

**Proposal 06-05 (P.R. 0151)**  
**Creates new Rules 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580 and 581**  
**Offered by a Committee of Municipal Attorneys**

**(New) Part E: Non Traffic Ordinance Violations**

**New Rule 570. Applicability.**

These rules are applicable to the prosecution through the judicial system of ordinance violations passed pursuant to 65 ILCS 5/1-2-1 or Home Rule authority for which the penalty does not include the possibility of a jail term.

**Committee Comment**

These proposed rules are intended to apply to the prosecution of ordinance violations not punishable by a jail term and other than traffic offenses. Violations of ordinances punishable by a jail term are to be prosecuted in accordance with the Rules of Criminal Procedure. 65 ILCS 5/1-2-1.1. Municipal corporations are granted authority to “pass all ordinances and make all rules and regulations proper or necessary, to carry into effect the powers granted to municipalities, with such fines or penalties as may be deemed proper.” 65 ILCS 5/1-2-1.

Nothing in these rules is intended to alter or modify any statutes including statutes of limitations. Nor are these rules intended to limit the ability to proceed through an administrative process or other alternative methods of resolving ordinance violations.

**New Rule 571. Code of Civil Procedure to Apply.**

Except as specifically stated herein or in existing statutes, the Code of Civil Procedure shall apply in all ordinance prosecutions to which these Rules apply.

**Committee Comment**

The proposed rule builds on the holding of City of Danville vs. Hartshorn, 53 Ill.2d 399, 292 N.E.2d 382 (1973) in which the Supreme Court applied the Civil Practice Act to find a jury trial right but denied the automatic application of discovery procedures of the Civil Practice Act and “observed that (ordinance violation cases) though formally civil, such prosecutions are quasi-criminal.” 53 Ill.2d at 404. Before and after the Hartshorn decision, courts have struggled to decide what portions of the Code of Civil Procedure apply to ordinance violation prosecutions. It is the intent of these proposed rules to clarify that the Code of Civil Procedure applies to all ordinance violation proceedings except as otherwise provided by these rules.

## **New Rule 572. Form of Notice to Appear, Citation, Ticket or Complaint.**

(a) A prosecution for an ordinance violation for which the penalty does not include the possibility of a jail term may be initiated by a charging document such as a Notice to Appear, Citation, Ticket, or Complaint or combination of the same. Such charging document or combination of documents shall contain at least the following:

1. The name of the prosecuting entity;
2. The name of the defendant and his address, if known;
3. The nature of the offense or a reference to the relevant ordinance;
4. Execution by the person authorized to issue the charging document;
5. Whether the defendant is required to appear in court at a certain date, time and place;
6. A statement that the information is true and correct to the best of the issuing person's knowledge, information or belief;

(b) The following statement(s) shall also appear on the charging document or combination of documents listed in (a) above in the event a warrant or default judgment will be sought by the prosecuting entity:

1. A statement that a warrant for the defendant's arrest may issue if he or she fails to appear in court; or
2. A statement that a default or *ex parte* judgment may be entered in the event the person fails to appear in court or answer the charge made on the date set for the defendant's court appearance or any date to which the case is continued. The statement must also contain the amount of any *ex parte* or default judgment.

### **Committee Comment**

(a) This proposed rule is intended to provide flexibility in the initiation of an ordinance violation prosecution. The Municipal Code states that the first "process shall be a summons or a warrant." 65 ILCS 5/1-2-9. Many entities, however, begin with a "Notice to Appear" which is provided for in the Code of Criminal Procedure, 725 ILCS 5/107-12. The purpose of this Rule is to continue to allow public entities to utilize the most efficient means of initiating ordinance violation proceedings. "Notices to Appear" are appropriate and reasonable means of informing defendants of charges against them and are similar to citations issued in traffic cases.

This does not prohibit a prosecuting entity from obtaining a warrant based upon probable cause, as authorized in 65 ILCS 5/1-2-9.

Many cases hold that ordinance violation complaints "need not be drawn with the precision of an indictment or information" (e.g., Chicago vs. Brown, 61 Ill.App.3d 266, 272, 377 N.E.2d 1031, 1035 (1<sup>st</sup> Dist. 1978)). The proposed rule is intended to set forth

the minimum information that the charging document must contain. The language in Rule 572(a)(6) is based on 735 ILCS 5/1-109. Verification by certification is more appropriate than a statement under oath.

(b) Rule 576 requires notice be sent to the Defendant of the actual amount of any *ex parte* or default judgment.

### **New Rule 573. Service of the Charging document.**

The charging document may be served by hand delivery by a peace officer, a Code Enforcement Officer, or as otherwise authorized by law. Where the fine would not be in excess of \$750, and a jail term could not be imposed for the violation, service of summons may be made by certified mail, return receipt requested, whether service is to be within or without the state. This rule does not prohibit initiating prosecution by any other means authorized by statute.

#### **Committee Comment**

Service of summons by certified mail is expressly authorized in 65 ILCS 5/1-2-9.1. Mailing will be used far less frequently than hand delivery of a charging document, but must still be available for property violations when the property owner is an absentee owner. Since there are no liberty interests at stake for these violations, service by mail satisfies due process.

Notice for due process purposes is that notice which is reasonably calculated to reach the Defendant. Personal service of an ordinance violation citation by an officer of the municipality results in actual notice being received by the Defendant. Pursuant to this rule, certified mail notice satisfies due process. As noted in Jones v. Flowers, 126 S. Ct. 1708 (2006), "(t)he adequacy of a particular form of notice is assessed by balancing the State's interest against the individual interest sought to be protected." 126 S. Ct. at 1710.

Municipalities have an interest in the efficient adjudication of ordinance violations, while the interest at stake for an individual is limited by the Municipal Code to \$750, 65 ILCS 5/1-2-9.1. Mailed notice to a defendant by certified mail to the last known address of the defendant satisfies due process because the strong interest of the municipality in ensuring efficient compliance with ordinances outweighs the potential limited liability of \$750.

Many ordinance prosecutions are initiated by code enforcement officers, *e.g.*, building safety inspectors for property maintenance violations or animal control officers for animal ordinance violations.

The final sentence makes it clear that this rule allowing for the initiation of prosecution

by a Notice to Appear does not abrogate the opportunity to initiate a prosecution as provided in 65 ILCS 5/1-2-9 of the Municipal Code, namely, by summons or warrant.

**New Rule 574. Opportunity to Settle.**

An opportunity to avoid a court appearance through settlement of the dispute may be provided for by ordinance. The manner and time limit for settlement before which a court appearance will be required may be set forth in the charging document.

**Committee Comment**

This rule is modeled after Supreme Court Rule 529, which permits certain traffic offenses to be satisfied without a court appearance. Given the nature of ordinance violations, similar treatment is appropriate if the prosecuting entity authorizes such settlement. This rule diverts uncontested minor ordinance charges from court calendars. At the same time, full legal rights are preserved to those who wish to avail themselves of the Court system.

**New Rule 575. Charging Document.**

**(a) Signing.** The charging document must be signed by an attorney, peace officer or code enforcement officer.

**(b) Multiple Violations.** Multiple violations of automobile parking offenses, violations of a continuing offense, violations of the same offense occurring at different times or on different days, or ordinances for which the violation carries a per day fine for the violation, may be stated in one count even though each violation carries a separate fine. Such separate violations and fines must be clearly stated.

**(c) Prayer for Relief.** It shall be sufficient for the prosecuting entity to generally pray for a penalty range between the minimum and maximum penalties authorized by the corporate authorities of the prosecuting entity.

**(d) Construing Pleadings.** Pleadings shall be liberally construed with a view to doing substantial justice between the parties.

**(e) Amendments.** The charging document may be amended at any time, before or after judgment, to conform the pleadings to the proofs on just and reasonable terms.

## Committee Comment

Many prosecuting entities have created hybrid complaints that serve both as notice to appear and the charging document itself, similar to a traffic citation. Since an ordinance violation prosecution incorporates aspects of both criminal and civil procedures, the more general term “charging document” phrase is used.

(a) Allowing a non-attorney to sign the charging document is not intended to waive the requirement in Supreme Court Rule 282(b) which requires that a corporation must be represented by counsel. The proposed rule would simply clarify that an attorney need not sign the charging document in every case. This is especially important where the process is initiated by a non-attorney such as a police officer or code enforcement officer.

(b) This is intended to minimize paperwork and codify the decision in Village of Oak Park v. Flanagan, 35 Ill.App.3d 6, 341 N.E.2d 16 (1<sup>st</sup> Dist. 1975). The Village of Oak Park case involved prosecution for multiple parking tickets in which the court held that a computer printout was sufficient to comply with the requirements of pleading for ordinance violations. Note, however, this rule is not meant to contravene the one act/one crime rule identified in Village of Sugar Grove v. James Rich, 347 Ill.App.3d 689, 808 N.E.2d 525, 283 Ill. Dec. 559 (2d Dist. March, 2004).

(c) Section 2-604 of the Code of Civil Procedure requires a “specific” prayer for relief. 735 ILCS 5/2-604. This paragraph is intended to clarify that a prayer for a penalty within the penalty range authorized by the ordinance is sufficiently specific to advise the party of the maximum to which they are exposed.

(d) This is a direct quote from section 2-603(c) of the Code of Civil Procedure. 735 ILCS 5/2-603(c). In light of the hybrid nature of these proceedings, this rule is intended to emphasize that flexibility in the charging document is permitted in this type of proceeding.

(e) Section 2-616(a) of the Code of Civil Procedure specifically permits amendments to civil pleadings at various times. 735 ILCS 5/2-616(a). The purpose is to avoid minor errors in the charging document being a cause of a finding of not guilty when a violation has been proved by the requisite proof.

### **New Rule 576. Appearance of Defendant, Answer; Failure to Appear; Motions**

(a) A party responding to a charging document for an ordinance violation may appear and enter a plea, answer to the charge, or other responsive pleading. A Not Guilty plea will be construed as a general denial. The defendant need not file a written answer unless ordered to do so by the Court. In the event the defendant fails to appear at any

proceeding for which the Court has not excused the defendant's appearance, a warrant may issue, or an *ex parte* judgment or default judgment may be entered. If such judgment is entered, the defendant shall be mailed written notice at the defendant's last known address of: 1) the amount of the judgment, 2) the date by which such judgment must be paid, 3) if applicable, notice that a warrant of arrest may be issued if defendant fails to pay such judgment by the date specified, and 4) that a motion to vacate judgment must be filed within thirty days of the date of judgment.

(b) By leave of court, a party may make a motion for a more specific statement of the charge.

(c) By leave of court, a party may make a motion for summary judgment prior to any trial on the merits.

### **Committee Comment**

(a) The purpose of this section is to provide for a simple process for those who appear to answer a charge and also in determining the effect of a failure to appear for an ordinance violation charge. Supreme Court Rule 286(a) provides for a general denial in small claims cases and this rule proposes a similar procedure for ordinance violations. Supreme Court Rule 556(a) permits the entry of an *ex parte* judgment in traffic cases. This rule proposes a similar procedure for ordinance violations. Because of the variety of charges and dispositions, an amount cannot be set forth in these Rules.

(b) Chicago v. Joyce, 38 Ill. 2d 368, 232 N. E. 2d 289 (1967) suggested that a motion for a more detailed statement of the charge could be appropriate in a case involving an ordinance violation.

(c) Village of Beckmeyer v. Wheelan, 212 Ill. App. 3d 287, 569 N. E. 2d 1125, 155 Ill. Dec. 514 (5th Dist. 1991) provides for summary judgment motions in ordinance violation cases.

### **New Rule 577. Right to Counsel.**

A defendant has a right to be represented by an attorney; however, there shall be no right to appointment of counsel for violation of an ordinance for which the penalty does not include the possibility of a jail term or in civil contempt proceedings.

### **Committee Comment**

This rule reiterates the long held principle that the right to a court appointed counsel does not attach where there is no possibility of imprisonment as a penalty for the underlying offense. See City of Urbana v. Andre N.B., 211 Ill.2d 456, 813 N.E.2d 132, 285 Ill.Dec.

75 (2004) and City of Danville v. Clark, 63 Ill.2d 408, 348 N.E.2d 844 (1976). City of DeKalb v. Thomas, 331 Ill.App.3d 9, 12, 770 N.E.2d 730, 733 (2<sup>nd</sup> Dist. 2002) additionally found the court had no authority to order the City to pay attorneys fees for the defendant in ordinance violation cases.

### **New Rule 578. Jury Trial.**

The defendant shall have the right to trial by a jury. The defendant shall make his or her jury demand at the time of entering his or her appearance, plea, answer to the charge, or other responsive pleading. Failure to pay the required jury fee to the clerk of the circuit court at the time of entering his or her initial appearance shall constitute a waiver of a jury trial.

#### **Committee Comment**

This rule follows section 103-6 of the Code of Criminal Procedure of 1963 which states that “every person accused of an offense shall have the right to a trial by jury unless . . . (ii) the offense is an ordinance violation punishable by fine only and the defendant either fails to file a demand for a trial by jury at the time or entering his or her plea of not guilty or fails to pay to the clerk of the circuit court at the time of entering his or her plea of not guilty any jury fee required to be paid to the clerk.” 725 ILCS 5/103-6.

Most communities have an initial appearance date and a later trial date since it is a change in circumstance from the original posture of the case. This rule acknowledges that practice.

### **New Rule 579. Discovery.**

In suits for violation of ordinances, neither requests to admit nor discovery procedures shall be allowed prior to trial except by leave of court.

#### **Committee Comment**

This rule paraphrases Supreme Court Rule 201(h) but applies to ordinance prosecutions by entities other than municipalities and extends the application of the rule to cases in which penalties may include public service work and restitution in addition to fines.

### **New Rule 580. Burden of Proof.**

The prosecuting entity must prove the ordinance violation by a preponderance of the evidence; meaning it is more likely true than not true that the violation occurred.

### Committee Comment

This rule restates case law which holds that the burden of proof in ordinance violation cases is the civil law standard of preponderance of the evidence rather than the criminal standard of beyond a reasonable doubt. City of Mattoon v. Mentzer, 282 Ill.App.3d 628, 635, 668 N.E.2d 601, 605, 211 Ill. Dec. 117, 121 (4<sup>th</sup> Dist. 1996); Chicago v. Joyce, 38 Ill. 2d 368, 373, 232 N. E. 2d 289,291 (1967).

#### **New Rule 581. Disposition.**

**(a) Sentence.** The Court shall determine the amount of any fine for an ordinance violation to which these Rules apply, except that any fine imposed shall not be less than the “minimum fine” authorized by ordinance. Court costs shall be imposed.

**(b) Additional Conditions.** In addition to any fine imposed, the Court may impose a sentence including restitution, or other appropriate penalties or conditions authorized by ordinance, including but not limited to abatement, injunctions, public service work, or other conditions as deemed appropriate by the Court. A sentence of conditional discharge or court supervision disposition shall be permitted in ordinance violation cases unless specifically prohibited by ordinance or statute.

**(c) Dispositional Considerations.** The court may consider evidence and information offered by the parties in aggravation and mitigation.

**(d) Failure to Appear.** In the event of a defendant’s failure to appear for a dispositional hearing, the Court may impose a fine within the range permitted by the corporate authorities of the municipality in which the ordinance violation occurred, as it deems appropriate. Other conditions or penalties may be imposed only after hearing with proof of notice of such hearing to defendant at his/her last known address.

**(e) Ex Parte or Default Judgments.** In case of an *ex parte* or default judgment, the Court shall proceed pursuant to Rule 576(a). Only a fine may be imposed upon entry of an *ex parte* or default judgment unless a subsequent sentencing hearing is held with notice to defendant at his/her last known address.

### Committee Comment

(a) In accordance with typical situations in which a range of penalties is authorized by statute, the court in City of Chicago v. Alessia, 348 Ill.App.3d 218, 807 N.E.2d 1150, 283 Ill.Dec. 309 (1<sup>st</sup> Dist. 2004) held that the fine may not be less than the statutory



minimum. The intent of these rules was not to change the law. However, this is one area where the committee is not opposed to a change in the law that would allow the Court to determine the sentence or penalties.

(b) People v Hasprey, 194 Ill.2d 84, 86, 740 N.E.2d 780, 781 (2000) held that restitution could not be ordered pursuant to 730 ILCS 5/5-5-6 for a violation of the Illinois Vehicle Code because the Vehicle Code did not expressly authorize it. If restitution is expressly authorized by ordinance, again, under the holding in City of Highland Park v. Curtis, 83 Ill.App.2d 218, 229 (2<sup>nd</sup> Dist 1967), the court should be permitted to impose restitution. Regarding acceptable conditions of Conditional Discharge and Supervision, see 730 ILCS 5/5-6-3 and 5/6-3.1. Conditional Discharge or Court Supervision for an ordinance violation would not involve court services or probation departments unless specifically ordered by the Court.

It is in the area of dispositions that ordinance violations most resemble criminal matters. Therefore, it is appropriate to allow for criminal-type dispositions such as conditional discharge and court supervision.

(c) Statutory authorization for imposition of court supervision is found in 730 ILCS 5/5-6-1(d). That provision expressly bars court supervision for offenders who have violated certain local ordinances that are similar to certain state laws, with the clear implication that court supervision is available for all other local ordinances. See e.g., 730 ILCS 5/5-6-1(d), (f), (g), (I), (j); People v. Scognamiglio, 119 Ill.App.3d 747, 750-51, 457 N.E.2d 99, 101-02, 75 Ill. Dec. 309, 311-12 (2d Dist. 1983) (exclusion of certain traffic offenses from eligibility for court supervision means that other traffic offense are eligible for court supervision). The Supreme Court has recognized the authority of the courts to impose court supervision in ordinance violation cases. City of Urbana v. Andre N.B., 211 Ill.2d 456, 813 N.E.2d 132, 285 Ill. Dec. 75 (2004).

(d) Regarding evidence to be offered in aggravation or mitigation, see 730 ILCS 5/5-4-1(a)(4).

(e) Supreme Court Rule 556(e) permits entry of an *ex parte* judgment for fine only offenses if a defendant fails to appear.