

THE COURTS

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CHS. 1 AND 10]

Order Promulgating Rules 1030, 1031, 1032, 1033, 1034, 1035, and 1036, and Amending Rules 105 and 1000; No. 327 Criminal Procedural Rules; Doc. No. 2

On September 9, 2005, effective February 1, 2006, upon the recommendation of the Criminal Procedural Rules Committee, the Court promulgated a new Chapter 10, Part B, consisting of new Pa.Rs.Crim.P. 1030, 1031, 1032, 1033, 1034, 1035, and 1036 governing procedures in Philadelphia Traffic Court, and adopted correlative changes to Rules 105 (Local Rules) and 1000 (Scope of Rules). These new rules, which establish procedures different from the procedures for traffic summary cases in the magisterial district courts, are necessary for Traffic Court to efficiently and judiciously handle its case load while providing defendants with a fair and expeditious disposition of their cases. The Final Report follows the Court's Order.

Order

Per Curiam:

Now, this 9th day of September, 2005, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been submitted without publication pursuant to Pa.R.J.A. 103(a)(3) in the interests of justice and efficient administration, 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) New Rules of Criminal Procedure 1030, 1031, 1032, 1033, 1034, 1035, and 1036 are promulgated; and

(2) Rules of Criminal Procedure 105 and 1000 are amended,

all in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective February 1, 2006.

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

CHAPTER 1. SCOPE OF RULES, CONSTRUCTION AND DEFINITIONS, LOCAL RULES

PART A. Business of the Courts

Rule 105. Local Rules.

(A) For the purpose of this rule, the term "local rule" shall include every rule, regulation, directive, policy, custom, usage, form or order of general application, however labeled or promulgated, which is adopted or enforced by a court of common pleas, **by the Philadelphia Municipal Court, or by the Philadelphia Traffic Court** to govern criminal practice and procedure.

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(C) A local rule shall not become effective and enforceable until the adopting court has fully complied with all the following requirements:

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(5) The local rules shall be kept continuously available for public inspection and copying in the office of the prothonotary or clerk of [**court**] **courts**. Upon request and payment of reasonable costs of reproduction and mailing, the prothonotary or clerk shall furnish to any person a copy of any local rule.

(6) A local rule promulgated before the effective date of this rule shall be filed on or before that effective date with the prothonotary or clerk of [**court**] **courts** and shall be kept by the prothonotary or clerk for inspection, copying, and furnishing as provided in paragraph (C)(5).

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Official Note: Rule 6 adopted January 28, 1983, effective July 1, 1983; amended May 19, 1987, effective July 1, 1987; renumbered Rule 105 and amended March 1, 2000, effective April 1, 2001; amended October 24, 2000, effective January 1, 2001; Comment revised June 8, 2001, effective immediately; amended October 15, 2004, effective January 1, 2005; **amended September 9, 2005, effective February 1, 2006.**

Committee Explanatory Reports:

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. [**1477**] **1478** (March 18, 2000).

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Final Report explaining the June 8, 2001 Comment revision citing to the AOPC's webpage published with the Court's Order at 31 Pa.B. 3310 (June 23, 2001).

Final Report explaining the October 15, 2004 amendment to paragraph (A), and to paragraph (C)(3) concerning the Legislative Reference Bureau publication requirements, published with the Court's Order at 34 Pa.B. 5893 (October 30, 2004).

Final Report explaining the September 9, 2005 amendments to paragraph (A) published with the Court's Order at 35 Pa.B. 5242 (September 24, 2005).

CHAPTER 10. RULES OF CRIMINAL PROCEDURE FOR THE PHILADELPHIA MUNICIPAL COURT AND THE PHILADELPHIA TRAFFIC COURT

Rule 1000. Scope of Rules.

(A) The rules in this chapter govern all proceedings in the Philadelphia Municipal Court, including summary cases; Municipal Court cases, as defined in Rule 1001(A); the filing of appeals from Municipal Court cases; the filing of petitions for writs of certiorari; and the preliminary proceedings in criminal cases charging felonies, **Part A, and govern proceedings in summary traffic cases in Traffic Court, Part B.**

(B) Any procedure that is governed by a statewide Rule of Criminal Procedure that is not specifically covered in Chapter 10 or by a Philadelphia local rule **authorized by these rules and** adopted pursuant to Rule 105 shall be governed by the relevant statewide rule.

Comment

The 2004 amendments make it clear that, except as otherwise provided in the rules, Chapter 10 governs all proceedings in the Philadelphia Municipal Court, including the procedures for instituting criminal cases charging

felonies, preliminary arraignments, and preliminary hearings. See 42 Pa.C.S. § 1123 (Jurisdiction and Venue).

Official Note: Rule 6000 adopted December 30, 1968, effective January 1, 1969; amended March 28, 1973, effective March 28, 1973; amended July 1, 1980, effective August 1, 1980; renumbered Rule 1000 and amended March 1, 2000, effective April 1, 2001; amended August 24, 2004, effective August 1, 2005; amended June 30, 2005, effective August 1, 2006; **amended September 9, 2005, effective February 1, 2006.**

Committee Explanatory Reports:

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Final Report explaining the September 9, 2005 amendments adding new rules governing Philadelphia Traffic Court published with the Court's Order at 35 Pa.B. 5242 (September 24, 2005).

PART A. Philadelphia Municipal Court Procedures

- 1002. Procedure in Summary Cases.
- 1003. Procedure in Non-Summary Municipal Court Cases.
- 1004. Arraignment Prior to Trial.
- 1005. Pretrial Applications for Relief.
- 1006. Notice of Right to Appeal or to Petition for Certiorari; Guilty Plea Challenge Procedure.
- 1007. Challenge to Guilty Plea.
- 1008. Contents of Notice of Appeal or Petition for Certiorari.
- 1009. Notice to Municipal Court Judge and Attorney for the Commonwealth of Appeal or of Petition for Certiorari.
- 1010. Procedure on Appeal.
- 1011. Bail.
- 1012. Recording and Transcribing Municipal Court Proceedings; Admissibility of Testimony at Trial De Novo.
- 1013. Prompt Trial—Municipal Court.

PART B. Philadelphia Traffic Court Procedures

- 1030. Scope of Summary Traffic Court Rules.
- 1031. Institution of Proceedings in Summary Traffic Cases.
- 1032. Pleas in Response to Citation.
- 1033. Procedures When Defendant Arrested with Warrant.
- 1034. Collateral.
- 1035. Appointment of Counsel.
- 1036. Traffic Court Hearing Officers.

Rule 1030. Scope of Summary Traffic Court Rules.

Except as provided in these rules or by local rule authorized by these rules, or elsewhere in Chapter 10, all criminal proceedings in which a person is accused of one or more summary traffic offenses only or violations of municipal traffic ordinances shall proceed as provided in Chapter 4 of the Rules of Criminal Procedure.

Comment

These rules were developed in 2005 to accommodate the procedures Philadelphia Traffic Court has implemented to address the issues in summary traffic cases unique to Philadelphia, to more efficiently handle the vast number of summary traffic cases, and to protect the defendants' rights to a fair and prompt disposition of their cases.

See Rule 105 for the procedures for promulgating local rules.

Official Note: Adopted September 9, 2005, effective February 1, 2006.

Committee Explanatory Reports:

Final Report explaining the provisions of the new rule published with the Court's Order at 35 Pa.B. 5242 (September 24, 2005).

Rule 1031. Institution of Proceedings in Summary Traffic Cases.

(A) Summary traffic cases in Philadelphia shall be instituted by:

(1) issuing a citation to the defendant as provided in Rules 405-409;

(2) filing a citation with the Traffic Court as provided in Rules 410-414; or

(3) arresting without a warrant when arrest is specifically authorized by law as provided in Rules 440 and 441.

(B) The Administrative Judge of Traffic Court, or in the event the position of Administrative Judge is vacant, the Traffic Court President Judge, may provide by local rule, as an exception to the trial notice procedures in Rule 408(B), when a citation is issued to the defendant as provided in Rule 405, that the law enforcement officer also shall give the defendant written notice of the date and time and location set for the summary trial.

(1) The trial notice shall include an explanation that if the defendant enters a guilty plea and pays the fine and costs indicated on the citation within the specified time, the summary trial will be cancelled.

(2) The trial notice also shall include notice to the defendant that:

(a) failure to appear for the trial shall constitute consent for the trial to be conducted in the defendant's absence;

(b) if the defendant is found guilty, the collateral deposited will be forfeited and applied toward the fine and costs; and

(c) the defendant will have the right to appeal within 30 days for a trial de novo in the court of common pleas.

Comment

See Rule 403 for the contents of the citation.

The trial notice permitted in paragraph (B) may be added to the citation form.

See Rule 105 for the procedures for promulgating local rules.

Official Note: Adopted September 9, 2005, effective February 1, 2006.

Committee Explanatory Reports:

Final Report explaining the provisions of the new rule published with the Court's Order at 35 Pa.B. 5242 (September 24, 2005).

Rule 1032. Pleas in Response to Citation.

In addition to the procedures in Rules 407 and 412 for entering a plea in a summary traffic case, the defendant, by means of electronic transmission as provided by local rule, may notify the Traffic Court of his or her plea, and either pay the fines and costs or post the requisite collateral.

Comment

See Rule 105 for the procedures for promulgating local rules.

Official Note: Adopted September 9, 2005, effective February 1, 2006.

Committee Explanatory Reports:

Final Report explaining the provisions of the new rule published with the Court's Order at 35 Pa.B. 5242 (September 24, 2005).

Rule 1033. Procedures When Defendant Arrested with Warrant.

(A) When a defendant is arrested pursuant to a warrant issued as provided in Rule 430, the police officer without unnecessary delay shall take the defendant before the proper issuing authority and shall proceed as provided in this rule and by local rule.

(B) When the defendant appears in person or appears by means of two-way simultaneous audio-video equipment, the judge or bail commissioner shall:

(1) inform the defendant concerning the specific citations to which the defendant has not entered a plea as required by Rules 407 and 412;

(2) inform the defendant concerning the specific citations that have been adjudicated that have outstanding fines or costs for which the defendant is in default of a payment order or a payment plan; and

(3) advise the defendant of the right to retain counsel, and if, in the event of a conviction, there is a reasonable likelihood of a sentence of imprisonment and the defendant does not have the financial ability to retain counsel, advise the defendant that counsel will be appointed by Traffic Court as provided in Rule 1035.

(C) When the defendant appears before a bail commissioner, the bail commissioner shall schedule the next court proceeding before the Traffic Court and give the defendant a hearing notice or subpoena, set collateral as provided in Rule 1034 and local rule, and release the defendant, or if the defendant is unable to post the collateral, commit the defendant.

(D) When the defendant appears before a Traffic Court judge,

(1) if the matter is not ready to proceed, the Traffic Court judge shall schedule the next court proceeding and give the defendant a scheduling order, set collateral as provided in Rule 1034 and local rule, and release the defendant, or if the defendant is unable to post the collateral, commit the defendant.

(2) If the matter is ready to proceed,

(a) when the defendant is arrested pursuant to a warrant issued as provided in Rule 430(A) or (B)(1)(a) or (B)(2), the defendant shall enter a plea. If the defendant pleads guilty, the Traffic Court judge shall impose sentence. If the defendant pleads not guilty, the summary trial shall be conducted.

(b) When the defendant is arrested following a trial in absentia pursuant to a warrant issued as provided in Rule 430(B)(3)(c) and (B)(4),

(i) the Traffic Court judge shall conduct an immediate hearing to determine defendant's financial ability to pay the full amount due.

(ii) If the Traffic Court judge determines the defendant is financially unable to pay the full amount due, the judge may order an installment payment plan as provided in Rule 456(C)(2).

(iii) If the judge determines the defendant is financially able to pay the full amount due, and that there is a

likelihood that imprisonment will be imposed at the conclusion of the hearing, the judge shall advise the defendant of the right to retain counsel, and, if the defendant does not have the financial ability to retain counsel, advise the defendant that counsel will be appointed by Traffic Court as provided in Rule 1035. A hearing may be held if retained or appointed counsel is available; otherwise, the hearing shall be rescheduled for a date certain, and the defendant shall be released on collateral as provided in Rule 1034.

(iv) At the conclusion of the hearing, the Traffic Court judge shall proceed as provided in Rule 456(C)(3).

(c) When the defendant is arrested after defaulting on the payment of fine or costs or restitution pursuant to a warrant issued as provided in Rule 430(B)(3)(b) and (B)(4),

(i) the Traffic Court judge shall conduct an immediate hearing to determine whether the defendant is financially able to pay the outstanding fines and costs as previously ordered.

(ii) If the judge determines the defendant is financially unable to pay as previously ordered, the judge may issue a revised payment order or payment plan.

(iii) If the judge determines the defendant is financially able to pay as previously ordered, and that there is a likelihood that imprisonment will be imposed at the conclusion of the hearing, the judge shall advise the defendant of the right to retain counsel, and if, the defendant does not have the financial ability to retain counsel, advise the defendant that counsel will be appointed by Traffic Court as provided in Rule 1035. A hearing may be held if retained or appointed counsel is available; otherwise the hearing shall be rescheduled for a date certain, and the defendant shall be released on collateral as provided in Rule 1034.

(iv) At the conclusion of the hearing, the Traffic Court judge shall proceed as provided in Rule 456(C)(3).

(d) When the defendant is arrested on multiple warrants in cases involving both unadjudicated citations and adjudicated citations with outstanding balances, the matter shall proceed as provided in paragraph (D)(2)(a) (summary trial), or paragraphs (D)(2)(b) or (D)(2)(c) (default hearings). These cases may be joined and the proceeding scheduled before the same Traffic Court judge.

Comment

Pursuant to Municipal Court Local Rule 540 and Traffic Court Local Rule 1033, when a defendant is arrested outside the normal business hours of Traffic Court, the defendant is to be taken without unnecessary delay before a Philadelphia Municipal Court bail commissioner who shall proceed as provided in paragraph (C) and in Traffic Court Local Rule 1033.

"Proper issuing authority" as used in this rule is the traffic court judge or bail commissioner assigned to conduct these proceedings as provided in this rule, Municipal Court Local Rule 540, and Traffic Court Local Rule 1033.

For the procedures for contempt proceedings in Traffic Court cases, see Rules 140, 141, and 142.

For the summary appeal procedures, see Rules 460, 461, and 462.

See Rule 105 for the procedures for promulgating local rules.

Official Note: Adopted September 9, 2005, effective February 1, 2006.

Committee Explanatory Reports:

Final Report explaining the provisions of the new rule published with the Court's Order at 35 Pa.B. 5242 (September 24, 2005).

Rule 1034. Collateral.

(A) Except as provided in this rule, the procedures for collateral shall be as provided in Rule 452.

(B) When determining the amount of collateral, if any,

(1) if the defendant does not have a prior history of failure to appear for scheduled hearings, or there are other reasonable grounds to believe that the defendant will appear, or the defendant is without adequate resources to deposit collateral, the Traffic Court judge or bail commissioner shall consider releasing the defendant on his or her own recognizance, or sign own bail ("SOB"), or on a nominal amount of collateral.

(2) If the defendant has a prior history of failing to appear for Traffic Court scheduled hearings, and notice of the hearings was served personally on defendant, the Traffic Court judge or bail commissioner may set collateral in an amount not to exceed the collateral that may be required for the payment of defendant's adjudicated citations and the balance of outstanding fines and costs owed on adjudicated citations.

Comment

When the collateral is set in a monetary amount, the Traffic Court judge or bail commissioner may permit the defendant to be released from custody when 10% of the amount has been posted.

When determining the amount of collateral to set in paragraph (B)(2), the judge or bail commissioner must take into consideration the defendant's financial resources and ability to post the amount set. The amount of collateral must be reasonable.

See Rule 105 for the procedures for promulgating local rules.

Official Note: Adopted September 9, 2005, effective February 1, 2006.

Committee Explanatory Reports:

Final Report explaining the provisions of the new rule published with the Court's Order at 35 Pa.B. 5242 (September 24, 2005).

Rule 1035. Appointment of Counsel.

(A) When the Traffic Court judge has preliminarily determined that there is a likelihood that imprisonment will be imposed at the conclusion of a summary traffic proceeding,

(1) a hearing may be held if retained or appointed counsel is available; or

(2) if the defendant is without financial resources or is otherwise unable to employ counsel, the judge shall continue the proceeding, issue a scheduling order, and either appoint counsel or direct the defendant to report for a financial interview to determine eligibility to court-appointed counsel.

(B) When the defendant reports for the financial interview to determine eligibility to court-appointed counsel, the defendant shall provide supporting documentation, such as a driver's license, a DPW card, pay stubs, and any other relevant information. Upon review of the

information provided by the defendant during the financial interview, the Traffic Court judge shall enter an appropriate order.

(C) Counsel's appointment shall terminate at the conclusion of the Traffic Court proceeding, unless the Traffic Court judge sentences the defendant to a period of incarceration, in which case, counsel's appointment shall continue through any appeal for a trial de novo in the court of common pleas.

(D) At the time a sentence is imposed that includes a period of incarceration, if the defendant is represented by private counsel, the Traffic Court judge shall advise the defendant that, in the event private counsel ceases to represent the defendant after the imposition of the sentence and before the sentence is carried out, if the defendant is unable to afford counsel, he or she has the right to have counsel appointed to represent the defendant to file an appeal for a trial de novo, and if appointed, counsel's appointment shall continue through the trial de novo in the court of common pleas.

Comment

No defendant may be sentenced to imprisonment or probation if the right to counsel was not afforded at trial. See *Alabama v. Shelton*, 535 U.S. 654, 122 S.Ct. 1764, 152 L.Ed.2d 888 (2002), *Scott v. Illinois*, 440 U.S. 367, 99 S.Ct. 1158, 59 L.Ed.2d 383 (1979), and *Argersinger v. Hamlin*, 407 U.S. 25, 92 S.Ct. 2006, 32 L.Ed.2d 530 (1972).

See Rules 460, 461, and 462 for the procedures for summary case appeals.

Official Note: Adopted September 9, 2005, effective February 1, 2006.

Committee Explanatory Reports:

Final Report explaining the provisions of the new rule published with the Court's Order at 35 Pa.B. 5242 (September 24, 2005).

Rule 1036. Traffic Court Hearing Officers.

(A) The Administrative Judge of Traffic Court, or in the event the position of Administrative Judge is vacant, the President Judge of Traffic Court, may appoint Traffic Court hearing officers to conduct post-hearing proceedings, including but not limited to, establishing or re-establishing payment plans, monitoring compliance with payment plans, holding warrant hearings, and performing additional duties as may be identified by local rule.

(B) The Administrative Judge by local rule shall establish the qualifications and educational requirements for the position of Traffic Court hearing officer.

Comment

See Pa.R.Crim.P. 105 for the procedures for promulgating local rules.

Official Note: Adopted September 9, 2005, effective February 1, 2006.

Committee Explanatory Reports:

Final Report explaining the provisions of the new rule published with the Court's Order at 35 Pa.B. 5242 (September 24, 2005).

FINAL REPORT¹

¹ 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.

New Rules of Criminal Procedure 1030, 1031, 1032, 1033, 1034, 1035, and 1036; Correlative Amendments to Rules of Criminal Procedure 105 and 1000

Philadelphia Traffic Court Procedures

On September 9, 2005, effective February 1, 2006, upon the recommendation of the Criminal Procedural Rules Committee, the Court promulgated a new Chapter 10, Part B, consisting of new Pa.Rs.Crim.P. 1030, 1031, 1032, 1033, 1034, 1035, and 1036 governing procedures in Philadelphia Traffic Court, and adopted correlative changes to Rules 105 (Local Rules) and 1000 (Scope of Rules).

I. BACKGROUND

The need for changes to the Rules of Criminal Procedure that would accommodate Philadelphia Traffic Court arose in the wake of a federal law suit challenging Philadelphia Traffic Court's procedures related to the post-arrest imprisonment of defendants without affording them counsel in cases in which the defendants were arrested for failing to respond to citations or failing to pay the fines and costs. As part of the settlement the parties reached, Traffic Court's President Judge issued an administrative order that included an explanation of the statewide Criminal Rule procedures governing summary traffic cases and the interplay between these procedures and the Philadelphia Traffic Court procedures to be implemented under the terms of the settlement.

Concerned about the possible conflicts between the Criminal Rules and the Administrative Order, the Committee reviewed the statewide rules and the procedures set forth in the Administrative Order, noting the Court had issued an order in the early 1980's directing that Philadelphia Traffic Court comply with the statewide Criminal Rules. As a result of the Committee's review and the concerns about the inconsistencies, the Committee's Staff informally met several times with representatives from Traffic Court to address the Committee's concerns in an effort to resolve the inconsistencies and to bring the local procedures in line with the statewide Criminal Rules. Because of the vast number of cases Traffic Court handles compared to the rest of the state, several procedural issues were not able to be resolved satisfactorily within the scope of the statewide rules. In view of this, with the Court's approval, the Committee has developed separate Traffic Court rules within the statewide Criminal Rules similar to the current Municipal Court rules in Chapter 10 to accommodate these Traffic Court issues.

II. THE ISSUES

The procedural differences identified as necessitating separate rules concern (1) the use of a form of preliminary arraignment in summary traffic cases; (2) the use of the bail rules for these summary traffic cases; and (3) the procedure whereby the Traffic Court President Judge, with the consent of the Municipal Court President Judge, may delegate to the Municipal Court bail commissioners the authority to conduct the Traffic Court-created summary case arraignments when Traffic Court is not open.

1. Preliminary Arraignment-Type Procedures

The Traffic Court representatives explained the "preliminary arraignment" procedure is necessary to provide Traffic Court with the flexibility it needs to accommodate the vast numbers of defendants who have numerous outstanding cases in which the defendants have not responded to the citation, or have failed to pay the fines and costs or to make payments as required by a payment

schedule; or when there is a determination of a likelihood of imprisonment and the defendant must be afforded an opportunity to obtain counsel; or when the defendant is arrested outside Traffic Court's normal business hours.

2. Traffic Court "Bail"

Philadelphia Traffic Court uses the statewide bail rules for summary traffic offenses (1) based on the Philadelphia District Attorney's Office's interpretation that the bail rules apply to Philadelphia Traffic Court cases, and (2) to encourage the Traffic Court judges and bail commissioners to use ROR or nominal bail. When following Rule 452 (Collateral), the Traffic Court judges are imposing the full amount of fines and costs, as permitted by the rule, especially in the most egregious cases of failures to pay or failures to respond, rather than assessing the defendant's ability to pay, and this has led to numerous defendants being incarcerated for relatively long periods of time without assistance of counsel, one of the problems leading to the federal law suit.

3. Philadelphia Bail Commissioners

Related to the arraignment issue is the question of the propriety of Traffic Court using Municipal Court bail commissioners to handle after-hours release issues for Traffic Court when a defendant is arrested outside the normal business hours of Traffic Court. This procedure has been in place for a number of years pursuant to Municipal Court Local Rule 540 (Bail for Traffic Court Scofflaws). Although the authority for bail commissioners is in 42 Pa.C.S. § 1123(a)(5) (Jurisdiction and venue) [*of Municipal Court judges*], the Traffic Court and Municipal Court President Judges had agreed to retain this arrangement because the bail commissioners are available 24 hours a day, 7 days a week to process arrests, including arrests in non-traffic summaries that are within the jurisdiction of the Municipal Court. They thought this arrangement is the best use of limited judicial resources within the First Judicial District.

4. Correlative Matters

a. Trial Date on Citation

In addition to the specific issues concerning Traffic Court noted above, there are a few correlative procedures being addressed. First, the Traffic Court representatives suggested, either as a statewide rule or a separate Traffic Court rule, that the summary citation rules be modified to permit police officers to include on the citation a date certain for the summary trial. Traffic Court and the Philadelphia police are able to do this, and such a procedure will ensure actual notice of the summary trial dates. Traffic Court officials believe this will reduce the number of failures to appear.

b. Trial de novo

Another issue concerns the 2003 changes to the Criminal Rules that clarify once a case is appealed for a trial de novo, the case is to remain in the common pleas court for disposition.² This procedure is contrary to what is occurring in Philadelphia. Both Traffic Court and Philadelphia Common Pleas Court have serious concerns about the significant burden the statewide procedure would have on the Common Pleas Court, especially given the extraordinary number of cases involved and the amount of the fines and costs owed. Both courts note the current practice of returning the cases to Traffic Court for collection following the trial de novo works efficiently and has been successful.

² See Court's February 28, 2003 Order, effective July 1, 2003, and the Committee's explanatory Final Report published at 33 Pa.B. 1326 (3/15/2003).

c. *Pleas in Summary Traffic Cases*

Traffic Court has implemented procedures for defendants to enter guilty pleas and pay their fines and costs via the Internet. They are working on permitting not guilty pleas to be entered in the same manner. The electronic entry of pleas is not currently covered by the Criminal Rules, but given the recent trend to accommodate advanced communication technology in criminal proceedings, this Traffic Court procedure seems a logical next step.

III. DISCUSSION OF THE NEW RULES

The new Philadelphia Traffic Court rules are set forth as new Part B of Chapter 10.³ Generally, Chapter 4 (Procedures in Summary Cases) of the Rules of Criminal Procedure will apply to Traffic Court cases. See Rule 1030 (Scope of Summary Traffic Court Rules).

1. *New Rule 1031 (Institution of Proceedings in Summary Traffic Cases)*

Rule 1031 sets forth the methods of instituting proceedings in Traffic Court. Rule 1031(A) provides that Traffic Court cases will continue to be instituted as provided in Rules 405–409 when the citation is issued to the defendant, or in Rules 410–414 when the citation is filed, or as provided in Rules 440 and 441 when the case is instituted by arrests without a warrant.⁴ Paragraph (B) gives the Traffic Court Administrative Judge⁵ the authority to establish by local rule the scheduling of a summary case trial for a date certain at the time the citation is issued to the defendant. The scheduling notice will be added to the citation, and will advise the defendant that the summary trial is scheduled for a date/time/place certain, and inform the defendant that if the defendant pleads guilty and pays the fine and costs within the applicable time limits, the summary trial will be cancelled.

The purpose of providing the procedures by local rule is to afford some flexibility to the Administrative Judge in determining when and for what cases the notice will be included on the citation.⁶ This local rule procedure permits the Administrative Judge to institute this form of trial notice on the citation when the technology is in place to add such notice to the citation, and gives the Administrative Judge discretion whether to provide that the trial notices either appear on all citations or only when the charges are for specified types of offenses, such as when the offense charged carries a mandatory prison sentence upon conviction, or for “special” programs such as “drag racing” and other offenses that may impact on quality of life issues.

2. *New Rule 1032 (Pleas in Response to Citation)*

Rule 1032 provides for the electronic transmission of a plea and payment of fines and costs or collateral in a summary traffic case pursuant to procedures established by local rule. This procedure is in addition to the methods of entering a plea set forth in Rules 407 and 412.

³ Chapter 10 currently sets forth the rules governing Philadelphia Municipal Court proceedings. Chapter 10 has been modified to address both Municipal Court proceedings and Traffic Court proceedings with the Municipal Court rules, now Part A.

⁴ Because there are no private complaints in Traffic Court, there is no reference to Rules 420-424, the summary case rules governing private criminal complaints in summary cases, in this section of the rule.

⁵ The Traffic Court Administrative Judge's authority includes all matters related to the daily operations of the court, including promulgation of local rules. The President Judge only assumes this responsibility when there is no Administrative Judge.

⁶ In addition, this permits the Administrative Judge to modify the procedures without having to go through the ordinarily lengthy process of statewide rule changes. Of course, the Committee pursuant to Rule 105 will monitor any changes to the local rule the Administrative Judge promulgates.

3. *New Rule 1033 (Procedures When Defendant Arrested with Warrant)*

Rule 1033 sets forth the procedures following an arrest with a warrant in a Philadelphia Traffic Court case. Paragraph (B) sets forth the information about outstanding citations, outstanding fines and costs, and right to counsel that the bail commissioner or Traffic Court judge must provide a defendant following an arrest with a warrant.

Paragraph (C) sets forth the procedures when the defendant appears before a bail commissioner. These procedures are a form of “preliminary arraignment.” The bail commissioner will set the date and time for the defendant to appear in Traffic Court for the scheduled hearing, set collateral, and release the defendant if the collateral is posted or commit the defendant until the collateral is posted or a Traffic Court hearing is held.

Paragraph (D) sets forth the procedures when the defendant appears before the Traffic Court judge. In these cases, the defendant either receives an immediate hearing or, in the Traffic Court judge's discretion, at the initial post-arrest appearance collateral is set and the hearing is set for a date certain.⁷ The procedures are separated by types of arrest: procedures when the arrest is pursuant to Rule 430(A) or (B)(1)(a) or (2); when the defendant is arrested following a trial in absentia; and when the defendant is arrested after defaulting on the payment of fines and costs.

4. *New Rule 1034 (Collateral)*

Traffic Court and the bail commissioners, when conducting Traffic Court post-arrest proceedings, will set “collateral” as provided in the Criminal Rules, and Traffic Court will continue to forfeit the collateral and apply the money toward the defendants' fines and costs consistent with Rule 452(C). The types of collateral that may be set in a Traffic Court case are expanded in Rule 1034 to include not only a monetary amount not exceeding the full amount of fines and costs as provided in Rule 452(A) and (B) and ROR, but also a 10% cash program and the unsecured bail bond (“sign own bail”⁸ in Philadelphia).

The Comment includes a cautionary reminder to the Traffic Court judges and bail commissioners that, when setting a monetary amount of collateral, the amount must be reasonable and the judge or bail commissioner must take into consideration the defendant's financial resources and ability to pay.

5. *New Rule 1035 (Appointment of Counsel)*

One of the major issues in the federal law suit concerned the incarceration of defendants in Traffic Court cases without the appointment of counsel. As part of the settlement, the First Judicial District has established for Traffic Court a mechanism to ensure the appointment of counsel. These procedures are incorporated in Rule 1035.

The Rule 1035 Comment cross-references *Argersinger v. Hamlin*, 407 U. S. 25, (1972) and its progeny, and cautions that “no defendant may be sentenced to imprisonment or probation if the right to counsel was not afforded at trial.”⁹

⁷ Instead of using the terminology “hearing notice,” which is the term used in the summary case rules, Traffic Court will continue to issue “scheduling orders” to give notice of hearings, and the bail commissioners will continue to use the subpoena/commitment form to give to the defendant as the defendant's notice to appear in Traffic Court and to give to the place of commitment in the event the defendant does not post the collateral. Scheduling orders and subpoena/commitment forms have been in use for a number of years and it will be less confusing for Traffic Court judges and staff, the bail commissioners, and the police if these terms are retained.

⁸ This Philadelphia-specific local phraseology is commonly abbreviated “SOB.”

⁹ See also the Comments to Rules 122 (Assignment of Counsel) and 454 (Trial in Summary Cases).

6. *New Rule 1036 (Traffic Court Hearing Officers)*

Rule 1036 permits the Administrative Judge to establish for Traffic Court a hearing officer program that would provide for the non-judicial position of hearing officer to handle the cases in which the Traffic Court judge has determined a defendant should have a payment plan to pay the fines and costs. It is envisioned the hearing officer would, for example, conduct the financial background investigations and work with the defendants to establish payment plans, receive the money, monitor the payments, and send out default notices. This position would be similar to the trial commissioners used by Municipal Court but in a more limited capacity.

Pursuant to paragraph (B), the Administrative Judge must establish by local rule the qualifications and educational requirements for the position.

IV. CORRELATIVE CHANGES

Rule 105(A) has been amended to include references to Philadelphia Municipal Court and Philadelphia Traffic Court to make it clear in the rules that these "minor" courts have the authority to enact local rules governing procedures in their courts, and that they must proceed pursuant to Rule 105 when they do enact local rules.

To accommodate the addition of new Part B (Philadelphia Traffic Court) in Chapter 10, the Municipal Court Rules, Rules 1002 through 1013, are now new Part A. In addition, the titles to Chapter 10 and Rule 1000 have been amended to include references to Philadelphia Traffic Court.

[Pa.B. Doc. No. 05-1767. Filed for public inspection September 23, 2005, 9:00 a.m.]

Title 255—LOCAL COURT RULES

BERKS COUNTY

Administrative Order Relative to Amendment of Rules of Judicial Administration; No. 98-8009 Prothonotary; No. 1-MD-2005 Clerk of Courts

Order

And Now, this 2nd day of September, 2005, it is hereby *Ordered* that Berks County Rules of Judicial Administration 6000.1 through 6000.5 are *Rescinded* in their entirety and made null and void effective this date.

The District Court Administrator of Berks County is further *Ordered* and *Directed* to do the following:

1. File ten (10) certified copies of this Order with the Administrative Office of Pennsylvania Courts for distribution in accordance with Pa.R.J.A. 103(c);

2. File two (2) certified copies of this Order with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*;

3. File one (1) certified copy of this Order with the Berks County Law Library;

4. Have other, non-certified copies of this Order continually available for public inspection and copying.

By the Court

ARTHUR E. GRIM,
President Judge

[Pa.B. Doc. No. 05-1768. Filed for public inspection September 23, 2005, 9:00 a.m.]

CHESTER COUNTY

Adoption of Local Rules of Criminal Procedure; No. 859M05

Order

And Now, this 1st day of September, 2005, the Court approves and adopts the following Chester County Local Rules of Criminal Procedure. These Rules shall become effective thirty (30) days from the date of publication in the *Pennsylvania Bulletin*.

In conformity with Pa.R.C.P. 105, seven (7) certified copies of the within Order shall be filed by the Court Administrator with the Administrative Office of Pennsylvania Courts. Two (2) certified copies shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*. One (1) certified copy shall be filed with the Criminal Procedural Rules Committee. One (1) copy shall be filed with the Clerk of Courts of Chester County, one (1) copy with the Court Administrator of Chester County, one (1) copy with the Chester County Bar Association, one (1) copy with the Law Library of Chester County and one (1) copy with each Judge of this Court.

By the Court

PAULA FRANCISCO OTT,
President Judge

CHAPTER 1. SCOPE OF RULES, CONSTRUCTION AND DEFINITIONS, LOCAL RULES

Rule 100. Scope of Local Rules.

These local rules shall govern criminal proceedings in all Chester County Courts, including Courts not of record where applicable. Unless otherwise specifically provided, these local rules shall not apply to juvenile or domestic relations proceedings.

These local rules have been structured and given numbers that are keyed to the numbers of the general rules of the Supreme Court to which the local rules correspond. As these local rules are intended to be a supplement to the general rules of the Supreme Court and Acts of the Assembly, the parties should always consult the corresponding general rules of the Supreme Court and any applicable Act of the Assembly.

Rule 101. Purpose and Construction of Local Rules.

(A) These rules are intended to provide for the just determination of every criminal proceeding.

(B) These rules shall be construed to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay.

(C) To the extent practicable, these rules shall be construed in consonance with the rules of statutory construction.

(D) These rules are intended to be a supplement to the Pennsylvania Rules of Criminal Procedure and Acts of the Assembly, and are not intended to conflict with them.

(E) These rules shall not be construed in any manner that would render them inconsistent with any general rule of the Supreme Court or any Act of the Assembly.

Rule 102. Citing the Chester County Criminal Rules.

These rules shall be known as the Chester County Rules of Criminal Procedure, and shall be cited as "C.C.R.Crim.P. ____."

**PART A
BUSINESS OF THE COURTS**

Rule 103. Definitions.

Unless otherwise defined, the words and phrases used in the Chester County Rules of Criminal Procedure shall have the same meaning as the definitions set forth in Pa.R.Crim.P. 103.

Rule 104. Forms.

The Clerk of Courts shall maintain, in each courtroom, forms for use by defendants and by counsel, including:

- Application for Continuance
- Application for Bench Warrant
- Application to Dismiss/Quash Bench Warrant
- Praecepte for Appearance
- Transport Order
- Bail Slips
- Verdict, Sentence and Explanation of Post Verdict Rights
- Waiver of Jury Trial
- Plea Colloquy
- Sentencing Sheets
- Probation and Parole Violation Sentencing Form
- Summary Plea and Verdict Form
- Discharge Order
- Driving Under Influence/Intermediate Punishment Parole Order
- Pre-Sentence Investigation Order
- Indirect Criminal Contempt/PFA Order
- License Suspension Affidavits
- General Order Form

Rule 105(C). Amendment of Local Rules.

A local rule can be amended, upon approval by a majority of the sitting judges of the Court of Common Pleas of Chester County, and upon compliance with applicable rules and law, pursuant to Pa.R.Crim.P. 105(C).

Rule 105(D). Effective Date.

A local rule shall become effective 30 days after the date of publication of the rules in the *Pennsylvania Bulletin*, pursuant to Pa.R.Crim.P. 105(D), unless a later date is specified in the Amendment.

Rule 105(E). Violation of Local Rule.

These local rules are procedural and do not create any enforceable substantive rights in any party. No case shall be dismissed nor request for relief granted or denied because of failure to comply with a local rule. In any case

of noncompliance with a local rule, the Court shall alert the party to the specific provision at issue and provide a reasonable time for the attorney to comply with the local rule. After the Court has alerted the party to the local rule, the court may impose a sanction for subsequent noncompliance either on counsel, or the defendant, if proceeding pro se, but may not dismiss the case, or grant or deny relief because of noncompliance.

Rule 105(F).1. Authority of President Judge.

The President Judge of the Court of Common Pleas of Chester County may, by Administrative Regulation, suspend or vacate a local rule under applicable law when it appears that the rule is no longer in conformity with applicable state law.

Nothing in these local rules shall limit the authority of the President Judge to issue Administrative Orders that the President Judge may otherwise have the authority to issue under applicable law.

Rule 105(F).2. Chester County Criminal Rules Committee.

A criminal procedural rules committee may be established by the President Judge from time to time to study and make recommendations to the Court concerning local procedure in criminal matters and the promulgation and amendment of local rules of criminal procedure. The committee shall consist of a judge of the Court of Common Pleas of Chester County, together with at least four (4) members in good standing of the Bar of the Supreme Court of Pennsylvania, who maintain a principal office for the practice of law in Chester County. The judicial member and two lawyer members of the committee shall be appointed by the President Judge, one representative shall be named by the District Attorney of Chester County and one representative shall be named by the Public Defender of Chester County. All members shall serve at the will of the person appointing them. The President Judge shall select the Chairman of the committee. The committee shall meet and report at the direction of the President Judge, or of the Chairman of the committee.

Rule 105.1(a). Individual Calendars.

When a criminal proceeding is filed with the Clerk of Courts, the Court Administrator's Office shall forthwith assign it to a judge. Said assigned judge shall then be responsible for handling all phases of the assigned case, including but not limited to: Pre-Trial Motions, Trials, Post-Trial Motions and Sentencing, unless otherwise directed by the President Judge.

Rule 105.1(b). Assignment Method.

The Court Administrator in accordance with regulations approved by the President Judge shall make the assignment to a judge. Said regulations shall create a blind rotation system, which balances the caseloads among the judges. The sequence of assignment shall be kept secret and all steps shall be taken to prevent any person from being able to ascertain the name of the judge to whom any case may be assigned before the assignment.

Rule 105.1(c). Murder and Major Cases; Pre-Assignment.

When a defendant is charged with murder or a major crime in the complaint, upon written request of counsel to the Court Administrator the case may be assigned to a judge before the preliminary hearing.

Rule 105.1(d). Reassignment of Cases.

The President Judge may reassign cases whenever necessary to eliminate conflicts, to promote a balance of

the workload among the judges, and to improve prompt and just administration of all cases.

Rule 105.1(e). Consolidation.

Cases that are consolidated for trial after assignment to separate judges will be so consolidated by the Court Administrator's Office.

Rule 105.2. Interpreters.

In all criminal proceedings in Court or before Magisterial District Judges, where either a defendant or a testifying witness so requests, an official interpreter, or an alternate, shall be provided by the Court, through the Court Administrator's Office. It shall be the responsibility of counsel representing the defendant, or calling the witness, to notify the Court Administrator's Office, not less than twenty-four (24) hours in advance of the proceeding, when an interpreter will be needed.

Note: If the Magisterial District Judge is aware that an interpreter will be needed, the Magisterial District Judge should advise the Court Administrator.

Rule 105.3(a). Transport of Prisoners; Out of County.

In any criminal proceeding in which a court appearance by a prisoner housed in a facility out of Chester County will be required, the party, designated by C.C.R.Crim.P. 105.3(c), shall submit to the Court a transport order containing the location of the prisoner and when the prisoner will be needed for court. Once the Court signs the transport order, it shall be filed with the Clerk of Courts and copies provide to the Court Administrator and the Sheriff. The Sheriff shall arrange appropriate transportation of the prisoner. Absent genuine exigency or most unusual circumstances, a request for transport of a prisoner shall be made not less than three (3) days before the scheduled court appearance.

Note: The Court Administrator can issue a per curiam transport order if the prisoner is housed in a county facility. However, if the prisoner is housed in a state facility, the transport order requires a judicial signature.

Rule 105.3(b). Transport of Prisoners; County Prisoners.

In any criminal proceeding in which a court appearance by a prisoner housed by Chester County Prison will be required, the party, designated by C.C.R.Crim.P. 105.3(c), shall contact the Chester County Sheriff and request that the prisoner be transported. The Sheriff shall be provided with the name of the prisoner, the prisoner's identification number or date of birth, and the time and location of the appearance. Absent genuine exigency or most unusual circumstances, a request for transport of a prisoner shall be made not less than one (1) day before the scheduled court appearance.

Rule 105.3(c). Party Responsible for Transport Orders.

The party responsible for requesting the transport of a prisoner shall be as follows:

(A) Defense counsel shall have the responsibility for arranging transportation for hearings involving bail, habeas corpus, PCRA, Rule 600, the entering of a plea, and any other proceedings initiated by the defense, where the defendant's presence is required.

(B) The District Attorney shall be responsible for arranging transportation for proceedings such as arraignment, trial, sentencing, extradition, or hearings involving violation of probation or parole.

(C) For matters not listed above, the parties shall make every effort to agree as to who shall be responsible for arranging transportation of the prisoner.

Rule 105.3(d). Constable Transports—Humanitarian Reasons.

As there are instances when, for humanitarian reasons, or for other good cause, persons in confinement need to be transported from the place of confinement to another location, the Court may, upon petition and good cause shown, issue an Order authorizing the transport, either at the cost of the defendant, or at the cost of the County, to be made by a constable. These constables may be assigned at random by the Court from a list of constables duly qualified to do such transports. The Court Administrator of Chester County shall notify all Chester County constables who wish to be involved in said transports to do so in writing to the Court Administrator of Chester County. The Warrant Enforcement Bureau (WEB) will maintain this list and the assignments may be made on a random, rotating basis. Constables who wish to be part of this list must agree that in appropriate cases the Court may determine that a single constable will be sufficient for said transport. In any case in which the County pays the constable transport cost, the constable must comply with the Constable Handbook adopted by the Chester County Commissioners.

Rule 105.4. Documents.

A carbon, photo static, or NCR copy of any document filed with the Clerk of Court shall be given the full lawful effect of its original for all purposes when certified as a true copy by the Clerk of Courts or a duly authorized deputy.

Rule 105.5(a). Answer to Parole Petition by Commonwealth.

Upon receipt of a copy of a parole application, the attorney for the Commonwealth shall, within ten (10) days, in a signed writing, advise the judge to whom the application is addressed whether the application is opposed. The attorney for the Commonwealth shall serve a copy of such notice upon the defendant and upon the filing attorney or the last attorney of record.

Rule 105.5(b). Parole Hearing.

If the attorney for the Commonwealth or the warden opposes the application, and the Court does not deny the application, the Court shall schedule a hearing, with notice to the defendant, to the attorney for the Commonwealth, and to defendant's attorney of record, if any.

Rule 105.6(a). Session Calls.

Unless otherwise directed by the assigned judge, the principal call of said judge's criminal list, will be conducted, during the week immediately prior to the judge's trial session. The Criminal Court Administrator, a court reporter, counsel of record and unrepresented defendants shall be present, except as otherwise provided in this rule. The Court Administrator shall send notice.

Rule 105.6(b). Presence of Counsel.

Counsel of record need not be personally present:

(i) for continuance requests for filed ARD or IPP applications, with the written consent of the District Attorney; or

(ii) if there is present at the call of the list a lawyer who counsel of record has designated to answer the call for counsel of record and which designee has knowledge of the status of the case; or

(iii) if Counsel has notified the Court Administrator, copy to District Attorney, in writing of the disposition of the case (other than a continuance) prior to the call of the list.

Rule 105.6(c). Periodic Calls.

During the trial week, periodic calls shall be held at such times and in such manner as directed by the judge to whom the case has been assigned.

Rule 105.6(d). Duty of Counsel.

Counsel shall be required to keep the Criminal Court Administrator advised of changes in the status of the case.

Rule 105.7(a). Copies of Orders.

A party who has obtained an order shall, at the time of filing, supply to the Clerk of Courts two (2) copies thereof to be conformed and delivered by the Clerk in accordance with the State Rules.

Rule 105.7(b). Delivery to District Attorney or Public Defender.

Delivery of documents by the Clerk to the District Attorney or Public Defender may be achieved by the Clerk of Courts placing conformed and time-stamped copies thereof in the boxes provided in the Clerk's Office for that purpose.

Rule 105.8. Praecepto to Reduce Sentence to Judgment.

In all Court Cases and Summary Cases, once the Judge has imposed sentence, the Clerk of Courts shall reduce the sentence to judgment and enter that judgment upon the appropriate docket. A separate praecipe to reduce sentence to judgment shall not be required.

Note: Traditionally a praecipe to reduce sentence to judgment was filed so the Clerk of Courts would enter the judgment of sentence on the appropriate docket for appeal purposes. See Pa.R.A.P. 301(a) and 904(d). However, current practice is that the judgment of sentence is always entered on the appropriate docket without a request from a party. See Pa.R.Crim.P. 113 and 114.

Rule 105.1901. Dismissals.

Pursuant and subject to the requirements of Pa.R.J.A. 1901, the Clerk of Courts shall prepare a 1901 list no later than February 1 of each year and send it to the District Attorney with a copy to the Public Defender. Counsel shall advise the court in writing, within ninety (90) days of the list being delivered, of good cause for retaining a matter on the list. If no good cause of continuing a proceeding is shown an order for dismissal shall be entered by the Court, subject to the right of either party to petition to reactivate the matter for good cause shown.

Rule 106(A). Applications for Continuance.

All applications for continuance shall be made to the assigned judge or substitute, with notice to the opposing party, setting forth the reason for the requested continuance.

Rule 106(B). Order for Continuance.

Counsel requesting a continuance shall submit a proposed order, which shall specify:

1. The party requesting the continuance
2. The reason for the continuance request
3. The position of the opposing party

4. Reason for Grant/Denial

The Court Administrator will provide a suggested form of such order.

Rule 114. Orders and Court Notices: Filing; Service; and Docket Entries.

Pa.R.Crim.P. 114 shall govern the procedures for the filing, service, and docketing of orders and court notices.

Rule 114(B)(2). Service of Orders and Court Notices.

The Clerk of Courts, the Court Administrator, or the Court, may serve orders and court notices.

Rule 117. Coverage: Issuing Warrants; Preliminary Arraignments and Summary Trials; and Setting and Accepting Bail.

Pursuant and subject to the requirements of Pa.R.Crim.P. 117, the President Judge shall, as needed, issue an Administrative Order implementing Pa.R.Crim.P. 117.

Rule 118. Use of Two-Way Simultaneous Audio-Visual Communication in Criminal Proceedings.

Pa.R.Crim.P. 118 shall govern the procedures for the use of two-way simultaneous audio-visual communication in criminal proceedings.

**PART B
COUNSEL**

Rule 120.1. Appearance and Withdrawals.

Appearances and Withdrawals Shall be in Accordance with State Rule 120, et seq.

Rule 120.2. Effect of Entry of Appearance.

The entry of the formal written appearance shall require counsel to represent the defendant until proceedings have been terminated in the Court of Common Pleas of Chester County, including without limitation, motions for withdrawal of guilty plea or for modification of sentence, except that the attorney may withdraw an appearance with leave of Court. Court-appointed counsel shall continue representation only through any direct appeal by right, unless the period of representation is specifically extended by the Court.

Rule 120.3. Obligation of Counsel After Certain Dispositions.

A previously filed appearance shall not require counsel to represent a defendant after placement on ARD, or in proceedings involving probation or parole.

CHAPTER 2. INVESTIGATIONS

**PART A
SEARCH WARRANTS**

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

The District Attorney of Chester County having filed a certification, pursuant to Pa.R.Crim.P. 202, search warrants shall not hereafter be issued by any judicial officer unless the search warrant application has the approval of an attorney for the Commonwealth prior to filing.

CHAPTER 3. ACCELERATED REHABILITATIVE DISPOSITION (ARD)

**PART A
SUMMARY CASES**

Rule 300. Summary Cases Excluded.

The District Attorney of Chester County having filed a certification, pursuant to Pa.R.Crim.P. 300, has desig-

nated, in addition to those offenses and/or offenders which are statutorily excluded, that summary cases are ineligible for ARD.

**PART B
COURT CASES**

Rule 316(A).1. Administration Fee.

In addition to such other conditions as may be imposed, a condition of admission into the ARD program shall be that a person accepted into the program shall pay a fee as established by Court Order.

Rule 316(A).2. Terms of Payment.

Unless the terms of payment are agreed upon prior to the ARD hearing, the Court shall include in its Order the method, amounts and times for payment. In the absence of good cause shown, all fees shall be paid in advance of the ARD hearing.

CHAPTER 4. PROCEDURES IN SUMMARY CASES

**PART F
PROCEDURES IN SUMMARY CASES FOR
APPEALING TO COURT OF COMMON PLEAS FOR
A TRIAL DE NOVO**

Rule 460.1 Procedures in Summary Cases for Appealing to Court of Common Pleas; Nunc Pro Tunc.

When an appeal is authorized by law in a summary proceeding, a summary appeal shall be perfected, pursuant to Pa.R.Crim.P. 460, by filing a Notice of Appeal, with the Clerk of Courts, within thirty (30) days after the entry of the guilty plea, the conviction, or other final order, from which the summary appeal is taken.

If a party seeks to file a summary appeal after the thirty (30) day appeal period has expired, the following procedure shall be followed:

(A) The party seeking a summary appeal nunc pro tunc shall file, pursuant to Pa.R.Crim.P. 460, a Notice of Appeal, with the Clerk of Courts. The party shall pay any applicable fees. The Clerk of Courts shall, within five (5) days, follow the procedure set forth in Pa.R.Crim.P. 460(C). The Issuing Authority shall, within twenty (20) days, follow the procedure set forth in Pa.R.Crim.P. 460(D).

(B) The party shall also file, contemporaneously, with the Clerk of Courts, a Petition for Summary Appeal Nunc Pro Tunc. Pursuant to C.C.R.Crim.P. 575(A), before the Petition is filed, it shall be covered with a Notice of Hearing, completed by the Court Administrator, setting forth the time and place of the hearing. However, the Court Administrator shall not schedule a hearing if the party has not complied with paragraph (A) of this rule, nor shall the Court Administrator schedule a hearing for the appeal filed pursuant to paragraph (A) of this rule. The hearing date shall not be less than thirty (30) days from the date of the request for a hearing.

(C) In addition to the requirements of Pa.R.Crim.P. 575, the Petition for Summary Appeal Nunc Pro Tunc shall contain the following:

1. The Caption of the Case; including the Miscellaneous Number assigned by the Clerk of Courts.
2. The procedural history of the case; including all relevant dates, charges, and citation numbers.
3. The specific facts the party would attempt to prove at a hearing, which the party asserts would warrant nunc pro tunc relief.

Note: A party who seeks a summary appeal nunc pro tunc must plead and prove that the failure to file a timely summary appeal was caused by the "fraud or its equivalent" of a "court official" or because of a "breakdown in the court's operation."

4. The specific facts the party would attempt to prove demonstrating that the party acted promptly in seeking nunc pro tunc relief.

Note: A party who seeks a summary appeal nunc pro tunc must plead and prove that they acted promptly to assert such a right upon learning of the existence of the grounds relied upon for such relief.

5. Copies of all documents and a list of all witnesses that the party relies upon.

6. A copy of the completed Notice of Appeal filed pursuant to paragraph (A) of this rule.

7. Any legal authority and theories the party relies upon in seeking nunc pro tunc relief.

8. A sworn affidavit of the person or persons having knowledge of the facts that the facts are verified as true and correct, or an unsworn written statement of such person or persons, that the facts are verified as true and correct subject to the penalties for Unsworn Falsification to Authorities, pursuant to 18 Pa.C.S.A. § 4904 of the Crimes Code.

(D) If the Petition for Summary Appeal Nunc Pro Tunc is granted, and no appeal from that order is filed, the Clerk of Courts shall combine the summary appeal file containing the Notice of Appeal with the miscellaneous file containing the Petition for Summary Appeal Nunc Pro Tunc, and the Court Administrator shall schedule a hearing on the merits, as it would if the Notice of Appeal was filed timely.

(E) If the Petition for Summary Appeal Nunc Pro Tunc is denied, the Clerk of Courts shall mark the Notice of Appeal as dismissed as untimely, and the judgment of the Magisterial District Judge shall stand. If there are any unpaid fines, costs, restitution, or any other outstanding matters such as community service, treatment, etc., the case shall be returned to the Magisterial District Judge, for further proceedings.

**CHAPTER 5. PRETRIAL PROCEDURES IN
COURT CASES**

**PART B(1)
COMPLAINT PROCEDURES**

Rule 507. Approval of Police Complaints and Arrest Warrant Affidavits by Attorney for the Commonwealth.

The District Attorney of Chester County having filed a certification pursuant to Pa.R.Crim.P. 507, criminal complaints and arrest warrant affidavits by police officers, as defined in the Rules of Criminal Procedure, charging the following offenses shall not hereafter be accepted by any judicial officer unless the complaint and affidavit have the approval of an attorney for the Commonwealth prior to filing:

- Criminal Homicide—18 Pa.C.S.A. § 2501;
- Murder in any degree—18 Pa.C.S.A. § 2502;
- Voluntary Manslaughter—18 Pa.C.S.A. § 2503;
- Involuntary Manslaughter—18 Pa.C.S.A. § 2504;
- Rape—18 Pa.C.S.A. § 3121;
- Statutory Sexual Assault—18 Pa.C.S.A. § 3122.1;

- Involuntary Deviate Sexual—18 Pa.C.S.A. § 3123;
- Sexual Assault—18 Pa.C.S.A. § 3124.1;
- Institutional Sexual Assault—18 Pa.C.S.A. § 3124.2;
- Aggravated Indecent Assault—18 Pa.C.S.A. § 3125;
- Arson—18 Pa.C.S.A. § 3301;
- Robbery—18 Pa.C.S.A. § 3701(a)(1)(i), (ii), (iii);
- Homicide by Vehicle—75 Pa.C.S.A. § 3732;
- Homicide by Vehicle While DUI—75 Pa.C.S.A. § 3735.
- Any criminal complaint filed against a person who is under 18 years of age under circumstances where the law authorizes such person to be charged as if the person were an adult. See C.C.R.Crim.P. 540.2.

PART C BAIL

Rule 522. Material Witnesses.

The Chester County Local Bail Rules shall apply equally to witnesses detained under Pa.R.Crim.P. 522. Applicability of these Rules in interstate witness situations under 42 Pa.C.S.A. § 5963 or § 5964 shall be subject to the discretion of the Court.

PART C(1) RELEASE PROCEDURES

Rule 524(C).1. R.O.R.

Where the Court or the issuing authority releases a defendant on the defendant's own recognizance (R.O.R.), the defendant shall not be subject to the rules, regulations, and special conditions of the Chester County Court Bail Agency.

Rule 528(C).1. Ten Percent Bail.

An issuing authority, with notice to the Chester County Court Bail Agency, or the Court may release a defendant upon the posting by or for defendant of ten (10) percent of the amount of bail set, but in no event less than twenty-five dollars (\$25). Defendant or a private third party surety shall execute the bail bond and post the sum required with the issuing authority or the Clerk of Courts.

Rule 528(D).1. Posting Real Estate Bail.

If realty is offered to satisfy the bail set for a defendant, whether before an issuing authority or thereafter, the following must be provided to the Clerk of Courts of Chester County:

- (i) the original deed, or a true copy certified by the Recorder of Deeds, for the realty being posted;
- (ii) a certificate from the Tax Assessment Office of the county in which the property is located, setting forth a general description of the property, the tax book references, and the assessed valuation of the realty as of the time the bail is requested;
- (iii) if the property is mortgaged, the original of a statement from the mortgagee indicating the unpaid balance due;
- (iv) a lien, judgment, and last owner search, dated not more than two (2) days prior to the posting of the bail, prepared by a reputable title insurance company or a reputable local abstractor;
- (v) the most recent tax receipts for county and school taxes applicable to the realty; and

(vi) if the realty offered is situated in another county, a written statement from the Prothonotary of such county that, in the event of forfeiture of the bail, said Prothonotary will accept said forfeiture for filing in that county and for entry and indexing as a judgment against the surety.

The Clerk of Courts shall enter judgment on the bond, and file a lien in the amount of the bond, in the office of the Prothonotary in the county in which the realty is located.

Rule 528(D).2. Establishing Value of Real Estate Bail.

The net value of any piece of realty, for purposes of posting bail, shall be determined by multiplying the assessed valuation of said property by the applicable county factor, and subtracting there from any mortgages, liens, or encumbrances. Alternatively, or if such calculation shall yield a value insufficient for the posting of bail, the surety may present a verified appraisal report from a licensed real estate broker doing business in the county where the realty is located, establishing a higher valuation for the realty. Such appraisal may be substituted for the multiple of assessed valuation.

Rule 528(D).3. Review of Documents by Clerk of Courts.

Upon review of the above documents, a determination will be made by the Clerk of Courts, as to whether the actual net value of the realty equals or exceeds the amount of the bail. Only after necessary documentation is provided to, and such determination made by the Clerk of Courts may realty be accepted for bail.

Rule 528(D).4. Posting for More Than One Defendant Prohibited.

Any piece of realty may be posted as bail only if it is not presently posted as bail for any other defendant or in any other matter, except with leave of Court.

Rule 528(D).5. Verification of Surety.

When realty is offered for bail, the owner(s) shall, in the presence of a member of the issuing authority's staff or Clerk of Courts' staff, file a verification of surety in the form required by the Clerk of Courts, and a verified statement that the realty posted is not subject to any outstanding lien, encumbrance, or agreement not shown in the search required by C.C.R.Crim.P. 528(D).1(iv).

PART C(2) GENERAL PROCEDURES IN ALL BAIL CASES

Rule 530.1. Powers of Bail Agency.

The Chester County Court Bail Agency is designated to have the duties and powers as set forth in Pa.R.Crim.P. 530.

Rule 530.2. Supervision by Bail Agency.

Any defendant released on percentage, nominal or unsecured bail shall be subject to the rules, regulations and special conditions of the Chester County Court Bail Agency, as set forth on the Bond. Where the Court or the issuing authority releases a defendant on percentage or nominal bail, the Chester County Court Bail Agency may be designated as surety for the defendant.

Rule 531(A).1. Corporate Sureties.

Corporate sureties or professional bail bondsmen or agents thereof are expressly prohibited from posting percentage bail allowed pursuant to these rules.

Rule 531(A).2. Application to Surety and Fidelity Companies and Professional Bondsmen, in General.

Surety companies, fidelity companies and bondsmen are not qualified to act as sureties in Chester County except as otherwise provided for in these rules.

Rule 531(A).3. Listing of Approved Sureties and Bondsmen.

The Clerk of Courts shall compile, maintain, and make available for public inspection a list of approved surety companies, fidelity companies, and professional bondsmen qualified to act as sureties in Chester County (hereinafter, "the approved list").

Rule 531(A).4. Approved Bondsman, Requirements to be Fulfilled By.

A professional bondsman, as defined in 42 Pa.C.S.A. § 5741, may not be included on the approved list unless the bondsman:

(i) presents proof of currently valid registration and licensure by the Insurance Department of the Commonwealth of Pennsylvania, pursuant to 42 Pa.C.S.A. § 5742;

(ii) presents proof that the bondsman maintains an office in Chester County from which the bondsman conducts business, pursuant to 42 Pa.C.S.A. § 5744;

(iii) posts and maintains as security with the Clerk of Courts the sum of twenty-five thousand dollars (\$25,000) in United States currency or securities of the United States government.

Rule 531(A).5. Approved Surety/Fidelity Companies, requirements to be fulfilled by.

Any fidelity or surety company authorized to act as surety within this Commonwealth may not be included on the approved list unless the company:

(i) presents proof of currently valid registration and licensure by the Insurance Department of the Commonwealth of Pennsylvania, pursuant to 40 P. S. § 831 et seq;

(ii) files with the District Attorney and with the Clerk of Courts, for the last calendar quarter ending before the date of the application, a report of the sort required to be filed quarterly, pursuant to 42 Pa.C.S.A. § 5747;

(iii) posts and maintains as security with the Clerk of Courts the sum of twenty-five thousand dollars (\$25,000) in United States currency or securities of the United States government.

Rule 531(A).6. Petition for Placement on Approved List.

A professional bondsman or fidelity or surety company wishing to be placed on the approved list must file a petition for such inclusion, in the manner provided by Pa.R.Crim.P. 575 et seq. Copies of said petition shall be served on the District Attorney and the Bail Agency. Hearing on said petition shall be scheduled by the Court Administrator on not less than 20 days notice to the District Attorney and the Bail Agency, which period may be extended for good cause shown on application by either agency. Upon a finding of compliance by the applicant with these rules and all applicable laws, the Court shall order the placement by the Clerk of Courts of the name of the applicant on the approved list.

Rule 531(A).7. Removal of Surety or Bondsman from Approved List.

Upon order of the Court of Common Pleas of Chester County, after Motion filed by any interested party and

hearing held on not less than ten (10) days notice to the bondsman or fidelity or surety company, the Clerk of Courts shall remove the name of the bondsman or company from the approved list. Grounds for suspension or revocation shall include, in the discretion of the Court:

(i) failure of the bondsman or fidelity or surety company to comply with any requirement of these rules;

(ii) suspension of the license of a bondsman by a Court of Common Pleas elsewhere in the Commonwealth of Pennsylvania for reasons other than failure to maintain an office in the county in which the bondsman was suspended;

(iii) suspension of the license of a fidelity or surety company by the Insurance Department of the Commonwealth of Pennsylvania;

(iv) non-compliance by a fidelity or surety company with the requirements of 42 Pa.C.S.A. § 5747;

(v) non-compliance by a bondsman with the requirements of 42 Pa.C.S.A. § 5746(b).

Rule 531(A).8. Bail Forfeiture, Deduction from Surety's Posted Security.

Whenever bail has been forfeited with respect to a defendant for whom bail has been posted by a professional bondsman or surety company or fidelity company, the amount of said forfeited bail shall, pursuant to Pa.R.Crim.P. 536, be deducted and withdrawn by the Clerk of Courts from the security posted by the said bondsman or company pursuant to these rules. Within ten (10) days after notice to the bondsman or company of such withdrawal by the Clerk of Courts, the said bondsman or company shall replenish the posted security to maintain twenty-five thousand dollars (\$25,000) as security. Failure, after such notice, to replenish the security shall (i) require notice by the Clerk of Courts of such failure to the District Attorney, and (ii) be grounds for removal of the name of the bondsman or fidelity or surety company from the approved list.

Rule 531(A).9. Approved List, Additions and Deletions, Circulation of.

The Clerk of Courts may make additions to or deletions from the approved list at any time. When there is an addition to or deletion from the list, the Clerk of Courts shall distribute copies of the list to the District Attorney of Chester County, Public Defender of Chester County, Bail Agency, Warden, and to the Court Administrator who shall distribute the list to all sitting Judges and Magisterial District Judges of the 15th Judicial District. An updated list shall be distributed to the above individuals by the Clerk of Courts at least once every twelve (12) months, notwithstanding the absence of any additions or deletions from the list.

Rule 531(A).10. Bail Accepted only from Approved Sureties.

No person or office may accept bail from a bondsman, a fidelity company or a surety company that is not included on the current approved list.

Rule 534. Termination of Case.

In cases where a defendant has been sentenced to a term of imprisonment, commencement of which sentence has been deferred, full and final disposition of the case shall not be deemed to occur prior to defendant's surrender to authorities for commencement of the sentence of imprisonment.

Rule 535(A). Receipt.

At the time of posting of any bail, including percentage bail, but excluding a surety bond, the office at which the bail is posted shall issue, to the person posting the bail a receipt itemizing the bail and the fees and costs which will apply in the absence of a violation or forfeiture.

Rule 535(D).1. Return of Cash Bail to Surety by Clerk of Courts.

Within twenty (20) days after the full and final disposition of a case on which full cash bail has been posted, the Clerk of Courts shall retain the lawful fee provided by the Judicial Code, and shall return the balance to the defendant or an assignee or the third party surety unless the balance is applied to pay a fine and costs of prosecution or to make restitution.

Rule 535(D).2. Return of Cash Bail to Surety by Issuing Authority.

Where a matter reaches a full and final disposition before an issuing authority, the issuing authority shall return the entire amount of full cash bail, which has been posted with the issuing authority.

Rule 535(D).3. Removal of Judgment Indexed Against Realty.

The Clerk of Courts shall, within twenty (20) days after the full and final disposition of a case on which realty has been posted as bail, notify the surety to present to the Clerk of Courts for execution by the Clerk of Courts a praecipe to remove the judgment previously entered by the Clerk of Courts.

Rule 535(D).4. Bail Agency Fee; Return of Bail to Surety.

Within twenty (20) days after full and final disposition [as defined by Pa.R.Crim.P. 534] of a case in which percentage bail has been posted, the issuing authority or the Clerk of Courts shall retain forty (40) percent of the amount deposited, but in no event less than fifty dollars (\$50), as administrative costs for the Chester County Court Bail Agency and shall return the balance to the defendant or an assignee or the third party surety unless the balance is applied to pay a fine and costs of prosecution or to make restitution. The fees to which the Bail Agency is entitled by law are deemed earned at the time the bail undertaking is executed and the money deposited.

Rule 535(D).5. Disposition of Bail Deposited by Defendant.

If the Court, upon sentence, orders the defendant to pay a fine and costs of prosecution or to make restitution, the amount deposited by the defendant, whether under the percentage cash bail program or otherwise, shall be first applied, in the case of percentage bail, to the administrative costs of the Chester County Court Bail Agency and then to any restitution ordered by the Court, then to the fine, if any, and then to other costs ordered by the Court to be paid.

Rule 535(D).6. Disposition of Bail Deposited by Third Party.

Where a third party surety has deposited money, under the percentage cash bail program or otherwise, the monies deposited shall be first applied, in the case of percentage bail, to the administrative costs of the Chester County Court Bail Agency. With voluntary written authorization of the person who deposited the bail, any balance shall then be applied to any restitution ordered by the

Court, then to the fine, if any, and then to other costs ordered by the Court to be paid.

Rule 535(D).7. Authorization to Pay Attorney.

When authorized in writing by the defendant and any third party surety who posted the deposit, whatever balance of such deposit is repayable to the defendant or the third party surety, may be paid to the defendant's attorney of record, upon filing such written authorization with the Clerk of Courts.

Rule 535(D).8. Notice to Person Posting.

The Clerk of Courts shall send notice of the full and final disposition to the person who originally posted money, at the address of record. Any money not claimed within one hundred and eighty (180) days from the time of full and final disposition of the case shall be forfeited to the use of the County of Chester.

Rule 536. Revocation of Bail.

When a defendant has failed to comply with the rules and regulations of the bail, or of the Chester County Court Bail Agency, or any additional conditions of the defendant's release, the Chester County Court Bail Agency may execute a bail piece, and/or petition that a bench warrant be issued, so that the defendant may be brought before the Court, to determine if additional bail shall be set in the case or bail revoked.

**PART D
PROCEDURES IN COURT CASES
BEFORE ISSUING AUTHORITIES**

Rule 540.1. Arrest of Fugitive from Justice; Another State.

In cases where complaints have been filed charging a defendant with being fugitive from justice wanted in another state, the Magisterial District Judge shall transmit the file to the Clerk of Courts following the preliminary arraignment. See 42 Pa.C.S.A. §§ 9134, 9135, 9136, and 9137. All subsequent proceedings will then be conducted by the Court of Common Pleas. See 42 Pa.C.S.A. §§ 9138 and 9139.

Rule 540.2. Arrest of Juvenile as Adult.

(A) The arrest of a juvenile for an offense required to be prosecuted as a criminal matter, by operation of 42 Pa.C.S.A. § 6355(e), shall be pre-approved by the District Attorney of Chester County or a designee.

(B) A juvenile arrested for an offense required to be prosecuted as a criminal matter by 42 Pa.C.S.A. § 6355(e) shall be immediately brought before the appropriate Magisterial District Judge for preliminary arraignment.

(C) The Magisterial District Judge conducting the preliminary arraignment shall:

1. In the case of an Arrest Without Warrant, pursuant to Pa.R.Crim.P. 519, contact the on-call District Attorney who shall pre-approve the Commonwealth's decision to proceed pursuant to 42 Pa.C.S.A. § 6355(e). The Magisterial District Judge shall then make the independent analysis required under Pa.R.Crim.P. 540(D).

2. The Magisterial District Judge shall inquire of the juvenile and/or the juvenile's parents and/or interested adult whether or not private counsel will be retained for the juvenile. In the absence of an affirmative response the Magisterial District Judge shall appoint the Public Defender of Chester County to represent the juvenile at the juvenile's preliminary hearing. The Magisterial District

Judge shall immediately notify the Public Defender of Chester County of said appointment by fax and in writing.

3. The Magisterial District Judge shall provide contact information for the Public Defender's Office to the juvenile and/or the juvenile's parents and/or interested adult. If the juvenile is not incarcerated, the Public Defender's Office shall be contacted, by the juvenile and/or the juvenile's parents and/or interested adult, as soon as possible, to undergo a financial qualification determination as to whether the juvenile is eligible for Public Defender's Office representation beyond the preliminary hearing. If the juvenile is incarcerated, an investigator from the Public Defender's Office will initiate contact for the purpose of determining eligibility for representation.

4. The Magisterial District Judge shall schedule the preliminary hearing pursuant to Pa.R.Crim.P. 540(F). In the case of a juvenile incarcerated at Chester County Prison, the hearing may not be extended pursuant to the provisions of Pa.R.Crim.P. 540(F)(1)(a) or Pa.R.Crim.P. 542(E) except upon order of a Judge of the Court of Common Pleas.

5. The attorneys for the Commonwealth and the juvenile defendant shall be attached for said preliminary hearing, which shall have priority over any other hearing in which counsel are involved in any District Court or Court of Common Pleas.

6. If the juvenile is detained by virtue of the juvenile's inability to post bail pursuant to Pa.R.Crim.P. 540(G) the juvenile shall be committed to the Chester County Prison.

7. All members of the minor judiciary are hereby granted the authority to commit a juvenile to the Chester County Prison notwithstanding the provisions of 42 Pa.C.S.A. § 6303(b).

8. The Magisterial District Judge shall immediately notify, by fax and in writing, the Court Administrator of Chester County (who will notify the Common Pleas Court Judge handling juvenile matters), the District Attorney of Chester County, the Public Defender of Chester County and the Director of the Juvenile Probation Office whenever a juvenile is committed to the Chester County Prison.

(D) The preliminary hearing shall be conducted in such a manner as to afford the Court of Common Pleas a full evidentiary record such that the Court of Common Pleas can rule on a motion for Writ of Habeas Corpus that the juvenile has in fact not committed an act required to be prosecuted as a criminal matter by 42 Pa.C.S.A. § 6355(e). The Magisterial District Judge shall determine on the record whether the Commonwealth has presented prima facie evidence that the matter should be prosecuted pursuant to 42 Pa.C.S.A. § 6355(e), taking into consideration documentary evidence and hearsay testimony, provided that the Attorney for the Commonwealth certifies that admissible evidence will be available from an identified source at the time of trial and/or sentencing. Said hearing shall be stenographically taken.

(E) In any case where a juvenile is held for the Court of Common Pleas for an offense, required to be prosecuted, as a criminal matter by operation of 42 Pa.C.S.A. § 6355(e), the juvenile through counsel shall, where appropriate, include in the juvenile's omnibus Pre-Trial Motion pursuant to Pa.R.Crim.P. 578 a petition for transfer from the criminal to juvenile court pursuant to 42 Pa.C.S.A. § 6322 and shall, where appropriate, file a Motion for Writ of Habeas Corpus, which motion shall be heard at the same time as the petition for transfer.

Counsel for the juvenile shall serve a copy of the petition for transfer upon the director of the Juvenile Probation Office.

(F) A juvenile held for the Court of Common Pleas for an offense required to be prosecuted as a criminal matter by operation of 42 Pa.C.S.A. § 6355(e) shall be assigned for trial purposes through the individual calendaring method to a list of judges maintained by the Court Administrator of Chester County.

(G) Any juvenile detained at the Chester County Prison shall, to the extent possible, be housed in an area separate from the general population and shall be observed on a twenty-four (24) hour basis through the use of video equipment and/or prison personnel.

(H) The Warden of the Chester County Prison shall, to the extent possible, accommodate the reasonable educational needs of the juvenile. In all other respects the juvenile shall be treated in the same manner as other inmates at the Chester County Prison.

(I) In the event that a juvenile is convicted of an offense required to be prosecuted as a criminal matter by operation of 42 Pa.C.S.A. § 6355(e), the Juvenile Probation Department in conjunction with the Adult Probation Department shall prepare a pre-sentence investigation memorandum on an expedited basis.

Rule 540.3. Preliminary Arraignment and Bail; Local Fugitives.

When the attorney for the Commonwealth has filed an information with the Court of Common Pleas without a preliminary hearing, pursuant to C.C.R.Crim.P. 565(D), because the defendant had been declared a fugitive, the Magisterial District Judge will retain limited jurisdiction over the case for the sole purpose of conducting a preliminary arraignment and setting bail, once the defendant is located, after which the remainder of the case will be forwarded to the Clerk of Courts, for further proceedings.

Rule 543.1. Disposition of Case at Preliminary Hearing; Summary Offenses.

In order to establish uniform procedures for Magisterial District Judges when conducting preliminary hearings that involve summary offenses charged on a criminal complaint with misdemeanor and/or felony charges, the following procedure shall be followed:

(A) When a Magisterial District Judge is conducting a preliminary hearing on misdemeanor and/or felony charges the Commonwealth is not required to provide evidence to substantiate summary criminal offenses included on the criminal complaint. At the conclusion of the preliminary hearing, if the Magisterial District Judge determines the Commonwealth has established a prima facie case with respect to the misdemeanor and/or felony charges, the Magisterial District Judge should hold those charges and the summary offenses over to the Court of Common Pleas.

(B) Upon completion of the preliminary hearing, if the Magisterial District Judge determines the Commonwealth has not established a prima facie case with respect to the misdemeanor and/or felony charges, the Magisterial District Judge should ask the attorney for the Commonwealth whether the Commonwealth intends to refile the misdemeanor and/or felony charges. If the Commonwealth's response is yes, no further evidence is required and the Magisterial District Judge shall state the lack of a prima facie case ruling in open Court. If the Commonwealth's response is that the defendant will not be

rearrested, the Magisterial District Judge shall allow the Commonwealth the opportunity to immediately supplement the hearing with additional evidence concerning the summary offenses, if needed, and then make a finding of guilt or innocence by proof beyond a reasonable doubt in regard to the charged summary offenses.

Rule 543.2(a). Motions Challenging Preliminary Hearing (Habeas Corpus).

All motions challenging the action of a Magisterial District Judge in finding a prima facie case shall have the substantive characteristics of a habeas corpus motion, but shall be captioned "Commonwealth v. Defendant," together with the term number, if any, or the offense tracking number. Such motions need consist only of a motion and notice of hearing. A writ shall be prepared only when specifically requested by the motion, and shall be directed to such custodian as shall be named in the motion. The motion and notice shall be assigned a hearing date on the miscellaneous list by the Court Administrator, and shall be filed with the Clerk of Courts. Where an expedited hearing is requested, the assigned judge may order an accelerated listing.

Rule 543.2(b). Sharing Cost of Transcript.

In all cases where the notes of testimony from a preliminary hearing are taken and/or transcribed by a court reporter, the entire cost of the services of the court reporter and the notes of testimony shall be borne equally by all parties requesting transcripts at any time. The original of the notes of testimony shall be provided to the party who engaged the services of the reporter.

Rule 543.2(c). Providing Transcript to Court, and Opposing Party.

It shall be the duty of the party filing such motion to obtain a transcript of the record of the preliminary hearing, or relevant portion thereof, regardless of the manner in which the record was made, and make such transcript available to the Court, and the opposing party, as soon as practicable.

Rule 543.2(d). Transcripts From Tape Recordings.

If the preliminary hearing was recorded electronically, each party shall review the transcript, and, prior to the hearing, note any objections or discrepancies for the Court. The parties shall attempt to resolve any such discrepancies prior to the hearing.

Rule 543.2(e). Stipulations in Absence of Record.

Where no record of the preliminary hearing has been made, or upon motion of either party, the Court may hear testimony or consider stipulations of the parties to supplement the record from the preliminary hearing.

**PART E
INFORMATIONS**

Rule 565. Presentation of Information Without Preliminary Hearing; Fugitives.

(A) When the attorney for the Commonwealth certifies to the Court of Common Pleas that a preliminary hearing cannot be held for a defendant for good cause, the Court of Common Pleas may grant leave to the attorney for the Commonwealth to file an information with Court of Common Pleas without a preliminary hearing.

(B) When a juvenile has been transferred for prosecution as an adult, the attorney for the Commonwealth may file an information with the Court without a preliminary hearing.

(C) Nothing in this rule is intended to preclude the attorney for the Commonwealth from filing an information or from having the date for the arraignment scheduled in those cases in which the issuing authority has conducted the preliminary hearing in the defendant's absence as provided for in Pa.R.Crim.P. 543(D).

(D) Where the defendant has been declared a fugitive by the Magisterial District Judge, and a preliminary hearing cannot be held in the defendant's absence pursuant to Pa.R.Crim.P. 543(D), the attorney for the Commonwealth may file an information with Court of Common Pleas without a preliminary hearing, under the following circumstances:

1. The Magisterial District Judge has declared the defendant a fugitive after a police officer or constable reports that the defendant cannot be located, and the police officer or constable completes an Affidavit of Due Diligence that the following steps have been taken to locate the defendant:

- Contact the defendant's last known address.
- Attempt to find the defendant at place of business or usual habitat.
- Contact neighbors and friends of the defendant.
- Verify that the defendant's name is on NCIC (National Crime Information Center); Pennsylvania's CLEAN (Commonwealth's Law Enforcement Assistance Network); and Chester County's WEB (Warrant Enforcement Bureau).
- Contact the post office to learn the whereabouts of the defendant.
- Contact state and county probation and parole officers.
- Contact county prison personnel.
- Make such other effort, as the serving officer deems appropriate under the circumstances of the case, such as, contacting any known telephone numbers of the defendant.

• Affidavits of Due Diligence shall also include a statement from the police officer or constable that they cannot locate the defendant, and believes the defendant to be a fugitive.

2. After a reasonable time, usually thirty (30) days after the issuance of the warrant that cannot be served, the Magisterial District Judge shall notify the arresting officer or the constable holding the warrant that they must come to the Magisterial District Judge's Office and complete the Affidavit of Due Diligence.

3. Once the Affidavit of Due Diligence has been completed and filed with the Magisterial District Judge, the Magisterial District Judge shall forward the file to the Clerk of Courts in accordance with procedures established by the Court Administrator. See C.C.R.Crim.P. 540.3 (retained jurisdiction for purpose of conducting preliminary arraignment and setting bail).

(E) The District Attorney of Chester County certifies that a preliminary hearing cannot be held for a defendant who has been declared a fugitive, pursuant to C.C.R.Crim.P. 565(D)(1), for the following good cause show:

- The defendant will be a fugitive for the foreseeable future, and may never be located.
- Decisions concerning extradition are expedited when the file is with the Court of Common Pleas.

- The extradition process is expedited when the file is with the Court of Common Pleas.

- Fugitive cases are more effectively monitored when they are centralized with the Court of Common Pleas, as this helps limit potential Pa.R.Crim.P. 600 problems, and promotes the dismissal of older fugitive cases that should be closed after a period of time.

- If the defendant is found, the defendant can petition the Court of Common Pleas for a remand for a preliminary hearing, or to have the Court of Common Pleas conduct such a hearing by way of a petition for a writ of habeas corpus.

(F) The Court of Common Pleas grants leave to the attorney for the Commonwealth to file an information with Court of Common Pleas without a preliminary hearing when the conditions of C.C.R.Crim.P. 565(D) are met, for the reasons set forth in C.C.R.Crim.P. 565(E).

(G) Nothing in this rule shall prevent the defendant from filing a petition for a remand to the Magisterial District Judge for the purpose of conducting a preliminary hearing, or prevent the Court of Common Pleas from conducting a preliminary hearing upon petition, except where the issuing authority has conducted the preliminary hearing in the defendant's absence as provided for in Pa.R.Crim.P. 543(D).

PART F PROCEDURES FOLLOWING FILING OF INFORMATION

Rule 571.1. Notice From Issuing Authority.

At the conclusion of a preliminary hearing in which a defendant is bound over for action by the Court of Common Pleas, the issuing authority will provide written notice of the date, place and time of arraignment.

Rule 571.2. Role of Court Administrator.

Arraignment may be conducted by the Court Administrator or a designated assistant.

Rule 571.3. Presence of Defendant.

A defendant shall be present at the arraignment unless all of the following requirements are met:

(i) the defendant is represented by counsel of record; and

(ii) prior to the date of arraignment, the defendant has filed a written waiver of arraignment with the attorney for the Commonwealth, signed by both defendant and defendant's counsel.

Rule 571.4. Consequences of Failure to Appear.

Upon failure of a defendant to be present when required hereby, the defendant's bail may be forfeited and a bench warrant may be issued.

PART F(1) MOTION PROCEDURES

Rule 575. Motions and Orders.

Pa.R.Crim.P. 575 shall govern the procedures for motions and answers.

Rule 575(A). Motions; Notice of Hearing.

The use of a rule returnable and/or a rule to show cause in motions in criminal matters is abolished. Before a motion is filed by either party, it shall be covered with a Notice of Hearing, completed by the Court Administrator, setting forth the time and place of the hearing.

Rule 575(B). Answers to Motions.

Unless specifically so ordered by the Court, neither party shall be required to file a written answer to any motion.

Rule 576. Filing and Service by Parties.

Pa.R.Crim.P. 576 shall govern the procedures for the filing and service of motions and answers by the parties.

Rule 576.1. Filing and Service of Motions.

Before a motion is filed in a criminal matter, the Court Administrator shall complete the Notice of Hearing attached thereto. Thereafter, such motion and Notice shall be filed with the Clerk of Courts, and a copy delivered to the opposing party.

Rule 577. Procedures Following Filing of Motion.

Pa.R.Crim.P. 577 shall govern the procedures following the filing of motion.

Rule 580. Pre-Trial Motion

All other pre-trial motions shall be scheduled by the Court Administrator for hearing on the Miscellaneous List, unless deferred by the moving party for hearing immediately prior to trial.

PART G PLEAS PROCEDURES

Rule 590.1. Preparation of Guilty Plea Form.

During the course of counseling a defendant relative to any plea of guilty or nolo contendere in the Court of Common Pleas, counsel shall review with the defendant a Chester County guilty plea form available from the Court Administrator, and shall explain to the defendant the contents of that form. Such forms shall be initialed and signed where appropriate and counsel's signature thereon shall constitute a certification by the attorney that the attorney has read, discussed and explained the plea form with the defendant, and that to the best of counsel's knowledge, information and belief, the defendant understands what the defendant is doing by entering the plea. Guilty plea forms shall be filed in open Court at the time of entry of any plea of guilty or nolo contendere. For pleas to a summary offense, the plea form need only consist of the disposition page, and need only state the offenses to which the defendant is pleading and the sentence which the defendant is to receive.

Rule 590.2. Sentencing Guideline Form.

Prior to entering the plea, the defendant shall review with counsel the sentencing guidelines. Completed forms, reviewed by both counsel will be submitted to the Court.

Rule 590.3. Prior Convictions.

The attorney representing the Commonwealth at the time the plea is entered shall be familiar with the case, and shall advise the Court of any prior convictions or adjudications of the defendant for felonies and misdemeanors.

Rule 590.4. Plea Agreements in Writing.

All plea agreements shall be in writing, on Chester County guilty plea colloquy forms, signed by the defendant, defense counsel, (if represented) and the Assistant District Attorney.

Rule 591. Motion to Challenge or Withdraw Plea.

Any motion to withdraw or challenge a plea of guilty or nolo contendere shall include a separate page addressed to the court reporter requesting transcription of the proceeding at which the plea was entered and of the

sentencing proceeding, if any. The entire transcripts of such proceedings shall be prepared unless limited by the Court. Copies of the motion shall be delivered to the trial judge, the court reporter, and the District Attorney immediately after filing thereof.

**CHAPTER 6. TRIAL PROCEDURES IN
COURT CASES**

**PART C(2)
CONDUCT OF JURY TRIAL**

Rule 647. Points for Charge.

Each requested point for charge shall cite the authority therefor and be set forth on a separate sheet of paper.

**CHAPTER 7. POST-TRIAL PROCEDURES IN
COURT CASES**

**PART A
SENTENCING PROCEDURES**

Rule 702.1. Criminal History Information.

When a case is bound over to Court, the District Attorney shall immediately obtain criminal history information records from the Federal Bureau of Investigation and the Pennsylvania State Police Bureau of Criminal Investigation.

Rule 702.2. Forwarding Criminal History Information.

Upon receipt of those records, the District Attorney shall immediately forward copies to defense counsel and the Adult Probation Department. In the event that no record exists, the District Attorney shall report that information to the Adult Probation Department.

Rule 702.3. Role of Adult Probation Department.

Upon receipt of criminal history information records, the Adult Probation Department shall obtain such information as may be missing from the reports, including disposition, sentences and the specific offenses of which the accused has been convicted and any other information necessary to calculate the defendant's prior record score.

Rule 702.4. Delivery of Criminal History to Parties.

Upon the completion of the update of the criminal history information, the Adult Probation Department shall send copies of the updated information to the District Attorney and defense counsel.

Rule 702.5. Preparation of Sentencing Guideline Form by Parties.

The District Attorney shall, after consultation with defense counsel and prior to sentencing, supply the sentencing judge with a sentencing guideline form completed except for the disposition section. Defense counsel shall be provided with a copy of the guideline form to be submitted by the District Attorney. Defense counsel shall immediately notify the sentencing judge of any objection to the sentencing guideline form submitted by the District Attorney, and may, where appropriate, provide a substitute guideline form reflecting the defense position.

Rule 702.6. Completion of Sentencing Guideline Form by Judge.

The sentencing judge shall be responsible for the final completion of the sentencing guideline forms and for the transmittal of those forms to the Commonwealth of

Pennsylvania. For Plea Agreements the District Attorney shall complete the disposition sections.

Rule 704.1. Reporting to Probation Office.

Where a defendant receives a sentence of county probation or immediate parole, the defendant shall report to the Adult Probation Office immediately after the imposition of sentence, or immediately after the defendant's discharge from custody, whichever is later.

Rule 704.2. Parole Orders.

In all cases where the defendant receives a sentence giving him immediate parole, it shall be the responsibility of defendant's counsel to provide the Court with a written order for immediate parole and to deliver two (2) certified copies of the signed order to the Chester County Sheriff for delivery to the institution of confinement.

Rule 704.3. Parole After Sentence of 30 Days or Less.

In all cases where the Court has signed a conditional order of parole to be effective after defendant serves thirty (30) days or less prison sentence, defendant's counsel shall provide him with a certified copy of said order immediately after sentencing. The defendant shall present that certified parole order at the prison when the defendant reports to begin serving the sentence.

Rule 704.4. Form of Parole Order.

Forms for parole orders not involving special conditions shall be available in the Court Administrator's Office.

**PART B
POST-SENTENCE PROCEDURES**

Rule 720.1. Filing and Delivery of Transcripts.

Transcript of the trial shall be delivered by the court reporter to the Clerk of Courts within sixty (60) days from the service upon the court reporter of the request for transcript.

Rule 720.2. Time for Filing of Post-Sentence Motion Briefs.

Defendant's brief shall be filed thirty-five (35) days after the filing of the post-sentence motion unless otherwise ordered by the Court. The Commonwealth's brief shall be due thirty-five (35) days from the date of filing of defendant's brief. Briefs shall be filed with the Clerk of Courts and a copy to the Judge and opposing party.

Rule 720.3. Extension of Post-Sentence Motion Briefing Schedule.

Any party, for good cause, may apply to the Court for an extension of time to file the post-sentence motion brief. The application is to be filed with the Clerk of Courts and a copy is to be delivered to the trial judge and opposing counsel. The application shall identify the moving party, state the reasons for the requested extension, and recite whether the request for extension is opposed or unopposed.

**CHAPTER 8. SPECIAL RULES IN CASES IN
WHICH DEATH SENTENCE IS AUTHORIZED**

(Reserved)

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

(Reserved)

[Pa.B. Doc. No. 05-1769. Filed for public inspection September 23, 2005, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Suspension

Notice is hereby given that by Order of the Supreme Court of Pennsylvania dated September 8, 2005, Timothy John Blatt is Suspended on Consent from the Bar of this Commonwealth for a period of six months, to be effective October 8, 2005. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

ELAINE M. BIXLER,
Secretary
The Disciplinary Board of the
Supreme Court of Pennsylvania

[Pa.B. Doc. No. 05-1770. Filed for public inspection September 23, 2005, 9:00 a.m.]
