

# THE COURTS

## Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CH. 5]

### Proposed Amendments to Pa.R.Crim.P. 575(C)

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Pa.R.Crim.P. 575(C) that would establish uniform format requirements for all pleadings filed in criminal cases. These format requirements are comparable to the requirements in Pennsylvania Rule of Appellate Procedure 124 and proposed new Pennsylvania Rule of Civil Procedure 204.1. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's considerations in formulating this proposal. Please note the Committee's Reports should not be confused with the official Committee Comments to the rules. Also note the Supreme Court does not adopt the Committee's Comments or the contents of the explanatory Reports.

The text of the proposed amendments to Rule 575(C) precedes the Report. Additions are shown in bold; deletions are in bold and brackets.

We request that interested persons submit suggestions, comments, or objections concerning this proposal to the Committee through counsel,

Anne T. Panfil  
Chief Staff Counsel  
Supreme Court of Pennsylvania  
Criminal Procedural Rules Committee  
5035 Ritter Road, Suite 100  
Mechanicsburg, PA 17055  
fax: (717) 795-2106  
e-mail: criminal.rules@pacourts.us

no later than Wednesday, March 8, 2006.

*By the Criminal Procedural Rules Committee*

NICHOLAS J. NASTASI,  
*Chair*

### Annex A

#### TITLE 234. RULES OF CRIMINAL PROCEDURE CHAPTER 5. PRETRIAL PROCEDURES IN COURT CASES

#### PART F(1). Motion Procedures

#### Rule 575. Motions and Answers.

\* \* \* \* \*

#### (C) Format of Motions, Answers, and Briefs

All motions, answers, and briefs must conform to the following requirements:

(1) The document shall be on 8 1/2 inch by 11 inch paper.

(2) The document shall be prepared on white paper (except for dividers and similar sheets) of good quality.

(3) The first sheet shall contain a 3-inch space from the top of the paper for all court stampings, filing notices, etc.

(4) The text must be double spaced, but quotations more than two lines long may be indented and single spaced. Margins must be at least one inch on all four sides.

(5) The lettering shall be clear and legible and no smaller than point 12. The lettering shall be on only one side of a page, except that exhibits and similar supporting documents may be lettered on both sides of a page.

(6) Documents and papers shall be firmly bound.

#### (D) Unified Practice

\* \* \* \* \*

#### Comment

\* \* \* \* \*

Paragraph (C), added in 2006, sets forth the format requirements for all motions, answers, and briefs filed in criminal cases. These new format requirements are substantially the same as the format requirements in Pennsylvania Rule of Appellate Procedure 124(a) and Pennsylvania Rule of Civil Procedure 204.1.

The format requirements in paragraph (C) are not intended to apply to pre-printed and computer-generated forms prepared by the Administrative Office of Pennsylvania Courts; to charging documents; to documents routinely used by court-related agencies; or to documents routinely prepared or utilized by the courts.

Pro se defendants may submit hand written documents that comply with the other requirements in paragraph (C) and are clearly readable.

Paragraph [(C)] (D), titled "Unified Practice," was added in 2004 to emphasize that local rules must not be inconsistent with the statewide rules. Although this prohibition on local rules that are inconsistent with the statewide rules applies to all criminal rules through Rule 105 (Local Rules), the reference to the specific prohibitions is included because these types of local rules have been identified by practitioners as creating significant impediments to the statewide practice of law within the unified judicial system. See the first paragraph of the Rule 105 Comment. The term "local rule" includes every rule, regulation, directive, policy, custom, usage, form or order of general application. See Rule 105(A).

\* \* \* \* \*

Although paragraph [(C)] (D) precludes local rules that require a proposed order be included with a motion, a party should consider whether to include a proposed order. Proposed orders may aid the court by defining the relief requested in the motion or answer.

**Official Note:** Former Rule 9020 adopted October 21, 1983, effective January 1, 1984; renumbered Rule 574 and amended March 1, 2000, effective April 1, 2001; rescinded March 3, 2004, effective July 1, 2004. Former Rule 9021 adopted October 21, 1983, effective January 1, 1984; renumbered Rule 575 and amended March 1, 2000, effective April 1, 2001; Rules 574 and 575 combined as Rule 575 and amended March 3, 2004, effective July 1, 2004; amended , 2006, effective , 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).

\* \* \* \* \*

**Report explaining the addition of the format requirements in paragraph (C) published at 36 Pa.B. 815 (February 18, 2006).**

## REPORT

### *Proposed Amendments to Pa.R.Crim.P. 575(C)*

#### **Requirements for the Format of Pleadings Filed in Criminal Cases**

### **I. INTRODUCTION**

During the course of the Committee's review of local rules pursuant to Rule 105, the Committee noted that there are various local rules establishing requirements for the format of pleadings and other documents filed in the judicial district. We also noted that there are is little uniformity in these format requirements. In view of the divergent requirements, the Committee agreed a Rule of Criminal Procedure governing the format of pleadings filed in criminal cases would promote statewide uniformity of practice and procedure and facilitate the statewide practice of law.

In preparation for drafting such a rule, the Committee looked at the statewide and local Pennsylvania rules of procedure<sup>1</sup> and other jurisdictions to get some idea of what is ordinarily included in format rules. We found that the format rules ran the gamut from extremely detailed to minimal detail, covering such things as types and size of paper, types, size, and color of print, spacing and margins, binding, headers and footers, page numbering, and captions and titles. From this review, the Committee agreed that the format requirements set forth in Pa.R.A.P. 124(a) provided adequate detail for a criminal format rule. In addition, the members concluded the bench and bar would be best served if, as much as possible, there are uniform format requirements for the documents filed in the different state courts. Accordingly, the Committee is proposing new format requirements that are substantially the same as Appellate Rule 124.<sup>2</sup>

### **DISCUSSION**

The first issue the Committee addressed is the placement of new format requirements. Agreeing that the format requirements should apply only to motions, answers, and briefs, the Committee is proposing that the new format requirements be in Rule 575 as new paragraph (C).

New paragraph (C) incorporates without modification the provisions of Appellate Rule 124(a)(1), (2), and (3).<sup>3</sup>

<sup>1</sup> Pennsylvania Rule of Appellate Procedure 124 (Form of Papers; Number of Copies) is the only statewide procedural rule with format requirements.

<sup>2</sup> In view of the benefits to the unified judicial system of having uniform format requirements in the state courts, the Committee communicated to the Civil Procedural Rules Committee our plan to propose format requirements substantially the same as Appellate Rule 124. The Civil Rules Committee has agreed to propose a similar change, and contemporaneously is publishing proposed Recommendation No. 212 for a new Rule of Civil Procedure 204.1 (Pleadings and Other Legal Papers, Format).

<sup>3</sup> Pennsylvania Rule of Appellate Procedure 124(a) provides:  
(a) *Size and other physical characteristics.* All documents filed in an appellate court shall be on 8 1/2 inch by 11 inch paper and shall comply with the following requirements:

(1) The document shall be prepared on white paper (except for covers, dividers and similar sheets) of good quality.

(2) The first sheet (except the cover of a paperback) shall contain a 3-inch space from the top of the paper for all court stampings, filing notices, etc.

(3) The text must be double spaced, but quotations more than two lines long may be indented and single spaced. Except as provided in subdivision (2), Margins must be at least one inch on all four sides.

(4) The lettering shall be clear and legible and no smaller than point 11. The lettering shall be on only one side of a page, except that exhibits and similar supporting documents and paperbooks may be lettered on both sides of a page.

Although Appellate Rule 124(a)(4) provides that the font size of the type by no less than 11 point, recognizing that a font size of 12 point is more frequently utilized for type print, the Committee agreed the requirement for font size in Rule 575(C) should be no smaller than 12 point. In all other respects, paragraph (a)(4) is included in Rule 575(C). The only other variance from Appellate Rule 124 is with regard to paragraph (a)(5). The Committee did not think it is necessary to require that any metal fasteners or staples be covered. We did agree that paragraph (C) should include the requirement that the documents must be firmly bound.

The Committee also is proposing some revisions of the Rule 575 Comment. First, recognizing that there are criminal cases in which the defendant is proceeding pro se and might not have access to a word processor or typewriter, the Comment explains that pro se defendants may submit hand written documents that comply with the other requirements of paragraph (C) if the documents are clearly readable.

During the Committee's discussions, some members questioned whether the new format requirements would apply to documents such as the criminal information or the criminal complaint or documents preprinted or computer generated documents prepared by the Administrative Office of Pennsylvania Courts, etc. Agreeing that this expansive reading of proposed new paragraph (C) was not what the Committee intends, the Comment specifically excludes "pre-printed and computer-generated forms prepared by the Administrative Office of Pennsylvania Courts; charging documents; documents routinely used by court-related agencies; and documents routinely prepared or utilized by the courts."

Finally, as an aide to bench, bar, and others filing documents in Pennsylvania courts, the Comment includes a cross-reference to the comparable format rules in the Rules of Appellate Procedure, Rule 124, and the Rules of Civil Procedure, proposed new Rule 204.1.

[Pa.B. Doc. No. 06-271. Filed for public inspection February 17, 2006, 9:00 a.m.]

## **Title 249—PHILADELPHIA RULES**

### **PHILADELPHIA COUNTY**

#### **Rescinded, Adopted and Amended Rules of Criminal Procedure for the Philadelphia Municipal Court; General Court Regulation No. 2006-02**

#### **Order**

*And Now*, this 31st day of January, 2006, the Board of Judges of Municipal Court having voted at the Board of Judges' meeting held on November 18, 2005 to rescind, adopt and amend Municipal Court Rules of Criminal Procedure 21, 406-7, 426, 431, 438, 515, 530, 550, 553, 555, 558, 600, 645, 710, 840, 850, and 860, as applicable, *It Is Hereby Ordered* that Municipal Court Rules of Criminal Procedure 21, 406-7, 426, 431, 438, 515, 530, 550, 553, 555, 558, 600, 645, 710, 840, 850, and 860 are rescinded, adopted and amended as follows.

This General Court Regulation is issued in accordance with Pa.R.Crim.P. 105 and, as required, the original

(5) Any metal fasteners or staples must be covered. Documents and papers must be firmly bound.

General Court Regulation shall be filed with the Prothonotary in a Docket maintained for General Court Regulations issued by the President Judge of the Municipal Court of Philadelphia, and copies shall be submitted to the Administrative Office of Pennsylvania Courts, the Clerk of Quarter Sessions, and the Criminal Procedural Rules Committee. Copies of the Order shall also be submitted to American Lawyer Media, *The Legal Intelligence*, Jenkins Memorial Law Library, and the Law Library for the First Judicial District of Pennsylvania, and posted on the website of the First Judicial District: <http://courts.phila.gov>.

*By the Court*

LOUIS J. PRESENZA,  
*President Judge*

### **Rules of Criminal Procedure for the Philadelphia Municipal Court**

The following Rules of Criminal Procedure were rescinded, adopted and amended as set forth by the Municipal Court Board of Judges on 18 November 2005; effective on 15 March 2006.

#### **Rule 21 Municipal Court Emergency Judge Procedures**

The President Judge of the Municipal Court shall designate an Emergency Judge who shall be available for all [ **civil and** ] criminal and civil emergency matters, including appeals from bail set by a Bail Commissioner. [ **during the evening hours and on weekends. The President Judge shall also designate a Bail Appeal Judge who shall hear all such bail appeals during the weekday working hours.** ] The name and phone numbers of the Emergency [ **and Bail Appeal Judges** ] Judge shall be listed in the weekly Court schedule and available through the City Hall switchboard (215-686-1776).

*Amended by the Municipal Court Board of Judges on 18 November 2005; effective 15 March 2006.*

#### **Rule 406-7 Standards for Appointment of Counsel in Misdemeanor Cases**

##### **[ A. Qualifications for Counsel ]**

An attorney may be appointed as counsel only if that attorney has:

1. [ **Has** ] been admitted to the bar of the Pennsylvania Supreme Court or admitted to practice [ **pro hac vice**; ] pro hac vice.
2. [ **Has** ] completed at least one course or has viewed one video-taped program on Municipal Court [ **criminal justice** ] practice within the past year, is familiar with the Pennsylvania Rules of Criminal Procedure, including, but not limited to, [ **Rules 6000-6013,** ] **Rules 1000-1013** and is readily available to accept appointments, or has demonstrated experience in Municipal Court cases.

*Amended by the Municipal Court Board of Judges on 18 November 2005; effective 15 March 2006.*

#### **Rule 426—RESCINDED**

##### **[ Compensation Rates for Court-Appointed Counsel in Municipal Court**

###### **A. Non-Homicide Criminal Cases**

(1) Counsel, not exceeding one, who has been assigned to represent a defendant charged with a

non-homicide criminal offense shall, at the conclusion of the representation, or any segment thereof, be compensated for his or her services in such representation and reimbursed for all reasonable expenses advanced by counsel which were necessarily incurred.

(2) Upon the conclusion of counsel's representation under this Rule, or any segment thereof, the Judge sitting at the trial of the case, if there is a trial; otherwise, the Judge presiding over the disposition of the matter shall, after the filing of the claim and sworn statement in accordance with Phila.Crim.R. 425, allow such counsel all reasonable personal and incidental expenses, and compensation for services rendered.

(3) Counsel shall be compensated at a rate not exceeding forty dollars (\$40) per hour for time expended in a Court of record and at the rate of thirty dollars (\$30) per hour for time reasonable expended out of Court. For representation of a defendant in a case in which one or more felonies are charged, the compensation paid to an attorney shall not exceed fifteen hundred dollars (\$1,500). In a case in which only misdemeanors are charged, payment shall not exceed seven hundred and fifty dollars (\$750).

(4) Payment in excess of the limits stated herein may only be made, if the Judge to whom the application is made certifies to the President Judge of the Municipal Court that because of extraordinary circumstances set forth, such additional payments are necessary to provide fair compensation for representation. Any payment in excess of the above limits will be at the discretion of the President Judge of the Municipal Court.

(5) Assigned counsel may also make a written request to obtain investigative, expert or other services necessary to an adequate defense in accordance with Phila.Crim.R. 425 G(4). Upon finding after proper inquiry that such services are necessary, the Court shall authorize counsel to obtain such services on behalf of a defendant. The compensation paid to a person for such services rendered to a defendant shall not exceed five hundred dollars (\$500).

(6) Counsel so assigned shall not, except with prior approval of the Court, receive or contract to receive directly or indirectly, any compensation for such services or reimbursement for expenses from any source other than herein provided.

(7) Counsel shall be appointed under this Rule only when, because of conflict of interest or other sufficient reason, the individual cannot properly be represented by the Defender Association of Philadelphia. The provisions of this Rule shall not apply where the defendant is represented by the Defender Association of Philadelphia.

###### **B. Appointments**

Appointments made pursuant to this Rule continue through all stages of the proceedings in accordance with Phila.Crim.R 425 (B).

###### **C. Payment**

Such allowance of expenses and compensation under this Rule shall be charged upon the City and County of Philadelphia, to be paid by the City Treasurer, upon the certification of the appropriate Judge.

**D. Reimbursement**

(1) The defendant or the spouse, child (except as hereinafter provided), father and mother of every indigent person, whether a public charge or not shall, to the extent of his, her or their financial ability, reimburse the City and County of Philadelphia for compensation and expenses included and paid to Court-assigned counsel at such rate as the Court shall order and direct. No child shall be liable for the support of any parent who abandoned the child and persisted in the abandonment for a period of ten years during the child's minority.

(2) The Common Pleas Court shall have the power to hear, determine and make orders and decrees in such cases upon the petition of the City and County of Philadelphia. Such order shall have the force and effect of a judgment for the payment of money and shall be entered in the judgment index of the Office of the Prothonotary.

(3) In all cases where an order has been made by the Court for reimbursement to the City and County of Philadelphia for compensation and expenses paid to Court-assigned counsel and the said order has not been complied with, the Court, or any Judge thereof, upon affidavit or petition filed setting forth that the person on whom the said order has been made has not complied with the said order, shall issue an attachment directed to the Sheriff, directing and commanding that the person named as having failed to comply with said order be brought before the Court at such time as the Court may direct. If it shall appear to the Court, after hearing, that the person on whom the said order was made has willfully neglected or refused to comply with said order, the Court may adjudge said person in contempt of Court and, in its discretion, may commit said person to the county jail for a period not exceeding six months. ]

**Rule 426 Compensation for Court-Appointed Counsel in Municipal Court**

Compensation for court-appointed counsel in Municipal Court is governed by the First Judicial District's Guaranteed Fee System as amended by the Administrative Governing Board effective March 10, 1997. Compensation shall be a flat fee of \$350.00 per case. In extraordinary cases, counsel may receive in excess of \$350.00 upon petition and approval of the Municipal Court President Judge or a designee.

*Former Rule 426 rescinded and new rule adopted by the Municipal Court Board of Judges on 18 November 2005; effective 15 March 2006.*

**Rule 431 Attorneys with Twenty (20) or More Cases in Philadelphia Municipal Court.**

Counsel representing defendants in [ twenty (20) ] 20 or more criminal cases in Philadelphia Municipal Court which have not been brought to trial within [ four [ (4) ] 4 months of Preliminary Arraignment ( [ such category will ] hereinafter [ be ] referred to as "case inventory") shall be precluded from entering an appearance for or in any other manner representing any additional defendant or defendants in any other criminal case in any [ Court ] court in this county until such time as said case inventory is reduced to less than [ twenty (20) ] 20 cases.

(A) [ It shall be the duty of the Deputy Court Administrator for Data Processing, at ] At the end of every month, [ to ] the court will prepare a list of attorneys who, at such time, represent such [ an ] a case inventory. [ Said ] The list shall include the attorney's name, the number of cases in [ such ] the case inventory, the name of [ each ] the defendant in each [ such ] case, [ the charges ] and the [ Court ] court term and number. A copy of this list shall be [ furnish ] provided to the [ Municipal Court District Judge ] Supervising Judge of the Municipal Court's Criminal Division [ to each counsel named ] and the Office of the District [ Attorney, ] Attorney. The Supervising Judge shall review the list and give [ with ] notice to counsel that this Rule will become operative, unless [ , within ten (10) days, a petition is filed in accordance with (B) hereof. ] within 10 days of receipt of the letter counsel provides a written response to the Supervising Judge explaining why the rule should not become operative; such explanation to include the accuracy of the list, the responsibility for the delay, the existence of extraordinary circumstances or compelling reasons justifying exemption.

[ (B) Counsel affected by the application of this Rule shall have the right to petition the President Judge of the Municipal Court to assign a Judge thereof to promptly fix a hearing for the purpose of determining:

(1) The accuracy of the list prepared by the Court Administrator,

(2) The responsibility for the delay in any of the listed cases,

(3) The existence of extraordinary circumstances or compelling reasons justifying exemption from the Rule. The filing of such a petition shall operate as a supersedes. ]

(B) If the Supervising Judge determines that a hearing is needed, one shall be scheduled. Notice of the hearing shall be given to counsel and the District Attorney, both of who shall have the right to be heard and to present documentary and other pertinent evidence.

[ (C) Notices of this hearing shall be given to petitioner and the District Attorney, both of whom shall have the right to be heard and to present documentary and other pertinent evidence. The Court, at the conclusion of the hearing, shall promptly make findings of fact. ]

(C) The Supervising Judge shall make Findings of Fact.

(D) Upon finding that [ a petitioner's ] counsel's excess case inventory has not been [ occasioned ] caused by [ his ] counsel's inability to appear for cases [ which ] that are otherwise ready for disposition, the [ Court ] Supervising Judge shall enter an Order relieving [ him ] counsel from the application of this [ Rule accompanied by such Order as may be appropriate. ] Rule.

(E) Where [ subject ] counsel has one or more partners or associates in the practice of law, entries of

appearance by [said] any partner[s] or associate[s] shall not be considered in determining the defendants represented by counsel whose cases have not been brought to trial within the [prescribed] 4 month time period described in section (A). In no event shall substitution of appearances be permitted by counsel where the apparent purpose of such substitution is to avoid compliance with this Rule. [Defendants who are fugitives or whose cases are in deferred status by reason of incompetence or other good and sufficient reason, shall not be included in determining the number of cases outstanding for a period in excess of four (4) months.]

*Amended by the Municipal Court Board of Judges on 18 November 2005; effective 15 March 2006.*

#### Rule 438 Crash Court.

All defendants charged with a Municipal Court case, who do not make bail within [ten (10)] 10 days after preliminary arraignment, and all defendants charged with a felony, whose preliminary hearing is continued for more than [twenty (20)] 20 days, shall be listed forthwith in Crash Court at a Philadelphia county prison.

Crash Court shall be conducted [every weekday and shall be presided over by a senior Trial Commissioner.] one day a week and shall be presided over by a Municipal Court Judge. Attorneys from the District Attorney's Office and [the Office of] the Defender Association shall be present, together with a Quarter Sessions Clerk and the defendant.

At Crash Court, each case shall be reviewed and one of the following actions may be taken:

1. Agreement by the District Attorney to reduce bail;
2. Agreement by the District Attorney to reduce the charge to a summary criminal offense and accept a guilty plea;
3. [Relistment of] Relisting the matter within [forty-eight (48)] 48 hours [in City Hall] to the Criminal Justice Center for a guilty plea;
4. [Relistment of] Relisting the matter on an accelerated basis for trial or preliminary hearing;
5. [Existing bail and next action date maintained.] Bail to remain the same and date for next action set.

*Amended by the Municipal Court Board of Judges on 18 November 2005; effective 15 March 2006.*

#### Rule 515 Bench Warrant Hearings

[In all cases where the defendant appears late in Court,] If a defendant arrives late to court after a Bench Warrant has been issued and the Commonwealth's witnesses have been excused, [the Trial Judge should hold] the judge may hold an immediate [B] bench [W] warrant [H] hearing [at that time and] to determine whether [or not] the defendant's lateness was willful. If the [Trial J] judge [makes a determination] determines that the lateness was [in fact] willful, the judge may increase the defendant's bail [may be increased if the Court believes that there

is an] if it appears that there is an increased likelihood that the defendant will fail to appear at the next listing.

*Amended by the Municipal Court Board of Judges on 18 November 2005; effective 15 March 2006.*

#### Rule 530 Arrest Warrants Issued Outside City

The following procedure is applicable to cases in which [troopers of] the Pennsylvania State Police (State Police) make arrests in Philadelphia on warrants issued outside Philadelphia County. Under the [Supreme Court] Pennsylvania Rules of Criminal Procedure, [the trooper must take] the defendant shall be taken before [the] a [bail] Bail Commissioner. [at the Police Administration Building.] The Bail Commissioner is required to advise the defendant [that he has] of the right to have bail set[, ] or to waive the right to bail.

1. If the defendant waives the right to bail, the defendant [is then] shall be taken by the State [Trooper] Police to the County where the warrant was issued. If the defendant [wishes] requests bail consideration [bail set], the State [Trooper] Police will [hand up to] provide [the Judge] a copy of the [defendant's criminal record and the Judge may then question the defendant as to his community contacts and then set bail.] warrant and/or the complaint to the Bail Commissioner.

2. In [Pennsylvania] State Police [Cases] cases, [there is no necessity for processing] defendants are not to be processed [through the Police Detention Unit.] through the police identification process.

*Amended by the Municipal Court Board of Judges on 18 November 2005; effective 15 March 2006.*

#### Rule 550—RESCINDED

#### [Preliminary Arraignment.

The Preliminary Arraignment Court at the Police Administration Building shall be open at all times and shall be staffed continuously by a Municipal Court Bail Commissioner and Data Entry Clerk.

Hospital bedside arraignments will be the responsibility of the Standby Bail Commissioner.]

#### Rule 550 Preliminary Arraignment

(A) Preliminary arraignments shall be held 24/7/365.

(B) Police shall direct all requests for bedside arraignments to the Bail Commissioner sitting on the day shift at the Criminal Justice Center.

*Former rule 550 rescinded and new rule adopted by the Municipal Court Board of Judges on 18 November 2005; effective 15 March 2006.*

#### Rule 553 Line-ups Ordered Prior to a Preliminary Hearing.

1. In all cases where a Municipal Court Judge [shall] determines that a line-up is appropriate, the Judge shall [cause a] issue a Short Certificate [to be issued, and shall order] ordering the defendant, [the Attorney representing the defendant] defense counsel, and

the witnesses to appear at the prescribed time, [and] date [at the Philadelphia Detention Center] and location for that purpose. [Defendant's Attorney] Defense counsel must appear at the line-up unless his or her presence is waived by the defendant. [Willful failure of defendant's Attorney to] Defense counsel's willful failure to appear at the line-up shall constitute [c] Contempt of Court [and may be subject to] punishable by sanctions. Willful failure of any other parties ordered to appear shall constitute a waiver of their presence.

2. [All] The defendants shall sign a Short Certificate to indicate receipt and notification of the time and place of the line-up. A copy of [this] the Short Certificate shall be made part of the official [Court] court record.

3. If, at the time of the line-up, there is an allegation of a substantial alteration of the defendant's appearance from the time of the order to the time of the line-up, the line-up shall be canceled. At the next listing of the preliminary hearing, the Commonwealth shall present to the presiding [Judge] judge photographs taken of the defendant at the line-up and photographs taken at or near the date of the [Court] court order. If the presiding [Judge] judge determines that there has been a substantial alteration of appearance, the original line-up order shall be voided. If the presiding [Judge] judge [rules] determines that there has not been [such] a substantial alteration of appearance, a new lineup shall be ordered. [and the] The time from the original lineup order to the second line-up order shall be charged against the Commonwealth for purposes of Pennsylvania Rules of Criminal Procedure [1100] 600 and 1013.

*Amended by the Municipal Court Board of Judges on 18 November 2005; effective 15 March 2006.*

#### Rule 555—RESCINDED

##### [Preliminary Hearings.]

A. Cases at preliminary hearings may be discharged for lack of prosecution where the Commonwealth is twice not prepared to proceed. The Court may issue bench warrants for Commonwealth witnesses if requested by the Attorney for the Commonwealth.

B. Where an interpreter is required, but not available at a preliminary hearing, and all parties cannot agree to have someone other than an official Court interpreter act as translator, the case shall be continued into City Hall for the preliminary hearing.

C. All preliminary hearings in felony cases shall be listed for preliminary hearing in the Municipal divisional Courts except as follows:

1. Homicide cases shall be listed in Room 675, City Hall.

2. Rape cases shall be listed in Room 254, City Hall.

3. Narcotics narcotics cases, other than those from the East Police Division, shall be listed in Room 285, City Hall. ]

#### Rule 555 Preliminary Hearings

A. A Municipal Court judge may dismiss a case at preliminary hearing when the Commonwealth wit-

nesses fail to appear three times. The court may issue bench warrants for Commonwealth witnesses in appropriate cases.

B. A Municipal Court judge may appoint the Defender Association to represent the defendant at the preliminary hearing only where the case has previously been continued for the non-appearance of private counsel.

*Former rule 555 rescinded and new rule adopted by the Municipal Court Board of Judges on 18 November 2005; effective 15 March 2006.*

#### Rule 558 Required Discovery in Municipal Court

In [All Municipal Court] misdemeanor trials [for arrests on and after August 4, 1986] required discovery shall be made available to defense counsel upon defense counsel's written request for discovery made within 10 days of entry of appearance. Such cases shall be listed [initially] in a calendar room no earlier than [twenty (20)] 20 days after preliminary arraignment. These cases will be continued for status back into [that] the calendar room until [such time] discovery is provided by the Commonwealth or waived by the defendant. [: has delivered to counsel for the defendant the following Required Discovery unless such Discovery is waived by counsel for defendant:] The following constitutes required discovery:

1. Police Investigation Report (75-49)
2. Supplemental Investigation Report, if any (75-52)
3. Police DU1 Arrest Report, if any (75-50c)
4. Defendant's Statement, if any (75-483)
5. Ballistics Report, Chemical Analysis, Breathalyzer Report or other reports of experts, if appropriate.
6. Search Warrant, including affidavit of probable cause.
7. Affidavit of probable cause in warrant cases.

If [counsel for defendant] defense counsel fails to request [such Required Discovery] required discovery, in writing, within [ten (10)] 10 days after entry of appearance, trial shall not be delayed for failure [of] to provide discovery. The Defender Association shall not be required to give [such routine] written notice in all cases represented by it. Rule [6013] 1013 shall run against the Commonwealth until such time as [the Required Discovery] discovery has been completed, provided that the defendant is otherwise ready for trial. No other discovery shall be permitted unless ordered by the [Trial Judge] trial judge. Reciprocal discovery by the defendant to the Commonwealth shall continue to be governed by [Pa.R.C.P. 305(c).] Pennsylvania Rule of Criminal Procedure 573.

*Amended by the Municipal Court Board of Judges on 18 November 2005; effective 15 March 2006.*

#### Rule 600—RESCINDED

##### [Motions—Filing]

1. V. Appeals from summary convictions or Traffic Court Appeals: To perfect appeals from summary convictions or Traffic Court appeals, the Attorney for the appellant or the appellant shall file an

affidavit of service with the Office of the Clerk of Quarter Sessions setting forth that the appellant or his Attorney has served a copy of the notice of appeal with the Municipal Court Administrator or with the Traffic Court Judge who heard the case. Said affidavit shall include the name of the party serving the affidavit, the date of service, the means of service (whether served personally or by certified mail), and the name of the Municipal Court Administrator, or the Traffic Court Judge served. The affidavit shall be filed with the Clerk of Quarter Sessions within ten (10) days from the date service was effectuated. In the event the affidavit is filed and twenty (20) days expire from the date of service upon the Municipal Court Administrator, or the Traffic Court Judge, and the transcript has not been filed by the said administrator or Judge with the Office of Quarter Sessions upon praecipe, the Clerk of Quarter Sessions shall enter judgment of non pros and return to the appellant the bail posted. ]

#### Rule 645 RESCINDED

[ Stay Pending Appeal of Municipal Court Judgment.

In Municipal Court cases, where the defendant has been adjudged guilty and a prison sentence is imposed, the execution of such sentence must be stayed for thirty (30) days in order that the defendant may file a de novo appeal if he desires.

The defendant shall be given a subpoena directing him to appear in Room 703(B), City Hall, thirty (30) days after an adjudication of guilt. If a defendant has not filed an appeal and does not appear on the thirtieth (30th) day as directed by the subpoena, a bench warrant will issue forthwith. ]

#### Rule 645 Stay Pending Appeal of Municipal Court Judgment

In Municipal Court cases, where the defendant has been adjudged guilty and a prison sentence is imposed, the execution of such sentence must be stayed for thirty (30) days in order that the defendant may file a de novo appeal.

*Former rule 645 rescinded and new rule adopted by the Municipal Court Board of Judges on 18 November 2005; effective 15 March 2006.*

#### Rule 710 Guilty Pleas Refused by Trial Judge

Where a negotiated plea has been refused by the [ Trial Judge ] trial judge after hearing the facts of the case and the defendant is permitted to withdraw [ his ] the guilty plea, the Quarter Sessions [ Clerk must ] clerk shall note on the transcript, with specificity, the District Attorney's recommendation and that the plea bargain was declined by the [ Judge ] judge. [ stating specifically what the District Attorney's recommendation was. ]

This procedure is intended to prevent counsel from taking the same case before another [ Judge ] judge who [ will ] might accept the negotiation [ which ] that was previously refused by the [ Court. ] court.

*Amended by the Municipal Court Board of Judges on 18 November 2005; effective 15 March 2006.*

#### Rule 840 Private Criminal Complaint Procedure

(A) Private criminal complaints shall be filed with the [ County Detectives Unit. ] District Attorney's Office.

(B) A disapproval of a private criminal complaint shall require the signature of an Assistant District Attorney and shall set forth the reasons for the disapproval.

(C) Upon the petitioner's request, [ of the petitioner for a private criminal complaint, a disapproved complaint shall be immediately forwarded by the District Attorney's Office ] the District Attorney shall forward a disapproved private criminal complaint to the President Judge of the Municipal Court or [ his ] a designee for review. [ The President Judge of Municipal Court shall assign the matter to a Municipal Court Judge for review. Appeal of the decision of the Municipal Court Judge shall be ] If the reviewing judge denies the issuance of the private criminal complaint, the petitioner may appeal the decision to the Court of Common Pleas.

*Amended by the Municipal Court Board of Judges on 18 November 2005; effective 15 March 2006.*

#### Rule 850 Municipal Court Arbitration for Private Criminal Complaints

(A) Actions commenced by Private Criminal Complaint may be:

[ (1) ] 1. [ Withdrawn ] withdrawn by agreement of the parties and approval of [ the ] a Trial Commissioner; or

[ (2) ] 2. referred to the Municipal Court Arbitration Program. All parties must agree, in writing, on forms provided by the Arbitration Program Director, to submit the matter to the [ award of the ] Arbitration Program. All parties must agree to be bound by the applicable statutes, rules and regulations of the Arbitration Program; or

[ (3) ] 3. listed for trial before a [ Philadelphia ] Municipal Court Judge.

(B) Actions referred to the Municipal Court Arbitration Program shall be governed by the [ following rules ] Municipal Court Arbitration rules and provided to the parties in advance of the arbitration.

[ (1) The Arbitration Program Director shall appoint and assign an Arbitrator, shall affix a time and place for a hearing and shall serve notice on all parties.

(2) The Arbitration Program Director may remand any matter to the Municipal Court for trial at any time prior to the entering of an award or upon a showing of good cause.

(3) Arbitration hearings:

(a) parties may be represented by counsel.

(b) Persons party to or having a direct interest in the dispute are entitled to attend hearings. The Arbitrator shall have the power to sequester witnesses during the testimony of other witnesses.

(c) The hearing may proceed in the absence of any party who, after due notice, fails to be present

or fails to obtain a continuance. An award shall not be made solely on the default of a party. The Arbitrator shall require the party who is present to submit such evidence as he or she may require for the making of an award.

(d) Parties and witnesses shall testify under oath or affirmation, which shall be administered by the Arbitrator.

(e) The Arbitrator shall conduct the hearing in such manner as he or she deems best suited to discover the facts and to determine the justice of the case in accordance with substantive law and shall not be bound by the formal rules of evidence, except those pertaining to privileged communications.

(f) The Arbitrator shall receive and consider evidence of witnesses by affidavit, but shall give it only such weight as he or she deems it entitled after considering objections made to its admission.

(g) A stenographer or court reporter shall not be present at the hearing nor shall any recording device be permitted unless authorization is obtained from the Arbitration Program Director.

(h) Upon cause shown, the Arbitrator may continue the matter to a date certain.

(4)

(a) The Arbitrator may grant any remedy or relief which he or she deems just, including monetary awards and equitable awards.

(b) Parties may enter into a consent agreement at any time prior to the making of an award. The consent agreement shall state the obligations of the respective parties, shall be in writing and signed by all parties. The consent agreement shall be filed with the Arbitration Program and shall have the same effect as an award:

(c) Copies of an award or consent agreement will be mailed or otherwise forwarded to all parties or their counsel by the Arbitration Program. Except as provided in subsection (B)

(5), an award or consent agreement shall be final and binding on all parties.

(5)

(a) A party may file exceptions to the award of the Arbitrator for the following reasons and for no other:

(i) The Arbitrator committed a plain mistake in matter of fact or in matter of law; or

(ii) The Arbitrator misbehaved in the conduct of the case; or

(iii) The action of the Arbitrator was procured by corruption or other undue means.

(b) Exceptions may be filed with the Arbitration Program Director within 15 days of the entering of the award.

(c) Exceptions must be submitted in writing and shall set forth all allegations of fact in support of the exceptions.

(d) The Municipal Court Administrator shall assign a date and courtroom for a hearing on the exceptions on the Municipal Court Civil Trial List. Thereafter, copies of the exceptions shall be served on all parties by the Arbitration Program.

(e) If, upon exceptions filed to any award, it shall appear to the Court that the Arbitrator made a mistake in fact or law, the Court shall refer the case back to the Arbitration Program for such further proceedings as shall be necessary.

(f) Should the Court sustain exceptions as provided above in subsection (B)(5)(e), the award of the Arbitrator shall be vacated by the Court and the case referred back to the Arbitration Program with directions that a new Arbitrator be appointed to hear and decide the matter.

(6) Arbitration Program awards and consent agreements shall be enforceable upon issuance unless stayed by the Arbitration Program Director or by the Municipal Court.

(7) Any party neglecting or refusing to perform and execute an award or consent agreement shall be liable to all the penalties of contempt of court. Upon petition by an aggrieved party, the Arbitration Program Director shall schedule a hearing in the Municipal Court to determine the existence of contempt.

(C) Except for actions in which a government agency is a party, all actions listed for trial before a Philadelphia Municipal Court Judge must first be submitted to the Arbitration Program for compulsory mediation. In the event that the compulsory mediation hearing does not result in an agreement between the parties, the action shall either be:

(1) referred to the Arbitration Program upon agreement of all parties in accordance with section (B) above; or

(2) listed for trial in accordance with Chapter 6000 of the Pennsylvania Rules of Criminal Procedure. ]

*Amended by the Municipal Court Board of Judges on 18 November 2005; effective 15 March 2006.*

#### **Rule 860 Enforcement of Arbitration Award.**

Parties [ **which** ] **who** have agreed to submit their case to arbitration shall be bound to the award of the Arbitrator. Upon petition, [ **the Judges** ] a **Municipal Court judge** [ **of the Municipal Court** ] may conduct contempt proceedings to compel enforcement of the Arbitrator's award. The [ **Court** ] **court** shall not hear the merits of the case [ **de novo** ] *de novo*.

*Amended by the Municipal Court Board of Judges on 18 November 2005; effective 15 March 2006.*

[Pa.B. Doc. No. 06-272. Filed for public inspection February 17, 2006, 9:00 a.m.]