

RULE 462. TRIAL *DE NOVO*.

(A) When a defendant appeals after the entry of a guilty plea or a conviction by an issuing authority in any summary proceeding, upon the filing of the transcript and other papers by the issuing authority, the case shall be heard *de novo* by the judge of the court of common pleas sitting without a jury.

(B) 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.

(C) In appeals from summary proceedings arising under the Vehicle Code or local traffic ordinances, other than parking offenses, the law enforcement officer who observed the alleged offense must appear and testify. The failure of a law enforcement officer to appear and testify shall result in the dismissal of the charges unless:

(1) the defendant waives the presence of the law enforcement officer in open court on the record;

(2) the defendant waives the presence of the law enforcement officer by filing a written waiver signed by the defendant and defense counsel, or the defendant if proceeding *pro se*, with the clerk of courts; or

(3) the trial judge determines that good cause exists for the law enforcement officer's unavailability and grants a continuance.

(D) If the defendant fails to appear, the trial judge may dismiss the appeal and enter judgment in the court of common pleas on the judgment of the issuing authority.

(E) If the defendant withdraws the appeal, the trial judge shall enter judgment in the court of common pleas on the judgment of the issuing authority.

(F) The verdict and sentence, if any, shall be announced in open court immediately upon the conclusion of the trial, or, in cases in which the defendant may be sentenced to intermediate punishment, the trial judge may delay the proceedings pending confirmation of the defendant's eligibility for intermediate punishment.

(G) At the time of sentencing, the trial judge 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 trial judge 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 to the Superior Court within 30 days of the imposition of sentence, and that, if an appeal is filed, the execution of sentence will be stayed and the trial judge may set bail;

(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 trial judge. The order shall include the information specified in paragraphs (G)(1) through (G)(3), and a copy of the order shall be given to the defendant.

(H) After sentence is imposed by the trial judge, the case shall remain in the court of common pleas for the execution of sentence, including the collection of any fine and restitution, and for the collection of any costs.

COMMENT: This rule is derived from former Rule 86(G) and former Rule 1117(c).

This rule was amended in 2000 to make it clear in a summary criminal case that the defendant may file an appeal for a trial *de novo* following the entry of a guilty plea.

'Entry,' as used in paragraph (A) of this rule, means the date on which the issuing authority enters or records the guilty plea, the conviction, or other order in the **[district justice] magisterial district judge** computer system.

The procedures for conducting the trial *de novo* in the court of common pleas set forth in paragraphs (B), (F), and (G) are comparable to the summary case trial procedures in Rule 454 (Trial in Summary Cases).

Pursuant to paragraph (B), the decision whether to appear and assume control of the prosecution of the trial *de novo* is solely within the discretion of the attorney for the Commonwealth. When no attorney appears at the trial *de novo* on behalf of the Commonwealth or a municipality, the trial judge may ask questions of any witness who testifies, and the affiant may request the trial judge to ask specific questions. In the appropriate circumstances, the trial judge also may permit the affiant to question Commonwealth witnesses, cross-examine defense witnesses, and make recommendations about the case to the trial judge.

The provisions of paragraph (C) that permit the court to continue the case if there is good cause for the officer's unavailability were added in response to *Commonwealth v. Hightower*, 438 Pa. Super. 400, 652 A.2d 873 (1995).

Paragraph (D) makes it clear that the trial judge may dismiss a summary case appeal when the judge determines that the defendant is absent without cause from the trial *de novo*. If the appeal is dismissed, the trial judge should enter judgment and order execution of any sentence imposed by the issuing authority.

Paragraph (F) was amended in 2008 to permit a trial judge to delay imposition of sentence in order to investigate a defendant's eligibility for intermediate punishment for certain offenses, including summary violations of 75 Pa.C.S. §1543(b) (driving while license is under a DUI-related suspension), but only if he or she meets certain eligibility requirements, such as undergoing a drug and alcohol assessment. Potentially this information may not be available to the trial judge following a trial *de novo* at the time of sentencing.

Pursuant to paragraph (G), if the defendant is convicted, the trial judge must impose sentence, and advise the defendant of the payment schedule, if any, and the defendant's appeal rights. See Rule 704(A)(3) and Rule 720(D). No defendant may be sentenced to imprisonment or probation if the right to counsel was not afforded at trial. See *Alabama v. Shelton*, 535 U.S. 654 (2002), *Scott v. Illinois*, 440 U.S. 367 (1979), and *Argersinger v. Hamlin*, 407 U.S. 25 (1972).

Once sentence is imposed, paragraph (H) makes it clear that the case is to remain in the court of common pleas for execution of the sentence and collection of any costs, and the case may not be returned to the magisterial district judge. The execution of sentence includes the collection of any fines and restitution.

For the procedures for appeals from the Philadelphia Traffic Court, see Rule 1037.

NOTE: Former Rule 86 adopted July 12, 1985, effective January 1, 1986; revised September 23, 1985, effective January 1, 1986; the January 1, 1986 effective dates

extended to July 1, 1986; amended February 2, 1989, effective March 1, 1989; amended March 22, 1993, effective January 1, 1994; amended October 28, 1994, effective as to cases instituted on or after January 1, 1995; amended February 27, 1995, effective July 1, 1995; amended October 1, 1997, effective October 1, 1998; amended May 14, 1999, effective July 1, 1999; rescinded March 1, 2000, effective April 1, 2001, and paragraph (G) replaced by Rule 462. New Rule 462 adopted March 1, 2000, effective April 1, 2001; amended March 3, 2000, effective July 1, 2000; amended February 28, 2003, effective July 1, 2003; *Comment* revised March 26, 2004, effective July 1, 2004; amended January 18, 2007, effective August 1, 2007; amended December 16, 2008, effective February 1, 2009 [.] ; **Comment revised October 16, 2009, effective February 1, 2009.**

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COMMITTEE EXPLANATORY REPORTS:

FORMER RULE 86:

Final Report explaining the March 22, 1993 amendments to former Rule 86 published with the Court's Order at 23 Pa.B. 1699 (April 10, 1993).

Final Report explaining the October 28, 1994 amendments to former Rule 86 published with the Court's Order at 24 Pa.B. 5843 (November 26, 1994).

Final Report explaining the February 27, 1995 amendments to former Rule 86 published with the Court's Order at 25 Pa.B. 935 (March 18, 1995).

Final Report explaining the October 1, 1997 amendments to former Rule 86 concerning stays published with the Court's Order at 27 Pa.B. 5408 (October 18, 1997).

Final Report explaining the May 14, 1999 amendments to former Rule 86, paragraph (G), concerning the police officer's presence published with the Court's Order at 29 Pa.B. 2776 (May 29, 1999).

NEW RULE 462:

Final Report explaining the reorganization and renumbering of the

rules and the provisions of Rule 462 published at 30 Pa.B. 1478 (March 18, 2000).

Final Report explaining the March 3, 2000 amendments concerning appeals from guilty pleas published with the Court's Order at 30 Pa.B. 1508 (March 18, 2003).

Final Report explaining the February 28, 2003 amendments published with the Court's Order at 33 Pa.B. 1326 (March 15, 2003).

Final Report explaining the March 26, 2004 Comment revision published with the Court's Order at 34 Pa.B. 1931 (April 10, 2004).

Final Report explaining the January 18, 2007 amendment to paragraph (G)(2) published with the Court's Order at 37 Pa.B. 523 (February 3, 2007).

Final Report explaining the December 16, 2008 amendments to permit delay in sentencing published with the Court's Order at 39 Pa.B. 8 (January 3, 2008).

Final Report explaining the October 16, 2009 Comment revision regarding new Rule 1037 and procedures for the appeal from the Philadelphia Traffic Court published with the Court's Order at 39 Pa.B. (_____, 2009).

RULE 1037. APPEAL FROM SUMMARY CONVICTION.

(A) When a defendant appeals after the entry of a guilty plea or a conviction in any summary proceeding in the Philadelphia Traffic Court, upon the filing of the transcript and other papers by the Traffic Court, the Court of Common Pleas may schedule a status or settlement conference prior to the *de novo* summary trial.

(1) In the event the attorney for the Commonwealth or a designee and the defendant reach a negotiated plea, the plea may be entered before a Trial Commissioner and, upon approval by a judge of the Court of Common Pleas, the negotiated sentence will be recorded.

(2) In the event a negotiated plea is not approved by the court, the case shall be heard *de novo* by a judge of the Court of Common Pleas sitting without a jury.

(B) 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.

(C) In appeals from summary proceedings in the Philadelphia Traffic Court, the law enforcement officer who observed the alleged offense must appear and testify. The failure of a law enforcement officer to appear and testify shall result in the dismissal of the charges unless:

(1) the defendant waives the presence of the law enforcement officer in open court on the record;

(2) the defendant waives the presence of the law enforcement officer by filing a written waiver signed by the defendant and defense counsel, or the defendant if proceeding *pro se*, with the clerk of courts; or

(3) the trial judge determines that good cause exists for the law enforcement officer's unavailability and grants a continuance.

(D) If the defendant fails to appear for the trial *de novo*,

(1) when the appeal is from a mandatory sentence of imprisonment, the Court of Common Pleas judge shall dismiss the appeal, enter judgment in the Court of Common Pleas on the judgment of the Traffic Court judge, and issue a bench warrant and a commitment for the defendant. Execution of the sentence shall commence immediately upon defendant's arrest; and

(2) in all other cases, the Common Pleas Court judge shall dismiss the appeal and enter the judgment in the Court of Common Pleas on the judgment of the Traffic Court judge.

(E) If the defendant withdraws the appeal, the Court of Common Pleas judge shall enter the judgment in the Court of Common Pleas on the judgment of the Traffic Court judge.

(F) At the time of sentencing, the Court of Common Pleas judge shall:

(1) if the defendant's sentence includes a fine or costs and the defendant has the financial means to pay the amount in a single remittance, the judge shall instruct the defendant to make the payment at the Philadelphia Traffic Court. If the defendant is without the financial means to pay the amount in a single remittance, the judge shall instruct the defendant to contact the Philadelphia Traffic Court to establish an installment payment plan;

(2) advise the defendant of the right to appeal to the Superior Court within 30 days of the imposition of sentence, and that, if an appeal is filed, the execution of sentence will be stayed and the judge may set bail;

(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 judge. The order shall include the information specified in paragraphs (F)(1) through (F)(3), and a copy of the order shall be given to the defendant and to the Traffic Court.

(G) After sentence is imposed by the Court of Common Pleas judge, and 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 shall be returned to the Philadelphia Traffic Court for the collection of any outstanding fines and costs and for all other appropriate action.

COMMENT: This rule was adopted in 2009 to provide the procedures for appeals from the Philadelphia Traffic Court to the Court of Common Pleas of the First Judicial District. Except as provided in this rule, the procedures of Rules 460, 461, and 462, governing appeals for a trial *de novo* in summary cases, shall apply to summary case appeals in the Philadelphia Traffic Court.

For purposes of this rule, "judgment" means the determination of guilty and any sentence imposed on the defendant.

The date upon which payment is due upon a sentence of a fine or costs ordinarily will be 30 days following imposition of sentence.

NOTE: Rule 1037 adopted October 16, 2009, effective February 1, 2009.

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COMMITTEE EXPLANATORY REPORTS:

Final Report explaining new Rule 1037 concerning procedures for the appeal from the Philadelphia Traffic Court published with the Court's Order at 39 Pa.B. (, 2009).