

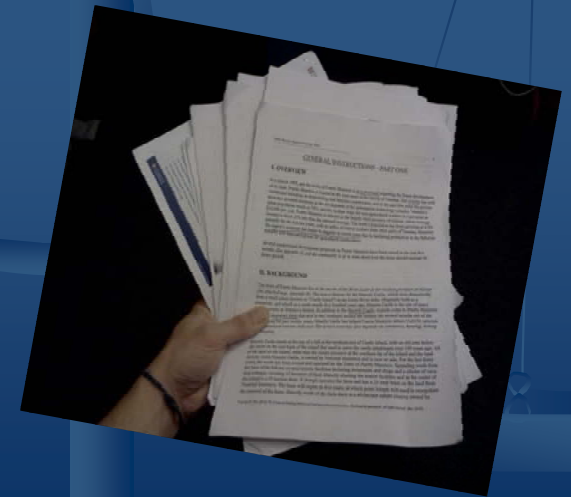
LEGAL ADMINISTRATION: WARRANTS, ENTRY ISSUES and COURTROOM PREPARATION for CODE OFFICIALS



WELCOME & THANK YOU!!



HOUSEKEEPING....



COURSE OBJECTIVES

This course will focus on Administrative Warrants, entry issues, and Courtroom preparation utilized in the Commonwealth of Pennsylvania. Attendees will be provided knowledge and information to discuss and understand:

- *Differences between criminal and civil implications of code enforcement*
- *Importance and preparation of Citation associated with Code Enforcement*
- *The recognition of legal circumstance and awareness of entry issues where Administrative Warrant(s) may be required*
- *The preparation and execution processes for Administrative Warrant(s)*
- *Potential Administrative Warrant(s) outcomes*
- *Processes and importance of Courtroom testimony supporting enforcement actions*

DISCALIMER

This course is not an avenue for legal advice. Information provided is intended to generate discussion with your respective solicitor(s), requisite boards, commissions and leaders.

Any reference or discussion regarding events, incidents or situations is for course facilitation and demonstrative purposes. It is not an endorsement, judgment, criticism, incident debrief or agreement of /with said events, actions or outcomes.



PRESENTERS

MICHELLE R. MAYFIELD, ESQ.

HARTMAN VALERIANO MAGOVERN & LUTZ

ANDREW B. ADAIR, ESQ.

DEASEY, MAHONEY, & VALENTINI, LTD

TODD M. IAEGER

UL SOLUTIONS

FIRE MARSHAL (RETIRED)



SPECIAL GUEST PRESENTER

THE HONORABLE DAVID L. YOCH

MAGISTERIAL DISTRICT JUDGE, COUNTY OF BERKS

MDC-23-2-04

*FORMER BOROUGH OF WYOMISSING POLICE OFFICER AND
DETECTIVE (RETIRED)*

*INSTRUCTOR PA MUNICIPAL POLICE OFFICERS' EDUCATION
TRAINING COMMISSION (RETIRED)*

INSTRUCTOR READING POLICE ACADEMY (RETIRED)

LEGAL ASPECTS OF CODE ENFORCEMENT



INTRODUCTION

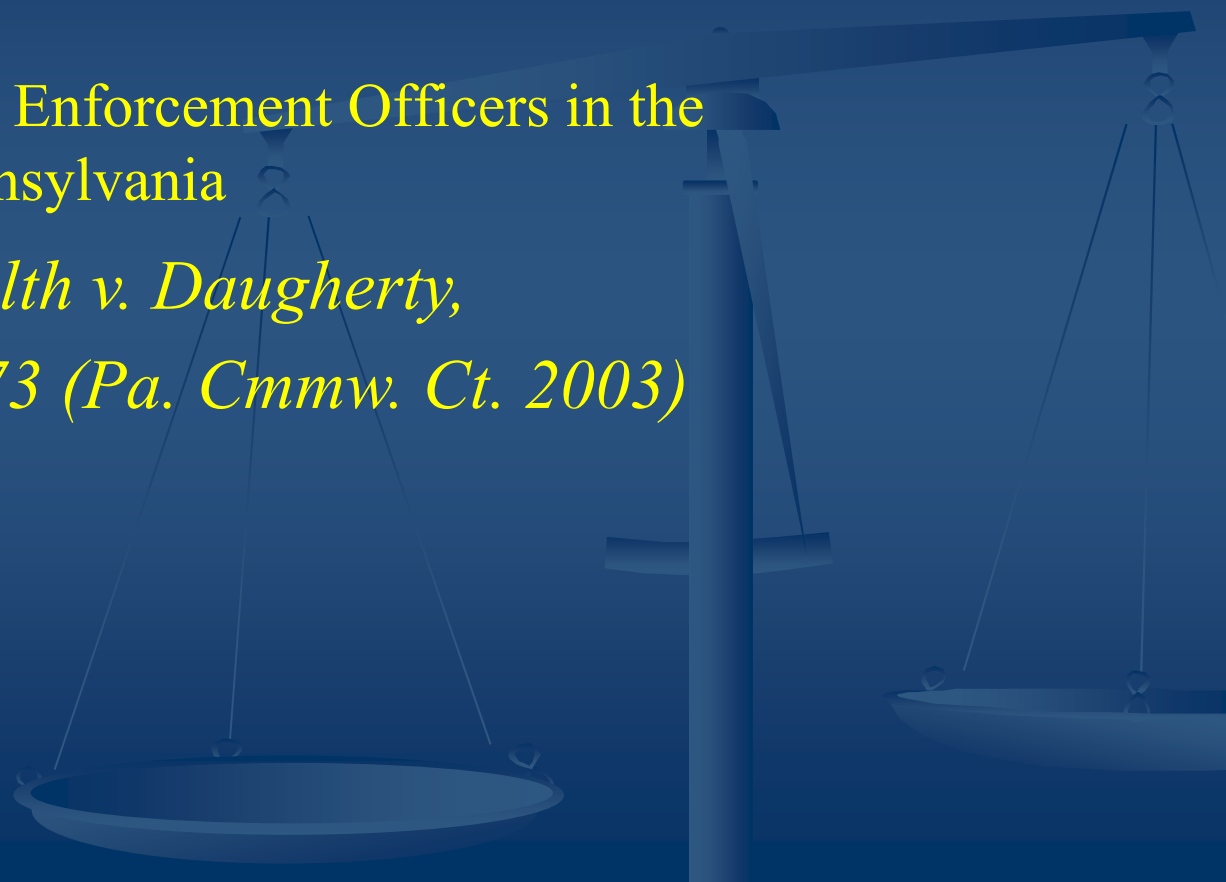
CITATION WRITING

TECHNOLOGY AND SOCIAL MEDIA

DUTIES AND POWERS OF CODE OFFICIAL

Code Officials are Law Enforcement Officers in the Commonwealth of Pennsylvania

Commonwealth v. Daugherty,
829 A.2d 1273 (Pa. Cmmw. Ct. 2003)



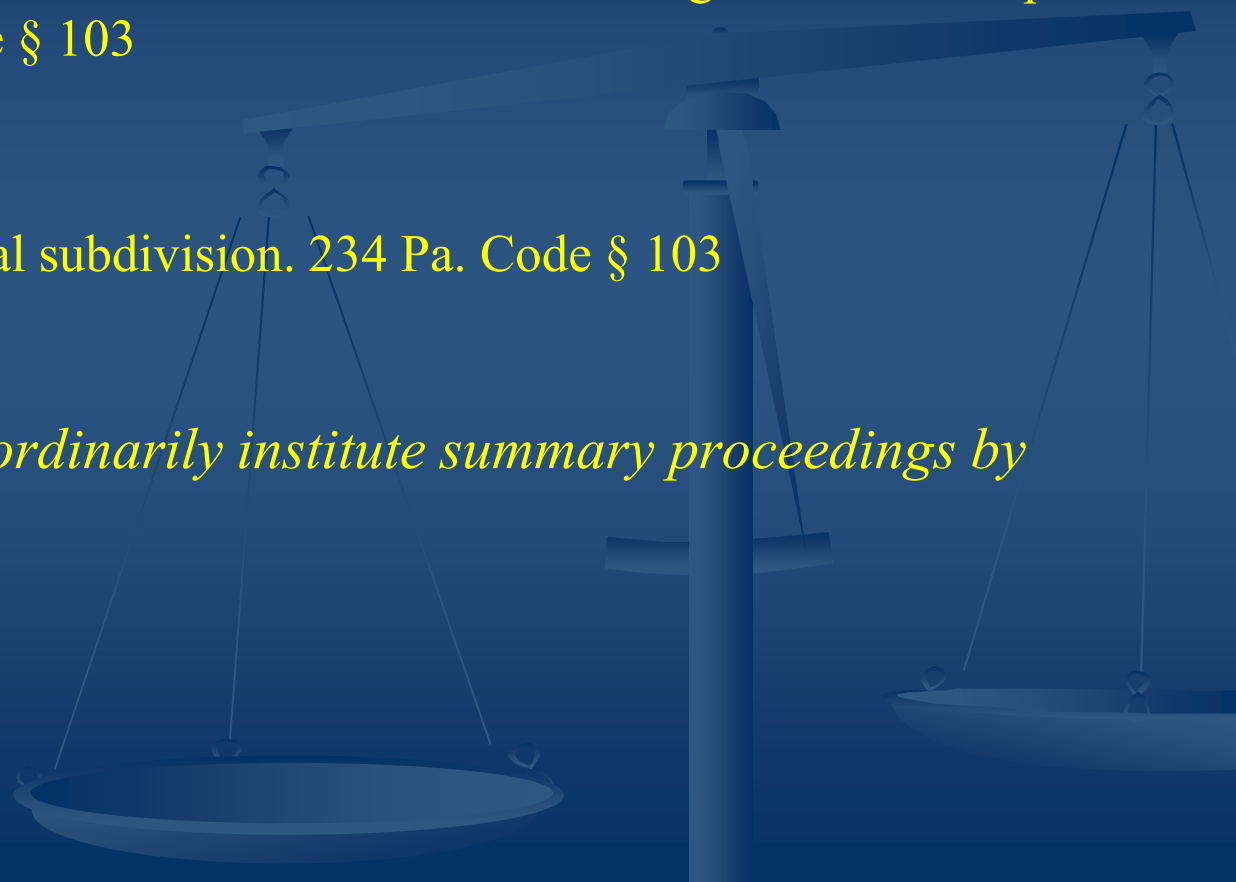
LAW ENFORCEMENT OFFICER:

Person who is by law given the power to enforce the law when acting within the scope of that person's employment. 234 Pa. Code § 103

ORDINANCE:

A legislative enactment of a political subdivision. 234 Pa. Code § 103

Law enforcement officers shall ordinarily institute summary proceedings by citation. 234 Pa. Code § 402



OFFICER SAFETY

- Increasing levels of violence nationwide aimed at code enforcement officials
(Varying enforcement actions)
- Difficult times politically / socially / philosophically
- Trust your instincts
- Know history ~ *property / complaints / alleged violator(s)*
- Uniformed approach



OFFICER SAFETY

- Community education / Education of alleged violator
- Hoarding *
- Peripheral relationships important (*PD / Social Services / Legal*)
- Situational Awareness = Sensibility / History / Threats
- Communication: Pre / During / Post enforcement

** *ICC / American Association of Code Enforcement / Others...*

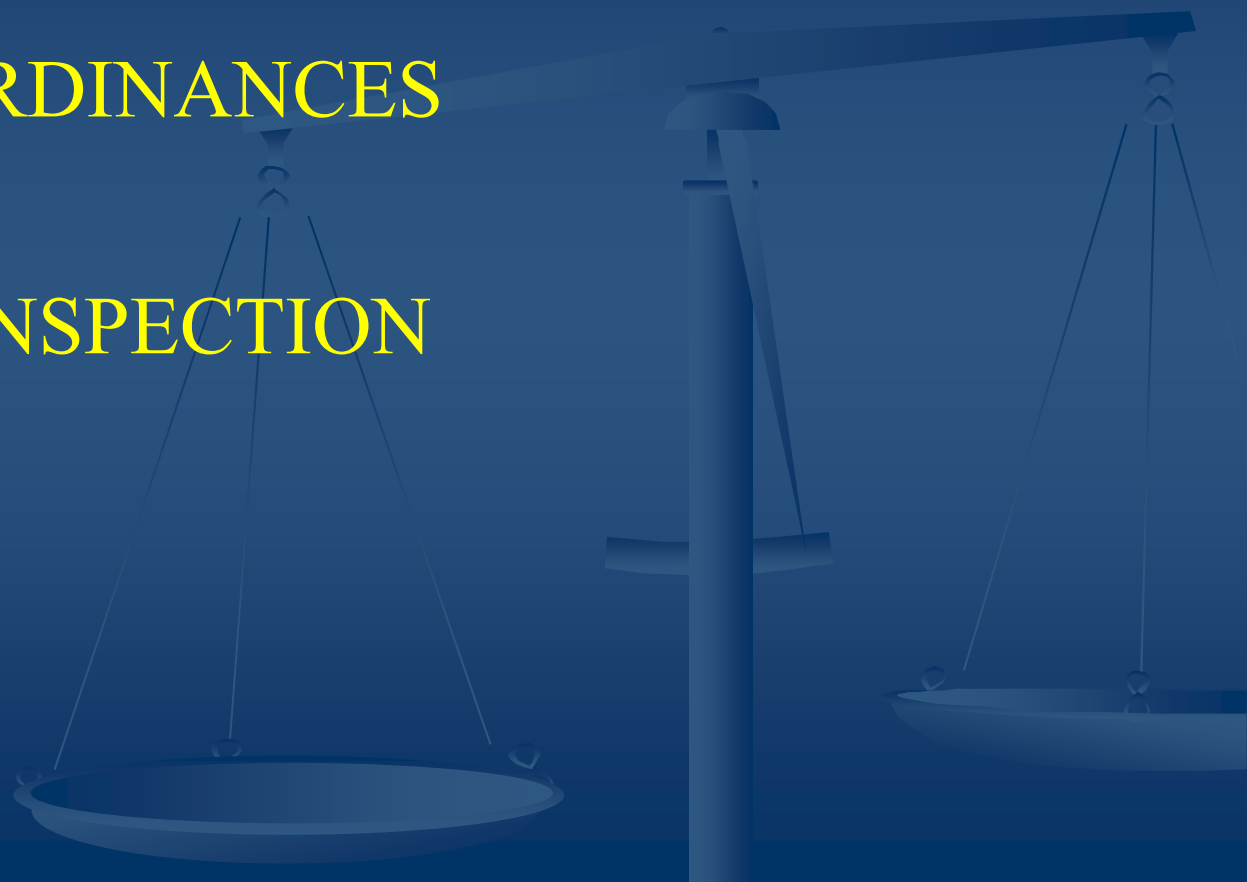


WHEN TO START PREPARING FOR COURT



ORDINANCES

INSPECTION



DOCUMENT YOUR INVESTIGATION

- You will not remember events that occurred two years prior
- Keep clear notes
- Identify photographs
- Keep a log/journal of the investigation
- Record names of witnesses/informants
- Encourage witnesses to keep logs



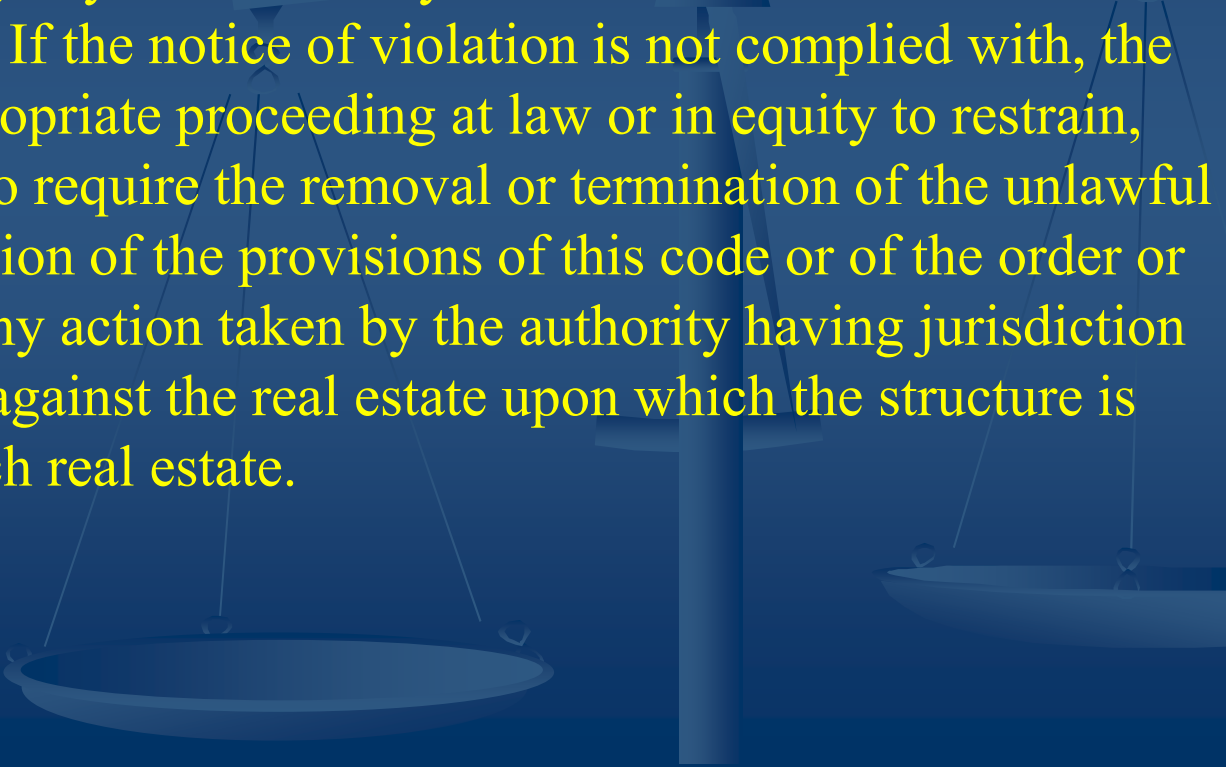
PRACTICAL CONSIDERATIONS

- Voluntary compliance is more effective than litigation
- Attitude and appearance matter
- Play it cool / relaxed
- Be consistent
- Do not retaliate



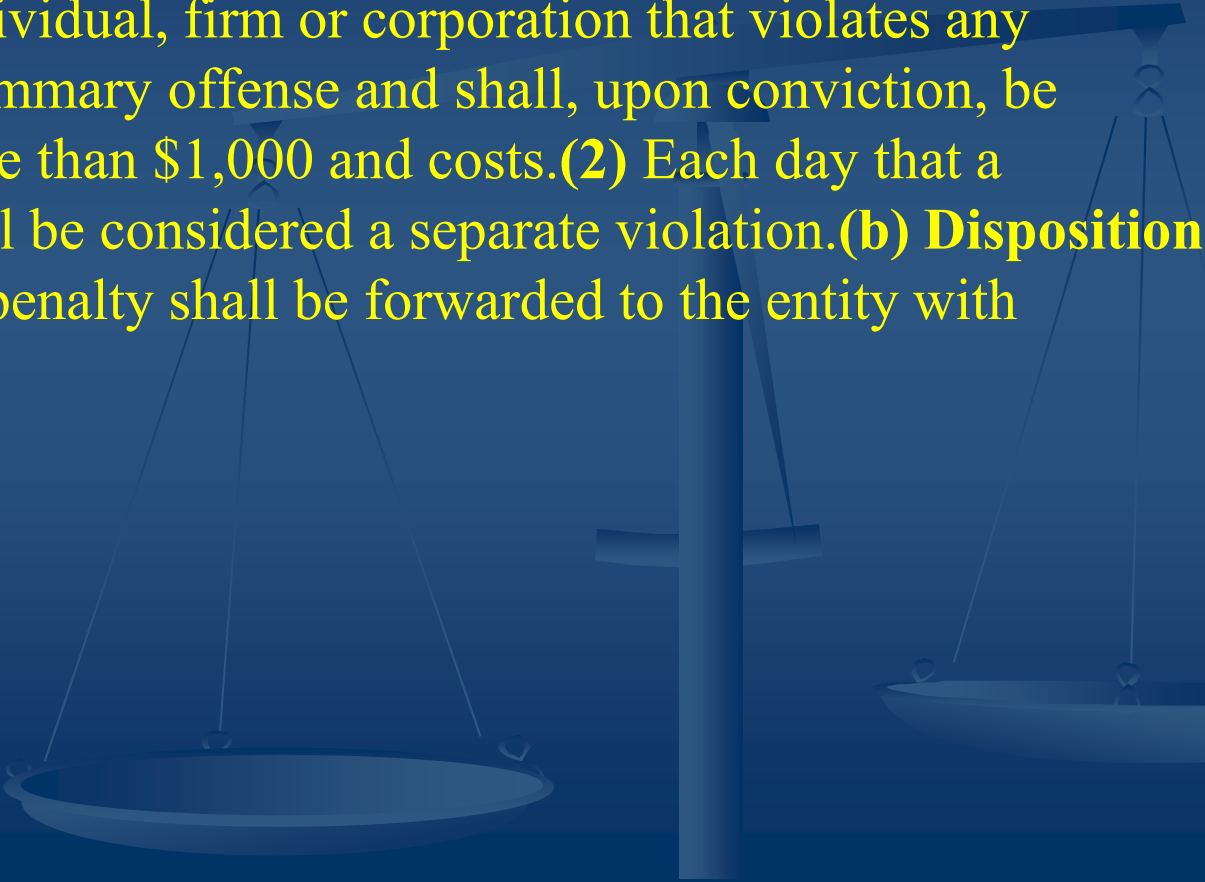
106.3 PROSECUTION OF VIOLATION.

Any person failing to comply with a notice of violation or order served in accordance with Section 107 shall be deemed guilty of a summary offense and the violation shall be deemed a strict liability offense. If the notice of violation is not complied with, the code official shall institute the appropriate proceeding at law or in equity to restrain, correct or abate such violation, or to require the removal or termination of the unlawful occupancy of the structure in violation of the provisions of this code or of the order or direction made pursuant thereto. Any action taken by the authority having jurisdiction on such premises shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate.



35 Pa. Stat. § 7210.903

(a) Violation of act.--(1) Any individual, firm or corporation that violates any provision of this act commits a summary offense and shall, upon conviction, be sentenced to pay a fine of not more than \$1,000 and costs.(2) Each day that a violation of this act continues shall be considered a separate violation.**(b) Disposition of penalties.--**The amount of the penalty shall be forwarded to the entity with enforcement jurisdiction.



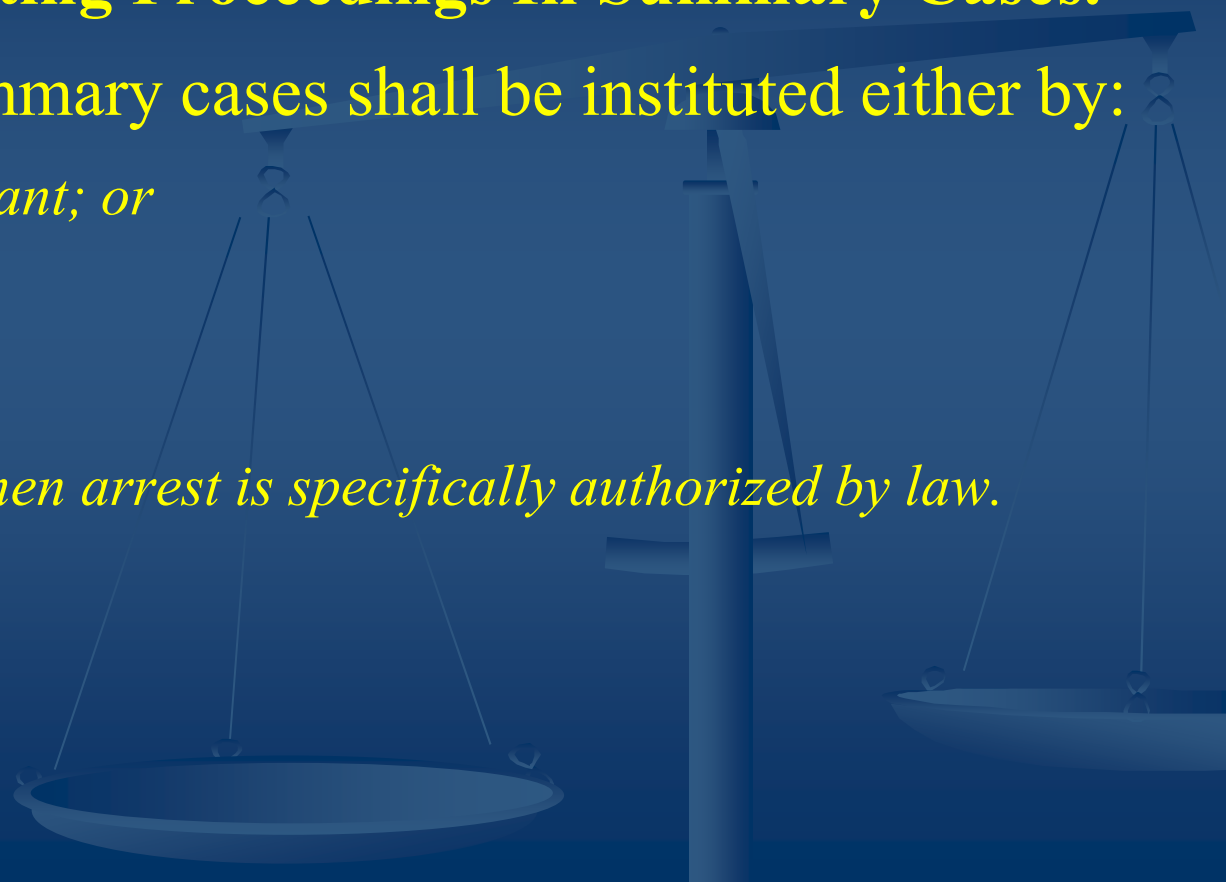


Pennsylvania Rules of Criminal Procedure

Rule 400. Means of Instituting Proceedings In Summary Cases.

Criminal proceedings in summary cases shall be instituted either by:

- 1) Issuing a citation to the defendant; or*
- 2) Filing a citation; or*
- 3) Filing a complaint; or*
- 4) Arresting without a warrant when arrest is specifically authorized by law.*



CITATION WRITING





COMMONWEALTH OF PENNSYLVANIA CITATION NO.

NON-TRAFFIC CITATION R2560481-0

1. Magisterial District Number		2. Docket Number		3. Social Security Number	
4. Address of Magisterial District Office				5. Driver's Number	
7. Defendant's Name - First		Middle		Last	
6. Defendant's Address (Street-City-State-Zip Code)					
9. Race/Ethnicity (V) <input type="checkbox"/> White (B) <input type="checkbox"/> Black (I) <input type="checkbox"/> Native American		(A) <input type="checkbox"/> Asian (H) <input type="checkbox"/> Hispanic (U) <input type="checkbox"/> Unknown		10. Sex (M) <input type="checkbox"/> Male (F) <input type="checkbox"/> Female	
11. Date of Birth (MM/DD/YY)		12. Resident Status (R) <input type="checkbox"/> Resident (N) <input type="checkbox"/> Non-Resident (U) <input type="checkbox"/> Unknown		13. Case Initiated by (O) <input type="checkbox"/> On-View Arrest (C) <input type="checkbox"/> Citation/Summons	
14. JUVENILE <input type="checkbox"/> Yes <input type="checkbox"/> No		15. Parents Notified <input type="checkbox"/> Yes <input type="checkbox"/> No		16. Parent's Name	
19. Charge <input type="checkbox"/> Disorderly Conduct <input type="checkbox"/> Harassment <input type="checkbox"/> Retail Theft <input type="checkbox"/> Other <input type="checkbox"/> Criminally Trespass <input type="checkbox"/> Public Drunkenness <input type="checkbox"/> Purchase, Consumption, Possession or Transportation of Liquor or Malt or Brewed Beverages <input type="checkbox"/> Theft of Services <input type="checkbox"/> Scattering Rubbish <input type="checkbox"/> Criminal Mischief					
20. Nature of Offense				21. Pa. Code	
22. <input type="checkbox"/> CRIMES CODE TITLE 18				23. SECTION	
24. SUB SEC.				25. FINE	
26. COSTS				27. J.C.P.A./C.J.E.A./S.A.G.	
28. TOTAL DUE \$				29. \$ 40.25	
31. Date		32. Time		33. Day	
34. City/Town/Boro		35. Code		36. Zone	
37. Location				38. County	
39. County Code				40. Defendant's Signature - Acknowledge Receipt of Citation	
41. Date				42. <input type="checkbox"/> Issued <input type="checkbox"/> Filed <input type="checkbox"/> Filed on info. received	
43. I verify that the facts set forth in this citation are true to the best of my knowledge, information and belief. This verification is made subject to the provisions of Section 4904 of the Crimes Code (18 Pa.C.S. § 4904) relating to unsworn statements to authorities. I certify this filing complies with the U.S. Case Records Public Access Policy.					
OFFICER'S SIGNATURE				BADGE NUMBER	
44. Station Address					
45. Offense Code		46. Property Record No.		47. Systems Code	
48. Initial Report		49. Attention LGE		50. Incident No.	
51. Victim's Name		52. Date of Birth (MM/DD/YY)		53. Sex	
54. Race/Ethnicity				55. Phone Number	
56. Victim's Address (Street-City-State-Zip Code)					
57. Confidential Information Section					
58. Remarks/Subpoena List					
				59. Supv. Init.	
				60. Badge No.	

R2560481-0

AOPC 407-95 (Rev. 04/2018)

MAGISTERIAL DISTRICT JUDGE

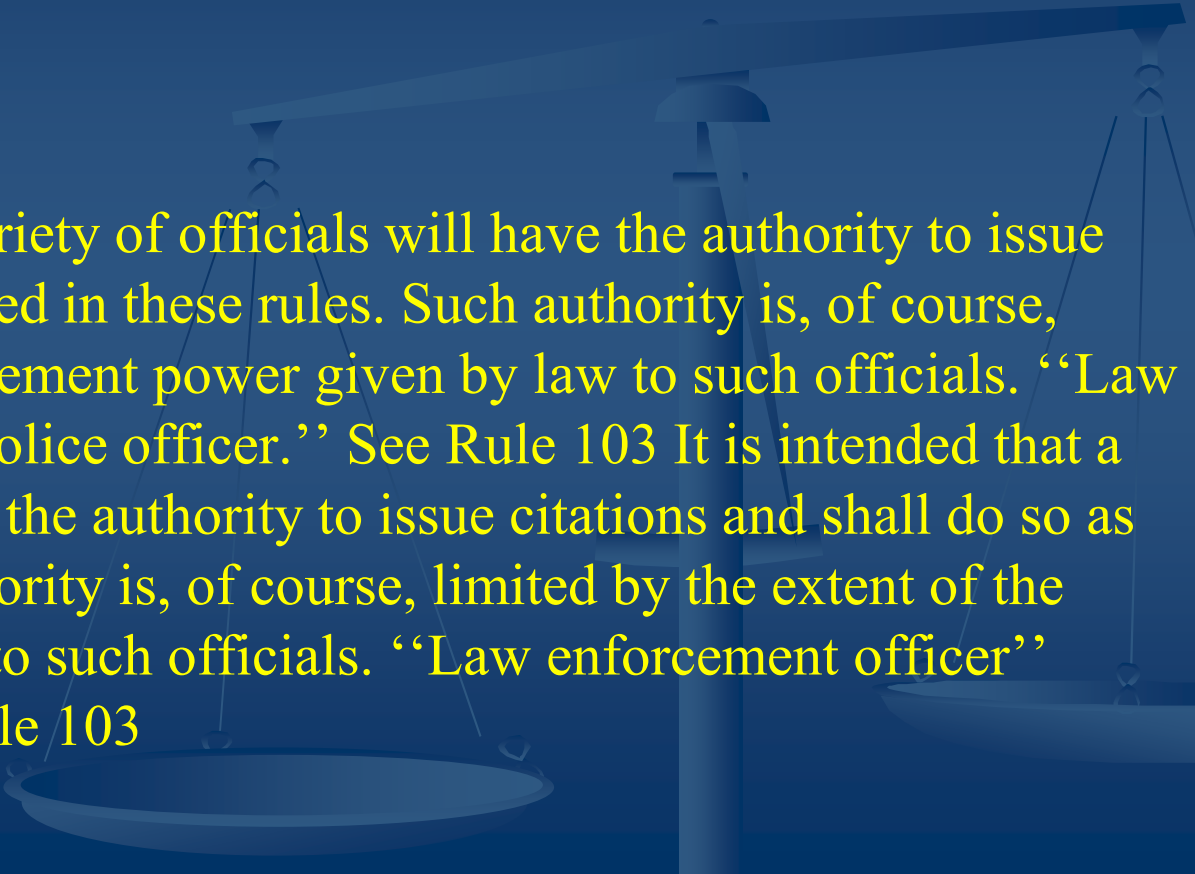
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Rule 402. Persons Who Shall Use Citations.

Law enforcement officers shall ordinarily institute summary proceedings by citation.

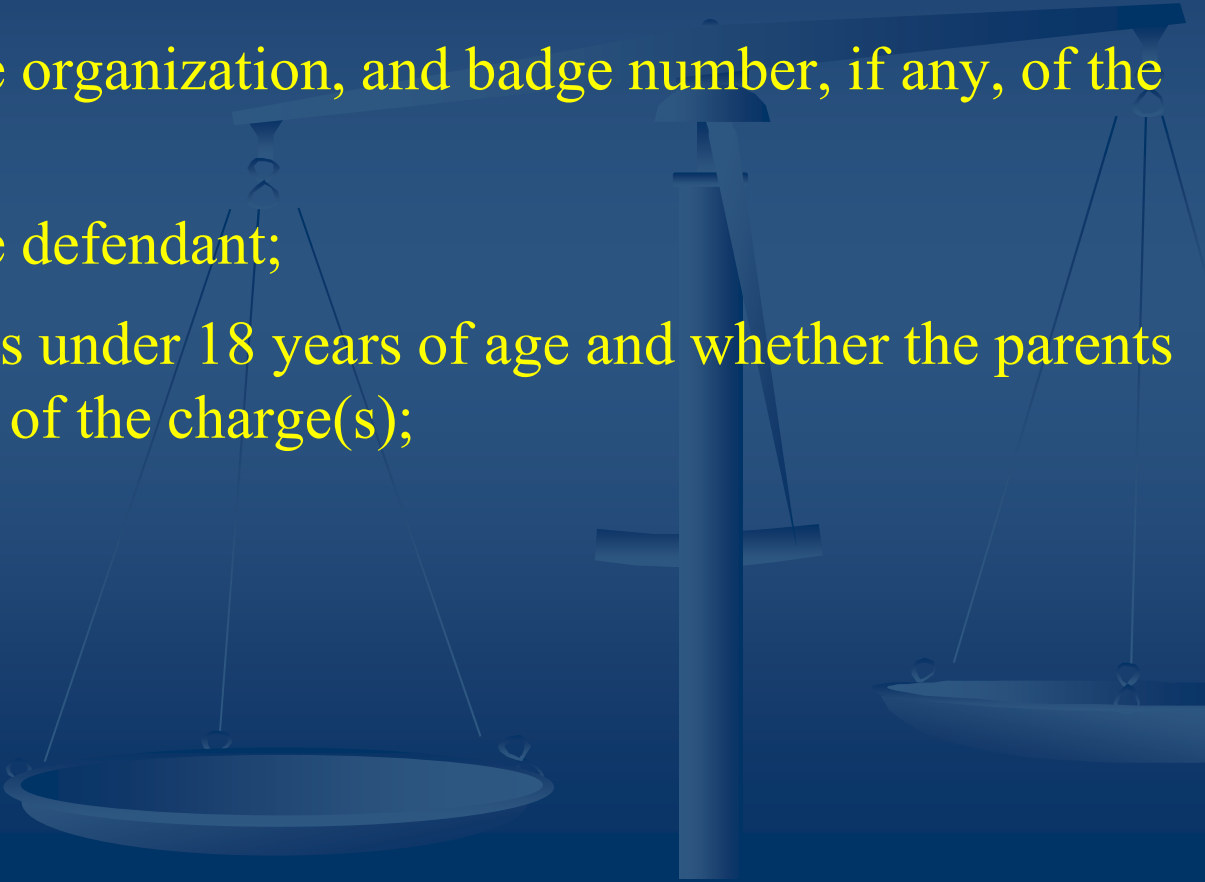
Comment

It is intended that a wide variety of officials will have the authority to issue citations and shall do so as provided in these rules. Such authority is, of course, limited by the extent of the enforcement power given by law to such officials. “Law enforcement officer” includes “police officer.” See Rule 103 It is intended that a wide variety of officials will have the authority to issue citations and shall do so as provided in these rules. Such authority is, of course, limited by the extent of the enforcement power given by law to such officials. “Law enforcement officer” includes “police officer.” See Rule 103

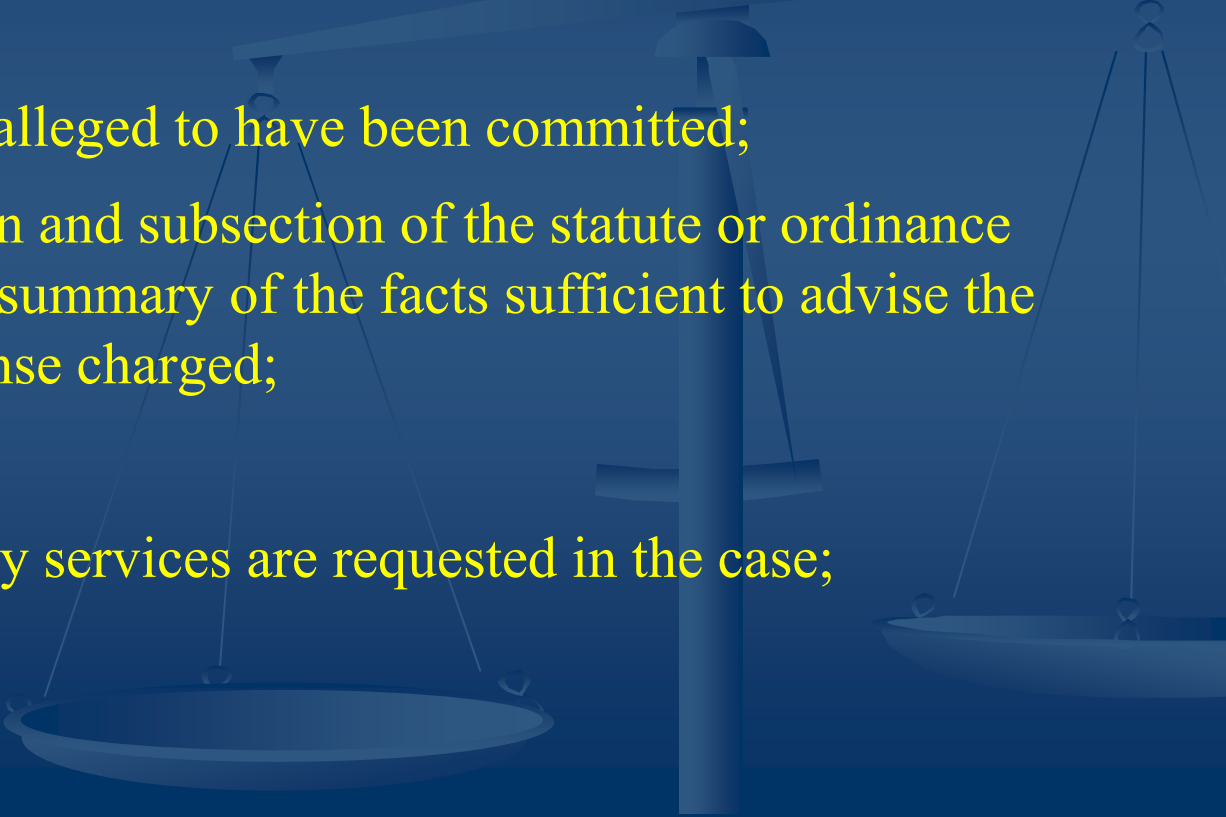


Rule 403. Contents of Citation.

(A) Every citation shall contain:

- (1) the name and address of the organization, and badge number, if any, of the law enforcement officer;
 - (2) the name and address of the defendant;
 - (3) a notation if the defendant is under 18 years of age and whether the parents or guardians have been notified of the charge(s);
- 

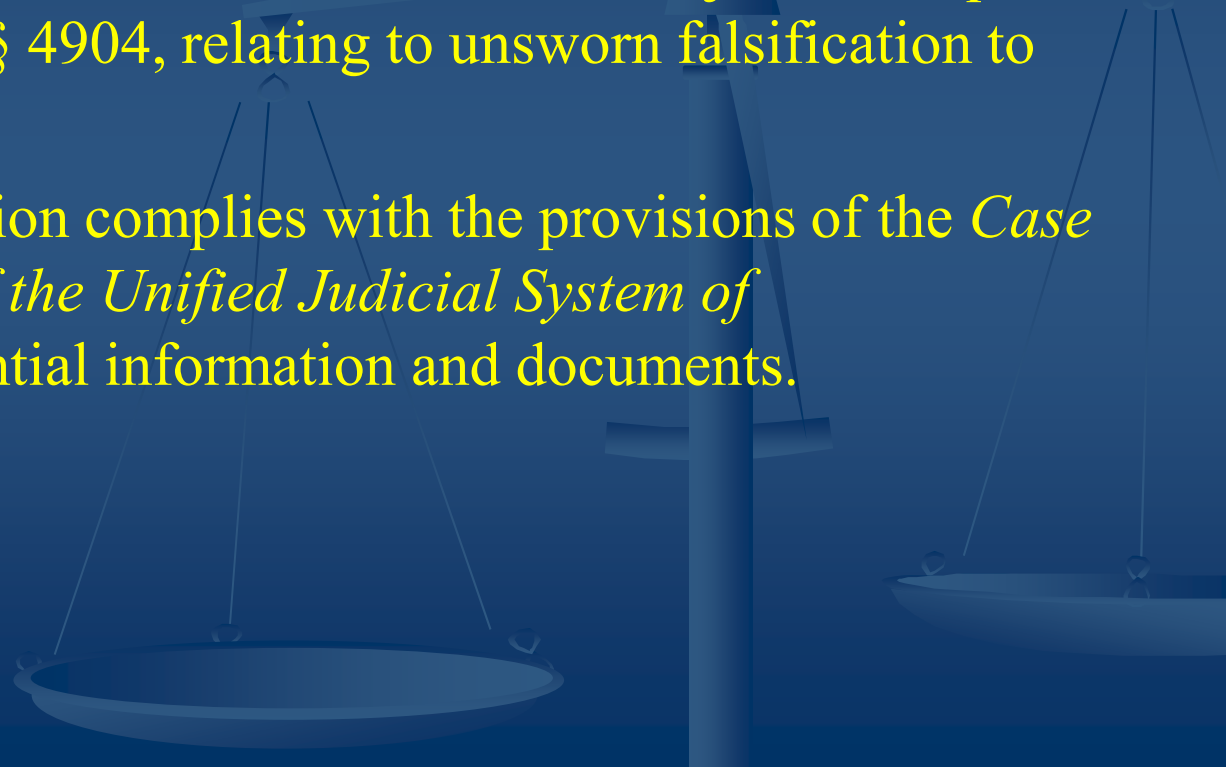
Rule 403.A. Continued

- (4) the date and time when the offense is alleged to have been committed, provided however, if the day of the week is an essential element of the offense charged, such day must be specifically set forth;
 - (5) the place where the offense is alleged to have been committed;
 - (6) a citation of the specific section and subsection of the statute or ordinance allegedly violated, together with a summary of the facts sufficient to advise the defendant of the nature of the offense charged;
 - (7) the date of issuance;
 - (8) a notation if criminal laboratory services are requested in the case;
- 

Rule 403.A. Continued

(9) a verification by the law enforcement officer that the facts set forth in the citation are true and correct to the officer's personal knowledge, or information and belief, and that any false statements therein are made subject to the penalties of the Crimes Code, 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities; and

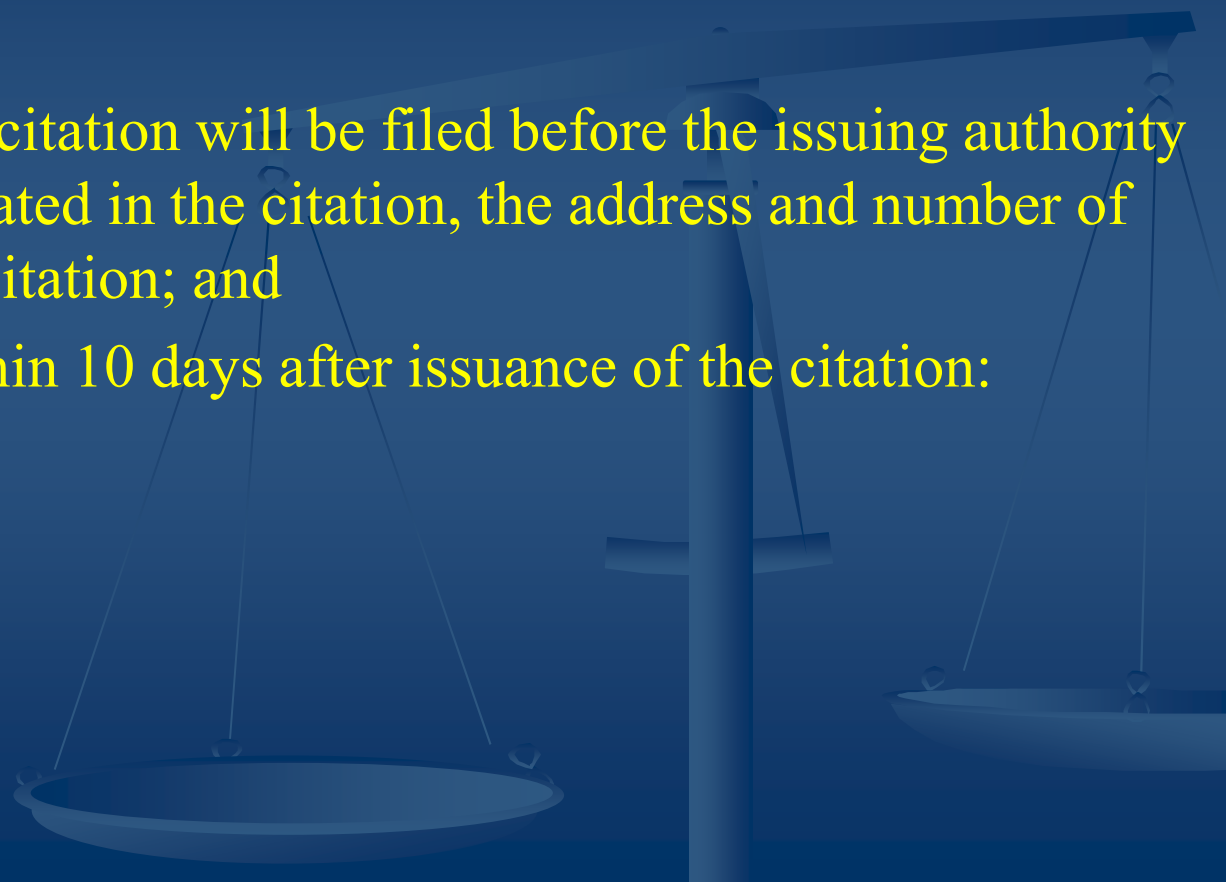
(10) a certification that the citation complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* regarding confidential information and documents.



Rule 403. Contents of Citation.

(B) The copy delivered to the defendant shall also contain a notice to the defendant:

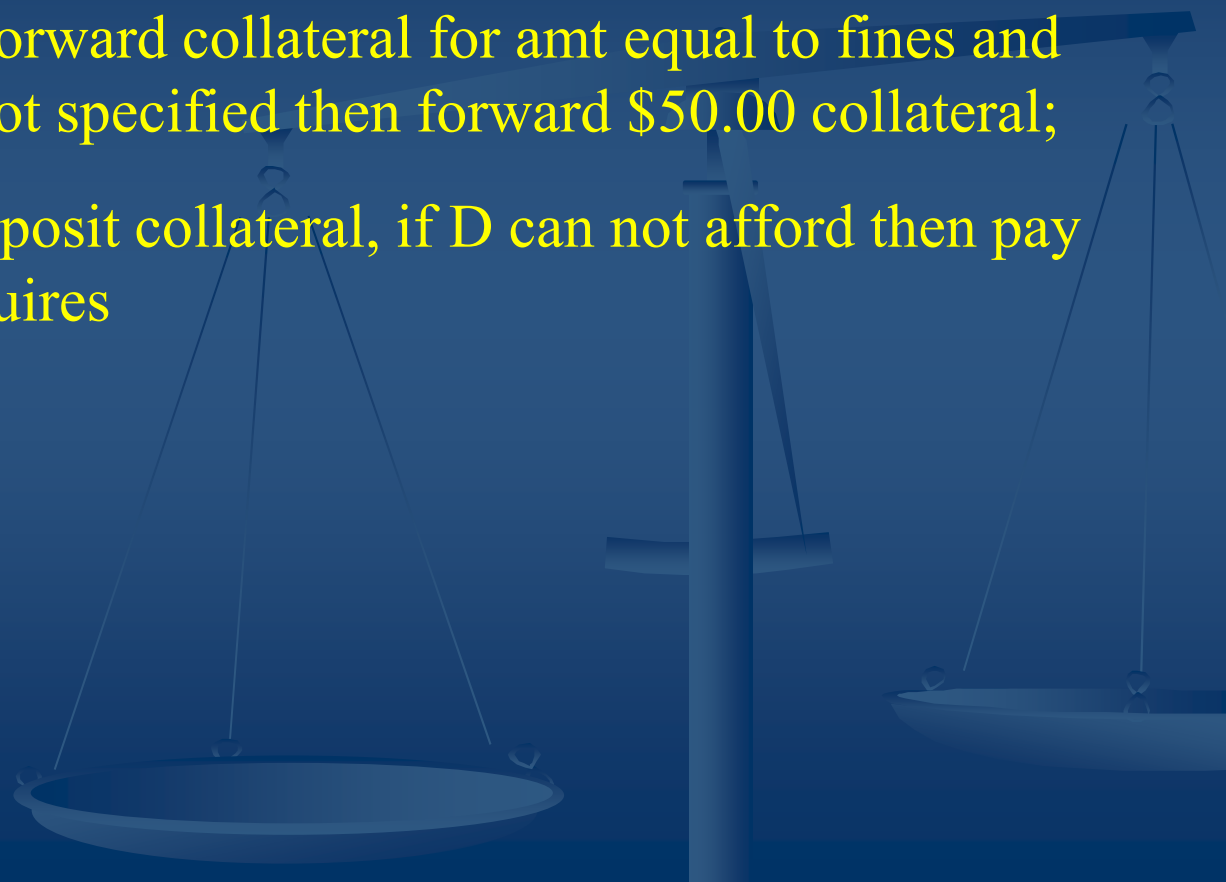
- (1) that the original copy of the citation will be filed before the issuing authority of the magisterial district designated in the citation, the address and number of which shall be contained in the citation; and
- (2) that the defendant shall, within 10 days after issuance of the citation:



Rule 403.B. Continued

(B)(2)(a) plead not guilty by:

- (i) notifying of plea in writing-forward collateral for amt equal to fines and costs on citation, or if amount not specified then forward \$50.00 collateral;
- (ii) appear at MDJ enter plea-deposit collateral, if D can not afford then pay \$50.00 collateral or as MDJ requires



Rule 403.B. Continued

(B)(2)(b) plead guilty by:

(i) notify MDJ in writing of plea and forward amount equal to fines and costs in citation or

(ii) appear before MDJ, enter plea, and receive imposition of sentence when fines are not specified in citation.

***** Notice also must state that if the defendant is convicted or has pleaded guilty , the defendant may appeal within 30 days for a trial de novo***

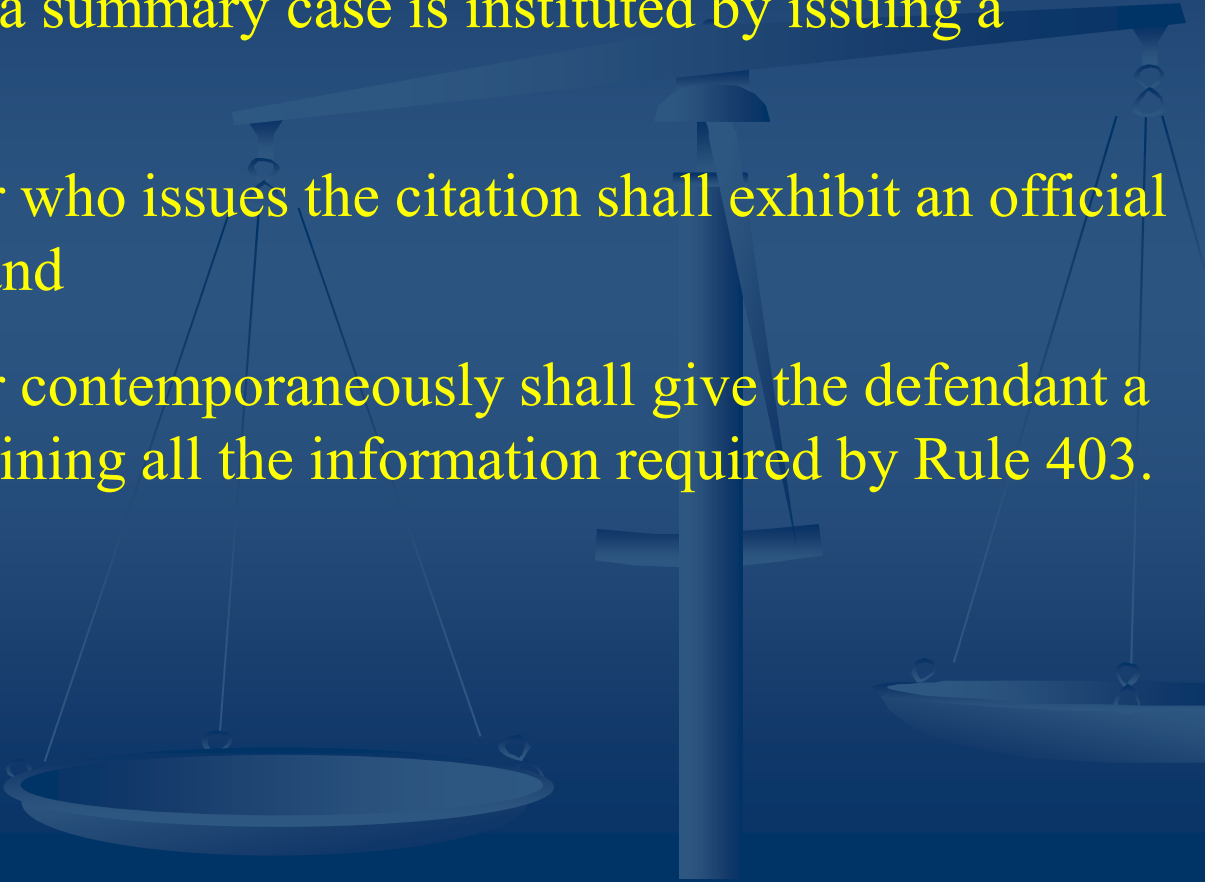


Procedures When Citation is Issued To Defendant



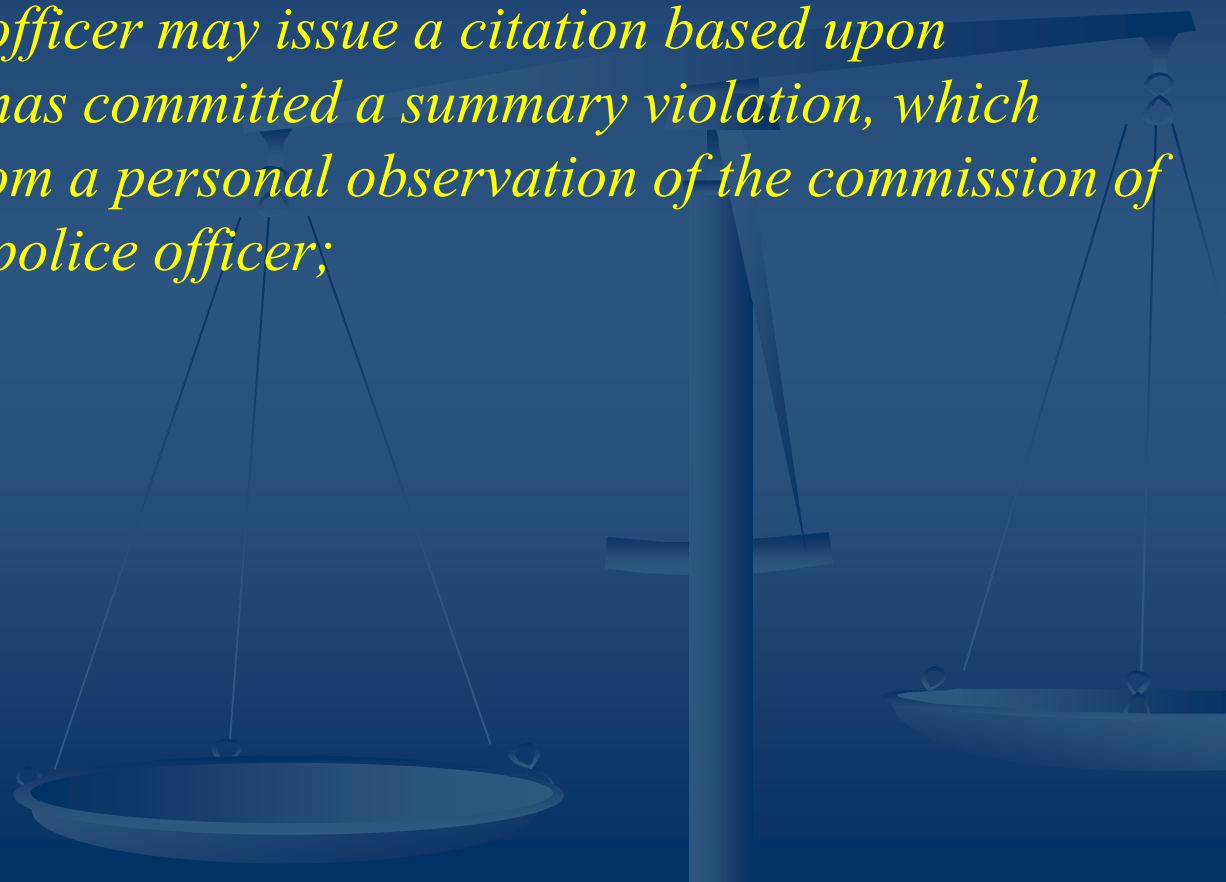
Rule 405. Issuance of Citation.

When a criminal proceeding in a summary case is instituted by issuing a citation to the defendant:

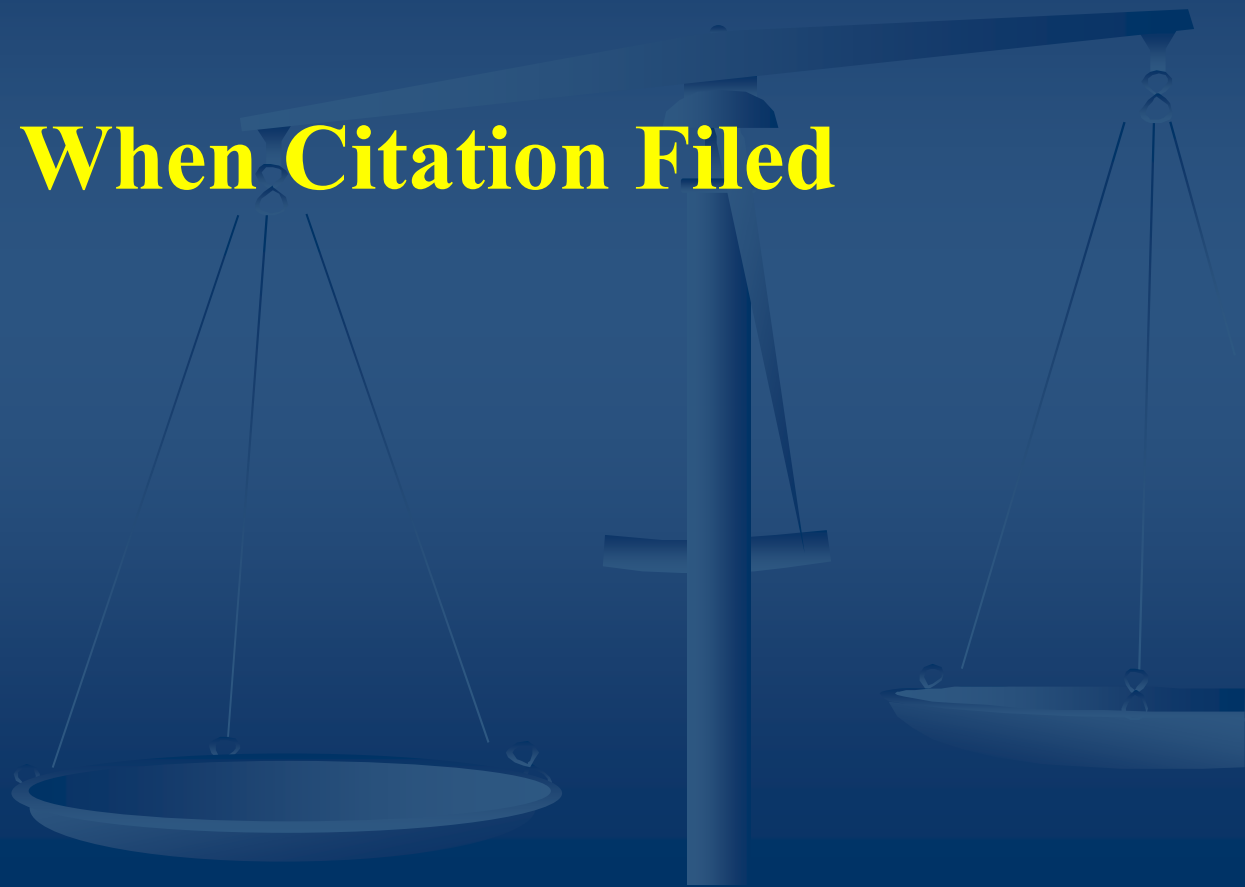
- (1) the law enforcement officer who issues the citation shall exhibit an official sign of the officer's authority; and
 - (2) the law enforcement officer contemporaneously shall give the defendant a paper copy of the citation containing all the information required by Rule 403.
- 

Rule 405. Continued

Comment - A law enforcement officer may issue a citation based upon information that the defendant has committed a summary violation, which information may be received from a personal observation of the commission of the offense; a witness; another police officer;

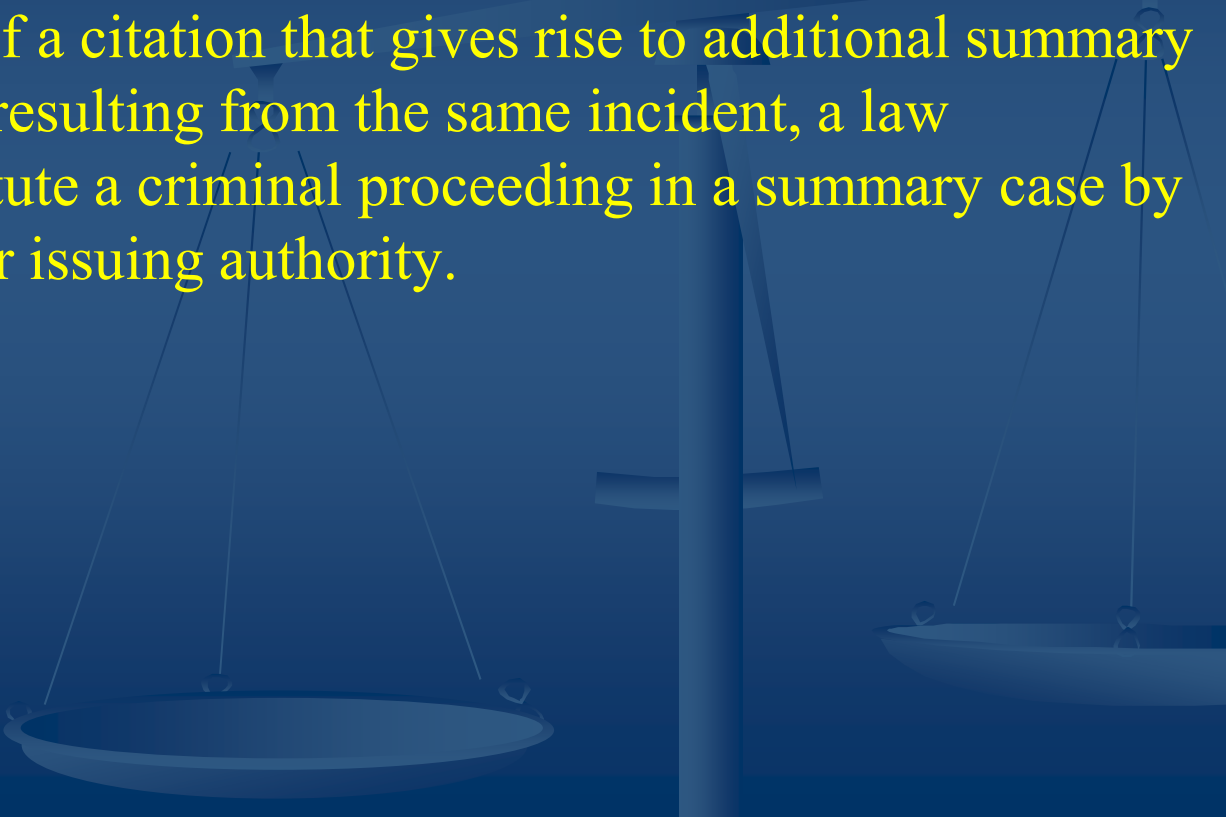


Procedures When Citation Filed

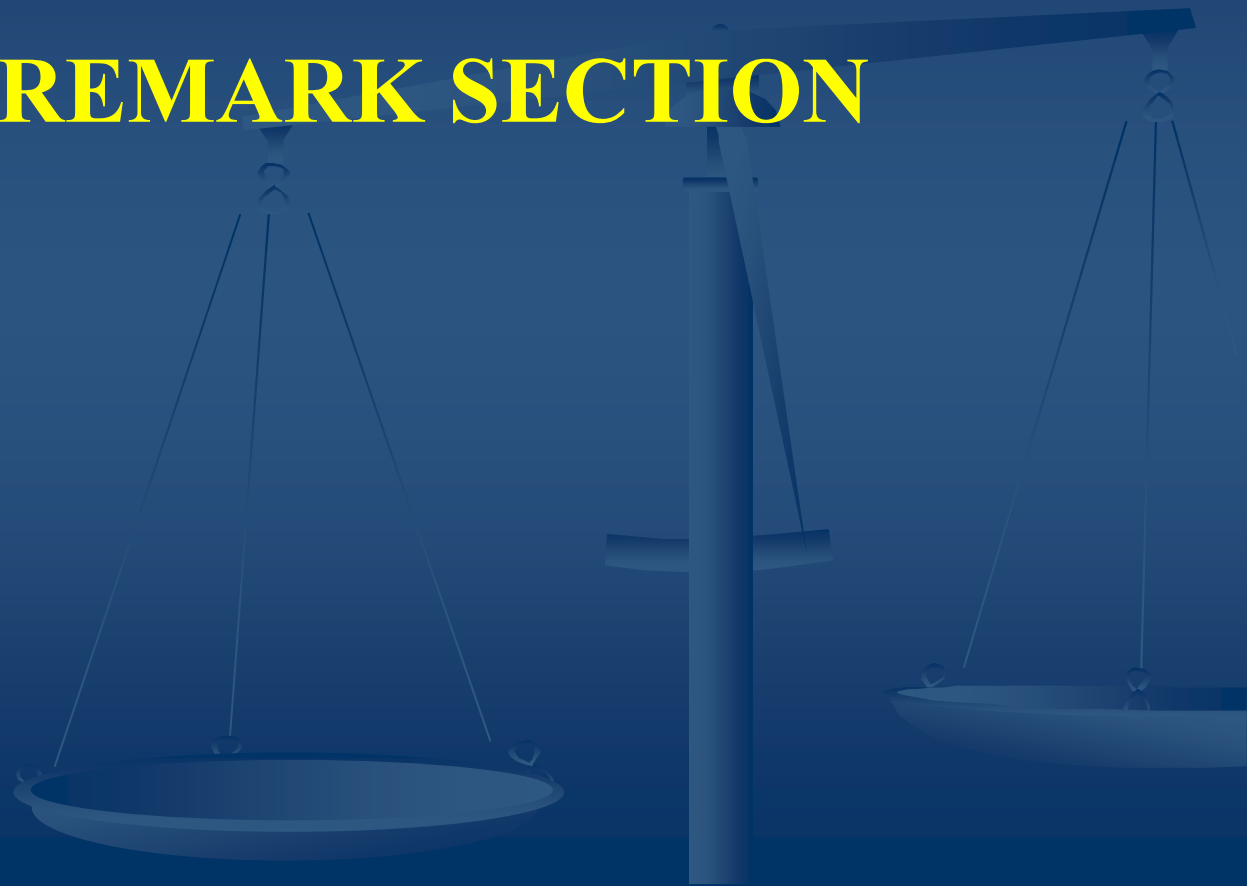


Rule 410 Filing of Citation

When it is not feasible to issue the citation to the defendant or when evidence is discovered after the issuance of a citation that gives rise to additional summary charges against the defendant resulting from the same incident, a law enforcement officer shall institute a criminal proceeding in a summary case by filing a citation with the proper issuing authority.



CITATION REMARK SECTION



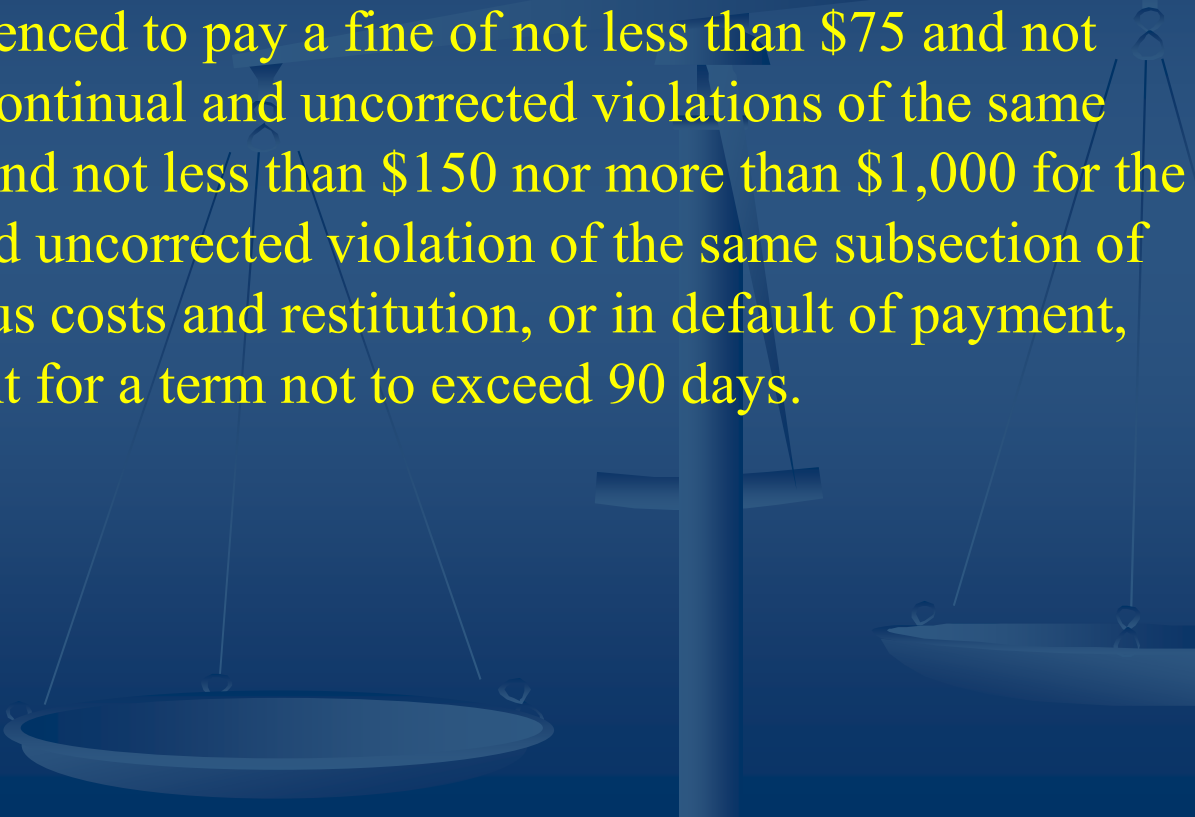
FINES

ORDINANCE ESTABLISH MAXIMUM FINES



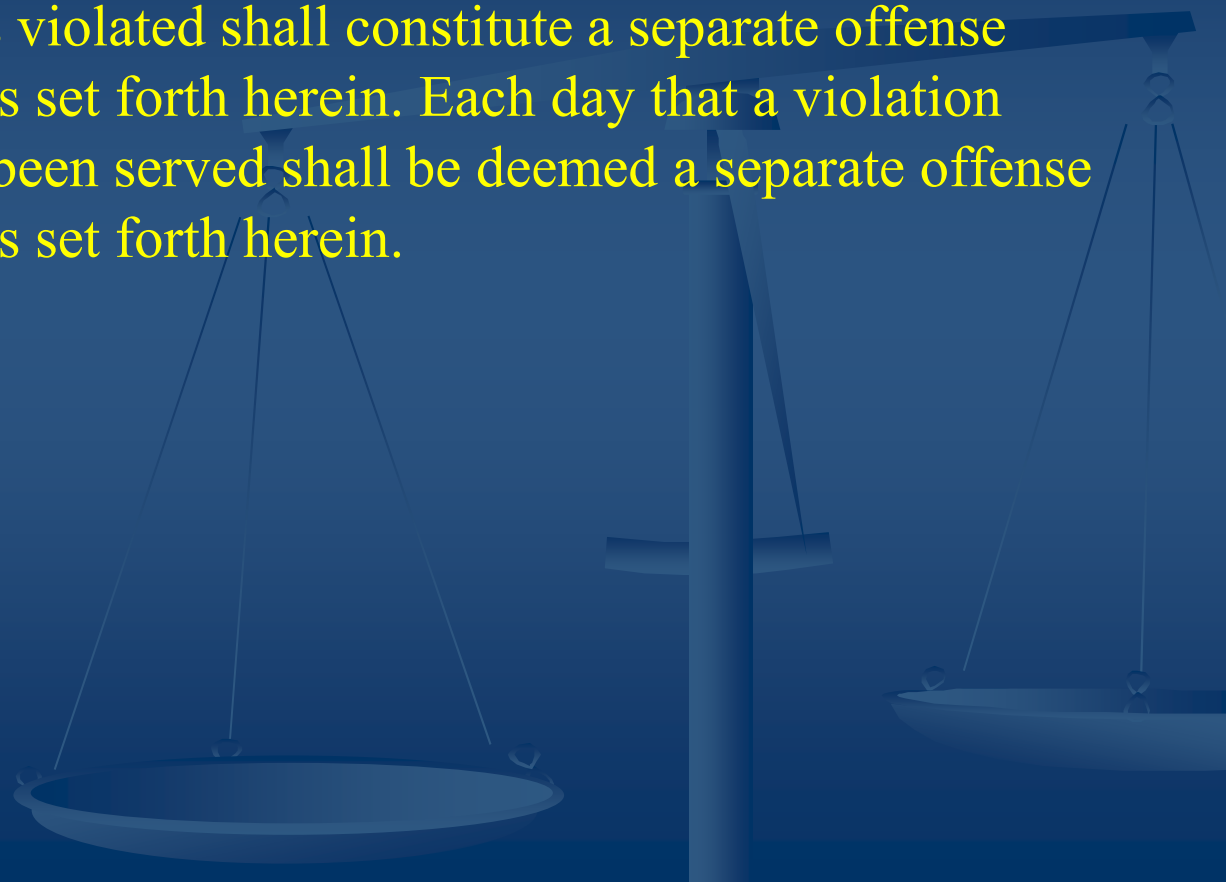
106.4 Violation Penalties.

Any person who shall violate a provision of this code shall, upon conviction thereof in a summary proceeding, be sentenced to pay a fine of not less than \$75 and not exceeding \$500 for the first two continual and uncorrected violations of the same subsection on the same property and not less than \$150 nor more than \$1,000 for the third and subsequent continual and uncorrected violation of the same subsection of the code on the same property, plus costs and restitution, or in default of payment, may be sentenced to imprisonment for a term not to exceed 90 days.



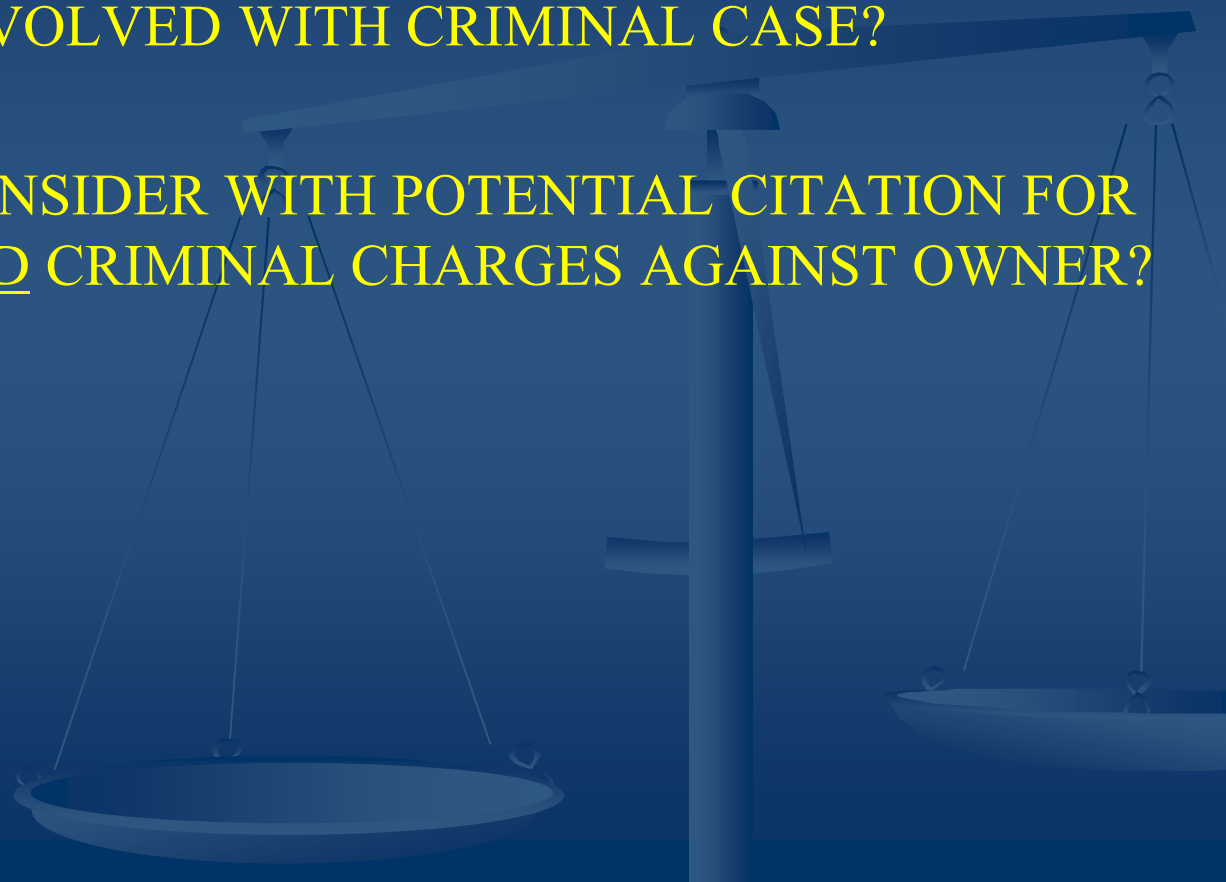
106.4 Violation Penalties. (Cont'd).

Each section of this code that is violated shall constitute a separate offense punishable by a separate fine as set forth herein. Each day that a violation continues after due notice has been served shall be deemed a separate offense punishable by a separate fine as set forth herein.



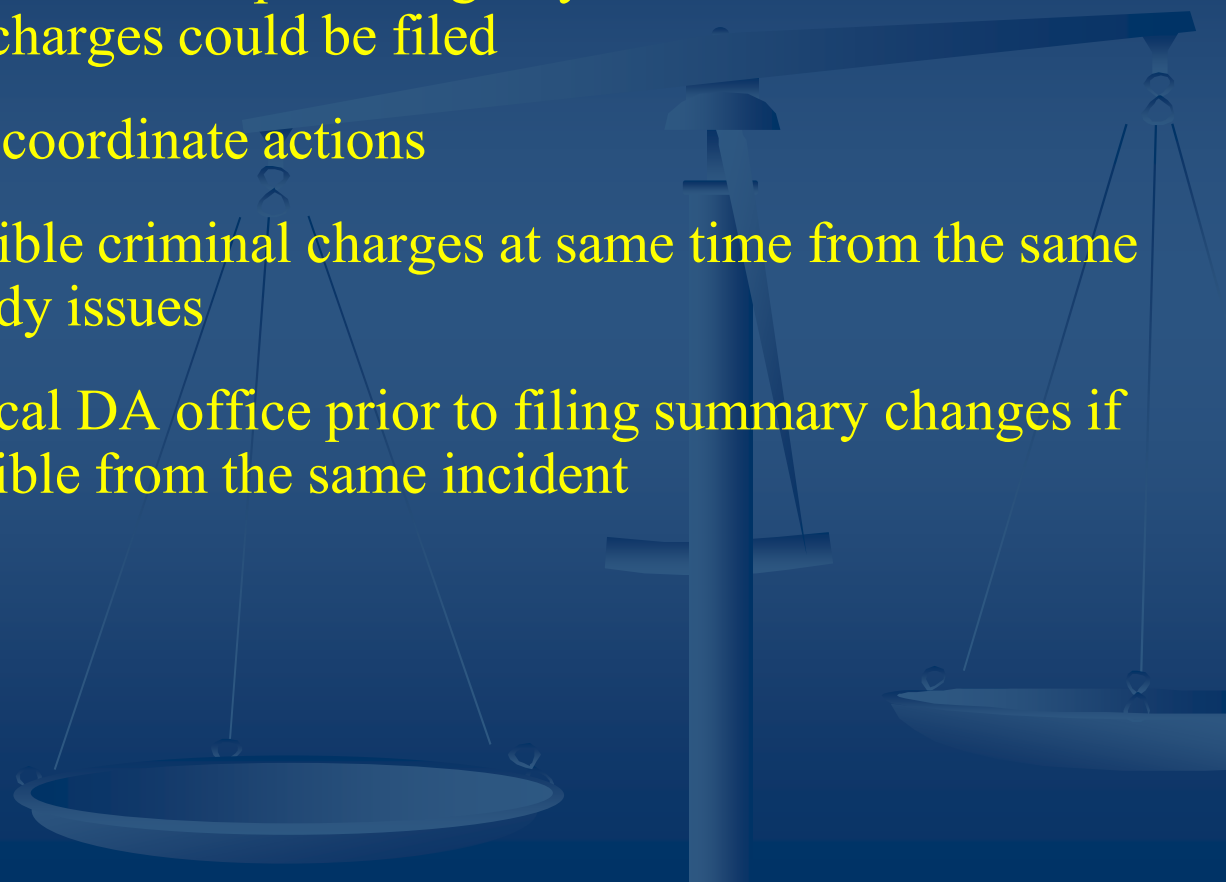
CRIMINAL CHARGES

- HOW MIGHT YOU BE INVOLVED WITH CRIMINAL CASE?
- ANYTHING NEED TO CONSIDER WITH POTENTIAL CITATION FOR CODES VIOLATIONS AND CRIMINAL CHARGES AGAINST OWNER?



DOUBLE JEOPARDY SCENARIO?

- Double jeopardy could result if defendant pleaded guilty to the codes violation before any additional criminal charges could be filed
- Governmental agencies should coordinate actions
- Safe approach is to file all possible criminal charges at same time from the same incident to avoid double jeopardy issues
- Check with your Solicitor or local DA office prior to filing summary charges if other criminal charges are possible from the same incident



TECHNOLOGY AND SOCIAL MEDIA

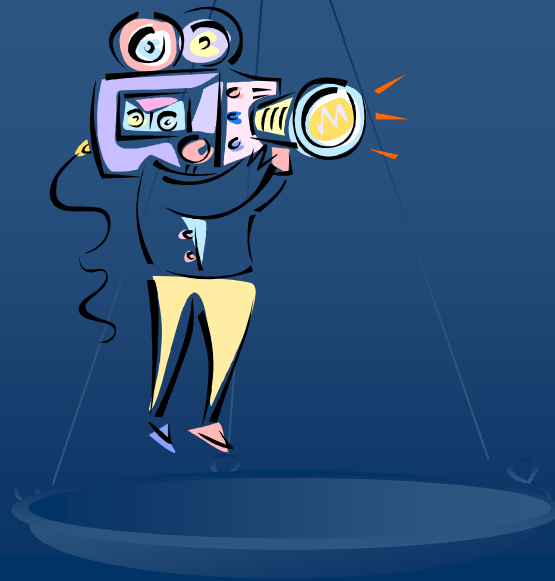


TECHNOLOGY AND SOCIAL MEDIA

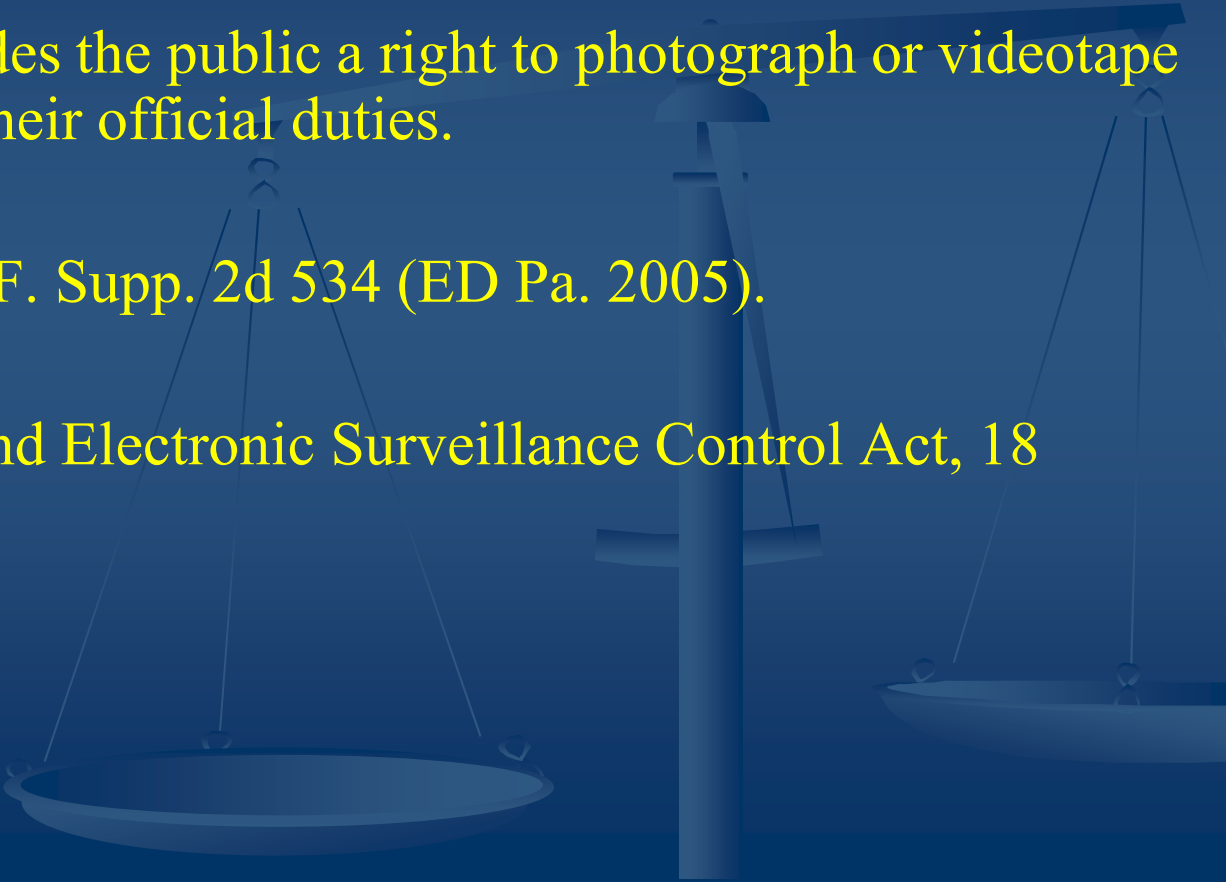
Remember, you're always being judged...



SMILE, YOU'RE ON
CAMERA!



PUBLIC'S RIGHT TO PHOTOGRAPH OR VIDEOTAPE SEARCH

- The First Amendment provides the public a right to photograph or videotape public officials performing their official duties.
 - Robinson v. Fetterman, 378 F. Supp. 2d 534 (ED Pa. 2005).
 - Pennsylvania Wiretapping and Electronic Surveillance Control Act, 18 Pa.C.S. § 5701 *et seq.*
- 

VIDEOTAPING AND PHOTOGRAPHING INVESTIGATIONS

- WHO? / WHAT? / WHERE? / WHEN?



SOCIAL MEDIA

- FACEBOOK
- TWITTER / X
- YOU TUBE
- NEWS WEBSITES
- SNAP CHAT
- INSTAGRAM



POLICY AND PROCEDURES

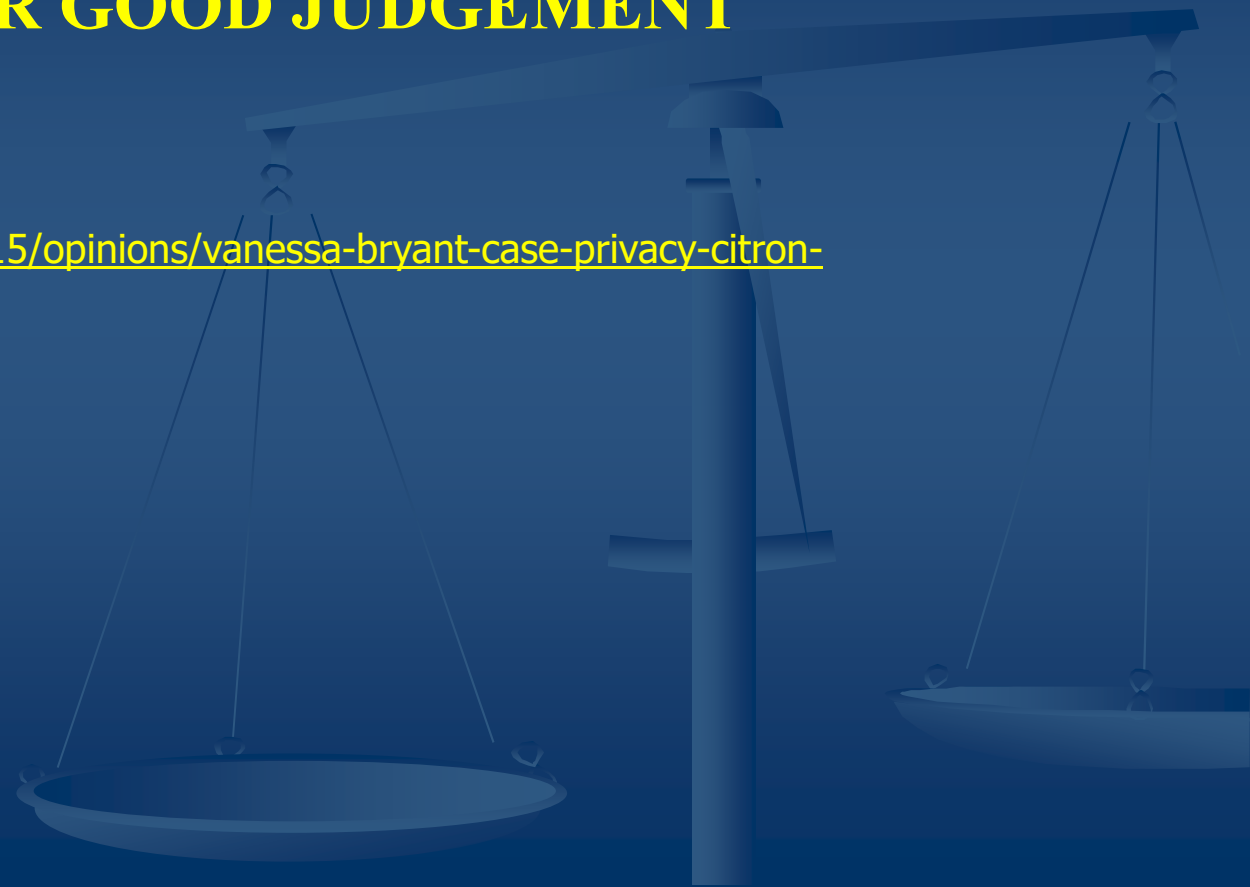


TAKING WORK TO OR FROM COMPUTER



NEED FOR GOOD JUDGEMENT

<https://www.cnn.com/2022/09/15/opinions/vanessa-bryant-case-privacy-citron-goldberg-zipursky/index.html>



NEED FOR GOOD JUDGEMENT



BEYOND POSTING

COMMENTING AND LIKING



QUESTIONS?



PREPARING FOR A SEARCH WARRANT:

WHEN?

WHY?

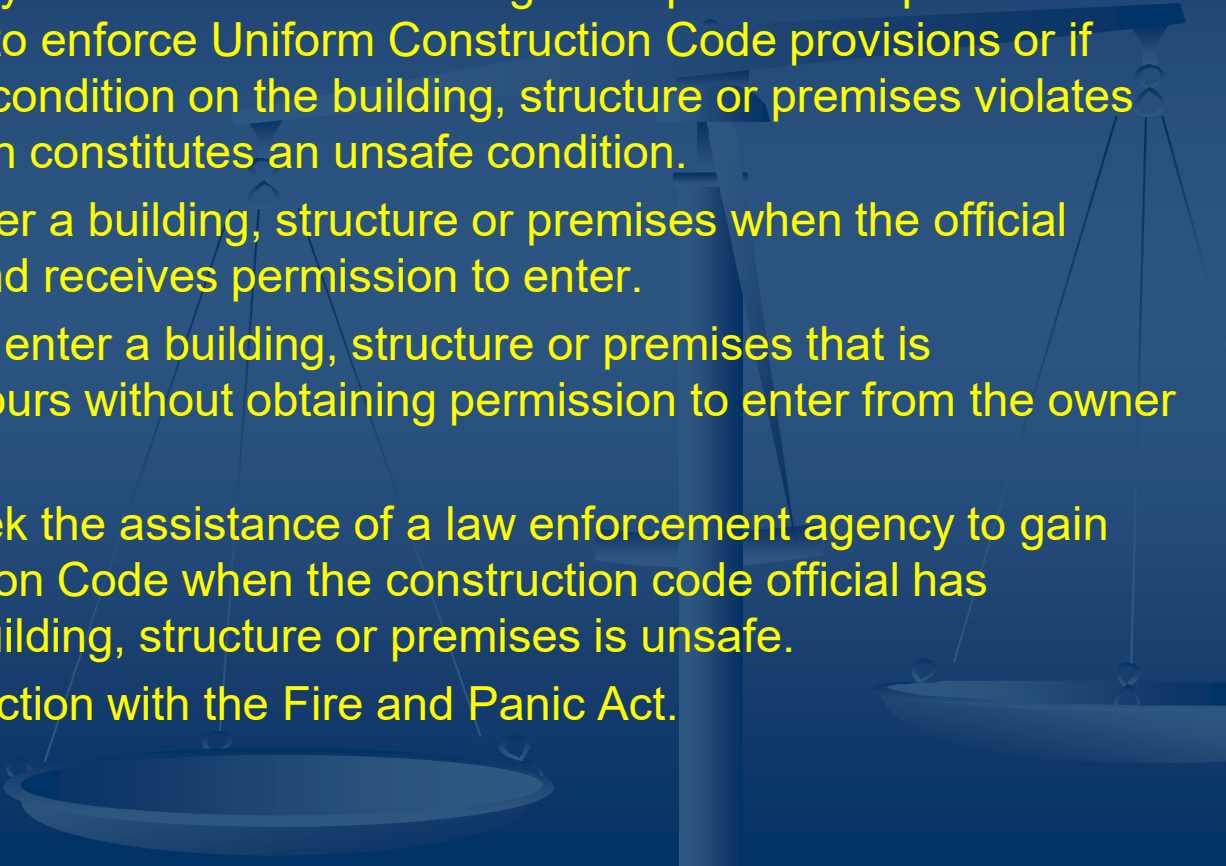
HOW?



ADOPTION OF ORDINANCES

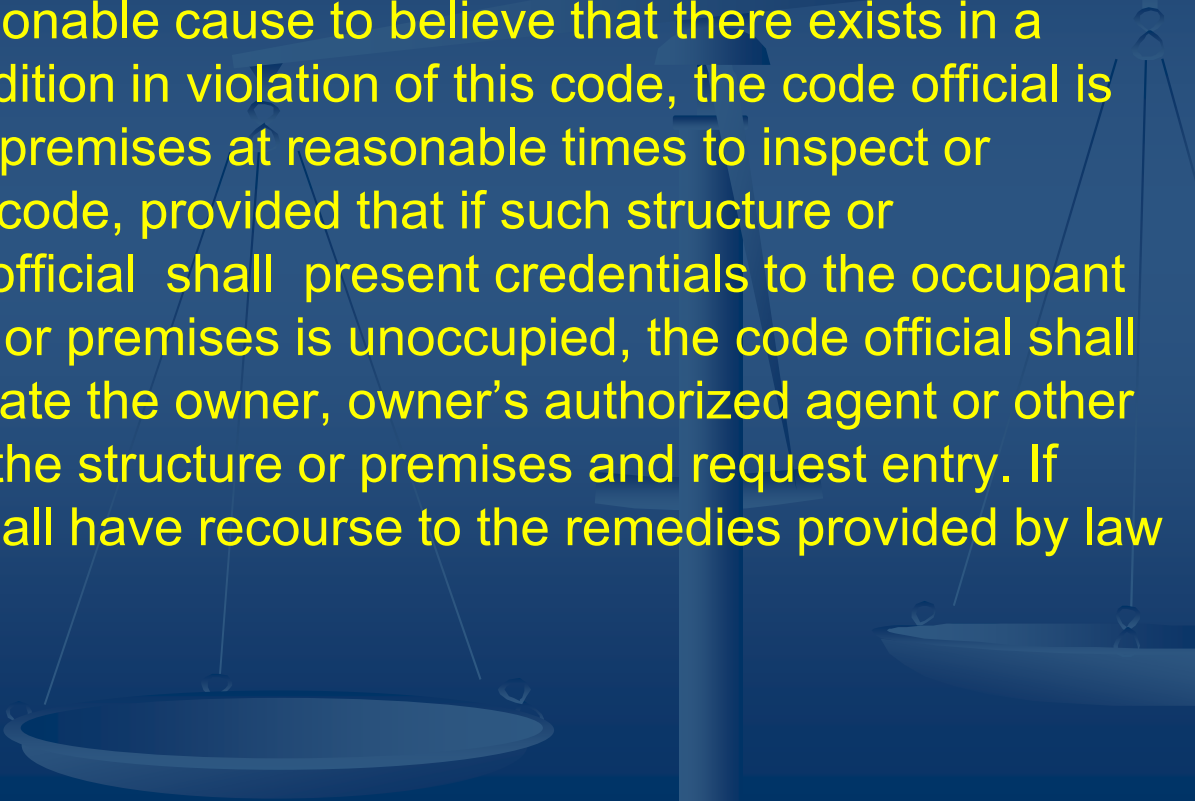


UCC 403.86. Right of entry to inspect.

- (a) A construction code official may enter a building, structure or premises during normal business hours or at a time agreed to by the owner or owner's agent to perform inspections under the Uniform Construction Code, to enforce Uniform Construction Code provisions or if there is reasonable cause to believe a condition on the building, structure or premises violates the Uniform Construction Code or which constitutes an unsafe condition.
- (b) A construction code official may enter a building, structure or premises when the official presents credentials to the occupant and receives permission to enter.
- (c) A construction code official *may not* enter a building, structure or premises that is unoccupied or after normal business hours without obtaining permission to enter from the owner or the owner's agent.
- (d) A construction code official may seek the assistance of a law enforcement agency to gain entry to enforce the Uniform Construction Code when the construction code official has reasonable cause to believe that the building, structure or premises is unsafe.
- (e) This section shall be used in conjunction with the Fire and Panic Act.
- 

2018 IPMC: 104.3 RIGHT OF ENTRY

Where it is necessary to make an inspection to enforce the provisions of this code, or whenever the code official has reasonable cause to believe that there exists in a structure or upon a premises a condition in violation of this code, the code official is authorized to enter the structure or premises at reasonable times to inspect or perform the duties imposed by this code, provided that if such structure or premises is occupied, the code official shall present credentials to the occupant and request entry. If such structure or premises is unoccupied, the code official shall first make a reasonable effort to locate the owner, owner's authorized agent or other person having charge or control of the structure or premises and request entry. If entry is refused, the code official shall have recourse to the remedies provided by law to secure entry.

A faint, stylized illustration of a pair of scales of justice is visible in the background of the slide, positioned behind the text. The scales are centered vertically and horizontally, with the pans hanging from a central point. The entire slide has a dark blue background.

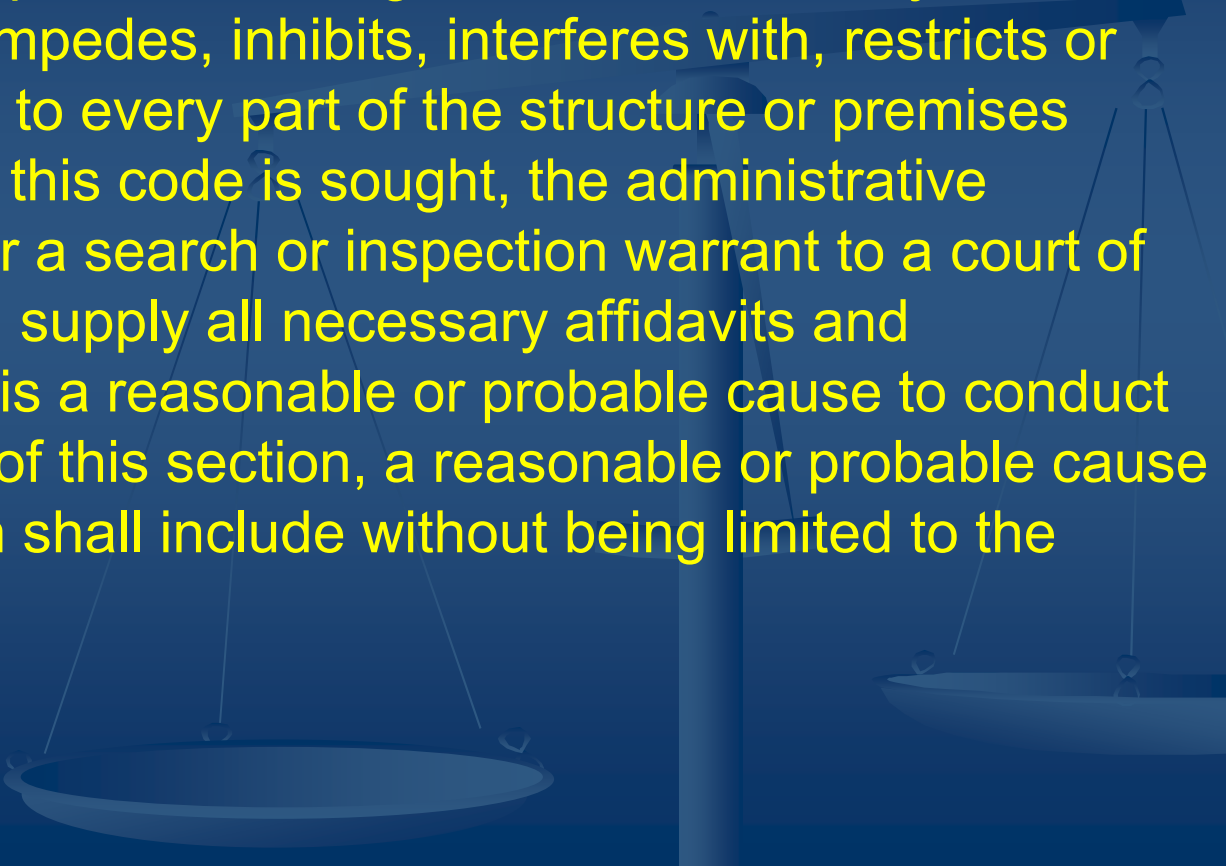
City of Reading: Property Maintenance Code ~ Right of Entry

AMENDMENTS

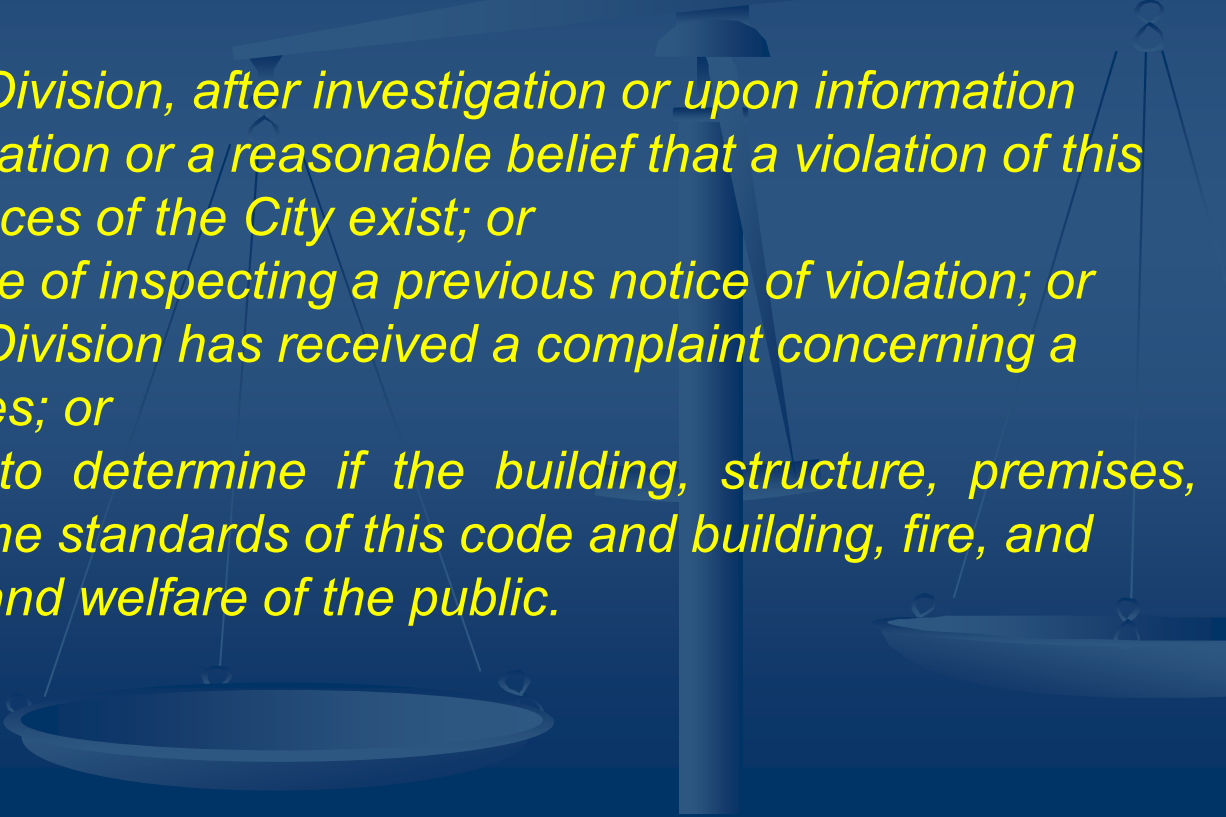


104.4.1 Refusal of entry.

If any owner, occupant or other person in charge of a structure subject to the provision of this code refuses, impedes, inhibits, interferes with, restricts or obstructs entry and free access to every part of the structure or premises where inspection authorized by this code is sought, the administrative authority may promptly apply for a search or inspection warrant to a court of competent jurisdiction and shall supply all necessary affidavits and testimony to indicate that there is a reasonable or probable cause to conduct an inspection. For the purpose of this section, a reasonable or probable cause to gain access for an inspection shall include without being limited to the following:



104.4.1 Refusal of entry.

1. *That the inspection of the area is part of a planned routine inspection being conducted pursuant to a systematic or concentrated code enforcement program in that portion of the City; or*
 2. *That the Property Maintenance Division, after investigation or upon information received, has knowledge, information or a reasonable belief that a violation of this code or other codes and ordinances of the City exist; or*
 3. *That such entry is for the purpose of inspecting a previous notice of violation; or*
 4. *That the Property Maintenance Division has received a complaint concerning a violation on or within the premises; or*
 5. *That such entry is necessary to determine if the building, structure, premises, dwelling or dwelling units meet the standards of this code and building, fire, and health codes and for the safety and welfare of the public.*
- 

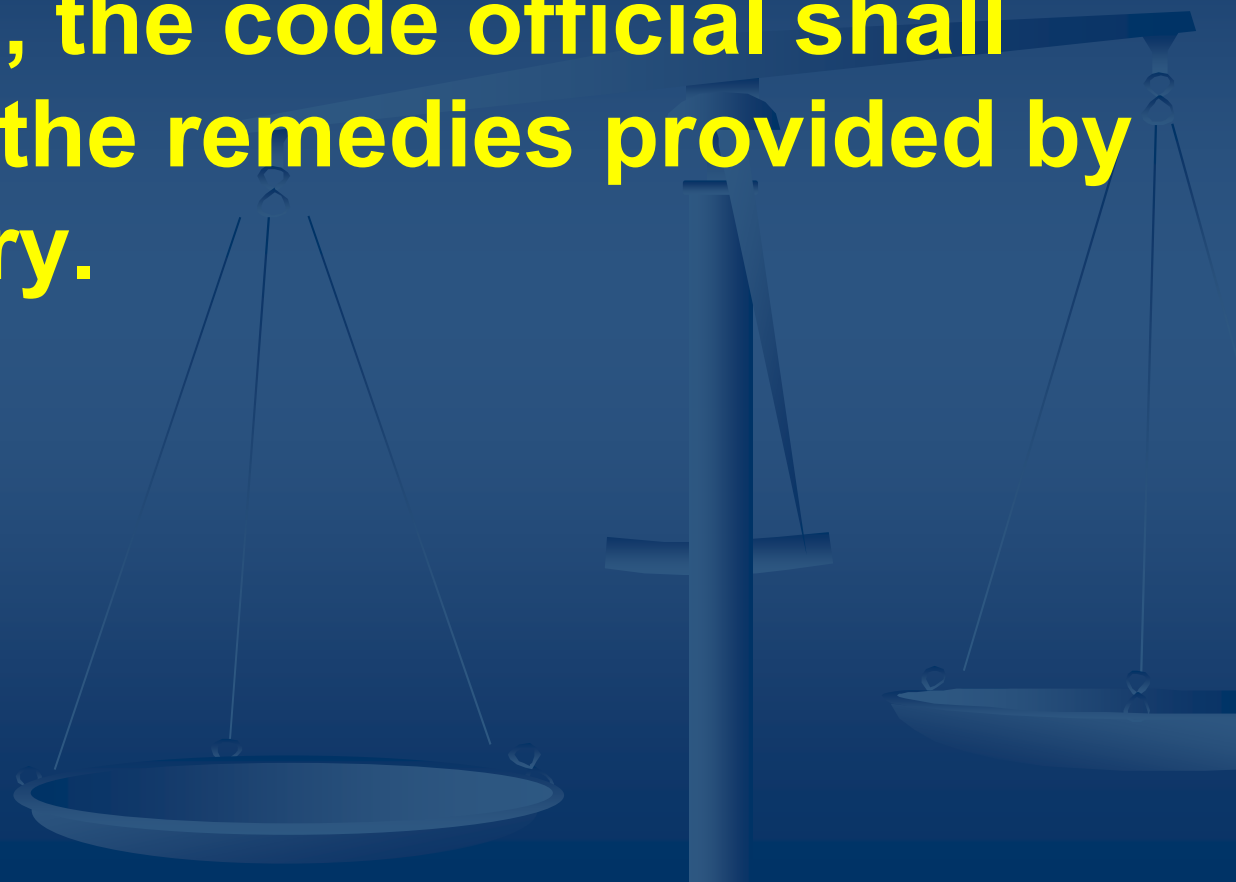
104.4.2 Right of entry by owner.

Every occupant of a dwelling unit, building, structure or premises shall give the owner thereof, or his agent or employee access to any part of such dwelling, dwelling unit, building, structure or premises, at all reasonable times for the purpose of conducting inspections to determine whether or not violation of the code may exist, or for the purpose of making such repairs or alterations as are necessary to effect compliance with the provisions of this code or with any lawful rule or regulation adopted or any lawful order issued pursuant to the provisions of this code.

104.4.3 Notification to tenants.

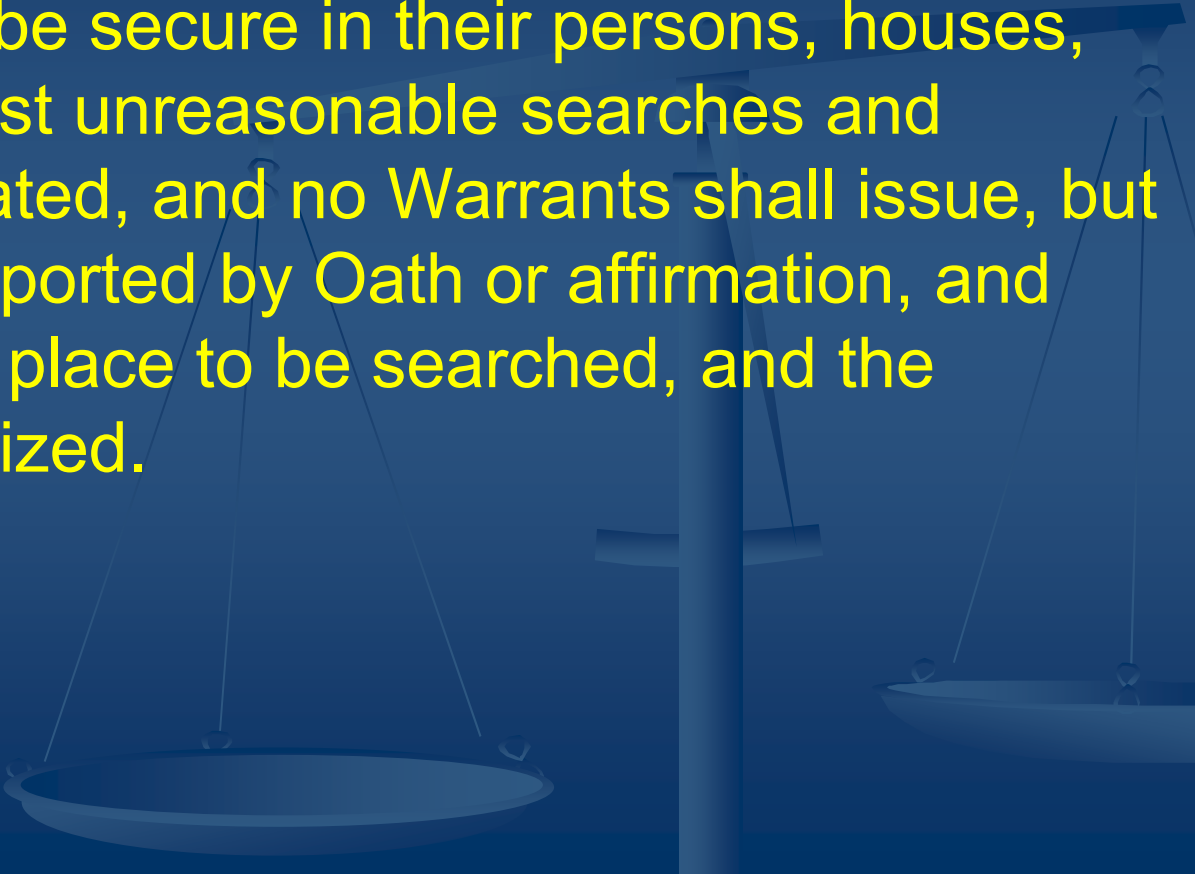
Every owner of a dwelling unit, building, structure or premises shall give the tenants thereof notice of an inspection and obtain their authorization to grant a code official entry to their unit. If the tenant(s) object(s) to entry by the code official, the owner shall so notify the code official.

If entry is refused, the code official shall have recourse to the remedies provided by law to secure entry.



FOURTH AMENDMENT

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.



FOURTH AMENDMENT TO CODE OFFICIALS

42 U.S.C. § 1983

- Statute creating civil action for violation of civil rights



MUNICIPAL LIABILITY ~ 42 U.S.C. § 1983

An individual may be liable if he/she violates a constitutional right

A municipality may only be liable when the alleged constitutional transgression is caused by a policy, regulation or decision officially adopted by the governing body or informally adopted by custom. Monell v. New York City Dept. of Social Services, 436 U.S. 658 (1978)

“Policy” is made when a decision maker possessing final authority to establish municipal policy with respect to the action issues an official proclamation, policy or edict.

A course of conduct is considered to be a “custom” when, though not authorized by law, such practices of state officials are so permanently and well settled as to virtually constitute law.

QUESTIONS?



ENTRY ONTO PROPERTY OF ANOTHER



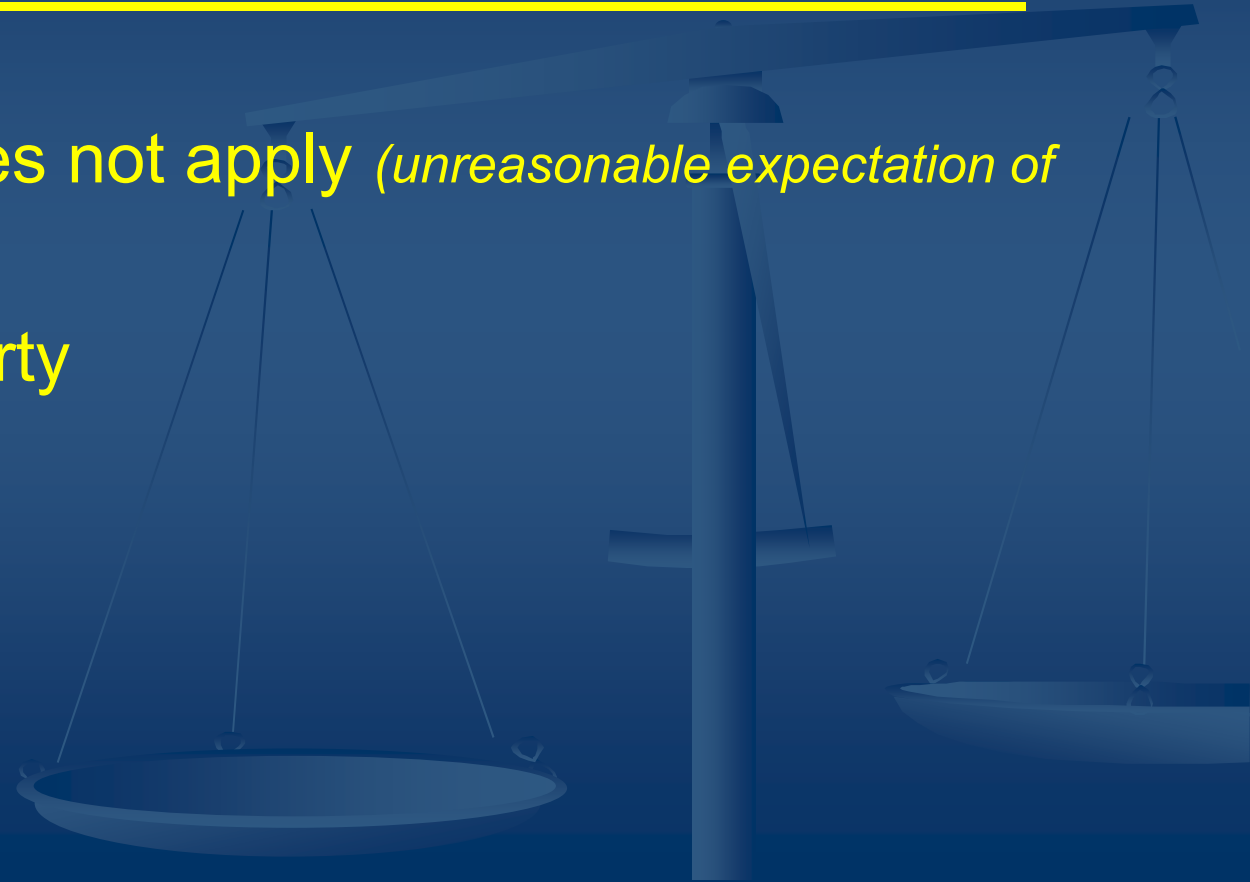


***YOU MAY NOT ENTER PRIVATE PROPERTY UNLESS YOU
HAVE A LEGAL RIGHT TO BE THERE!***



EXCEPTIONS TO SEARCH WARRANT REQUIREMENT FOR ENTRY ONTO PROPERTY

- Fourth Amendment does not apply (*unreasonable expectation of privacy*)
- Consent to enter property
- Exigent circumstances
- Plain view doctrine

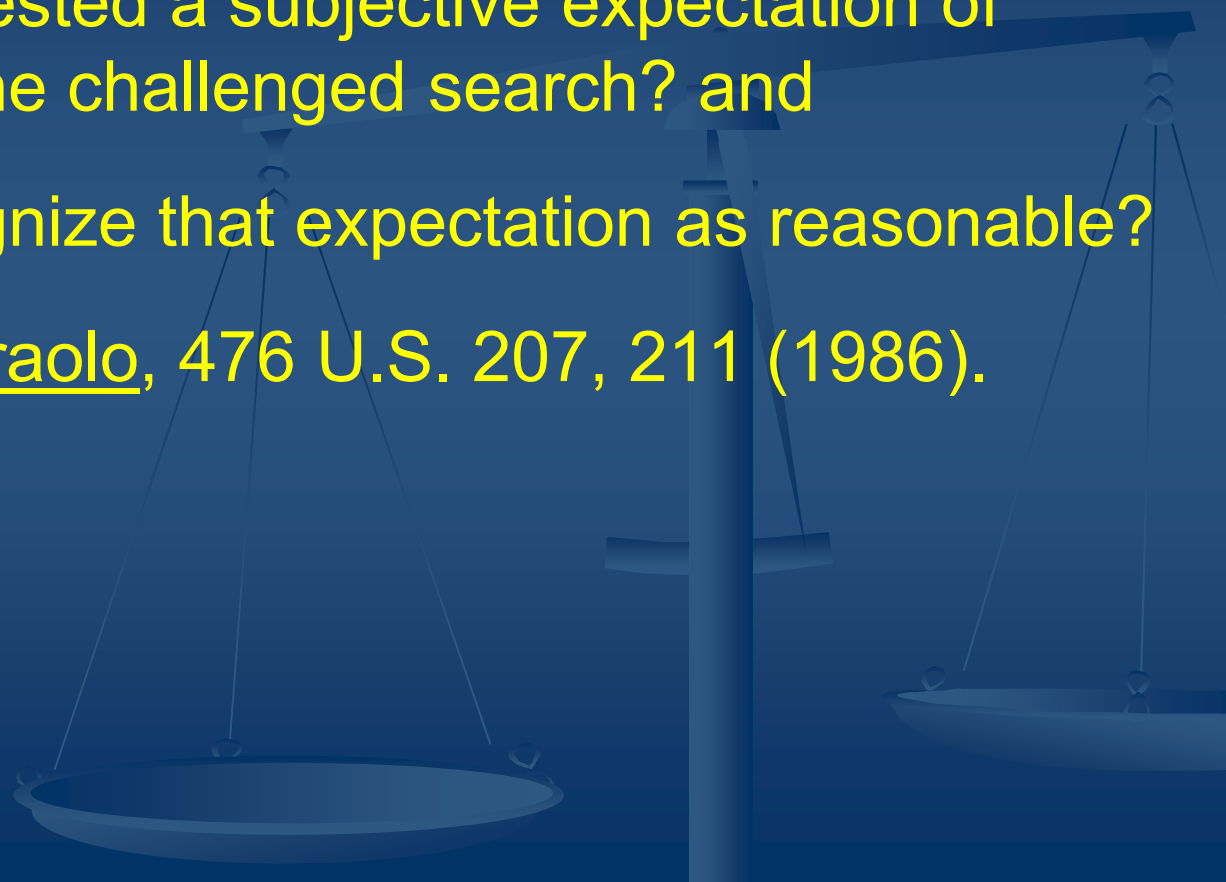


REASONABLE EXPECTATION OF PRIVACY

Has the individual manifested a subjective expectation of privacy in the object of the challenged search? and

Is society willing to recognize that expectation as reasonable?

California v. Ciruolo, 476 U.S. 207, 211 (1986).



CONSENT TO SEARCH

Common Authority:

Where “common authority”, either party may give consent.
United States v. Matlock, 415 US 164 (1974).

Common authority does not rest upon the law of property; rather, it rests on mutual use of the property by persons generally having joint access or control for most purposes Id.

But....

What about conflicting consent?



CONSENT TO SEARCH (CONT.)

Apparent Authority:

Public official reasonably mistakes the actual authority of the party consenting to the search.

The determination of consent to enter is judged upon an objective standard: *would the facts available to the official at the moment warrant a person of reasonable caution in the belief that the consenting party had authority over the premises.*

Commonwealth v. Quilles, 619 A.2d 291 (Pa. Super 1993).

MUNICIPALITY
CODES ENFORCEMENT DIVISION
SEARCH WAIVER AND CONSENT

I, _____, (print name), _____ (owner or tenant) of
_____ (property address), Municipality, County, Pennsylvania, having been informed of
my Constitutional Rights not to have a search made of the aforesaid premises without a search warrant and of my right to refuse to
consent to such a search, hereby authorize _____ (name) _____ (title),
_____ (name) _____ (title), and _____ (name)
_____ (title), Code Officials / Inspectors with Municipality Codes Enforcement Division, City, County,
Pennsylvania, to conduct a complete search of any portion of the premises, property, structure, and /or building located at _____
_____ (property address), Municipality, County, Pennsylvania, for violations of the Municipality
Ordinances regarding, including but not limited to, Property Maintenance, Zoning, Building, Plumbing, Electrical, Mechanical and Fire
issues.

The officials are authorized by me to take any photographs of the aforesaid premises, property, structure and/or building.

This written permission is given by me to the above named Code Officials voluntarily, without threats or promises of
any kind at _____ (time) on this _____ day of _____ 20__, at _____
(location).

SIGNED _____
Address _____

Telephone Numbers _____ (Home)
_____ (Bus)
_____ (Cell)

Witness _____
Signature

Print Name

Address _____

_____ (Home)
Telephone Numbers

EXIGENT CIRCUMSTANCES

Warrantless entry may be legal when there is compelling need for official action and no time to secure a warrant



VIOLATIONS IN “PLAIN VIEW”

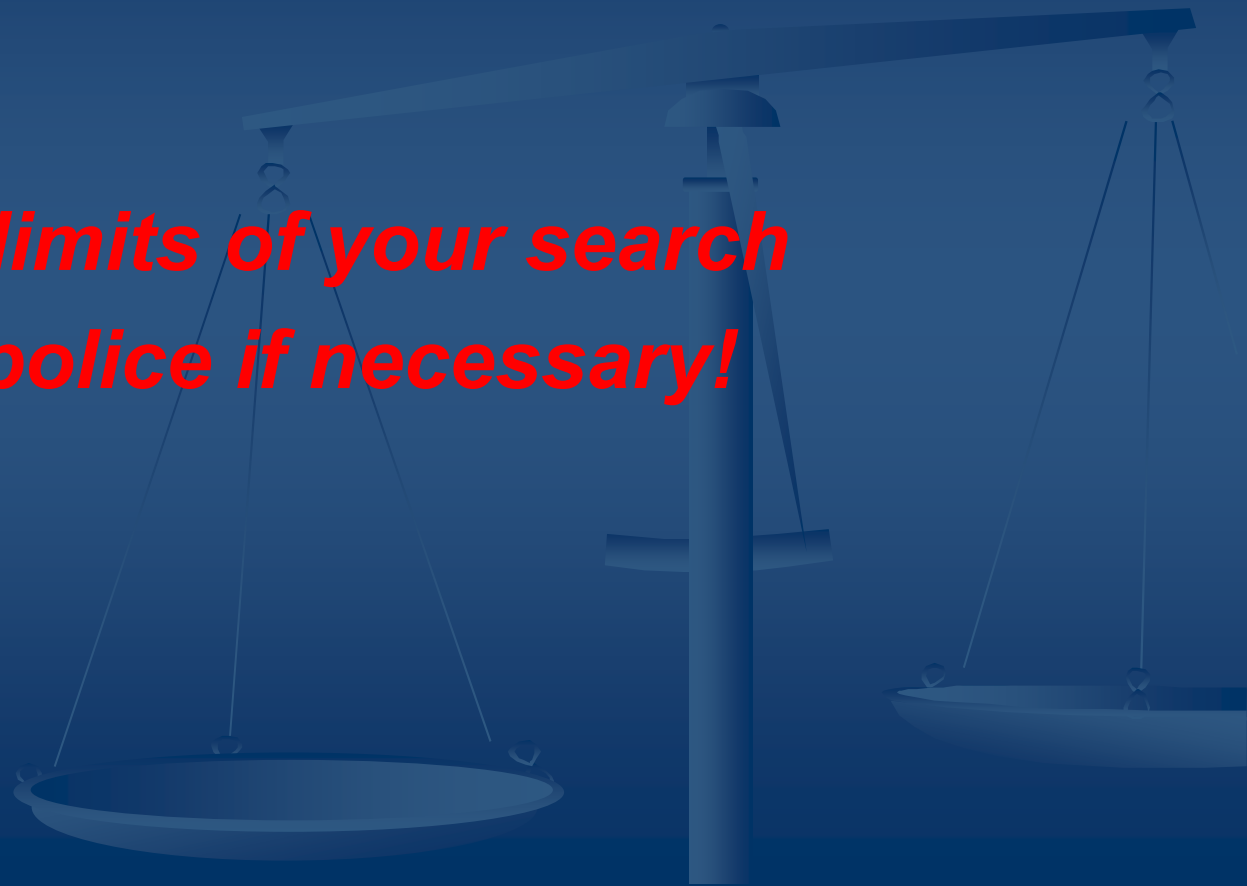


Violation is in plain view;

- Its incriminatory character is immediately apparent
- Official is lawfully in the place where the seizure occurs and has a lawful right of access to the object
- Plain view is **NOT** a right to enter property without a warrant

Warning:

*Know the limits of your search
and call police if necessary!*



PROBABLE CAUSE

Search warrant to investigate criminal activity:

Probable cause to believe that a search will reveal evidence of criminal behavior.

Administrative search warrant for non-criminal inspections:

Probable cause is met by finding a reasonable relationship between the property maintenance code and the property to be searched. Probable cause is measured in terms of the “reasonableness” of the search.

Camara v. Municipal Court of the City and County of San Francisco, 387 U.S. 523 (1967); See v. Seattle, 387 U.S. 541 (1967).

SEARCH WARRANT BASED UPON: PLANNED / ROUTINE INSPECTION

Court will look at:

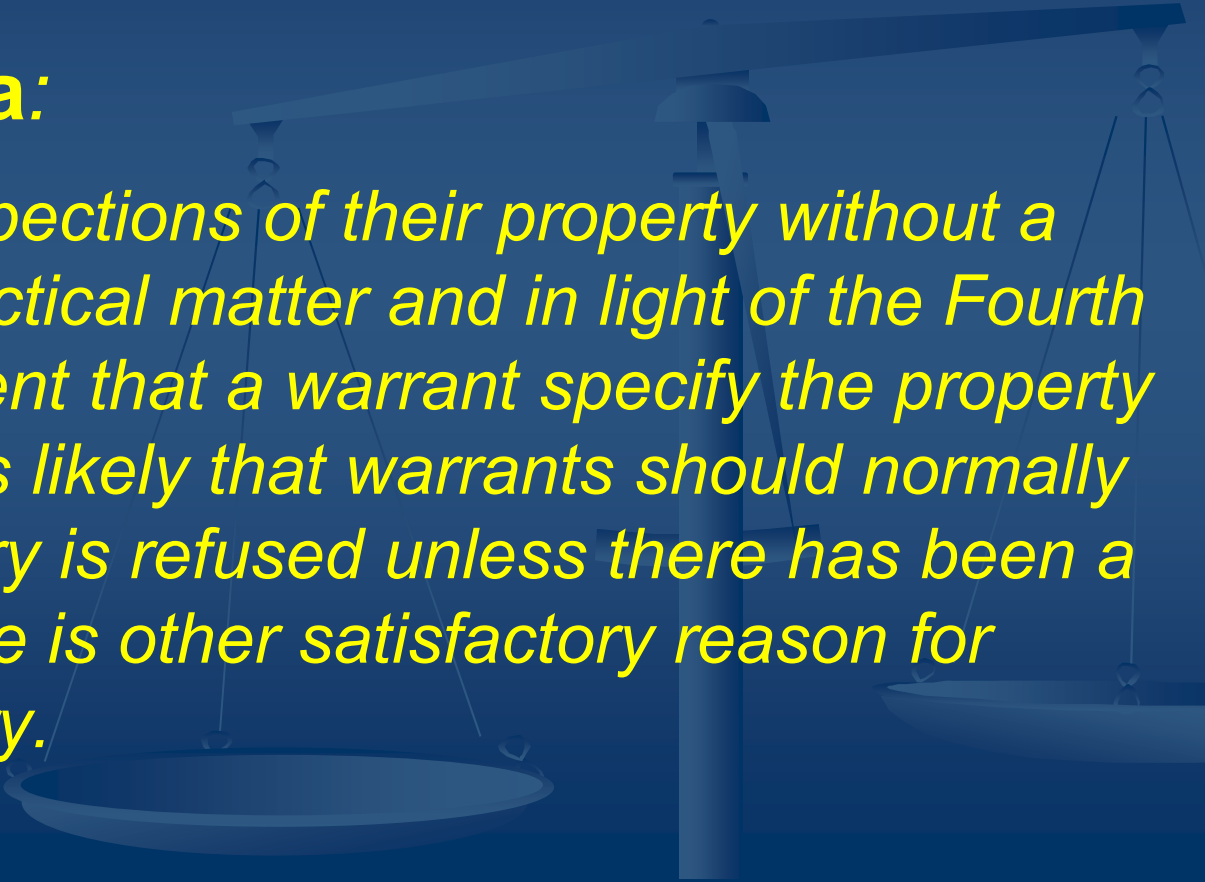
- The purpose of the ordinance;
- Relationship between the ordinance and the property to be searched including but not limited to:
 - *The passage of time between inspections;*
 - *The nature of the building;*
 - *The condition of the entire area;*
 - *Important: Code Enforcement Officer need not have a specific knowledge of the condition of the particular dwelling.*

Camara v. Municipal Court of the City and County of San Francisco, 387 U.S. 523 (1967).

MUST THE TENANT HAVE NOTICE OF THE INSPECTION / SEARCH WARRANT?

According to **Camara**:

[M]ost citizens allow inspections of their property without a warrant. Thus, as a practical matter and in light of the Fourth Amendment's requirement that a warrant specify the property to be searched, it seems likely that warrants should normally be sought only after entry is refused unless there has been a citizen complaint or there is other satisfactory reason for securing immediate entry.



WARRANT BASED UPON SUSPECTED CODE VIOLATION

Provide the Judge with sufficient facts to establish a reasonable need to enter the property:


- *Description of Code to be Enforced*
- *Passage of time*
- *Nature of building*
- *Condition of area*
- *Complaints*
- *Specific knowledge of conditions*
- *Any other facts known to you*



POLICE FORMAT



BLANK SEARCH WARRANT

Commonwealth of Pennsylvania			RETURN of SERVICE AND INVENTORY
COUNTY OF _____	Position Incident	Warrant Control	
Docket Number _____	Number _____	Number _____	
Date of Search: _____	Time of Search _____	Property Seized as result of Search (Y/N): _____	
Date of Return: _____	Time of Return _____	Officer making Return: _____	
Signature of Person Seizing Property: _____			
Other Officers Participating in Search: _____			

Pa. R. Crim. P., Chapter 2, Part A. SEARCH WARRANTS

Rule 202. Approval of Search Warrant Applications by Attorney for the Commonwealth - Local Option.

(a) The District Attorney of any county may require that search warrant applications filed in the county have the approval of an attorney for the Commonwealth prior to filing.

Rule 203. Purpose To Seize Warrant

A search warrant shall be issued by a law enforcement officer.

Rule 205. Contents of Search Warrant.

Each search warrant shall be signed by the issuing authority and shall:

- (1) specify the date and date of issuance;
- (2) identify specifically the property to be seized;
- (3) name or describe with particularity the person or place to be searched;
- (4) affirm that the search is necessary either (a) to a specific piece of evidence, and to a conviction of a crime, from the date of issuance, or (b) when the warrant is issued for a preventive event, or (c) for the specific event has occurred;
- (5) direct that the warrant be served in the daytime unless otherwise authorized on the warrant. **PROVIDED THAT**, for purposes of the Rules of Chapter 2, Part A., the term "daytime" shall be used to mean the hours of 6 a.m. to 10 p.m.;
- (6) designate by title the public who is to effect the warrant, unless a private individual;
- (7) certify that the issuing authority has found probable cause based upon the facts set out or admitted before the issuing authority by written affidavit(s) attached to the warrant, and
- (8) where applicable, certify on the face of the warrant that for good cause (over the affidavit(s) is soiled pursuant to Rule 211) and state the date and time the affidavit(s) will be sealed.

Rule 206. Contents of Affidavit for Search Warrant.

Each affidavit in support of a search warrant shall be supported by written affidavit(s) signed and sworn to or affirmed before an issuing authority, which affidavit(s) shall:

- (1) state the name and defendant, arrest, or address of the officer;
- (2) identify specifically the items or property to be searched for and seized;
- (3) frame the facts with particularity if it is a preventive search warrant;
- (4) name by name, or describe, or position of the place to be searched;
- (5) specify or describe the crime which has been or is being committed;
- (6) set out specifically the facts and circumstances which form the basis for the officer's conclusion that there is probable cause to believe that the items or property identified are evidence of the crime or a crime committed, or are a commodity to be obtained and unlawfully possessed, or a document to be seized, and that these items or property are or are expected to be located on the particular place and the particular place described;
- (7) state if the officer is making a preventive search, state additional reasons for the preventive search in the nighttime; and
- (8) where the attorney for the Commonwealth is requesting that the affidavit(s) be sealed pursuant to Rule 211, state the facts and circumstances of which are alleged to establish good cause for the sealing of the affidavit(s).

Rule 208. Copy of Warrant to be Left for Person to be Searched.

(a) A law enforcement officer, upon being properly authorized to search warrants, shall leave with the person from whom or from whose premises the property was seized a copy of the warrant and affidavit(s) in support thereof, and a receipt for the property seized. A copy of the warrant and affidavit(s) must be left with the person if no property is seized.

(b) If no one is present at the premises when the warrant is executed, the officer shall leave the documents specified in paragraph (a) at a conspicuous place on the premises. A copy of the warrant and affidavit(s) may, but is not required to, be left at any property if seized.

(c) Notwithstanding the requirements in paragraphs (a) and (b), the officer shall not leave a copy of an affidavit if a seal has been placed pursuant to Rule 211.

Rule 209. Return of Inventory

(a) An inventory of items seized shall be made by the law enforcement officer making a search warrant. The inventory shall be made in the presence of the person from whose possession or premises the property was taken, when feasible, or otherwise in the presence of at least one witness. The officer shall sign a statement on the inventory that it is a true and correct listing of all items seized, and that the signer is subject to the penalties and punishment of 48 Pa.C.S. Section 4904(b). Moreover, at the discretion of the officer, the inventory shall be returned to and filed with the issuing authority.

(b) The joint officer who is the owner or a maker shall upon request cause a copy of the inventory to be delivered to the applicant for the warrant and to the person from whose possession or premises the property was taken.

(c) When the search warrant affidavit(s) is sealed pursuant to Rule 211, the return shall be made to the justice or judge who issued or caused to be issued the warrant.

THE LAW ENFORCEMENT OFFICER SHALL MAKE ALL RETURNS TO THE ISSUING AUTHORITY DESIGNATED ON THE SEARCH WARRANT.

28 Pa.C.S. § 4904

28 Pa.C.S. § 4904

COMPLETING APPLICATION FOR SEARCH WARRANT



IDENTIFY ITEMS TO BE SEARCHED FOR AND SEIZED

- Describe what looking for:
 - *Violations or compliance with Codes*
 - *Structural Integrity*
 - Describe who participating in the search
 - Make sure to mention intent to photograph violations
- 

SPECIFIC DESCRIPTION OF PREMISES

Be as specific as possible:

- Address
- Unusual Details
- Style of Construction
 - *Tudor / Victorian, etc...*
- Location to Street
 - *Northwest corner*
- Description / Type of Building
 - *Brick, Stucco, etc*



VIOLATION OF

Reference all codes related to violations or compliance



NAME OF OWNER, OCCUPANT OR POSSESSOR OF PREMISES

Owner

- *Property Records*
- *Address of Owner if Different then Premises*

Occupant / Tenant

- *If known*



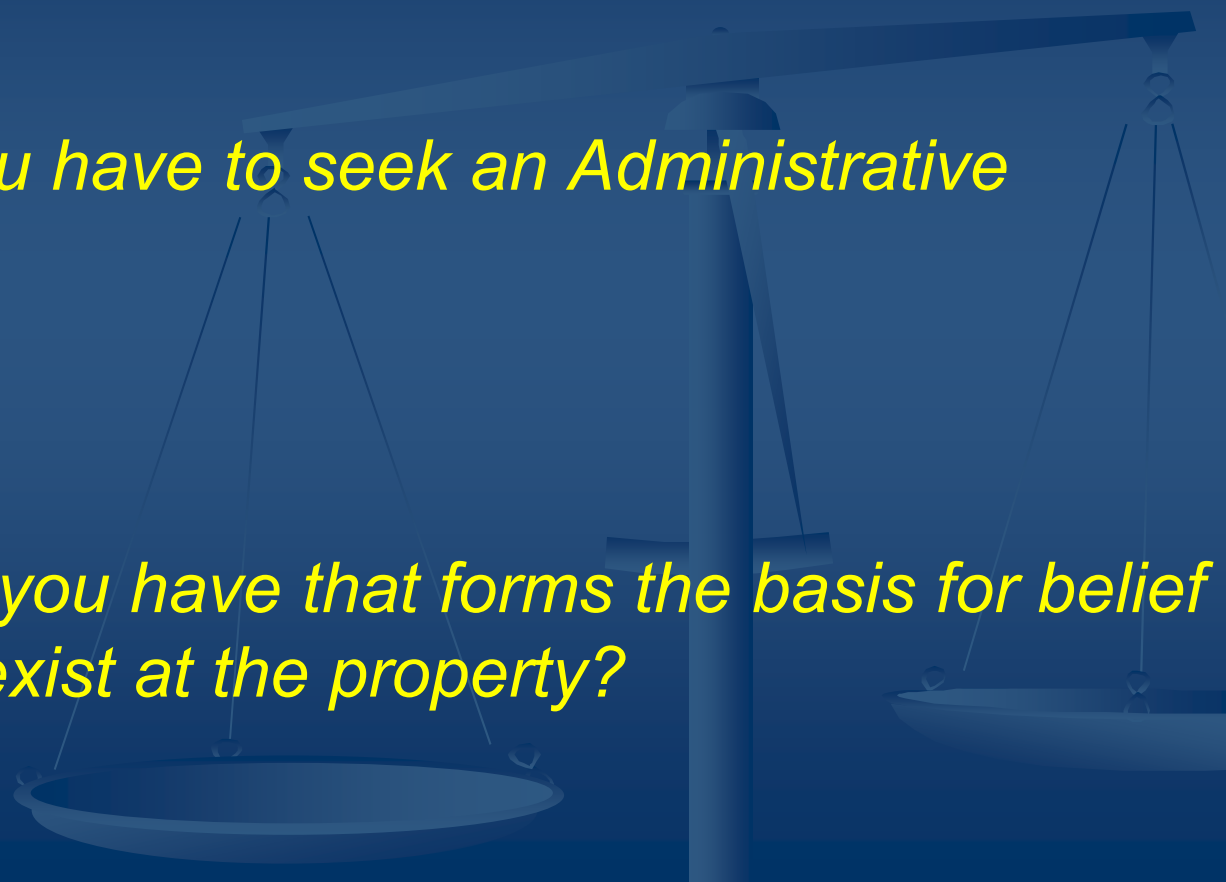
PROBABLE CAUSE

Authority

- *What authority do you have to seek an Administrative Warrant?*

Facts

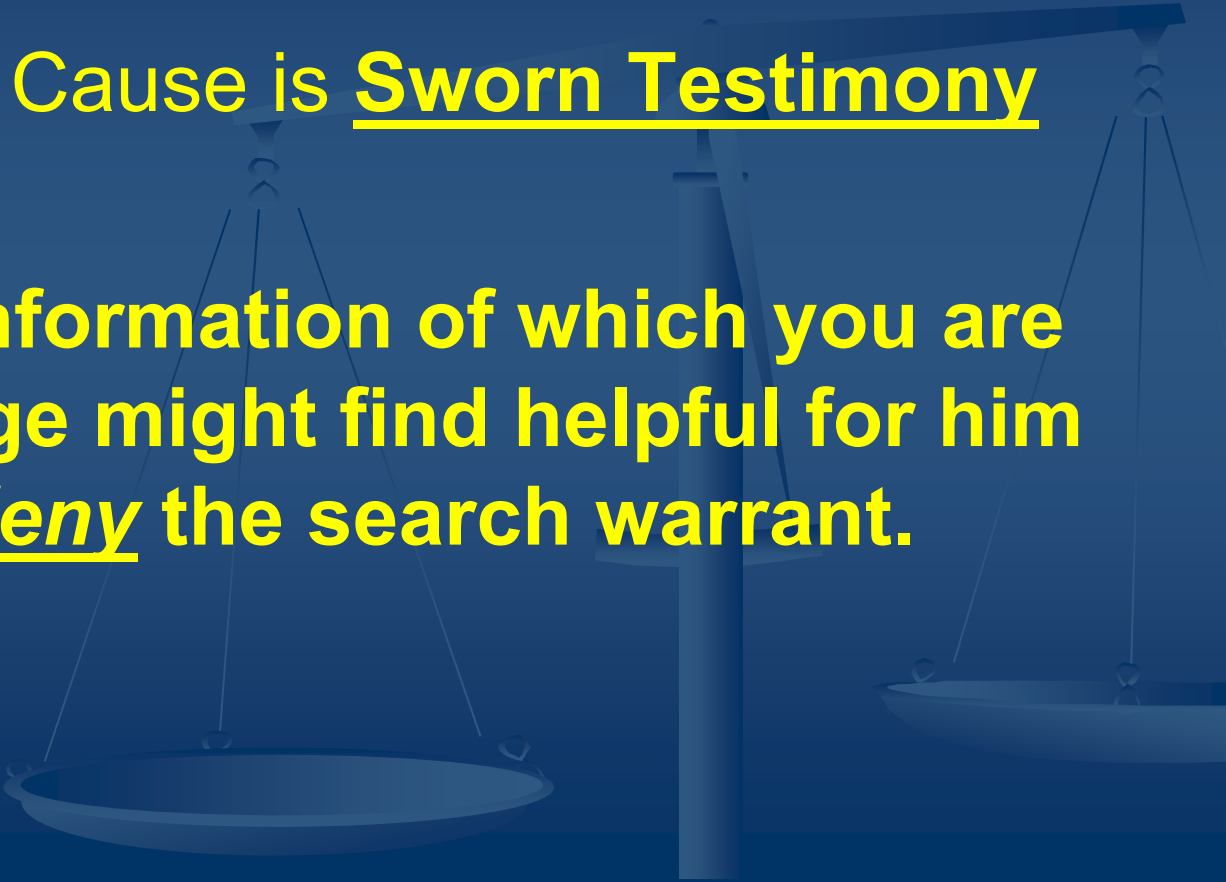
- *What information do you have that forms the basis for belief that code violations exist at the property?*



PROBABLE CAUSE

Affidavit of Probable Cause is Sworn Testimony

Tell the Judge all information of which you are aware that the Judge might find helpful for him or her to issue or deny the search warrant.

A faint, stylized illustration of a pair of scales of justice is visible in the background, centered behind the text. The scales are rendered in a light blue color, matching the background, and are positioned behind the main text blocks.

QUESTIONS?



PRESENTATION OF SEARCH WARRANT APPLICATION TO JUDGE



TYPE OF JUDGE

Court of Common Pleas

Magisterial District Judge

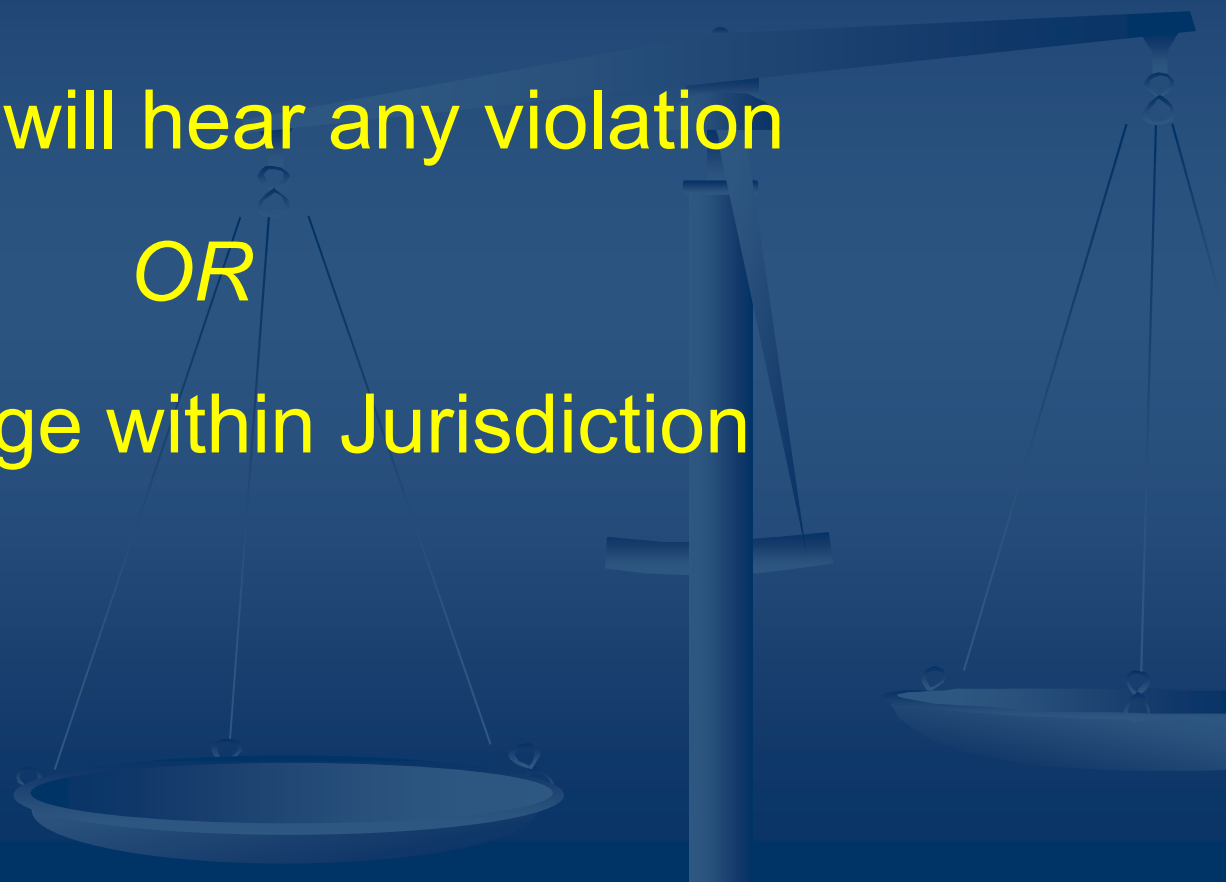


JURISDICTION OF JUDGE

Judge that will hear any violation

OR

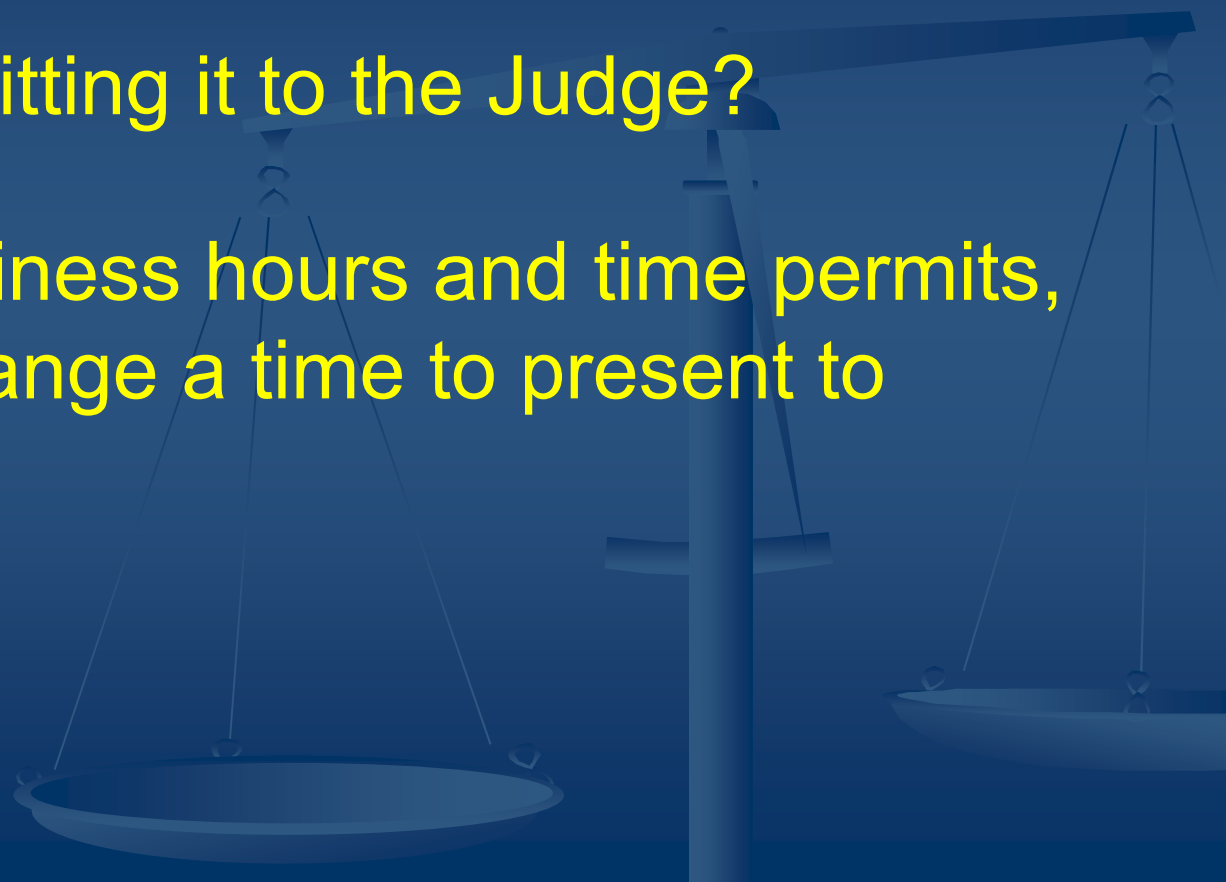
Other Judge within Jurisdiction



WHEN?

When are you submitting it to the Judge?

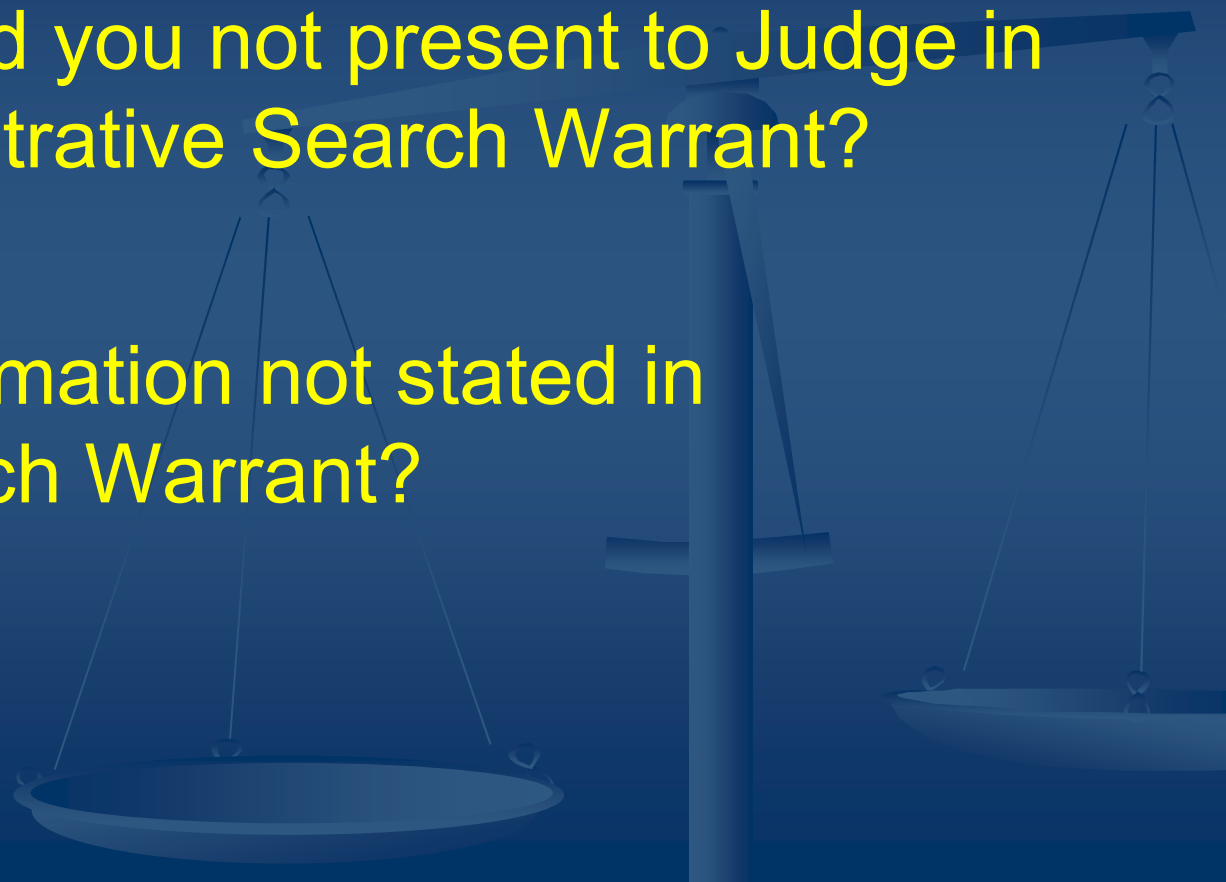
If during normal business hours and time permits, are you going to arrange a time to present to Judge?



WHAT?

What should / should you not present to Judge in applying for Administrative Search Warrant?

What if receive information not stated in Administrative Search Warrant?



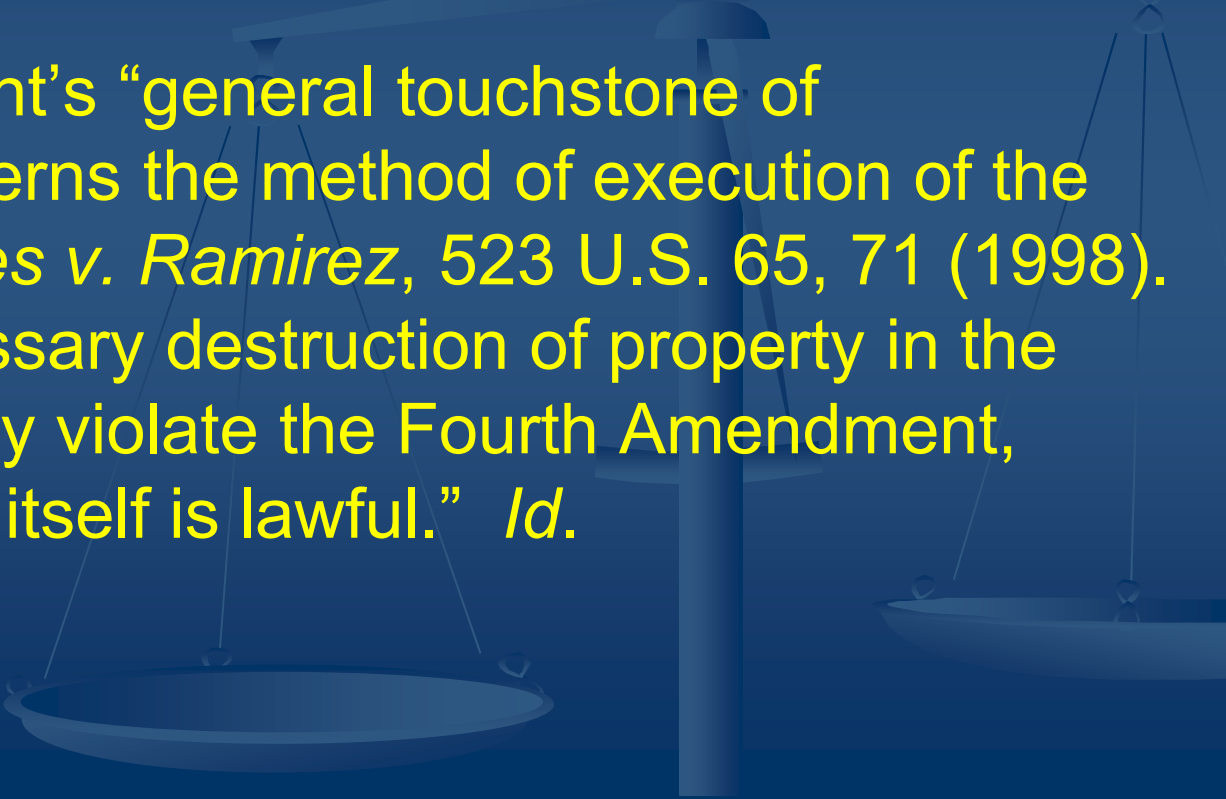
SERVICE OF SEARCH WARRANT



EXECUTING WARRANT

Method of executing the warrant must be reasonable:

The Fourth Amendment's "general touchstone of reasonableness...governs the method of execution of the warrant." *United States v. Ramirez*, 523 U.S. 65, 71 (1998). "Excessive or unnecessary destruction of property in the course of a search may violate the Fourth Amendment, even though the entry itself is lawful." *Id.*



THINGS TO CONSIDER WHEN SERVING WARRANT



SMILE, YOU'RE ON CAMERA!



ESCORT BY POLICE OFFICER

REMEMBER OFFICER SAFETY!

Do you need or want police to escort you in serving warrant and conducting inspection?

If yes, what can the police do if they observe a crime occurring in the property while escorting?



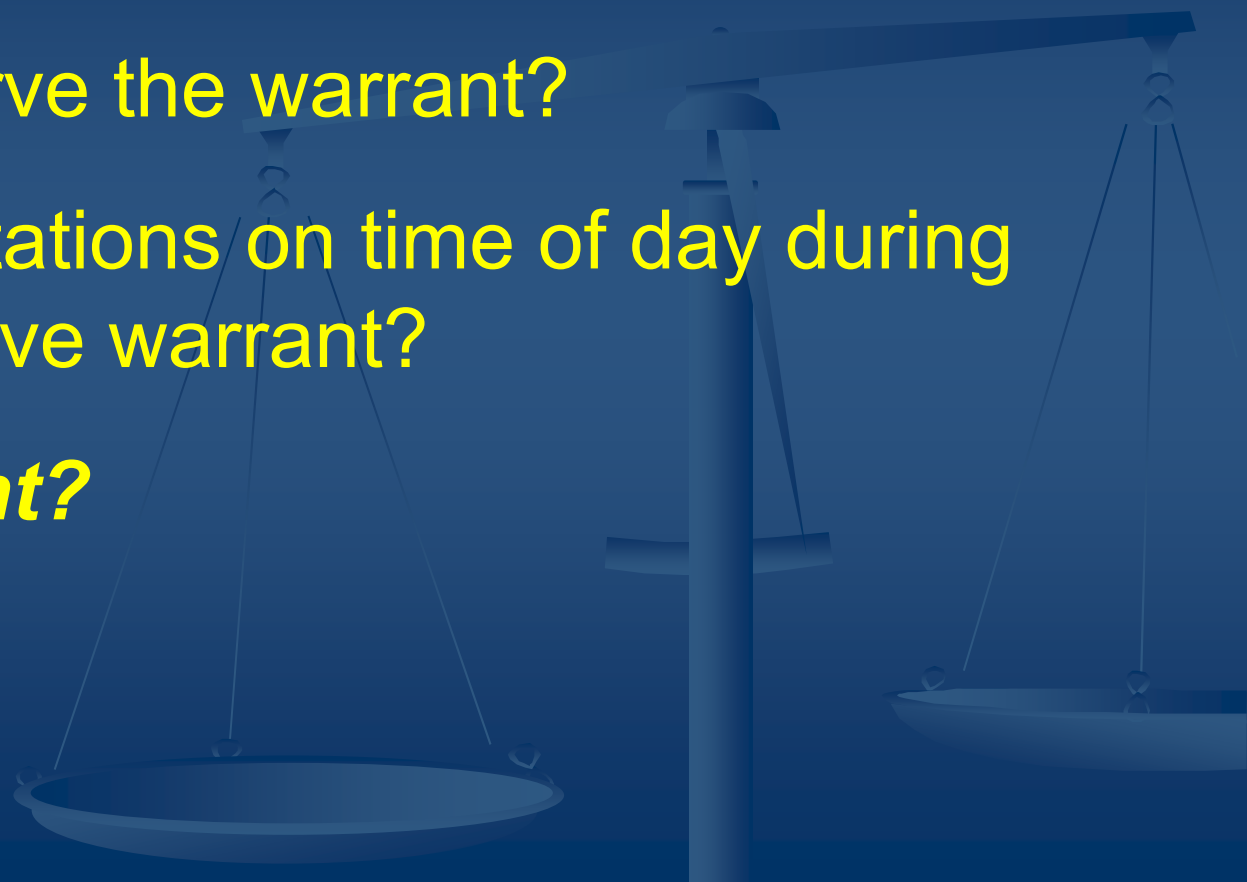
NOTIFYING OWNER / OCCUPANTS OF INTENT TO SERVE WARRANT

Are you advising the owner and/or occupants of time
serving warrant?



TIME OF DAY OF SERVICE OF WARRANT

- When can you serve the warrant?
- Are there any limitations on time of day during which you can serve warrant?
- ***Nighttime warrant?***



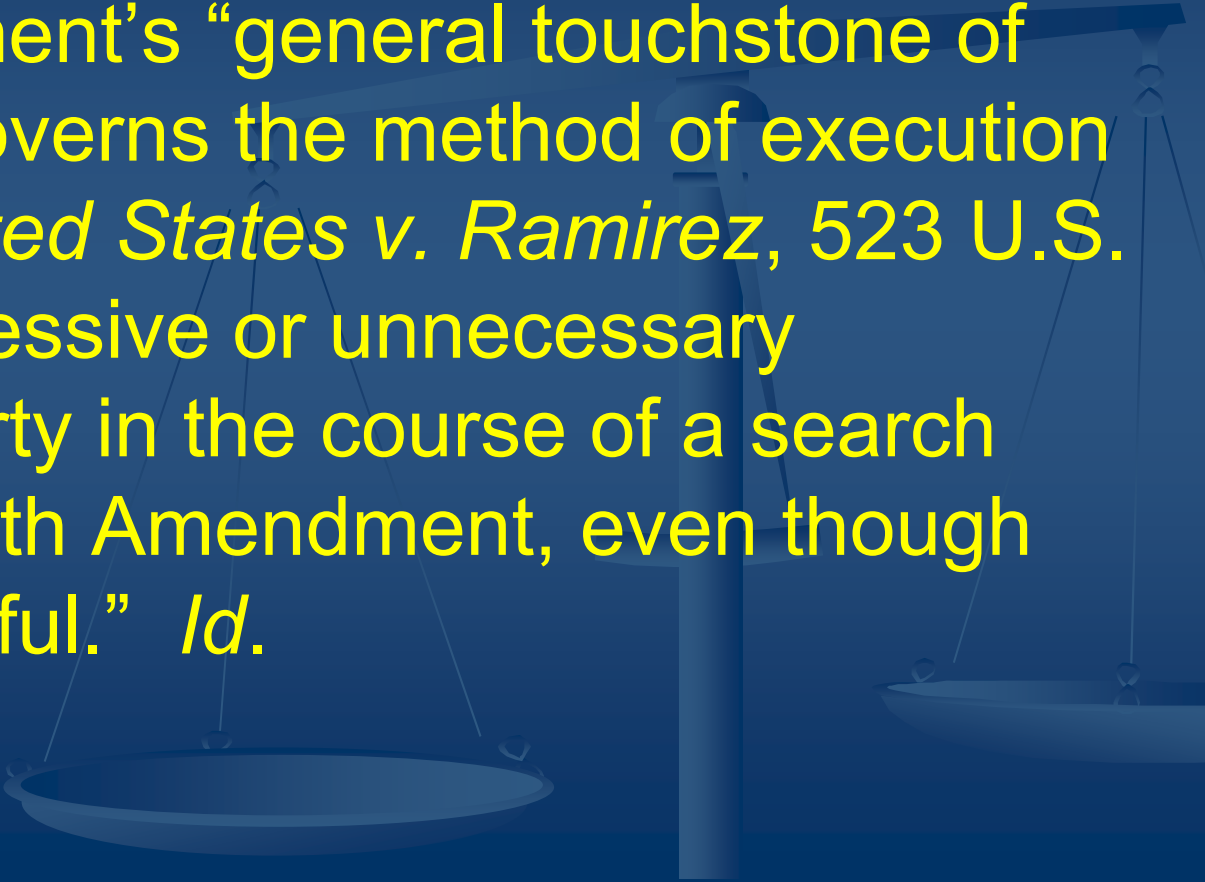
KNOCK AND ANNOUNCE

What are requirements for announcing warrant execution?



USE OF FORCE TO EXECUTE A WARRANT

The Fourth Amendment's "general touchstone of reasonableness...governs the method of execution of the warrant." *United States v. Ramirez*, 523 U.S. 65, 71 (1998). "Excessive or unnecessary destruction of property in the course of a search may violate the Fourth Amendment, even though the entry itself is lawful." *Id.*



ACTUAL SERVICE OF WARRANT

(What Do You Do With The Warrant?)

- ORIGINAL STAYS WITH COURT
- COPY FOR YOUR FILE
- COPY TO OWNER AND OCCUPANTS



RETURN OF SERVICE

WHEN?

WHAT?



INVENTORY

WHAT TO LIST?



QUESTIONS?



NOW ITS YOUR TURN....

**Drafting and Presentation of
Administrative Search Warrant**



QUESTIONS?



COURTROOM TESTIMONY AND THE CODE OFFICIAL




COURSE OBJECTIVES

This course will focus on fact based Testimony delivered in the Commonwealth of Pennsylvania. Attendees will be provided knowledge and information to discuss and understand:

- *Differences between criminal and civil implications of code enforcement*
- *Differences between litigious proceedings within code enforcement*
- *Differences between fact and expert testimony*
- *Importance of proper preparation and procedural aspects before and during testimony delivery*
- *Recognition of potential outcomes arising from social media*

CEDAR STREET CASE STUDY

- *Actual case worked in 2006*
 - *Today's search warrant and testimony portion based on this case*
 - *Case had many twists and turns involving numerous code officials and codes*
 - *Case involved both Criminal and Civil Rights issues*
 - *Case involved several testimony levels and non-code agencies*
 - *Officer safety considerations*
 - *Case facts handout provided ***
- 

RECEIPT OF COMPLAINT

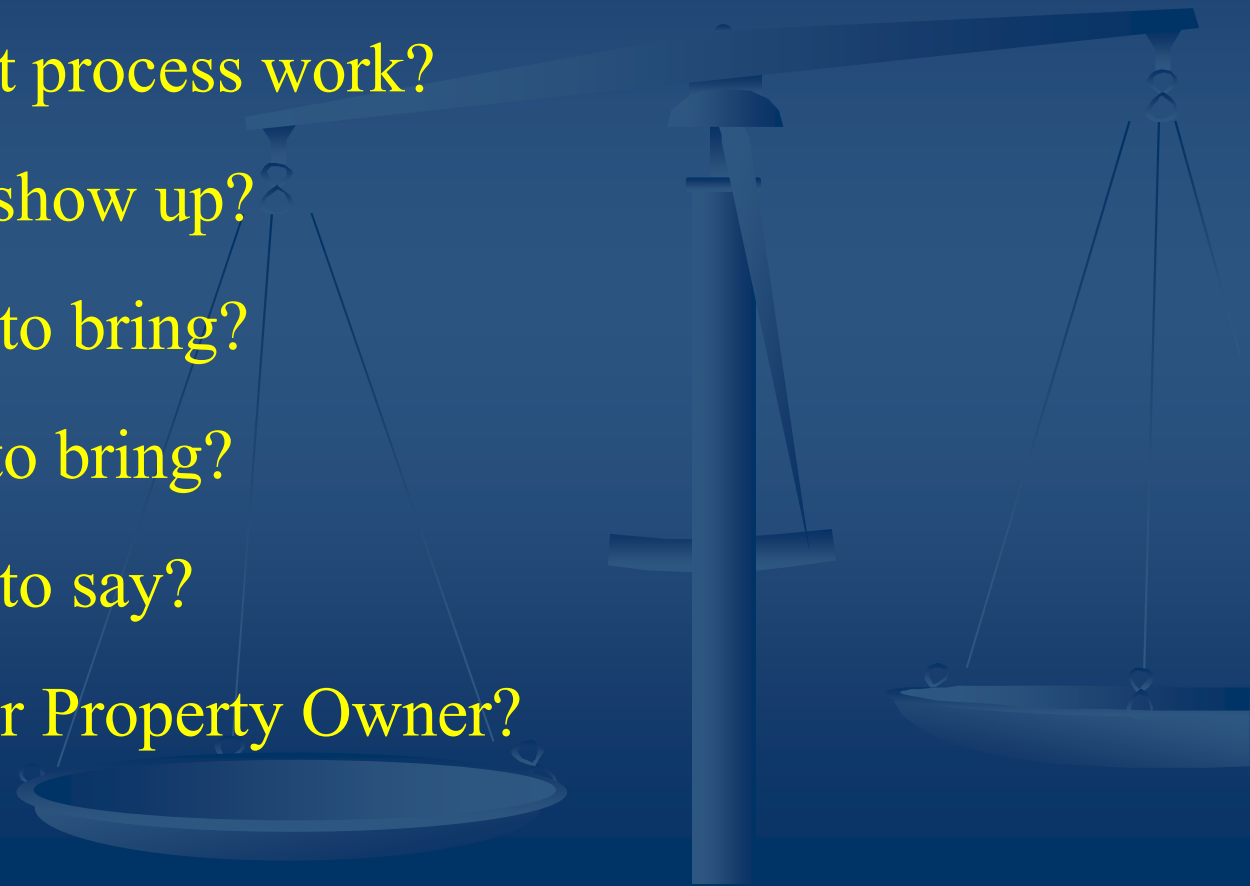


Video

'State Farm'

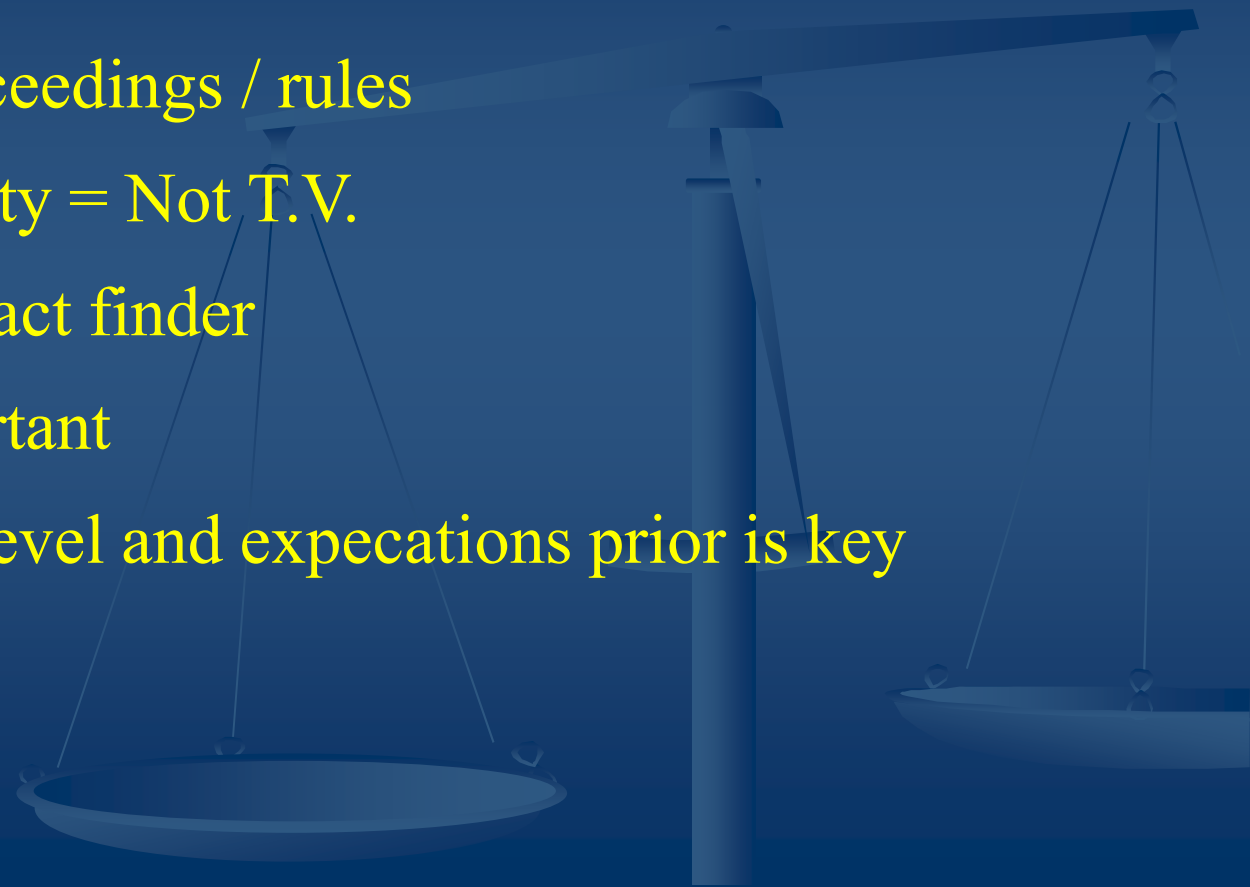
APPEARING AND TESTIFYING BEFORE THE COURTS

- How does the court process work?
- When/Where do I show up?
- What do you need to bring?
- Who do you need to bring?
- What do you need to say?
- Who can appear for Property Owner?



HOW DOES COURT WORK?

- Various levels / proceedings / rules
- Perception vs. Reality = Not T.V.
- Process oriented / Fact finder
- Preparation is important
- Understanding the level and expectations prior is key



WHEN / WHERE DO YOU SHOW UP / GO?

- Based on subpoena
- Know prior exactly where you'll be going
- Stop in before court to see layout
- Ask what expectations are



WHAT TO WEAR?

- Uniform?
- No Uniform?



WHAT DO YOU NEED TO BRING?

- Ordinances
- Code Book(s)
- Photographs
- Notes / Inspection Report(s)
- Notices / Citation Copies
- Resume / Bio



EXHIBITS SMITH BOROUGH DOE HEARING

Number	Document	Admitted
	Ordinance Adopting PMC	
	PMC	
	NOV	
	Photographs at time NOV June 7, 2017	
	Photographs June 28, 2017	
	Photographs August 16, 2017	

WHO DO YOU NEED TO BRING?

- Witnesses
- Legal Representation

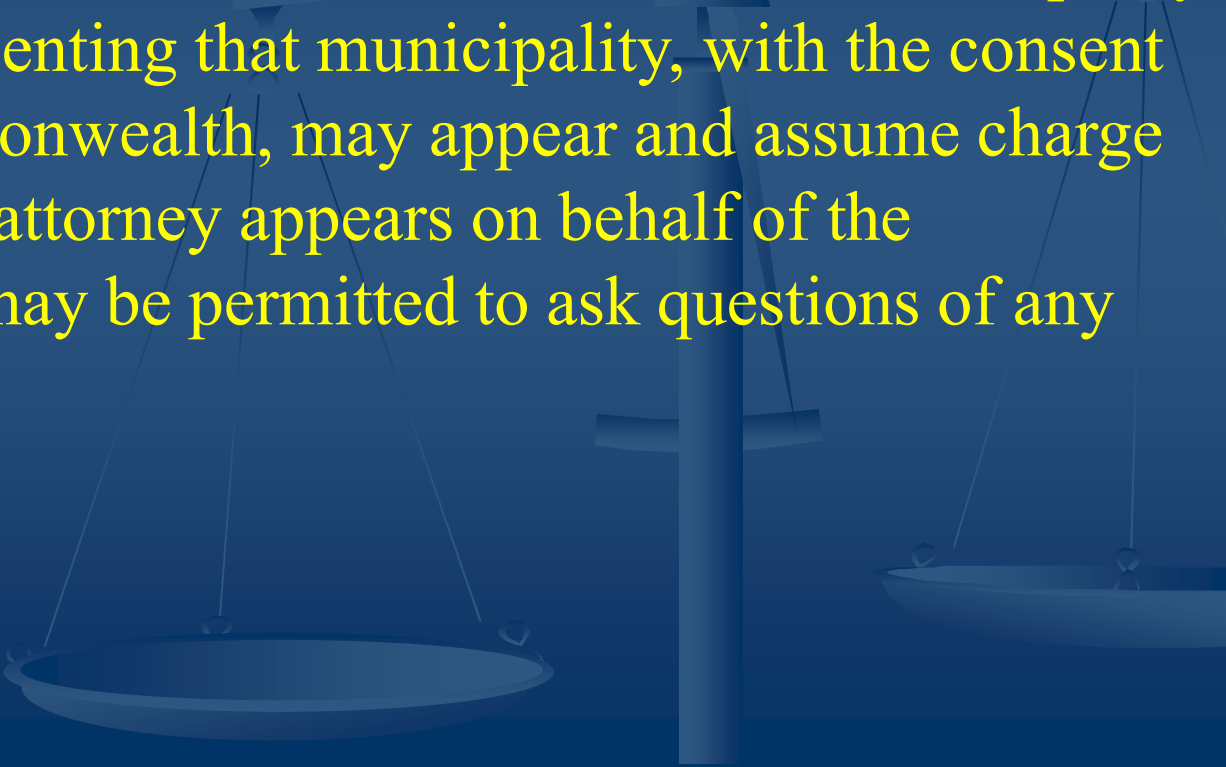


LEGAL REPRESENTATION OF MUNICIPALITY

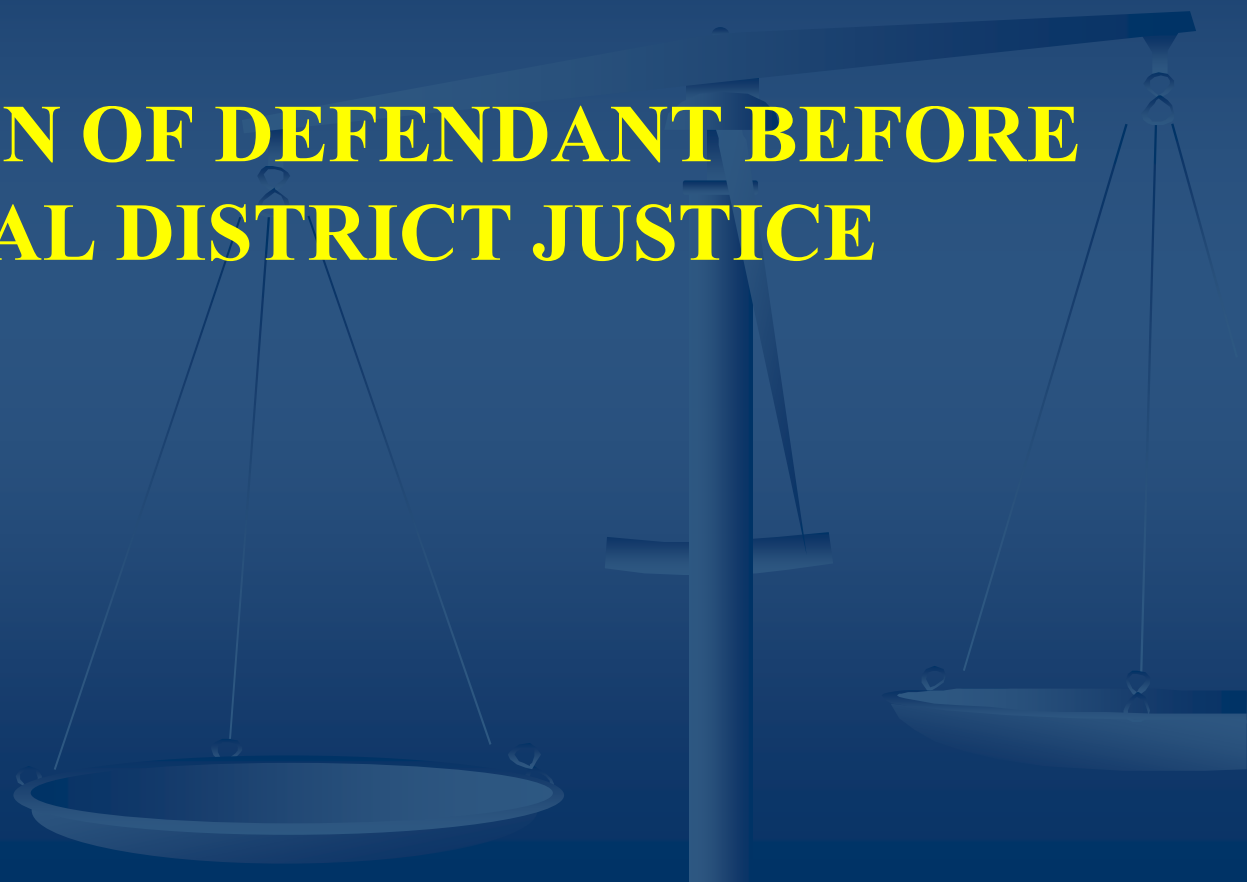


PA.R.CRIM.P. RULE 454 TRIAL IN SUMMARY CASES

(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.



REPRESENTATION OF DEFENDANT BEFORE MAGISTERIAL DISTRICT JUSTICE



Pa.R.C.P.D.J. No. 207

Representation in Magisterial District Court Proceedings

(A) In **magisterial district** court proceedings:

(1) Individuals may be **represented by themselves**, by an **attorney** at law, or by a **representative** with personal knowledge of the subject matter of the litigation and written authorization from the individual to appear as the individual's representative.

(2) Partnerships may be represented by an attorney at law, a partner, or by an employee or authorized agent of the partnership with personal knowledge of the subject matter of the litigation and written authorization from a partner to appear as the partnership's representative.

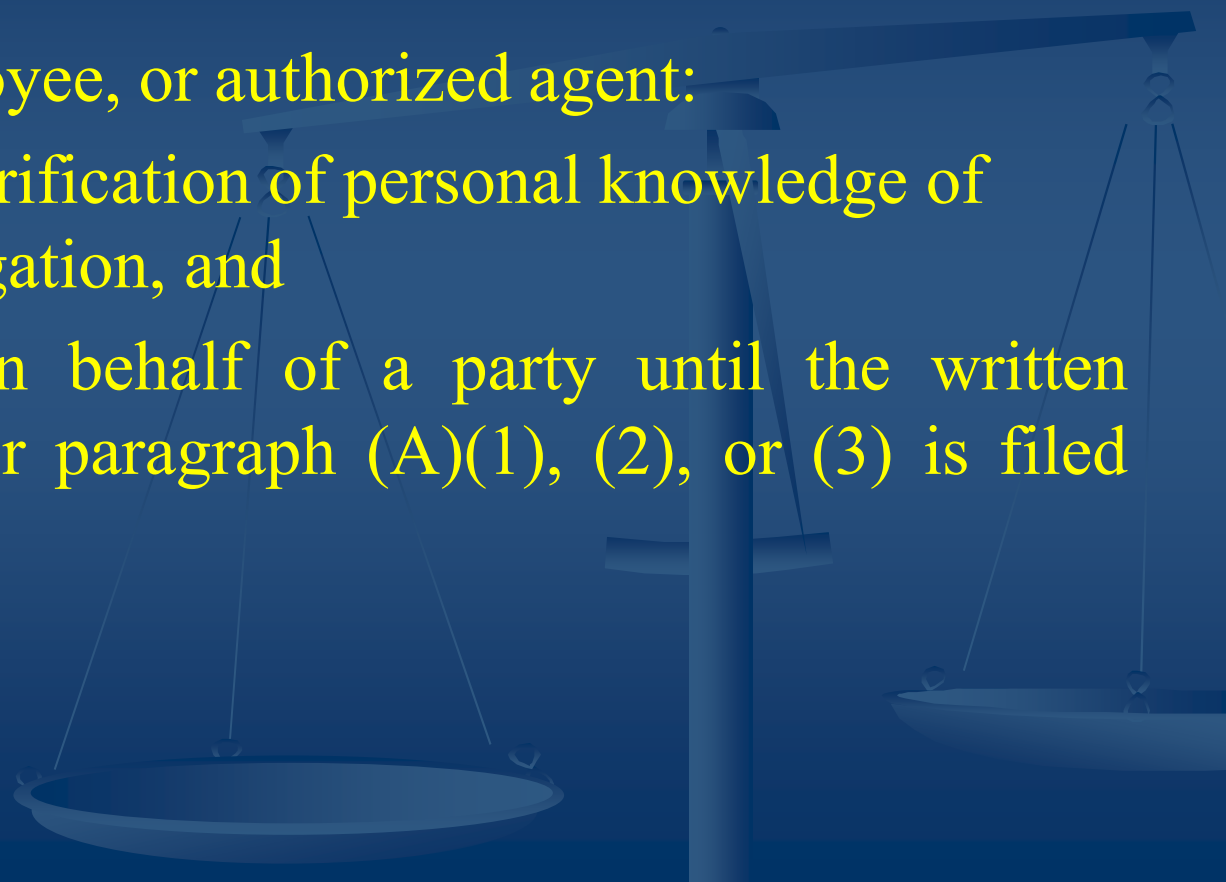
(3) Corporations or similar entities and unincorporated associations may be represented by an attorney at law, by an officer of the corporation, entity, or association, or by an employee or authorized agent of the corporation, entity, or association with personal knowledge of the subject matter of the litigation and written authorization from an officer of the corporation, entity, or association to appear as its representative.

Rule 207.

(B) A representative, employee, or authorized agent:

(1) must provide written verification of personal knowledge of the subject matter of the litigation, and

(2) may take no action on behalf of a party until the written authorization required under paragraph (A)(1), (2), or (3) is filed with the court.



TESTIMONY TYPES

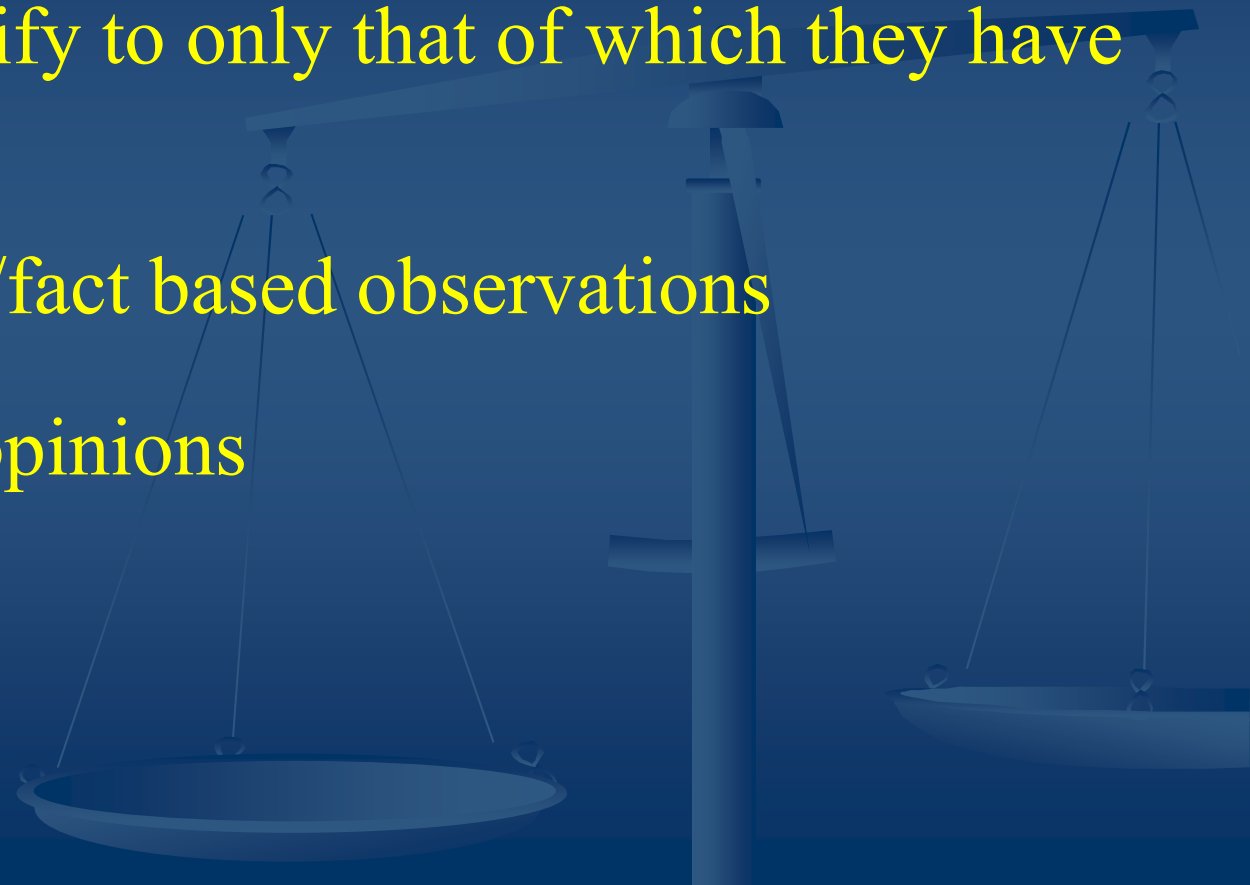
Fact

Expert



FACT

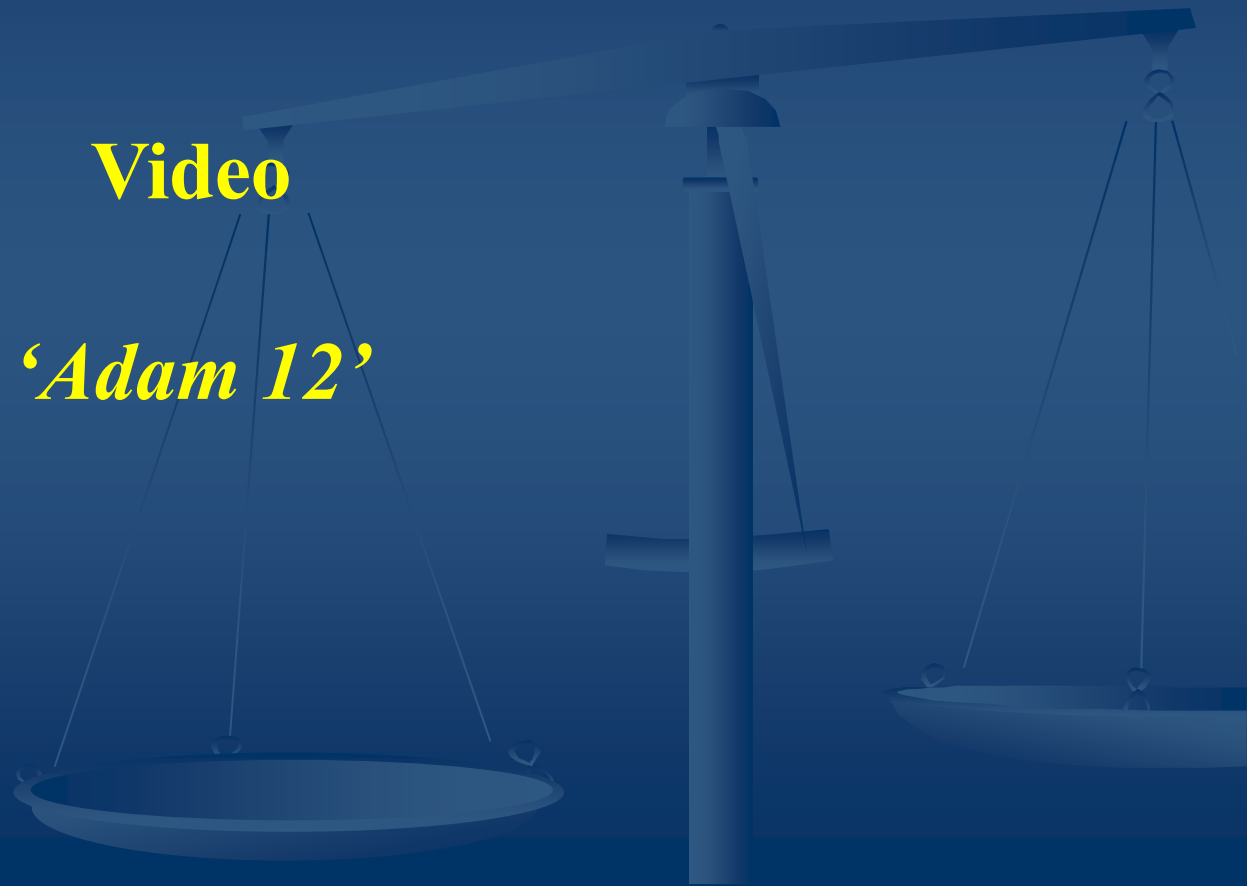
- A fact witnesses testify to only that of which they have firsthand knowledge
- Describes only facts/fact based observations
- Does NOT express opinions



WHAT DO YOU NEED TO SAY?

Video

'Adam 12'



WHAT DO YOU NEED TO SAY CONT?

- *‘Always being judged’*
- Careful listening
- Pause before answering
- Direct answer (Ask / Answer)
- Don't be combative



WHAT SHOULD YOUR TESTIMONY BE?

Video

'Just the Facts'



EXPERT

- When / Where needed (*attorney & role driven*)
- Court decides:
 - Witness qualification
 - ▣ *Curriculum Vitae (C.V.)*
 - ▣ *Voir Dire*



WHAT DO YOU NEED TO SAY?

Video

'Voir Dire'



TESTIMONY

Magisterial District Court without Legal Representation:

- Introduce Yourself
- Facts / Poise / Professionalism
- Ordinance / Actions



TESTIMONY

Courts and Proceedings with Legal Representation:

- Summary Appeal
- Deposition
- State or Federal Court



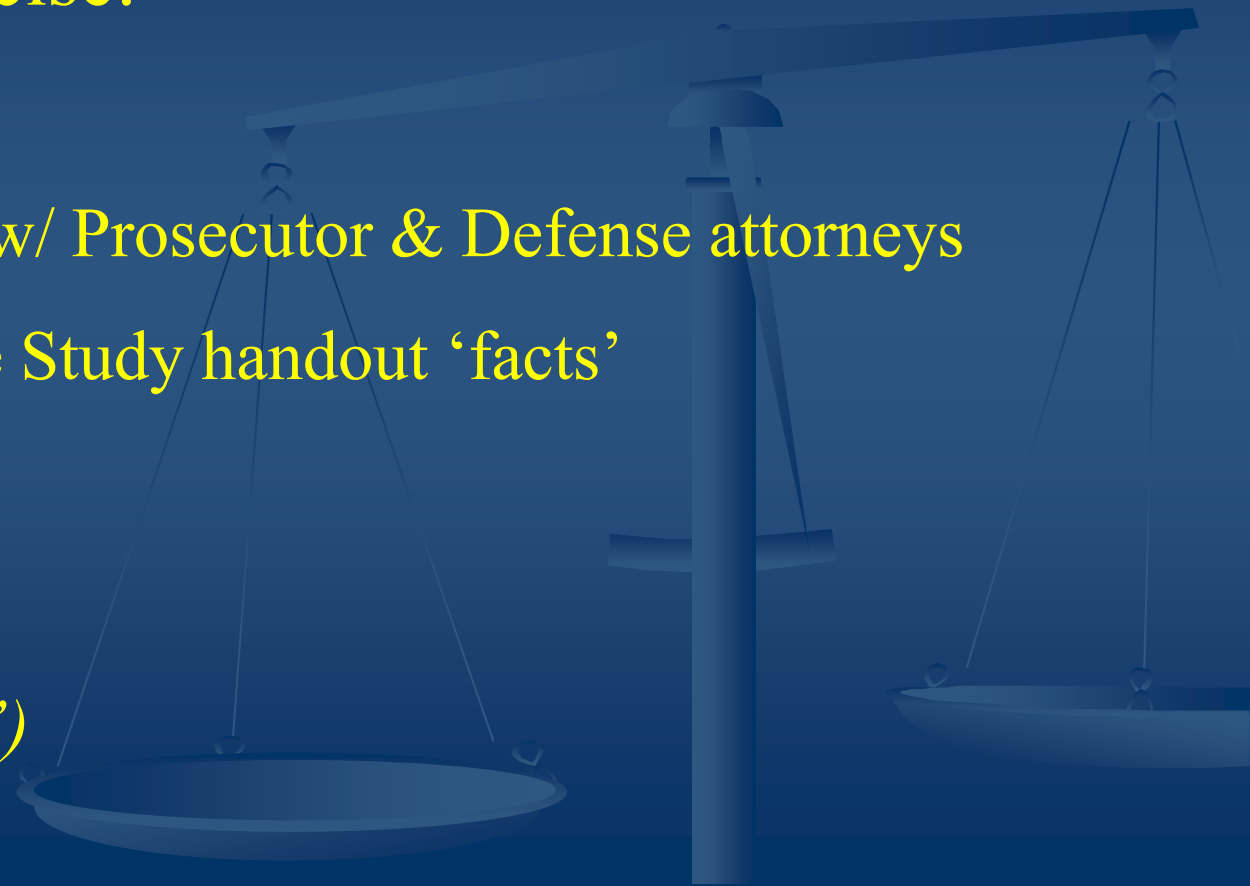
QUESTIONS?



NOW ITS YOUR TURN

Testimony practical exercise:

- *'Courtroom'*
- Classroom modification w/ Prosecutor & Defense attorneys
- Testimony based on Case Study handout 'facts'
- **Witness volunteers????**
- Witnesses sequestered
- Class role (*learn & 'jury'*)



QUESTIONS?

QUESTIONS?



THANKS!!!!



CONTACT INFO

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Andrew Adair

AAdair@dmvlawfirm.com

Todd M. Jaeger

fourtmi@yahoo.com





UNIT 3 (location of initial complaint)**

UNIT 2

UNIT 1

UNIT 4

UNIT 5 (DEMOLISHED SOMETIME AFTER INCIDENT)

THANKS!!!!



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