

**[CHAPTER 30] CHAPTER 1. PART D. PROCEDURES IMPLEMENTING**  
42 Pa.C.S. §§ 4137, 4138, and 4139: CRIMINAL CONTEMPT POWERS OF  
DISTRICT JUSTICES, JUDGES OF THE PITTSBURGH MAGISTRATES COURT, AND  
JUDGES OF THE TRAFFIC COURT OF PHILADELPHIA

**RULE [30] 140. CONTEMPT PROCEEDINGS BEFORE DISTRICT JUSTICES,  
PITTSBURGH MAGISTRATES COURT JUDGES, AND PHILADELPHIA TRAFFIC  
COURT JUDGES.**

**(A) CONTEMPT IN THE PRESENCE OF THE COURT**

1. An issuing authority may summarily hold an individual in contempt for misbehavior in the presence of the court which obstructs the administration of justice, and, after affording the individual an opportunity to be heard, may impose a punishment of a fine or imprisonment as provided by law.
2. The issuing authority shall orally advise the contemnor of the right to appeal within 30 days for a trial *de novo* in the court of common pleas, and that:
  - a. any punishment shall be automatically stayed for a period of 30 days from the date of the imposition of the punishment;
  - b. if the contemnor files an appeal within the 30-day period, the stay will remain in effect pending disposition of the appeal;
  - c. when the punishment is imprisonment, the contemnor has the right to assistance of counsel for the purpose of the *de novo* hearing in the court of common pleas, and, if the contemnor is without financial resources or otherwise unable to employ counsel, counsel will be assigned as provided in Rule **[316] 122**;
  - d. the contemnor must appear in the court of common pleas for the *de novo* hearing or the appeal may be dismissed; and
  - e. unless a notice of appeal is filed within the 30-day period, on the date specified by the issuing authority, the contemnor must:
    - (1) pay any fine imposed [.] ; and
    - (2) appear before the issuing authority for execution of any punishment of imprisonment.

3. The issuing authority shall issue a written order of contempt, in which the issuing authority shall:

- a. set forth the facts of the case which constitute the contempt;
- b. certify that the issuing authority saw or heard the conduct constituting the contempt, and that the contempt was committed in the actual presence of the issuing authority;
- c. set forth the punishment imposed, and the date on which the contemnor is to pay any fine or to appear for the execution of any punishment of imprisonment; and
- d. set forth the information specified in paragraph (A)2.

4. The order of contempt shall be signed by the issuing authority, and a copy shall be given to the contemnor.

## (B) CONTEMPT NOT IN THE PRESENCE OF THE COURT

### 1. INSTITUTION OF PROCEEDINGS

- a. An issuing authority may institute contempt proceedings by either
  - (1) giving written notice to the alleged contemnor of the time, date, and place of the contempt hearing, or
  - (2) when deemed appropriate by the issuing authority, issuing an attachment by means of a warrant,

whenever a person is alleged to have (i) failed to obey a subpoena issued by the issuing authority; (ii) failed to comply with an order of the issuing authority directing a defendant to pay fines and costs in accordance with an installment payment order; (iii) failed to comply with an order of a district justice directing a defendant to compensate a victim; (iv) violated an order issued pursuant to 23 Pa.C.S. § 6110; or (v) failed to comply with an order of an issuing authority in any case in which the issuing authority is by statute given the power to find the person in contempt.

- b. If the proceedings are instituted by notice, the notice shall:
  - (1) specify the acts or omissions and the essential facts constituting the contempt charged;

(2) advise what the statutorily provided punishment may be for a finding of contempt in the case;

(3) if, in the event of a finding of contempt, there is a likelihood that the punishment will be imprisonment, advise the alleged contemnor of the right to the assistance of counsel and that counsel will be assigned pursuant to Rule **[316] 122** if the alleged contemnor is without financial resources or is otherwise unable to employ counsel; and

(4) advise the alleged contemnor that failure to appear at the hearing may result in the issuance of a warrant of arrest.

c. The notice shall be served in person or by both first class and certified mail, return receipt requested.

## 2. HEARING

a. The hearing shall be conducted in open court, and the alleged contemnor shall be given a reasonable opportunity to defend.

b. At the conclusion of the hearing:

(1) The issuing authority in open court shall announce the decision, and, upon a finding of contempt, impose punishment, if any.

(2) If the issuing authority finds contempt and imposes punishment, the issuing authority shall orally advise the contemnor of the right to appeal within 30 days for a trial *de novo* in the court of common pleas, and that:

(a) any punishment shall be automatically stayed for a period of 30 days from the date of the imposition of the punishment;

(b) if the contemnor files an appeal within the 30-day period, the stay will remain in effect until disposition of the appeal;

(c) when the punishment is imprisonment, that the contemnor has the right to assistance of counsel for the purpose of the *de novo* hearing in the court of common pleas and, if the contemnor is without financial resources or

otherwise unable to employ counsel, that counsel will be assigned as provided in Rule **[316] 122**;

(d) the contemnor must appear in the court of common pleas for the *de novo* hearing or the appeal may be dismissed; and

(e) unless a notice of appeal is filed within the 30-day period, on the date specified by the issuing authority, the contemnor must:

(i) pay any fine imposed **[,]** ; and

(ii) appear before the issuing authority for execution of any punishment of imprisonment.

(3) If the issuing authority finds contempt and imposes punishment, the issuing authority shall issue a written order of contempt setting forth:

(a) the facts of the case which constitute the contempt;

(b) the punishment imposed, and the date on which the contemnor is to pay any fine or to appear for the execution of any punishment of imprisonment; and

(c) the information specified in paragraph (B)2.b(2).

(4) The order of contempt shall be signed by the issuing authority, and a copy given to the contemnor.

(5) Whether or not the issuing authority finds an individual in contempt for failure to comply with an order to pay restitution or to pay fines and costs, the issuing authority may alter or amend the order. If the issuing authority alters or amends the order, the issuing authority shall:

(a) issue a written order setting forth the amendments and the reasons for the amendments, make the order a part of the transcript, and give a copy of the order to the defendant; and

(b) advise the defendant that the defendant has 30 days within which to file a notice of appeal of the altered or

amended order pursuant to Rule **[31] 141**.

c. The issuing authority shall not hold a contempt hearing in the absence of the alleged contemnor. If the alleged contemnor fails to appear for the contempt hearing, the issuing authority may continue the hearing and issue a warrant of arrest.

COMMENT: This rule sets forth the procedures to implement 42 Pa.C.S. §§ 4137, 4138, and 4139 concerning contempt powers of the minor judiciary, as well as any other statutes subsequently enacted which would provide for findings of contempt by the minor judiciary. It is not intended to supplant the procedures set forth in 23 Pa.C.S. § 6113 concerning violations of protection from abuse orders.

The scope of the contempt powers of district justices, Pittsburgh Magistrates Court judges, and Philadelphia Traffic Court judges is governed by 42 Pa.C.S. §§ 4137, 4138, and 4139 respectively. Therefore, as used in this rule, "issuing authority" refers only to district justices, Pittsburgh Magistrates Court judges, and Philadelphia Traffic Court judges when acting within the scope of their contempt powers.

All contempt proceedings under this rule are to be entered on the issuing authority's miscellaneous docket, and a separate docket transcript for the contempt proceeding is to be prepared. If an appeal is taken, the issuing authority is required to forward the transcript and the contempt order to the clerk of courts. See Rule **[31] 141**.

Paragraph (A) sets forth the procedures for handling contempt proceedings when the misbehavior is committed in the presence of the court and is obstructing the administration of justice. **See** 42 Pa.C.S. §§ 4137(a)(1), 4138(a)(1), and 4139(a)(1). This type of contempt is commonly referred to as "direct" or "summary" contempt. The issuing authority may immediately impose punishment without a formal hearing because prompt action is necessary to maintain or restore order in the courtroom and to protect the authority and dignity of the court. Although immediate action is permitted in these cases, the alleged contemnor is ordinarily given an opportunity to be heard

before the imposition of punishment. See *Commonwealth v. Stevenson*, 393 A.2d 386 (Pa. 1978).

Customarily, individuals are not held in summary contempt for misbehavior before the court without prior oral warning by the presiding judicial officer.

Paragraph (B) provides the procedures for instituting and conducting proceedings in all other cases of alleged contemptuous conduct subject to the minor judiciary's statutory contempt powers, which are commonly referred to as "indirect criminal contempt" proceedings.

Pursuant to 42 Pa.C.S. §§ 4137(a)(2), (3), (4), and (5), 4138(a)(2) and (3), and 4139(a)(2) and (3), only district justices have the power to impose punishment for contempt of court for failure to comply with an order directing a defendant to compensate a victim or an order issued pursuant to 23 Pa.C.S. § 6110. See paragraph (B)1.a.

"Indirect criminal contempt" proceedings must be instituted either by serving the alleged contemnor with a notice of the contempt hearing, or by issuing an attachment in the form of a warrant. The alleged contemnor must be afforded the same due process protections that are normally provided in criminal proceedings, including notice of the charges, an opportunity to be heard and to present a defense, and counsel. See, e.g., *Codispoti v. Pennsylvania*, 418 U.S. 506 (1974), and *Bloom v. Illinois*, 391 U.S. 194 (1968).

When a warrant of arrest is executed under this rule, the alleged contemnor should be taken without unreasonable delay before the proper issuing authority.

Although 42 Pa.C.S. §§ 4137(a)(4), 4138(a)(3), and 4139(a)(3) permit an issuing authority to impose summary punishments for indirect criminal contempt when a defendant fails to comply with an order of the issuing authority directing the defendant to pay fines and costs in accordance with an installment payment order, nothing in this rule is intended to preclude an issuing authority from proceeding pursuant to Rule 85 (Default Procedures: Restitution, Fines, and Costs).

The Supreme Court in *Commonwealth v. Abrams*, 336 A.2d 308 (Pa. 1975) held that the right to counsel applies in cases of criminal contempt. See also *Commonwealth v. Crawford*, 352 A.2d 52 (Pa. 1976).

For the assignment of counsel, follow the Rule **[316] 122** procedures for summary cases.

For waiver of counsel, follow the Rule **[318] 121** procedures for proceedings before an issuing authority.

For the procedures for taking, perfecting, and handling an appeal from an order entered pursuant to this rule, see Rule **[31] 141**.

If a contemnor defaults in the payment of a fine imposed as punishment for contempt pursuant to 42 Pa.C.S. §§ 4137(c), 4138(c), or 4139(c), the matter is to proceed as provided in Rule **[32] 142**.

See Chapter **[4000] 5 Part C** concerning bail before a contempt hearing. See 42 Pa.C.S. § 4137(e) concerning a district justice's authority to set bail after an adjudication of contempt.

Paragraphs (A)2.e and (B)2.b(2)(e) require the issuing authority to set a date for the contemnor to pay any fine or to appear for execution of any punishment of imprisonment. This date should be at least 35 days from the date of the contempt proceeding to allow for the expiration of the 30-day automatic stay period and the 5-day period within which the clerk of courts is to serve a copy of the notice of appeal on the issuing authority. See Rule **[31] 141**.

Paragraph (B)2.b(5) requires that the case be reviewed at the conclusion of a contempt hearing to determine whether the restitution order or the fines and costs installment order should be altered or amended, rather than scheduling another hearing. This review should be conducted whether or not the district justice finds an individual in contempt for failure to comply with an order to pay restitution, or whether or not the issuing authority finds an individual in contempt for failure to comply with an installment order to pay fines

and costs. For the authority to alter or amend a restitution order, see 18 Pa.C.S. § 1106(c)(2)(iii).

NOTE: **Rule 30 [A]** adopted October 1, 1997, effective October 1, 1998 [.] ; **renumbered Rule 140 and amended March 1, 2000, effective April 1, 2001.**

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**COMMITTEE EXPLANATORY REPORTS:**

**Final Report explaining the provisions of new Rule 30 published with the Court's Order at 27 Pa.B. 5405 (October 18, 1997).**

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