

# THE COURTS

## Title 210—APPELLATE PROCEDURE

### PART I. RULES OF APPELLATE PROCEDURE

[210 PA. CODE CHS. 1, 9, 11, 13, 15 AND 17]

Order Adopting Pa.R.A.P. 120 and 1703 and Amending the Notes to Pa.R.A.P. 121, 907, 1112, 1311 and 1514; No. 150 Appellate Procedural Rules; Doc. No. 1

#### Amended Order

*Per Curiam:*

And Now, this 15th day of March, 2004, upon the recommendation of the Appellate Court Procedural Rules Committee, the proposal having been published before adoption at 32 Pa.B. 5259 (October 26, 2002);

It Is Ordered, pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Pennsylvania Rule of Appellate Procedure 120 and 1703 be adopted in the following form, and that the Notes to Pennsylvania Rules of Appellate Procedure 121, 907, 1112, 1311 and 1514 be amended in the following form.

This Order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective 60 days after adoption.

#### Annex A

### TITLE 210. APPELLATE PROCEDURE

#### PART I. RULES OF APPELLATE PROCEDURE

##### ARTICLE I. PRELIMINARY PROVISIONS

##### CHAPTER 1. GENERAL PROVISIONS

##### DOCUMENTS GENERALLY

#### Rule 120. Entry of Appearance.

(a) *Filing.* Any counsel filing papers required or permitted to be filed in an appellate court must enter an appearance with the prothonotary of the appellate court unless that counsel has been previously noted on the docket as counsel pursuant to Rules 907(b), 1112(f), 1311(d) or 1514(d). New counsel appearing for a party after docketing pursuant to Rules 907(b), 1112(f), 1311(d), or 1514(d) shall file an entry of appearance simultaneous with or prior to the filing of any papers signed by new counsel. The entry of appearance shall specifically designate each party the attorney represents and the attorney shall file a certificate of service pursuant to Subdivision (d) of Rule 121 and Rule 122. Where new counsel enters an appearance on behalf of a party currently represented by counsel and there is no simultaneous withdrawal of appearance, new counsel shall serve the party that new counsel represents and all other counsel of record and file a certificate of service.

**Official Note:** See Subdivision (b) of Rule 907, Subdivision (f) of Rule 1112, Subdivision (d) of Rule 1311 and Subdivision (d) of Rule 1514.

#### Rule 121. Filing and Service.

\* \* \* \* \*

**Official Note:** The term "related papers" in Subdivision (a) of this rule includes any appeal papers required under Rule 1702 (stay ancillary to appeal) as a prerequi-

site to an application for a stay or similar relief. An acknowledgement of service may be executed by an individual other than the person served, e.g., by a clerk or other responsible person as contemplated by Subdivision (c) of the rule. Subdivision (e) of the rule does not apply to the filing of a notice of appeal, a petition for allowance of appeal, a petition for permission to appeal, or a petition for reconsideration or re-argument, since under these rules the time for filing such papers runs from the entry and service of the related order, nor to the filing of a petition for review, which is governed by similar considerations. However, these rules permit the filing of such notice and petitions (except a petition for reconsideration or re-argument) in the local county (generally in the county court house; otherwise in a post office), thus eliminating a major problem under the prior practice.

**With respect to appearances by new counsel following the initial docketing of appearances pursuant to Subdivision (d) of this rule, please note the requirements of Rule 120.**

### ARTICLE II. APPELLATE PROCEDURE

#### CHAPTER 9. APPEALS FROM LOWER COURTS

#### Rule 907. Docketing of Appeal.

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#### Official Note:

\* \* \* \* \*

With regard to Subdivision (b) and withdrawal of appearance without leave of the appellate court, counsel may nonetheless be subject to trial court supervision pursuant to Pa.R.Crim.P. 904 (Entry of Appearance and Appointment of Counsel; In Forma Pauperis).

**With respect to appearances by new counsel following the initial docketing appearances pursuant to Subdivision (b) of this rule, please note the requirements of Rule 120.**

#### CHAPTER 11. APPEALS FROM COMMONWEALTH COURT AND SUPERIOR COURT

##### PETITION FOR ALLOWANCE OF APPEAL

#### Rule 1112. Appeals by Allowance.

\* \* \* \* \*

#### Official Note:

\* \* \* \* \*

With regard to Subdivision (f) and withdrawal of appearance without leave of the appellate court, counsel may nonetheless be subject to trial court supervision pursuant to Pa.R.Crim.P. 904 (Entry of Appearance and Appointment of Counsel; In Forma Pauperis).

**With respect to appearances by new counsel following the initial docketing of appearances pursuant to Subdivision (f) of this rule, please note the requirements of Rule 120.**

#### Explanatory Comment—1976

In view of the fact that the Prothonotary of the Supreme Court will as a matter of course notify the Superior Court and the Commonwealth Court of the filing

of a petition for allowance of appeal, the requirement that the petitioner file a copy of the petition in the appellate court below is deleted.

See the Comment following Rule 908.

**CHAPTER 13. INTERLOCUTORY APPEALS BY PERMISSION**

**Rule 1311. Interlocutory Appeals by Permission.**

\* \* \* \* \*

**Official Note:**

\* \* \* \* \*

With regard to subdivision (d) and withdrawal of appearance without leave of the appellate court, counsel may nonetheless be subject to trial court supervision pursuant to Pa.R.Crim.P. 904 (Entry of Appearance and Appointment of Counsel; In Forma Pauperis).

**With respect to appearances by new counsel following the initial docketing of appearances pursuant to Subdivision (d) of this rule, please note the requirements of Rule 120.**

**CHAPTER 15. JUDICIAL REVIEW OF GOVERNMENTAL DETERMINATIONS**

**PETITION FOR REVIEW**

**Rule 1514. Filing and Service of the Petition for Review.**

\* \* \* \* \*

**Official Note:** This rule supersedes former Commonwealth Court Rules 20C, 21, 22 and 24. See the Note to Rule 1112 (appeals by allowance) for an explanation of the procedure when Form 3817 is used.

**With respect to appearances by new counsel following the initial docketing of appearances pursuant to Subdivision (d) of this rule, please note the requirements of Rule 120.**

**Explanatory Note—1979**

In order to make certain that parties before a government unit realize that they must file a notice of intervention under amended Rule 1531 if they are to participate in the appeal, a new requirement is added for notification in the petition for review papers alerting parties not named as respondents to the need for filing a notice of or application for intervention.

**CHAPTER 17. EFFECT OF APPEALS; SUPERSEDEAS AND STAYS**

**IN GENERAL**

**Rule 1703. Contents of Application for Stay.**

In addition to the requirements set forth in Rule 123 (Application for Relief), an application for stay pursuant to this chapter shall set forth the procedural posture of the case, including the result of any application for relief in any court below or federal court, the specific rule under which a stay or supersedeas is sought, grounds for relief, and, if expedited relief is sought, the nature of the

emergency. The application shall also identify and set forth the procedural posture of all related proceedings.

[Pa.B. Doc. No. 04-517. Filed for public inspection March 26, 2004, 9:00 a.m.]

**Title 234—RULES OF CRIMINAL PROCEDURE**

[234 PA. CODE CHS. 1 AND 9]

**Order Amending Rule 122 and Approving the Revision of the Comment to Rule 904; No. 304 Criminal Procedural Rules; Doc. No. 2**

The Criminal Procedural Rules Committee has prepared a Final Report explaining the March 12, 2004 changes to Rules of Criminal Procedure 122 and 904 that clarify the duration and nature of appointed counsel's representational obligations. The Final Report follows the Court's Order.

**Order**

*Per Curiam:*

Now, this 12th day of March, 2004, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before adoption at 30 Pa.B. 5533 (October 28, 2000), and in the *Atlantic Reporter* (Second Series Advance Sheets, Vol. 759), and a Final Report to be published with this *Order*:

*It Is Ordered* pursuant to Article V, Section 10 of the Constitution of Pennsylvania that:

- (1) Rule of Criminal Procedure 122 is amended; and
- (2) the revision of the Comment to Rule of Criminal Procedure 904 is approved,

all in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective July 1, 2004.

**Annex A**

**TITLE 234. RULES OF CRIMINAL PROCEDURE  
CHAPTER 1. SCOPE OF RULES, CONSTRUCTION AND DEFINITIONS, LOCAL RULES**

**PART B. Counsel**

**Rule 122. Assignment of Counsel.**

\* \* \* \* \*

(C) IN ALL CASES.

\* \* \* \* \*

(3) [ **Where** ] **When** counsel has been assigned, such assignment shall be effective until final judgment, including any proceedings upon direct appeal.

**Comment**

\* \* \* \* \*

[ **Subparagraph** ] **Paragraph** (C)(1) retains in the issuing authority or judge the power to assign counsel regardless of indigency or other factors when, in the issuing authority's or judge's opinion, the interests of justice require it.

[ Paragraph ] Pursuant to paragraph (C)(3) [ implements the decisions of *Douglas v. California*, 372 U.S. 353 (1963), and *Commonwealth v. Hickox*, 249 A.2d 777 (Pa. 1969), by providing that ], counsel [ appointed originally shall retain ] retains his or her assignment until final judgment, which includes [ appellate procedure ] all avenues of appeal through the Supreme Court of Pennsylvania. In making the decision whether to file a petition for allowance of appeal, counsel must (1) consult with his or her client, and (2) review the standards set forth in Pa.R.A.P. 1114 (Considerations Governing Allowance of Appeal) and the note following that rule. If the decision is made to file a petition, counsel must carry through with that decision. See *Commonwealth v. Liebel*, 825 A.2d 630 (Pa. 2003). Concerning counsel's obligations as appointed counsel, see *Jones v. Barnes*, 463 U.S. 745 (1983). See also *Commonwealth v. Padden*, 783 A.2d 299 (Pa. Super. 2001).

\* \* \* \* \*

**Official Note:** Rule 318 adopted November 29, 1972, effective 10 days hence[ ]; replacing prior rule; amended September 18, 1973, effective immediately; renumbered Rule 316 and amended June 29, 1977, and October 21, 1977, effective January 1, 1978; renumbered Rule 122 and amended March 1, 2000, effective April 1, 2001; amended March 12, 2004, effective July 1, 2004.

*Committee Explanatory Reports:*

\* \* \* \* \*

**Final Report explaining the March 12, 2004 editorial amendment to paragraph (C)(3), and the Comment revision concerning duration of counsel's obligation, published with the Court's Order at 34 Pa.B. 1672 (March 27, 2004).**

**CHAPTER 9. POST-CONVICTION COLLATERAL PROCEEDINGS**

**Rule 904. Entry of Appearance and Appointment of Counsel; In Forma Pauperis.**

\* \* \* \* \*

**Comment**

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Pursuant to paragraphs (E) and (G)(2), appointed counsel retains his or her assignment until final judgment, which includes all avenues of appeal through the Supreme Court of Pennsylvania. In making the decision whether to file a petition for allowance of appeal, counsel must (1) consult with his or her client, and (2) review the standards set forth in Pa.R.A.P. 1114 (Considerations Governing Allowance of Appeal) and the note following that rule. If the decision is made to file a petition, counsel must carry through with that decision. See *Commonwealth v. Liebel*, 825 A.2d 630 (Pa. 2003). Concerning counsel's obligations as appointed counsel, see *Jones v. Barnes*, 463 U.S. 745 (1983). See also *Commonwealth v. Padden*, 783 A.2d 299 (Pa. Super. 2001).

Paragraph (G) was added in 2000 to provide for the appointment of counsel for the first petition for post-conviction collateral relief in a death penalty case at the conclusion of direct review.

**Official Note:** Previous Rule 1504 adopted January 24, 1968, effective August 1, 1968; rescinded December 11, 1981, effective June 27, 1982; rescission vacated June 4, 1982; rescinded February 1, 1989, effective July 1, 1989, and replaced by Rule [ 907 ] 1507. Present Rule 1504 adopted February 1, 1989, effective July 1, 1989; amended August 11, 1997, effective immediately; amended January 21, 2000, effective July 1, 2000; renumbered Rule 904 and amended March 1, 2000, effective April 1, 2001; amended February 26, 2002, effective July 1, 2002; **Comment revised March 12, 2004, effective July 1, 2004.**

*Committee Explanatory Reports:*

\* \* \* \* \*

**Final Report explaining the Comment revision concerning duration of counsel's obligation published with the Court's Order at 34 Pa.B. 1672 (March 27, 2004).**

**FINAL REPORT<sup>1</sup>**

**Amendment to Pa.R.Crim.P. 122, and Revision of the Comment to Pa.R.Crim.P. 904**

**Duration of Appointed Counsel's Obligation**

On March 12, 2004, effective July 1, 2004, upon the recommendation of the Criminal Procedural Rules Committee, the Court made an editorial change to paragraph (C) of Rule of Criminal Procedure 122 (Assignment of Counsel), and approved the revisions to the Comments to Rules 122 and 904 (Appointment of Counsel; In Forma Pauperis) that clarify the duration and nature of appointed counsel's representational obligations.

**I. BACKGROUND**

The Committee initially undertook a review of the duration of appointed counsel's obligation provisions in Rule 122 at the request of the Court.<sup>2</sup> The Court asked the Committee to consider whether Pennsylvania's policy concerning the duration of appointed counsel's obligation should continue to be that counsel retains his or her assignment until final judgment, which includes all avenues of appeal through the Supreme Court of Pennsylvania.

**A. Rule 122 History<sup>3</sup>**

In order to fully address the Court's inquiry, the Committee first reviewed the Rule 122 history and case law interpreting Rule 122. When the Committee recommended the appointment of counsel rule in 1964, the submission to the Court explained that the Committee was proposing the rule provide counsel's assignment shall be effective until final judgment including any proceedings upon direct appeal, and that the proposal was based on the United States Supreme Court's decision in *Douglas v. California*, 372 U.S. 353 (1963). The Committee, however, did not explain what was intended by "any proceedings upon direct appeal." *Douglas* is not conclusive as to the meaning of "direct appeal" because the Supreme Court limited the scope of the *Douglas* decision saying "We are not here concerned with the problems that might arise from the denial of counsel for the preparation of a petition for discretionary review or mandatory review

<sup>1</sup> The Committee's Final Reports should not be confused with the official Committee Comments to the rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the Committee's explanatory Final Reports.

<sup>2</sup> References in this Final Report to "Supreme Court" mean the U. S. Supreme Court, and references to "Court" mean the Pennsylvania Supreme Court.

<sup>3</sup> Prior to the Court's renumbering of the Criminal Rules in 2000, Rule 122 was Rule 316, and this pre-2000 "history" refers to Rule 316.

beyond the stage in the appellate process at which the claims have once been presented by a lawyer and passed upon by an appellate court.”

Subsequently, the Court decided *Commonwealth v. Hickox*, 249 A.2d 777 (Pa. 1969). The *Hickox* opinion directs appointed counsel following the affirmance of defendant's sentence by the Superior Court “to proceed in accordance with the Rule,” suggesting that in 1969 the Court interpreted the use of “direct appeal” in Rule 122 to include discretionary appeals. The citation to *Hickox* was added to the Rule 122 Comment. The Committee concluded the addition of *Hickox* supported the premise that the intent of the rule is that appointed counsel is to stay in the case through the state courts' discretionary appeal process.

The issue of the length of appointed counsel's obligation has continued to arise in cases. The United States Supreme Court again addressed the issue in 1974 in *Ross v. Moffitt*, 417 U.S. 600 (1974). The Supreme Court held that there is no constitutional right to appointed counsel for discretionary appeals, noting that the decision should be made at the state level. The Pennsylvania Supreme Court did just that in 1980 when, in *Commonwealth v. Daniels*, 420 A.2d 1323 (Pa. 1980), it noted “by this Rule [Rule 316], this Court long has guaranteed that a person seeking allowance of appeal is entitled to the assistance of counsel.” Since *Daniels*, there have been several Superior Court cases addressing this issue in the context of ineffective assistance of counsel for failing to seek allowance of appeal to the Supreme Court, all accepting the premise that appointed counsel stays in the case through discretionary appeal. See, e.g., *Commonwealth v. Morrow*, 474 A.2d 322 (Pa. Super. 1984) and *Commonwealth v. West*, 482 A.2d 1339 (Pa. Super. 1984).

#### B. Policy Considerations

The Committee next considered the impact of this “history” on present practice. The Committee considered that, under the present system, having an attorney review the case for purposes of making a determination whether to file a petition for allowance of appeal will ensure the defendant receives adequate representation, and, at the same time, will ensure that the petitions will be filed only in those cases in which a reasoned assessment by counsel indicates that the case merits further review by the Court. If an attorney is not available to make these assessments, the number of filings are likely to increase because most defendants are aware of the discretionary appeal process, and will file pro se petitions for allowance of appeal without making the assessment counsel would make in the case.<sup>4</sup> Similarly, the Committee does not believe removing counsel's obligation to remain in the case will reduce the number of nunc pro tunc requests, which continues to be a concern at this stage of the proceedings; defendants still will file the requests, although counsel's abandonment may not be the justification.

The Committee also noted that the availability of post-conviction collateral review has been offered by other jurisdictions to support those jurisdictions' choice not to provide appointed counsel for discretionary appeals, but agreed Pennsylvania's criminal justice system has functioned well under the existing system, and was not persuaded that a change to the system more akin to the

<sup>4</sup> Such petitions often are of a poor quality, inarticulate, and procedurally and legally inadequate. Although many of these petitions would be dismissed, all the petitions would have to be docketed and reviewed.

federal system would improve Pennsylvania's appeal process. In fact, the members agreed such a change would have an adverse effect.

In view of the long history in Pennsylvania requiring appointed counsel to remain in a case through all avenues of appeal, the policy considerations the Committee evaluated, and the fact that the issue continues to arise, the Committee recommended to the Court that Rule 122 should be modified to more clearly state that the policy of Pennsylvania concerning the duration of appointed counsel's obligation continues until final judgment, which includes all avenues of appeal through the Supreme Court of Pennsylvania.<sup>5</sup>

## II. DISCUSSION OF RULE CHANGES<sup>6</sup>

The issue of appointed counsel's obligation has two parts—how long the appointment lasts, which was the initial issue raised by the Court, and the nature of the obligation, which, of necessity, requires consideration when contemplating the duration of the obligation.

### A. Duration of Obligation

The first prong of the Committee's consideration of this matter was the duration of appointed counsel's obligations, which is addressed in the sixth paragraph of the current Rule 122 Comment, and provides:

Paragraph (C)(3) implements the decisions of *Douglas v. California*, 372 U.S. 353 (1963), and *Commonwealth v. Hickox*, 249 A.2d 777 (Pa. 1969), by providing that counsel appointed originally shall retain his or her assignment until final judgment, which includes appellate procedure.

The Committee initially considered merely changing “appellate procedure” in the last line of the paragraph to “discretionary appeal.” We reconsidered this because the *Douglas* and *Hickox* decisions cited in the Comment involved cases in which the appeal was an appeal as of right, and both Courts appear to use “direct appeal” in that context. Furthermore, a reasonable interpretation of the “implements” language in the Comment is that “direct appeal” only goes through the appeal as of right stage. Agreeing this Comment provision is contributing to the confusion evidenced in the case law, and because Pennsylvania courts have gone in a different direction than the federal courts since *Ross v. Moffitt*,<sup>7</sup> the Committee recommended that the “implements” language in the Rule 122 Comment be deleted from the Comment. Similarly, because the Committee was concerned the phrase “appellate procedure” in this Comment provision would continue to contribute to the confusion about the length of appointed counsel's obligation, that phrase has been replaced with “all avenues of appeal through the Supreme Court of Pennsylvania.”<sup>8</sup> Finally, the citations to the *Douglas* and *Hickox* cases have been removed from the Comment provision to emphasize that the duration of counsel's obligation is a matter of policy in Pennsylvania rather than an interpretation of case law. With these changes, the current Rule 122 Comment has been revised to read:

<sup>5</sup> Because appointed counsel's obligations when pursuing post-conviction collateral relief for a client are the same as trial counsel's with regard to remaining in the case through all avenues of appeal, the Committee agreed the same modifications should be made to Rule 904.

<sup>6</sup> The Comment to Rule 904 also has been revised by the addition of the same language concerning appointed counsel's obligation that has been added to the Rule 122 Comment.

<sup>7</sup> Subsequent Pennsylvania cases have clearly interpreted Rule 122 as applying through discretionary appeals to the Pennsylvania Supreme Court.

<sup>8</sup> This language is consistent with the explanation of “final disposition” in other rules. See, e.g., Rule 534 (Duration of Obligation) for bail.

Pursuant to paragraph (C)(3), counsel retains his or her assignment until final judgment, which includes all avenues of appeal through the Supreme Court of Pennsylvania.

#### B. Nature of Obligation

The nature of appointed counsel's obligation is more complicated and continues to be the subject in a great deal of case law. Extrapolating from this case law,<sup>9</sup> the Committee discerned that appointed counsel, in making a decision whether to file a petition for allowance of appeal, must exercise his or her professional judgment and, in exercising that judgment, must consider the provisions of Pa.R.A.P. 1114 (Considerations Governing Allowance of Appeal). We do not believe the case law mandates counsel to file a petition for allowance to appeal in every case. Furthermore, as a matter of policy and for practical reasons, the Committee agreed that discretionary appeals in Pennsylvania are different from appeals as of right; counsel should not be required to file a petition for allowance to appeal in every case nor to raise every conceivable issue in a petition, nor should counsel be precluded from raising issues of merit not identified by the defendant. As Chief Justice Burger stated in *Jones v. Barnes*, 463 U.S. 745, 751 (1983):

Neither *Anders* nor any other decision of this Court suggests, however, that the indigent defendant has a constitutional right to compel appointed counsel to press nonfrivolous points requested by the client, if counsel, as a matter of professional judgment, decides not to present those points. This Court, in holding that a State must provide counsel for an indigent appellant on his first appeal as of right, recognized the superior ability of trained counsel in the 'examination into the record, research of the law, and marshalling of arguments on [the appellant's] behalf.' . . . Experienced advocates since time beyond memory have emphasized the importance of winnowing out weaker arguments on appeal and focusing on one central issue if possible, or at most on a few key issues.

This concept is articulated in Pennsylvania case law as well. Justice Saylor in a footnote in *Commonwealth v. Lantzy*, 736 A.2d 564 (Pa. 1999), points out that "our holding should not be construed as affecting the substantial body of case law which concerns the circumstances in which a defendant seeks to pursue frivolous claims on appeal, or demands that counsel pursue every possible course of action or press every point." *Id.* 572 footnote 8. And President Judge Emeritus Cercione notes in *Commonwealth v. Padden*, 783 A.2d 299, 316 (Pa. Super. Ct. 2001):

Review by the Supreme Court is 'purely discretionary and will be granted only where there exist both special and important reasons. Pa.R.A.P. 1114. It would be illogical to conclude that a miscarriage of justice occurred by counsel's failure to seek Supreme Court review unless it is established that the issue was such that review would have been granted by the Supreme Court.' *Commonwealth v. Gilbert*, 407 Pa. Super. 491, 595 A.2d 1254 (1991), appeal denied, 529 Pa. 640, 600 A.2d 1258 (1991). *Id.* at 962.

In *Commonwealth v. Liebel*, 825 A.2d 630 (Pa. 2003), the Court provided further guidance concerning counsel's professional obligations with regard to filing a petition for

discretionary review by clarifying that counsel should consult with his or her client about whether to proceed with a petition for allowance to appeal, and that it is an improper exercise of counsel's professional obligations to represent that he or she is going to file the petition and then to fail to do so. Furthermore, after consulting with his or her client, counsel still is obligated to exercise his or her professional judgment, as well as consider the provisions of Pa.R.A.P. 1114, to determine whether a petition for allowance to appeal is appropriate in the case, and if so, which issues to raise.

Although the text of Rule 122 only addresses the appointment of counsel, not counsel's professional responsibilities, the members, sensitive that the rules or case law could be interpreted incorrectly as requiring counsel to file a petition for allowance of appeal in every case, even when counsel, in exercising his or her professional judgment, determines it is inappropriate, agreed the Rule 122 Comment should be modified to emphasize that the attorney must exercise his or her professional judgment in determining whether to file a petition for allowance of appeal, and would only file a petition if there is a substantial basis for filing and the case meets the standards in Pa.R.A.P. 1114 (Considerations Governing Allowance of Appeal). Making these points clear in the Comment will alert the members of the bar to the nature of their obligations as appointed counsel, and will help to reduce the number of unnecessary or frivolous petitions for allowance of appeal filed by counsel.

Accordingly, the Rule 122 Comment has been further revised by the addition of the following language addressing the nature of appointed counsel's obligation:

In making the decision whether to file a petition for allowance of appeal, counsel must (1) consult with his or her client, and (2) review the standards set forth in Pa.R.A.P. 1114 (Considerations Governing Allowance of Appeal) and the note following that rule. If the decision is made to file a petition, counsel must carry through with that decision. See *Commonwealth v. Liebel*, 825 A.2d 630 (Pa. 2003). Concerning counsel's obligations as appointed counsel, see *Jones v. Barnes*, 463 U.S. 745 (1983). See also *Commonwealth v. Padden*, 783 A.2d 299 (Pa. Super. 2001).

[Pa.B. Doc. No. 04-518. Filed for public inspection March 26, 2004, 9:00 a.m.]

## Title 25—LOCAL COURT RULES

### LEHIGH COUNTY

#### Adoption of Revised and Renumbered Rules of Criminal Procedure; and Adoption of Criminal Rule of Judicial Administration 1901; File No. 535-M-2004

#### Order

*And Now*, this 10th day of March, 2004, *It Is Ordered* that the following Revised and Renumbered Rules of Criminal Procedure, and Criminal Rule of Judicial Administration in and for the 31st Judicial District of Pennsylvania composed of Lehigh County, be, and the same are, promulgated herewith, to become effective thirty (30) days after their publication in the *Pennsylvania Bulletin*.

<sup>9</sup> See, e.g., *Jones v. Barnes*, 463 U.S. 745, 751 (1983); *Commonwealth v. Liebel*, 825 A.2d 630 (Pa. 2003); *Commonwealth v. Lantzy*, 736 A.2d 564 (Pa. 1999); and *Commonwealth v. Padden*, 783 A.2d 299, 316 (Pa. Super. Ct. 2001).

*It Is Further Ordered* that the current Lehigh County Rules of Criminal Procedure, and any provision of an existing Administrative Order applicable to the Criminal Division of this Court and inconsistent with these Rules, are repealed upon these Rules becoming effective.

*It Is Further Ordered* that seven (7) certified copies of this Order and the following Rules of Criminal Procedure and Criminal Rule of Judicial Administration shall be filed with the Administrative Office of Pennsylvania Courts; that two (2) certified copies shall be filed with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*; that one (1) certified copy shall be filed with the Criminal Procedural Rules Committee of the Supreme Court of Pennsylvania; and that one copy shall be filed with the Clerk of Courts—Criminal of the Court of Common Pleas of Lehigh County.

*By the Court*

WILLIAM H. PLATT,  
*President Judge*

### Lehigh County Criminal Rules

#### Leh.R.Cr.P. 102. Citation of Rules.

All criminal rules of procedure adopted by the Court of Common Pleas of Lehigh County shall be cited as Lehigh Rules of Criminal Procedure ("Leh.R.Cr.P."). Rule 1901 shall be cited as Lehigh Rule of Judicial Administration ("Leh.Cr.R.J.A. 1901").

*Note:* The language of this Rule was derived from Leh.R.C.P. 51.

#### Leh.R.Cr.P. 103. Definitions.

Unless the context clearly indicates otherwise, the words and phrases used in any criminal rule adopted by the Court of Common Pleas of Lehigh County shall be given the same meaning as is given those words and phrases in the Pennsylvania Rules of Criminal Procedure with the following exceptions and additions: (1) "Court," means the Court of Common Pleas of Lehigh County; (2) "Rule," means any rule of criminal court adopted by the Court of Common Pleas of Lehigh County; (3) "Clerk of Courts—Criminal" means the Clerk of Courts—Criminal of the Court of Common Pleas of Lehigh County; and (4) "except as otherwise provided," means except as provided by statute, by the Pennsylvania Rules of Criminal Procedure, or by specific local criminal court rule.

*Note:* The language of this Rule was derived from Leh.R.C.P. 76.

#### Leh.R.Cr.P. 105. Effective Dates of Rules.

(a) A Rule or amendment to a Rule shall become effective upon the date specified by the court in adopting or amending such rule, but in no case until after the requirements of Pa.R.Crim.P. 105(C) and (D) are met.

(b) If no effective date is specified, the Rule or amendment to the Rule shall become effective on the first day of January or July, whichever is earlier, following the thirtieth day after its adoption, filing and publication in the *Pennsylvania Bulletin* (Pa.B.).

*Note:* The language of this Rule was derived from Leh.R.C.P. 52.

#### Leh.R.Cr.P. 202. Approval of Search Warrant Applications by Attorney for the Commonwealth.

The District Attorney of Lehigh County having filed a certification pursuant to Pa.R.Crim.P. 202, search warrants, in all circumstances, shall not be issued by any

judicial officer unless the search warrant application has the approval of an attorney for the Commonwealth prior to filing.

*Note:* This Rule, previously and most recently numbered 2002A, and prior to that 707, has been in effect since July 1, 1982, and has required approval of all search warrant applications since that date by the attorney for the Commonwealth prior to filing with an issuing authority. The original Rule 707 was published at 12 Pa.B. 2278 (July 17, 1982).

#### Leh.R.Cr.P. 300. Accelerated Rehabilitative Disposition in Summary Cases.

The District Attorney of Lehigh County has filed a certification pursuant to Pa.R.Crim.P. 300, and has elected that no summary offenses or offenders, including those which are statutorily excluded, are eligible for summary case A.R.D. before the minor judiciary except for Underage Drinking offenses under 18 Pa.C.S. §§ 6307, 6308 and 6310.3.

*Note:* This Rule was originally adopted August 23, 1994; and "corrected" August 30, 1994, with an accompanying Administrative Order filed to No. 338-M-1994. The Rule conforms to the last election made by the District Attorney and prohibits a District Justice from granting ARD except in cases charging violations of 18 Pa.C.S. §§ 6307, 6308 and 6310.3. The Administrative Order of August 30, 1994, was published at 24 Pa.B. 4672 (September 1, 1994).

#### Leh.R.Cr.P. 506. Private Criminal Complaints.

(a) If the attorney for the Commonwealth disapproves a private criminal complaint, the affiant may file a Petition with the Clerk of Courts—Criminal captioned with the name of the affiant, and not the name of the alleged Defendant, for review by the Court.

(b) Such filing shall consist solely of the Petition, a copy of the disapproved criminal complaint and the affidavit(s) of probable cause previously submitted to the attorney for the Commonwealth, together with a copy of the attorney for the Commonwealth's statement of reasons for disapproval if such statement is not contained on the face of the complaint.

(c) Upon the receipt of such filing, the Clerk of Courts—Criminal shall forthwith notify the attorney for the Commonwealth in writing of the filing and that he has ten (10) days from the date of said notification within which to present to the Judge assigned to review the Petition, for the latter's confidential review, any investigative reports which the attorney for the Commonwealth may deem relevant to approval or disapproval of the complaint. The Court shall thereafter review the filing and any material submitted by the attorney for the Commonwealth and enter an order approving or disapproving the private criminal complaint.

(d) If the private criminal complaint is approved, the Clerk of Courts—Criminal shall give written notice to the attorney for the Commonwealth and the affiant of the decision and transmit the complaint to the appropriate issuing authority. If the private criminal complaint is disapproved written notice thereof shall be given as aforesaid and the complaint shall be returned to the affiant.

*Comment:* This Rule is intended to supplement Pa.R.Crim.P. 506(B)(2) by providing a procedure for filing and review of disapproved private criminal complaints. The affiant or the affiant's attorney must file a Petition with the Clerk of Courts—Criminal accompanied by the

complaint and affidavits previously acted upon by the attorney for the Commonwealth, as well as a copy of the reasons for disapproval if those reasons are contained on a document other than the complaint itself. The Caption of the Case shall read: "In re: Private Criminal Complaint filed by (Affiant's Name)." The name of the alleged Defendant shall not appear in that caption. The Clerk of Courts—Criminal shall advise the attorney for the Commonwealth of the filing of these documents with the Court. Reference on that notice should be made to the attorney for the Commonwealth's case number (such as "D.A. 04-101") which appears on the complaint form in the incident number block. The attorney for the Commonwealth is allowed ten (10) days after receipt of this notice to file a copy of any investigative material generated by or for the Office of the Attorney for the Commonwealth, if desired. The Rule contemplates that this investigative material remain confidential, and that the attorney for the Commonwealth will notify the Court if nothing is to be filed by his office. "... the trial court may review all evidence that the district attorney considered in making her decision and is not limited to reviewing the four corners of the private criminal complaint." *In re: Private Complaint of Adams*, 764 A.2d 577, 578 (Pa. Super. 2000). No hearing is provided for by this Rule, nor is one legally required. *Piscanio Appeal*, 344 A.2d 658, 661, n.5 (Pa. Super. 1975).

The standard for review is not the existence of probable cause, but rather whether there has been a gross abuse of discretion. *Commonwealth v. Eisemann*, 419 A.2d 591, 593 (Pa. Super. 1980). "[A] trial court should not interfere with a prosecutor's policy-based decision to disapprove a private complaint absent a showing of bad faith, fraud, or unconstitutionality." *Commonwealth v. Brown*, 708 A.2d 81, 84 (Pa. 1998).

"Where the district attorney's denial is based on a legal evaluation of the evidence, the trial court undertakes a de novo review of the matter. *Commonwealth v. Cooper*, 710 A.2d 76 (Pa. Super. 1998). Where the district attorney's disapproval is based on policy considerations, the trial court accords deference to the decision and will not interfere with it in the absence of bad faith, fraud or unconstitutionality. *Id.* at 79. In the event the district attorney offers a hybrid of legal and policy reasons for disapproval, deference to the district attorney's decision, rather than de novo review, is the appropriate standard to be employed." *In re: Private Complaint of Adams*, 764 A.2d 577, 579 (Pa. Super. 2000)

*Note:* This Rule in its basic form was adopted in 1981 and published in 11 Pa.B. 1316 (April 18, 1981). The Comment has been expanded based upon more recent case law.

**Leh.R.Cr.P. 507. Approval of Police Complaints and Arrest Warrant Affidavits by Attorney for the Commonwealth.**

The District Attorney of Lehigh County having filed a certification pursuant to Pa.R.Crim.P. 507:

1. *Enumerated Offenses.*

Criminal complaints and arrest warrant affidavits by police officers, as defined in the Rules of Criminal Procedure, charging one or more of the following offenses shall not hereafter be accepted by any judicial officer unless the complaint and affidavit has the approval of an attorney for the Commonwealth prior to filing:

- a. Criminal homicide in violation of 18 Pa.C.S. § 2501
- Murder of any degree in violation of 18 Pa.C.S. § 2502
- Voluntary manslaughter in violation of 18 Pa.C.S. § 2503
- Involuntary manslaughter in violation of 18 Pa.C.S. § 2504
- Drug delivery resulting in death 18 Pa.C.S. § 2506
- Criminal homicide of unborn child 18 Pa.C.S. § 2604
- Murder of unborn child 18 Pa.C.S. § 2604
- Voluntary manslaughter of unborn child 18 Pa.C.S. § 2605
- b. Homicide by vehicle 75 Pa.C.S. § 3732
- Homicide by vehicle while driving under influence in violation of 75 Pa.C.S. § 3735
- Accidents involving death or serious bodily injury 75 Pa.C.S. § 3742(b)(2) and (3)
- c. Aggravated assault 18 Pa.C.S. § 2702
- Assault by prisoner 18 Pa.C.S. § 2703
- Assault by life prisoner 18 Pa.C.S. § 2704
- Kidnapping 18 Pa.C.S. § 2901
- Recklessly endangering another person 18 Pa.C.S. § 2705
- d. Rape 18 Pa.C.S. § 3121
- Statutory sexual assault 18 Pa.C.S. § 3122
- Involuntary deviate sexual intercourse 18 Pa.C.S. § 3123
- Sexual assault 18 Pa.C.S. § 3124.1
- Institutional sexual assault 18 Pa.C. § 3124.2
- Aggravated indecent assault 18 Pa.C.S. § 3125
- Sexual abuse of children 18 Pa.C.S. § 6312
- Neglect of care-dependent person 18 Pa.C.S. § 2713
- e. Arson 18 Pa.C.S. § 3301
- Causing or risking a catastrophe 18 Pa.C.S. § 3302
- Burglary 18 Pa.C.S. § 3502
- Robbery 18 Pa.C.S. § 3701
- Robbery of motor vehicle 18 Pa.C.S. § 3702
- f. Person not to possess firearm 18 Pa.C.S. § 6105
- Firearms not to be carried without a license 18 Pa.C.S. § 6106
- Possession of firearm by a minor 18 Pa.C.S. § 6110.1
- Possession of firearm with altered serial number 18 Pa.C.S. § 6110.2
- Certain bullets prohibited 18 Pa.C.S. § 6121
- Theft and Receiving stolen property (firearms) 18 Pa.C.S. § 3903(a)(2) and (a.1)
- Discharge of a firearm into an occupied structure 18 Pa.C.S. § 2707.1
- g. Ethnic intimidation 18 Pa.C.S. § 2710
- Bribery in official and political matters 18 Pa.C.S. § 4701
- Threats and other improper influences in official and political matters 18 Pa.C.S. § 4702
- Perjury 18 Pa.C.S. § 4902

Interception, disclosure or use of wire, electronic or oral communications 18 Pa.C.S. § 5703

Election code violations 25 Pa.C.S. (all offenses)

h. Controlled substance, drug device and cosmetic act 35 P. S. § 780-113 (all felonies)

i. Criminal attempt to commit any of the above offenses 18 Pa.C.S. § 901

Criminal solicitation to commit any of the above offenses 18 Pa.C.S. § 902

Criminal conspiracy to commit any of the above offenses 18 Pa.C.S. § 903

j. Any offense excluded by Section 6302(2)(i), (ii) and (iii) of the Juvenile Act, 42 Pa.C.S. § 6302(2) (i), (ii) and (iii),\* from the definition of a "delinquent act."

### 2. *Re-Arrests and Refilings*

Police criminal complaints or arrest warrant affidavits shall not hereafter be accepted by any judicial officer unless the complaint and affidavit has the approval of an attorney for the Commonwealth prior to filing where the complaint or arrest warrant are for the rearrest of a defendant previously discharged, or to reinstate a charge or charges previously dismissed by an issuing authority for failure to prove a prima facie case, provided the current and the former cases arise out of the same criminal episode.

### 3. *Arrest Warrant Affidavits Requiring Sealing*

Arrest warrant affidavits shall not hereafter be accepted by any judicial officer unless the arrest warrant affidavit has the approval of an attorney for the Commonwealth prior to filing in any case where the affidavit contains information, the disclosure of which, in the opinion of the police, would endanger the safety of an informant, jeopardize the integrity of an ongoing criminal investigation, or which for any other reason should not be disclosed at or about the time of the execution of the warrants. The judicial officer shall ask the police, prior to accepting an affidavit, whether it contains any such information, and if the police indicate it does, the judicial officer shall require that it be submitted to an attorney for the Commonwealth for approval in accordance with this Rule. If the police indicate it does not, the judicial officer shall accept the affidavit.

\* The term ["delinquent act"] shall not include:

(i) The crime of murder.

(ii) Any of the following prohibited conduct where the child was 15 years of age or older at the time of the alleged conduct, and a deadly weapon as defined in 18 Pa.C.S. § 2301 (relating to definitions) was used during the commission of the offense, which, if committed by an adult, would be classified as:

(A) Rape as defined in 18 Pa.C.S. § 3121 (relating to rape).

(B) Involuntary deviate sexual intercourse as defined in 18 Pa.C.S. § 3123 (relating to involuntary deviate sexual intercourse).

(C) Aggravated assault as defined in 18 Pa.C.S. § 2702(a)(1) or (2) (relating to aggravated assault).

(D) Robbery as defined in 18 Pa.C.S. § 3701(a)(1)(I), (ii) or (iii) (relating to robbery).

(E) Robbery of motor vehicle as defined in 18 Pa.C.S. § 3702 (relating to robbery of motor vehicle).

(F) Aggravated indecent assault as defined in 18 Pa.C.S. § 3125 (relating to aggravated indecent assault).

(G) Kidnapping as defined in 18 Pa.C.S. § 2901 (relating to kidnapping).

(H) Involuntary manslaughter.

(I) An attempt, conspiracy or solicitation to commit murder or any of these crimes, as provided in 18 Pa.C.S. §§ 901 (relating to criminal attempt), 902 (relating to criminal solicitation) and 903 (relating to criminal conspiracy).

(iii) Any of the following prohibited conduct where the child was 15 years of age or older at the time of the alleged conduct, and has been previously adjudicated delinquent of any of the following prohibited conduct, which, if committed by an adult, would be classified as:

(A) Rape as defined in 18 Pa.C.S. § 3121.

(B) Involuntary deviate sexual intercourse as defined in 18 Pa.C.S. § 3123.

(C) Robbery as defined in 18 Pa.C.S. § 3701(a)(1)(I), (ii) or (iii).

(D) Robbery of motor vehicle as defined in 18 Pa.C.S. § 3702.

(E) Aggravated indecent assault as defined in 18 Pa.C.S. § 3125.

(F) Kidnapping as defined in 18 Pa.C.S. § 2901.

(G) Voluntary manslaughter.

(H) An attempt, conspiracy or solicitation to commit murder or any of these crimes as provided in 18 Pa.C.S. §§ 901, 902 and 903.

*Note:* This Rule has required approval of the enumerated offenses listed in Paragraph 1, since it was adopted by an Administrative Order dated September 3, 2002, File No. 1971-M-2002, 32 Pa.B. 4693 et seq. (September 28, 2002). The original rule on this subject was numbered 706 and adopted by an order dated June 1, 1982, and published at 12 Pa.B. 2278 (July 17, 1982).

### **Leh.R.Cr.P. 528. Percentage Cash Bail System.**

(1) Where percentage cash bail has been authorized by the bail authority, the Defendant for whom bail has been set (and any private third party surety/depositor) shall execute the bail bond and deposit with the issuing authority or the Clerk of Courts—Criminal a sum of money equal to ten per cent (10%) of the amount of bail set, but in no event less than Twenty-five (\$25.00) Dollars. Corporate sureties or professional bail bondsmen or agents thereof are expressly prohibited from posting the deposit for the percentage cash bail system as provided in this Rule. However, where 10% cash bail is authorized, corporate sureties and professional bondsmen may, nevertheless, post bond, provided they do so for the full amount of the bail.

(2) Prior to setting 10% cash bail, the bail authority shall generally seek and review the recommendations of the court designated bail agency.

(3) Where a third-party becomes the depositor of the 10% cash on behalf of a defendant, that third-party shall become a surety for the balance of the full amount of the bail, and shall execute the bond as a surety.

*Note:* This Rule was part of the original bail rules numbered 4006, 4006A, 4006B, 4006C and 4006D. They were adopted by an order dated March 23, 1984, and published at 14 Pa.B. 833 et seq. (March 17, 1984).



**Leh.R.Cr.P. 530. Designation of Local Court Bail Agency.**

(1) Lehigh Valley Pretrial Services, Inc., is designated as the bail agency to monitor and assist defendants released on bail in criminal cases instituted in Lehigh County. This agency shall perform the duties and have the powers set forth in Pa.R.Crim.P. 530(A).

(2) When a Defendant is released on any of the types of bail set forth in Pa.R.Crim.P. 524(C)(1) through (4), or on 10% cash bail pursuant to Pa.Rs.C.P. 524(C)(5) and 528(D)(1), and the bail agency has been designated by the bail authority to act as surety or supervising agency for the defendant, the defendant shall then become subject to the rules and regulations of the bail agency. The bail agency shall not be required to sign the bail bond.

(3) Whenever a defendant who is supervised by the bail agency fails to comply with the conditions of his or her release, or the rules and regulations of the bail agency, a bail piece may issue pursuant to Pa.R.Crim.P. 536(B) to the bail agency, and the defendant may be brought before the court to determine if additional bail shall be set or bail revoked.

*Note:* This Rule was part of the original bail rules numbered 4006, 4006A, 4006B, 4006C and 4006D. They were adopted by an order dated March 23, 1984, and published at 14 Pa.B. 833 et seq. (March 17, 1984). The Rule was later amended to reflect the reorganization and renaming of the bail agency.

**Leh.R.Cr.P. 531. Corporate Surety and Surety Agents.**

**A. CORPORATE SURETY**

1. Every corporate surety duly authorized to do business in Pennsylvania may become surety on any bail bond required to be filed in the criminal courts of Lehigh County provided that a current Certificate of Authority issued to it by the Insurance Department of the Commonwealth of Pennsylvania, along with its current financial statement, are on file with the Clerk of Courts—Criminal. No bond shall be executed by any corporate surety after May 15 of any year unless such a certificate issued after March 31 of the same year and the current financial statement shall have been filed with the Clerk of Courts.

2. No bond shall be executed by any corporate surety where the aggregate maximum amount of unsettled and outstanding bail forfeitures, as determined by the Lehigh County Solicitor, Department of Law, is \$250,000.00 or more. The County Solicitor shall immediately notify the Clerk of Courts—Criminal, the District Attorney and the District Justices of Lehigh County, of any corporate surety having reached this limit. The Clerk of Courts—Criminal and District Justices shall immediately cease accepting bonds from the corporate surety. When appropriate financial settlement has been made with the County of Lehigh, the County Solicitor shall notify the Clerk of Courts—Criminal and District Justices that execution of bonds by the corporate surety may resume.

**B. SURETY AGENTS**

1. Every agent, acting on behalf of a corporate surety, may execute a bail bond required to be filed in the criminal courts of Lehigh County provided that a Power of Attorney issued by the corporate surety setting forth the maximum limit of liability per bail, along with proof of licensing by the Insurance Department of the Commonwealth of Pennsylvania, shall be filed with the Clerk of Courts. No bond shall be executed by any surety agent

after the expiration of such power of attorney until a new Power of Attorney has been filed with the Clerk of Courts.

2. No bond shall be executed by any surety agent of a corporate surety authorized to do business in Lehigh County where the aggregate amount of unsettled and outstanding bail forfeitures for all corporate sureties for which the surety agent is writing bonds, as determined by the Lehigh County Solicitor, Department of Law, is \$100,000.00 or more. The County Solicitor shall immediately notify the Clerk of Courts—Criminal, the District Attorney and the District Justices of Lehigh County, of any surety agent having reached this maximum limit. The Clerk of Courts—Criminal and District Justices shall immediately cease accepting bonds by the surety agent. When appropriate financial settlement has been made with the County of Lehigh, the County Solicitor shall notify the Clerk of Courts—Criminal and District Justices that execution of bonds by the surety agent may resume.

**C. PROFESSIONAL BAIL BONDSMEN**

1. Every professional bail bondsmen, duly authorized to do business in Pennsylvania, may become surety on any criminal bail bond required to be filed in this Court, provided that a currently valid registration and license from the Insurance Department of the Commonwealth of Pennsylvania, pursuant to 42 Pa.C.S. § 5742, evidencing such right, shall be filed with the Clerk of Courts—Criminal. Every professional bail bondsman must present proof that he or she maintains an office in Lehigh County from which his or her business is conducted pursuant to 42 Pa.C.S. § 5744, and he or she must post and maintain as security with the Clerk of Courts—Criminal the sum of \$25,000.00 in United States currency or securities of the United State Government.

2. No bond shall be executed by any professional bail bondsman where the aggregate amount of unsettled and outstanding bail forfeitures, as determined by the Lehigh County Solicitor, Department of Law, is \$100,000.00 or more. The County Solicitor shall immediately notify the Clerk of Courts—Criminal, the District Attorney and the District Justices of Lehigh County, of any professional bail bondsman having reached this maximum limit. The Clerk of Courts and District Justices shall immediately cease executing bonds by the professional bail bondsman. When appropriate financial settlement has been made with the County of Lehigh, the County Solicitor shall notify the Clerk of Courts—Criminal and District Justices that execution of bonds by the professional bail bondsman may resume.

*Note:* This Rule in substantially the same form was adopted as CR 4011, by Order dated November 7, 1995, and published at 25 Pa.B. 5238 et seq. (November 25, 1995).

**Leh.R.Cr.P. 535. Return of Cash Deposits. Charges.**

Upon full and final disposition of the case, the issuing authority or the Clerk of Courts—Criminal shall retain thirty per cent (30%) of the amount deposited, but in no event less than Ten (\$10.00) Dollars, as administrative costs, which includes the Clerk's poundage fee for the percentage cash bail program and shall return the balance to the depositor, unless the depositor at the time the balance is to be returned otherwise agrees in writing. The thirty per cent (30%) to be retained shall be considered as earned at the time the bail undertaking is executed and the cash is deposited by the defendant or the third party surety.

*Comment:* Nothing in this Rule is intended to preclude the application of the seventy per cent (70%) cash balance

being applied to fines, costs, restitution, or, if funds remain after payment of fines, costs and restitution, to fees due the Defendant's attorney of record, if agreed to in writing by the depositor at the time the money would otherwise be returned to the depositor. See Pa.R.Crim.P. 535, the Comment to that Rule, and the Report of the Criminal Procedural Rules Committee, 33 Pa.B. 6409 (December 27, 2003).

*Note:* This Rule was part of the original bail rules numbered 4006, 4006A, 4006B, 4006C and 4006D. They were adopted by an order dated March 23, 1984, and published at 14 Pa.B. 833 et seq. (March 17, 1984).

**Leh.R.Cr.P. 542. Continuances of Preliminary Hearings Before District Justices.**

(a) Preliminary hearings before District Justices in court cases shall be scheduled initially as required by the Pennsylvania Rules of Criminal Procedure.

(b) Thereafter a District Justice may grant continuances of the preliminary hearing upon the request either of the Defendant or the Commonwealth provided that such continuances are limited to the minimum period necessary and do not, in the aggregate number of days for all continuances in the case, exceed twenty-one (21) days from the date upon which the preliminary hearing was first scheduled.

(c) Except as provided in section (b) of this Rule, all requests for continuances of preliminary hearings shall be presented to the District Justice Court Administrator, or in his absence to an appropriate Judge of the Court of Common Pleas, in the form of a written motion setting forth good cause for the same with forty-eight (48) hours advance notice to the defendant or his counsel or the attorney for the Commonwealth.

(d) If a continuance is granted pursuant to section (c) of this Rule, the order of court granting the same shall set a time at which the preliminary hearing shall be held.

(e) For purposes of this Rule all co-defendants shall be regarded as one (1) party.

*Comment:* The appropriate common pleas judge under (c) would normally be the judge assigned to hear cases emanating from the District Justice Office or the common pleas judge specially assigned to the case.

*Note:* This rule, originally numbered 703, was adopted by an order dated March 20, 1984, and published at 14 Pa.B. 1388 et seq. (April 21, 1984). It has been slightly revised to reflect changes in the current case assignment process.

**Leh.R.Cr.P. 571. Arraignment.**

(a) Criminal court arraignments shall be held at such times and places as the Court shall direct. A first status conference shall be held at the same time as the court arraignment. Written notice of the arraignment and first status conference shall be given to the Defendant as provided Pa.R.Crim.P. 113(1)(a) by the District Justice at the time the case is bound over or waived to court.

(b) Prior to the date scheduled for arraignment, or at the arraignment, defense counsel, who has filed a written entry of appearance with the Clerk of Courts—Criminal and the attorney for the Commonwealth, may file a written waiver of arraignment properly executed by counsel and the Defendant.

(c) Attendance at the status conference is considered mandatory and cannot be waived.

(d) The Defendant, at the time of arraignment, may enter a plea of not guilty, guilty or, with the consent of the judge, nolo contendere. If a guilty or nolo contendere plea is entered, the Court shall proceed as set forth in Pa.R.Crim.P. 590. If the case is not disposed of at this time, the Defendant shall be given notice of the next required court appearance.

*Comment:* This rule implements Pa.R.Crim.P. 571. It contemplates that attendance at the arraignment and status conference is mandatory, except that the arraignment, but not the status conference, may be waived by a defendant who is represented by counsel as provided in section (b). Incarcerated defendants who are represented by counsel may waive arraignment in writing and appear in court only for their status conference. Where counsel cannot appear for the arraignment, counsel should obtain approval in advance from the arraignment judge for the Defendant to appear without counsel. A suitable date for the next listing of the case should be tentatively set at the time of the approval; and a waiver of arraignment should be filed.

The waiver of arraignment form, which must be signed by the defendant and by counsel, shall contain an acknowledgment that the Defendant: (a) understands the nature of the charges; (b) understands the rights and requirements contained in Pa.R.Crim.P. 571(C); and (c) waives his or her right to appear for arraignment.

*Note:* This Rule was originally adopted at R. 702; it was readopted as CR 303 by Order dated November 20, 1991, and published at 21 Pa.B. 5639 et seq. (December 7, 1991). The Rule has been amended to reflect current practices.

**Leh.R.Cr.P. 700. Sentencing Judge.**

The sentence following a plea of guilty or nolo contendere may be imposed by a judge other than the judge who received such plea whenever such substitution of judges shall enhance the efficient disposition of cases. In such instances, the defendant shall be given due notice at the time of entering the plea.

*Note:* This Rule was adopted as R. 1401(a) by Order dated April 16, 1976, and published at 6 Pa.B. 1041 (September 8, 1976).

**Leh.Cr.R.J.A. 1901. Termination of Inactive Criminal Cases.**

The Clerk of Courts—Criminal shall prepare for call on the first Monday of November of each year, or on such other date as the Court may by special order direct, a list of all criminal proceedings in which no steps or proceedings have been taken for two years or more. The Clerk shall give notice thereof to the attorney for the Commonwealth, any private prosecutor, the Defendant, and the Defendant's attorney of record, as provided by Pa.R.J.A. No. 1901(c). If no good cause for continuing a proceeding is shown at the call of the list, the Court shall enter an order dismissing the proceedings.

*Note:* This Rule implements Pa.R.J.A. No. 1901 for Criminal Cases in Lehigh County. Former L.C. Rule 532(b)(1) was not given a new criminal number in Administrative Order 174-M-1987 (17 Pa.B. 3406), when the Criminal Rules were renumbered and spun off from the Civil Rules, nor was it included in Civil Rule 239

adopted on July 20, 1990, File No. 90-J-4, 20 Pa.B. 4176 et seq. (August 14, 1990). The Rule subsequently was contained in an Administrative Order adopted August 29, 1990, File No. 381-M-1990, 20 Pa.B. 4953 (September 29, 1990).

[Pa.B. Doc. No. 04-519. Filed for public inspection March 26, 2004, 9:00 a.m.]

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## SUPREME COURT

### Subjects Tested on the Essay Portion of the Pennsylvania Bar Examination; No. 328 Supreme Court Rules; Doc. No. 1

#### Order

*Per Curiam:*

*And Now*, this 12th day of March, 2004, it is hereby ordered that:

Commencing with the Pennsylvania Bar Examination to be administered in July 2006, and until further Order of this Court, the subjects tested on the essay portion of the Pennsylvania Bar Examination shall include those set forth in Appendix 1.

Commencing with the Pennsylvania Bar Examination to be administered in July 2004, the following subjects will no longer be tested on the essay portion of the bar examination: U.C.C. Art. III—Commercial Paper, U.C.C. Art. IV—Bank Deposits and Collections and U.C.C. Art. IX—Secured Transactions.

#### Appendix 1

#### Subjects to be Tested on the Essay Portion of the Bar Examination

1. Civil Procedure (Pennsylvania and federal)
2. Criminal Law (including related Pennsylvania and federal constitutional issues and DUI)
3. Conflict of Laws
4. Contracts
5. Business Organizations (including corporations, partnerships, limited liability companies and professional corporations)
6. Wills, Trusts and Decedents' Estates (including related fiduciary responsibilities)
7. Evidence (Pennsylvania and federal)
8. Family Law
9. Federal Constitutional Law
10. Federal Income Taxes (personal only and limited to taxable and non-taxable income, deductions, proprietorships and capital transactions)
11. Professional Responsibility
12. Real Property
13. Torts
14. U.C.C. Art. II—Sales
15. Employment Discrimination (limited to Title VII, ADA and ADEA)

[Pa.B. Doc. No. 04-520. Filed for public inspection March 26, 2004, 9:00 a.m.]

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