

**FIRST JUDICIAL DISTRICT OF PENNSYLVANIA**  
**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY**  
**PRESIDENT JUDGE ADMINISTRATIVE DOCKET**

**No. 10 of 2002**

**In Re: Appointment of Mitigation Counsel and Adoption of Mitigation Protocol for  
Court-Appointed Conflict Capital Cases**

**O R D E R**

AND NOW, this 24th day of December, 2002, in order to safeguard the rights of indigent defendants charged with a death-penalty qualified offense, and to provide necessary mitigation representation, IT IS HEREBY ORDERED, ADJUDGED and DECREED that:

(1) Lead Counsel appointed pursuant to Phila.R. Crim.P. No. 406-1 (A), shall be responsible for filing, in appropriate cases, a Petition for the appointment of "Mitigation Counsel." Mitigation Counsel shall be responsible for undertaking a complete mitigation investigation, as provided herein, upon consultation with Lead Counsel commencing upon appointment through the sentencing phase. The Petition to Appoint Mitigation Counsel shall be forwarded to the President Judge of the Court of Common Pleas for determination;

(2) Until further order of the Court, Mitigation Counsel shall, at a minimum, meet the qualifications for "Lead Counsel" or "Associate Counsel" as set forth in Phila.R.Crim.P. No. 406-1 (B) and (C);

(3) Mitigation Counsel shall be receive a flat fee of One Thousand (\$1,000.00) Dollars in full compensation for the mitigation representation conducted pursuant to this Order, and shall receive compensation at the rate of Four Hundred (\$400.00) Dollars *per diem*, for penalty phase in-court testimony;

(4) Mitigation Counsel shall consult the **Mitigation Protocol Manual**, which is attached hereto, and which contains additional information and forms, for assistance in complying with this Order. Mitigation Counsel shall, at a minimum, conduct a thorough Client Interview, and shall obtain, if applicable, the following: Juvenile File; DHS file; mental health, medical and drug treatment records; prison records; military service records; employment records; disability records; and family interviews. Mitigation

Counsel shall seek leave of court to retain a professional mitigation specialist and/or a psychologist or psychiatrist. Mitigation Counsel shall be reimbursed for sums expended to obtain records identified above, and must specifically petition the Court for authorization to retain a Mitigation Expert or Specialist and/or for the appointment of a psychologist or psychiatrist; and

(5) Lead Counsel's failure to petition for the appointment of Mitigation Counsel when necessary, and Mitigation Counsel's failure to perform a mitigation investigation as set forth herein may result in: the removal of Lead Counsel or Mitigation Counsel from the specific case as well as from the applicable appointment list; denial of compensation; denial of penalty-phase expert; and the imposition of any other applicable sanctions; and

(6) This Order shall become effective on January 6, 2003.

This Administrative Order is issued pursuant to Pa.R.Crim. P. Nos. 105 and 122, and Phila.R.Crim.P. No. 406-1 et seq, and shall be filed with the Prothonotary in a Docket maintained for Administrative Orders issued by the President Judge of the Court of Common Pleas of Philadelphia County, and copies shall be submitted to the Administrative Office of Pennsylvania Courts, the Legislative Reference Bureau, and the Criminal 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.

/s/ FREDERICA A. MASSIAH-JACKSON

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FREDERICA A. MASSIAH-JACKSON  
PRESIDENT JUDGE,  
COURT OF COMMON PLEAS OF  
PHILADELPHIA COUNTY