

# THE COURTS

## Title 249—PHILADELPHIA RULES

### PHILADELPHIA COUNTY

#### Amendment of Philadelphia Orphans' Court Rule 6.9.D; President Judge General Court Regulation No. 2003-04

#### Order

*And Now*, this 22nd day of May, 2003, the Board of Judges of Philadelphia County having voted at the Board of Judges' meeting held on May 15, 2003 to amend Philadelphia Orphans' Court Rule 6.9.D., *It Is Hereby Ordered* that Philadelphia Orphans' Court Rule 6.9.D. is amended effective July 1, 2003.

This General Court Regulation is issued in accordance with Pa.O.C. Rule 1.2, and shall become effective July 1, 2003. As required, the original General Court Regulation shall be filed with the Prothonotary in a Docket maintained for General Court Regulations issued by the President Judge of the Court of Common Pleas of Philadelphia County, and copies shall be submitted to the Clerk of the Orphans' Court, the Administrative Office of Pennsylvania Courts, the Legislative Reference Bureau and the Orphans' Court Procedural Rules Committee. Copies of the Order shall also be submitted to American Lawyer Media, *The Legal Intelligencer*, Jenkins Memorial Law Library, and the Law Library for the First Judicial District of Pennsylvania.

FREDERICA A. MASSIAH-JACKSON,  
*President Judge*

Phila.O.C. Rule 6.9.D. is amended to read as follows:

\* \* \* \* \*

(3) *Accounts of Trustees*. In addition to the papers required by Rule 6.9.D.(1), at the time of the filing of an account of a trustee, counsel shall file:

(a) the original letters or the original trust instrument, if not submitted at a prior audit; **and**

(b) a copy of the trust instrument, certified by the accountant or counsel to be true and correct [ ; ].

**[ (c) a preliminary audit statement prepared on the form supplied by the Court and signed by the attorney who will appear for the accountant at the audit. ]**

Adopted by the Board of Judges of the Court of Common Pleas on May 15, 2003. Effective on July 1, 2003.

[Pa.B. Doc. No. 03-1109. Filed for public inspection June 13, 2003, 9:00 a.m.]

### PHILADELPHIA COUNTY

#### Procedure Concerning Arrest Warrants, Arraignment, Providing Court-Appointed Counsel, and Sentencing Defendants Who Fail to Plead to Traffic Citations or Pay Outstanding Fees, Fines and Costs; President Judge General Court Regulation No. 2003-01

The procedures which apply to Summary Offenses under the Vehicle Code are set forth in Pa.R.Crim.P. Nos. 470-471, and generally at 400 et seq. Specific statutory authority and rules address the Philadelphia Traffic Court's jurisdiction to issue warrants due to a Defendant's failure to respond to a traffic citation, or pay outstanding fines and costs. See Pa.R.Crim.P. No. 430-431. Moreover, statutory authority and rules address the Philadelphia Traffic Court's obligation to appoint counsel in Summary trials as well for contempt proceedings whenever it appears that incarceration is likely to be imposed. See Pa.R.Crim.P. No. 122 and 140, and 42 Pa.C.S. § 4136 et seq. However, the inter-relationship among the cited rules and other authority is, at times, confusing and may result in unwarranted expectation among the various interested parties. The within President Judge General Court Regulation is intended to clarify the various issues involved in the issuance and enforcement of arrest warrants, the appointment of counsel, and the imposition of mandatory sentences or for failure to respond to traffic citations, or pay outstanding fines and court costs.

1. *Issuance of Arrest Warrant*. A warrant for the arrest of a Defendant, who has been issued a traffic citation by a law enforcement officer, may be issued as provided in Pa.R.Crim.P. No. 430.

2. *Defendant Arrested Pursuant to an Arrest Warrant*. A Defendant arrested pursuant to an Arrest Warrant issued as provided in paragraph 1. will be taken without unnecessary delay before a proper issuing authority, shall be arraigned, and shall be advised concerning:

(A) *Specific Charges*. Defendant shall be provided with information concerning specific citations to which Defendant has not plead as required by Pa.R.Crim.P. No. 407, and plea will be elicited; and will be provided information concerning citations which have been adjudicated and which have outstanding fines or costs and in default of a payment order or plan.

(B) *Right to Counsel*. Defendant shall be advised that he/she has the right to retain counsel and that if he/she does not have the financial ability to retain counsel, counsel will be appointed by the Court if there is a likelihood that imprisonment may be imposed. Defendant will be directed to report to the First Judicial District's Pretrial Service Division for a financial interview to determine eligibility to court-appointed counsel. Failure to report for a financial interview as directed may result in the denial of court-appointed counsel. Upon establishment of financial eligibility, counsel will be appointed for the Traffic Court's summary trial or contempt hearing. Counsel's appointment will terminate at the conclusion of the summary hearing or contempt hearing, unless the Traffic Court sentences the Defendant to a period of incarceration. In the latter event, counsel's appointment shall either continue, or counsel will be otherwise provided to those Defendants who do not have the financial

ability to retain counsel pursuant to policies adopted from time to time by the President Judge of the Philadelphia Traffic Court.

(C) *Summary Trial or Contempt Hearing.* A summary trial or contempt hearing shall be scheduled or held as follows:

(1) *Unadjudicated Citations.* A trial will be scheduled as provided in Pa.R.Crim.P. No. 423(B), and Defendant will be served with a scheduling order, subpoena or notice to appear on the hearing date. The scheduling order, subpoena or notice shall contain a recitation of the rights set forth in Pa.R.Crim.P. No. 423(B)(3).

(2) *Guilty In Absentia Citations.* Upon arraignment on a bench warrant issued against a Defendant who was found guilty in absentia and did not pay the amount ordered to be paid pursuant to Pa.R.Crim.P. No. 455(D), the Traffic Court shall:

(a) conduct an immediate hearing to determine Defendant's financial ability to pay the amount due, and may provide for an Installment Payment Plan pursuant to Pa.R.Crim.P. No. 454(E); or

(b) schedule a hearing for a date certain to determine Defendant's financial ability to pay the amount due, and, on the hearing date, may provide for an Installment Payment Plan pursuant to Pa.R.Crim.P. No. 454(E).

(3) *Adjudicated Citations With Outstanding Fines and Costs.* Pursuant to Pa.R.Crim.P. No. 456, the Traffic Court shall:

(a) conduct an immediate hearing to determine whether Defendant is financially able to pay the outstanding fines and costs as previously ordered. If Defendant is financially unable to pay as previously ordered, the Traffic Court may issue a revised payment order or payment plan. If it appears that 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 contempt hearing, Defendant's eligibility to court appointed counsel must be established as provided in Section (2)(B) above, and the contempt hearing may be rescheduled for a date certain; or

(b) schedule a hearing for a date certain on the issue of whether Defendant is financially able to pay as ordered. If it appears that there is a likelihood that imprisonment will be imposed at the conclusion of that hearing, Defendant's eligibility to court appointed counsel must be established as provided in Section (2)(B) above.

(4) *Unadjudicated Citations and Adjudicated Citations With Outstanding Balances.* A Summary trial and contempt hearing will be scheduled as provided above, and may be scheduled before the same Traffic Court Judge.

(D) *Proper Issuing Authority.* The President Judge may from time to time determine, with the approval of the President Judge of the Municipal Court, whether arraignments of Traffic Court Defendants shall be conducted by the Traffic Court Judiciary, or by the Philadelphia Municipal Court Bail Commissioners. To the extent Municipal Court Bail Commissioners conduct Traffic Court arraignments, the bail process shall be governed by Pa.R.Crim.P. No. 500 et seq., Phila.Crim.R. No. 500 et seq., Phila.M.Crim.R. No. 540, the Bail Commissioners' Rules, and as may otherwise be provided from time to time.

(E) *Bail Pending Summary Hearing or Contempt Hearing.* Bail may be imposed in appropriate circumstance in accordance with established procedures. The imposition of

nominal bail or unsecured bail bond (SOB—or Sign Own Bail) is preferred if the Defendant does not have a prior history of failure to appear for scheduled hearings. Monetary bail may be imposed if a Defendant previously failed to appear for a Traffic Court scheduled hearing if notice was personally served on Defendant; provided, however, that the monetary bail shall not exceed the collateral which may be required for Defendant's unadjudicated citations and/or the balance of outstanding fines and costs owed on adjudicated citations.

3. *Eligibility of Court-Appointed Counsel.* If the Court has preliminarily determined that there is a likelihood that imprisonment may be imposed at the conclusion of a summary trial or contempt hearing, the Court will instruct Defendant to report, within ten (10) days of the issuance of the scheduling order, to the First Judicial District's Pretrial Service Unit for a financial interview to determine eligibility of court-appointed counsel. Defendant must bring supporting documentation such as Driver's License, DPW card, pay stubs and other relevant information at the time of the interview. Defendant's failure to report to the Pretrial Services Division may result in the denial of court-appointed counsel.

4. *Hearing or Trial.* At the summary trial or contempt hearing scheduled as provided above, Defendant may be represented by retained or court appointed counsel, or may waive the right to counsel. If the Defendant pleads guilty or is adjudicated guilty, the Court shall impose an appropriate sentence at the conclusion of the trial. If a sentence of imprisonment is imposed, the execution of the sentence shall be stayed during the thirty (30) day appeal period as required by Pa.R.Crim.P. Nos. 456 and 460. Defendant shall be ordered to report to the Traffic Court on a date certain for execution of the sentence, unless an Appeal is filed.

5. *Sentencing.* The Traffic Court shall enter any appropriate sentence upon conviction of a Motor Vehicle offense, including, but not limited to, alternatives to sentences as may be set forth in 42 Pa.C.S. § 9721 et seq.

6. *Notice of Appeal.* The sentence imposed by the Traffic Court may be appealed to the Court of Common Pleas within thirty (30) days, as authorized by Pa.R.Crim.P. Nos. 456 and 460. Defendant may file the Notice of Appeal without the payment of the Appeal costs if court-appointed counsel was provided at the Traffic Court level. If court-appointed counsel was not provided at the Traffic Court level, Defendant must pay the requisite Appeal fees unless a Petition to Proceed in Forma Pauperis is filed concurrently with the Notice of Appeal. The Judge to whom the underlying Appeal is assigned will determine whether Appeal costs must ultimately be paid by Defendant.

7. *Hearing on Appeal by the Court of Common Pleas.* The Court of Common Pleas will conduct a hearing de novo on the specific issue which is timely appealed by the Defendant. For instance:

(A) *Guilty Finding/Imposition of Sentence.* A de novo hearing on the merits of the underlying citation(s) will be held by the Court of Common Pleas if the Defendant appeals the Guilty Plea, or guilty adjudication and sentence within thirty (30) days of its entry.

(B) *Guilty in Absentia Payment Plan Orders.* A de novo hearing on the issue of Defendant's ability to pay the citation(s) adjudicated in Defendant's absence in a lump sum or through a payment plan will be held by the Court of Common Pleas. The Court of Common Pleas will not hold a hearing on the merits of the underlying citation(s)

unless the Notice of Appeal is filed within thirty (30) days of the entry of the Guilty in Absentia order.

(C) *Contempt of Court for Failure to Pay Outstanding Fines and Costs.* A de novo hearing on the issue of whether Defendant is in contempt of the Traffic Court's order to pay fines and costs (i.e. whether Defendant has the ability to pay the previously ordered fines and costs) will be held by the Court of Common Pleas if appealed within thirty (30) days of the contempt adjudication and imposition of sentence. See Pa.R.Crim.P. No. 141.

8. *Bail Pending Appeal.* Bail may be imposed in appropriate circumstance in accordance with established procedures. The imposition of nominal bail or unsecured bail bond (SOB—or Sign Own Bail) is preferred if the Defendant does not have a prior history of failure to appear for scheduled hearings. Monetary bail may be imposed if a Defendant previously failed to appear for a Traffic Court scheduled hearing if notice was personally served on Defendant; provided, however, that the monetary bail shall not exceed the collateral which may be required for Defendant's unadjudicated citations and/or the balance of outstanding fines and costs owed on adjudicated citations.

This General Court Regulation is promulgated in accordance with 42 Pa.C.S. § 4136 et seq., and Pa.R.Crim.P. Nos. 400 et seq., and shall become effective July 7, 2003. As required by Pa.R.Crim.P. No. 105, the original General Court Regulation shall be filed with the Prothonotary in a docket maintained for General Court Regulations issued by the President Judge of the Philadelphia Traffic Court, and copies shall be submitted to the Administrative Office of Pennsylvania Courts, the Legislative Reference Bureau, the Criminal Procedural Rules Committee, and the Minor Court Rules Committee. Copies of the Regulation shall also be submitted to American Lawyer Media, *The Legal Intelligencer*, Jenkins Memorial Law Library and the Law Library for the First Judicial District of Pennsylvania.

FRANCIS E. KELLY,  
*President Judge*  
*Philadelphia Traffic Court*

[Pa.B. Doc. No. 03-1110. Filed for public inspection June 13, 2003, 9:00 a.m.]