

FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY

President Judge General Court Regulation No. 2005-05

In Re: Amendment, Adoption and Rescission of Philadelphia Rules of Criminal Procedures 406-1, 406-2, 406-4, 406-6, 406-12, 406-13, 406-14, and 406-15.

ORDER

AND NOW, this 14th day of July, 2005, the Board of Judges of Philadelphia County having voted at the Board of Judges' meeting held on February 17, 2005 to amend, adopt or rescind Philadelphia Rules of Criminal Procedures 406-1, 406-2, 406-4, 406-6, 406-12, 406-13, 406-14, and 406-15, as applicable, IT IS HEREBY ORDERED that Philadelphia Rules of Criminal Procedures 406-1, 406-2, 406-4, 406-6, 406-12, 406-13, 406-14, and 406-15 are amended, adopted or rescinded as attached hereto.

This General Court Regulation is issued in accordance with Pa.R.Crim.P. 105 and, 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 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 Intelligencer*, 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:

/s/ **Frederica A. Massiah-Jackson**

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

Philadelphia Criminal Rules

Key:

~~Strikethrough~~ = Old Language

Underline, bold = New Language

Rule 406-1 Standards for Appointment in Homicide Cases

* * *

(B) (7) ~~Has attended and successfully completed within the last two years at least one training or educational program on criminal advocacy which focused on the trial of cases in which the death penalty is sought. (This requirement may be waived if the attorney has demonstrated outstanding performance as lead counsel in two or more death penalty trials within the preceding two years.)~~

Has complied with the educational requirements detailed in Pa.R.Crim.P. 801(2).

Rule 406-2 Appeals in Death Penalty Cases

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(B) Qualifications for Counsel Appointed on Appeal to Represent Appellants Under Sentence of Death

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(2) ~~Has had primary responsibility for at least five briefs submitted to any Appellate Court~~

Has had primary responsibility for at least five briefs in "significant cases," as defined in Pa.R.Crim.P. 801 (1) (c) and has represented clients in at least eight significant cases in appellate or post conviction matters;

Rule 406-4 Post Conviction Petitions by Prisoners Under Sentence of Death

* * *

(B) *Qualifications for Counsel Appointed to Represent Prisoners Under Sentence of Death in Post-Conviction Petitions.*

An attorney may be appointed to represent a post-conviction petitioner under sentence of death only if that attorney:

* * *

~~(6) Has taken at least one training or educational program, within the past two years, which focused on post-conviction litigation in death penalty cases. (This requirement may be waived if the attorney demonstrates to the Screening Committee knowledge of the principles of Pennsylvania and federal death penalty post-conviction litigation.~~

Has complied with the educational requirements detailed in Pa.R. Crim.P. 801 (2).

Rule 406-6 Standards for Appointment in Felony Cases

(A) *Qualifications for Counsel*

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

* * *

(7) Has prior experience as counsel in no fewer than five criminal trials which were tried to completion in this or any other jurisdiction. "Tried to completion" shall include trials in which the jury is discharged at the conclusion of the case without reaching a verdict. No more than two of the required five trials shall consist of major felony juvenile cases;

Rule 406-12 Experience Exception To Standards

A. If any applicant fails to meet any of the above specified standards, the Screening Committee, after conducting a personal interview with the applicant, may rate the applicant to be qualified if the applicant's experience,

knowledge and training are clearly equivalent to the standards for the category in which applicant seeks qualification, except as otherwise required by Pa.R.Crim.P. 801.

B. Even if the applicant meets all of the specific standards in any category, but it appears to the Selection Committee that the applicant's experience, knowledge, training and/or past performance in specific cases, may show the need for more training or supervision, the Selection Committee may require the applicant to appear before the Committee for a personal interview, after which the Selection Committee may approve the applicant, or may require the applicant to undergo one of the remedial measures set forth in Rule 406-15 before being approved. If the applicant refused to undergo those measures, or if after completing the measures, the Selection Committee still rejects the application, then the applicant may appeal the disapproval as provided in Rule 406-14.

Rule 406-13 Experience Exception To Standards.

Rescinded in its entirety as not in compliance with Pa Rule 801.

Rule 406-14 Performance Standards; Processing Complaints:

A. General: The Screening Committee may refuse to approve applicants as provided in Rule 406-12.B, or may impose remedial measures, if the applicant fails to meet the performance standards set forth in this Rule.

B. Processing Complaints:

1. Any complaint about the performance of any court-appointed counsel shall first be transmitted to an official in the Court Administrator's office designated for the receipt of such complaints. The official shall forward the complaint to the Chair of the Screening Committee.

2. All such complaints, as well as the identity of the complainant, shall remain absolutely confidential, except as set forth herein.

3. When the Chair of the Screening Committee receives such a complaint, he or she should appoint three members of the Committee as a Panel, and submit the complaint to that Panel. The Panel should review the complaint to determine whether it requires action. If the Panel finds that the complaint requires further action it should notify the subject and afford the subject an opportunity to reply or produce evidence in response to the complaint. The identity of the complainant should not be disclosed, unless the complainant waives confidentiality, provided that the non disclosure of the identity of the complainant does not preclude the subject from being able to address the substance of the complaint. Anonymity of the complainant shall go to the weight, but is not a bar to processing of a complaint. If it so determines, the Panel should notify the complainant that his or her identity will be disclosed, unless the complainant decides to withdraw the complaint.

4. Once the subject has submitted a reply to the complaint and any evidence deemed appropriate, the Panel

should promptly review the matter. The Panel may recommend that the subject voluntarily undergo remedial measures. The Panel may in its discretion refer the matter to a Hearing Committee, as set out hereinafter. If the Panel decides that the matter does not require an immediate disposition, then the subject shall be notified that no remedial action will be taken at this time, but the matter shall be deferred for up to two years. If the subject does not receive two more complaints within that two five year period, then the matter will be closed and the complaint dismissed. If complaints of 2 additional incidents arising from separate proceedings arise during a two year period following the first complaint, all open complaints may be referred to a Hearing Committee as set out herein.

5. A Hearing Committee shall consist of three members of the Criminal Justice Section appointed by the Executive Committee of the Criminal Justice Section. The Executive Committee shall name one of the three as Chair. None should be members of the Screening Committee. Those members should be respected an prominent members of the Section, with outstanding reputations for ethical conduct and knowledge of criminal law.

6. When a matter is referred to the Hearing Committee, the Committee will schedule hearing dates as soon as possible. One member of the Panel shall present the evidence of the deficient performance or skills. The Committee may invite the Complainant to appear. The subject must be invited to appear and may present evidence, and may

be represented by counsel. The subject may have a court reporter present at the subject's own expense; however, a copy of the transcribed notes must be provided to the Committee without cost to the Committee.

7. If a majority of the Hearing Committee finds that the charges have not been sustained by clear and convincing evidence, then the complaint should be dismissed with notice to the subject. If the Hearing Committee can impose any of the remedies set out in Rule 406-15 infra.

C. Appeals:

If the subject objects to any action of the Hearing Committee, then he or she may within 30 days appeal to the Court of Common Pleas. During the pendency of that appeal to the Court of Common Pleas, any remedies ordered shall be stayed. The President Judge of the Court of Common Pleas shall appoint three judges to hear such appeals. The scope of the hearing shall be de novo. One member of the Panel shall present the evidence concerning violation of the performance standard. The subject may also present any relevant evidence. The Court shall make any finding and impose any remedial measure authorized under Rule 406-15 infra.

D. Rule 427 excluded:

None of the actions of the Panel, the Hearing Committee, nor of the Court of Common Pleas shall relieve any attorney or judge from the right or obligation to make a proper report to the Disciplinary Board in accordance with local Rule of Criminal Procedure 427

Rule 406-15 Remedial Measures:

A. General: Once the Hearing Committee has determined that violation of these standards has been established, the Hearing Committee or reviewing court may impose any one or more of the following remedial measures. The purpose of these measures is not punitive, but remedial. Accordingly, the least onerous measure or measures should be imposed which is designed to remedy the type of violation adjudged.

B. Types of remedies:

1. Warning:

The subject should be warned of the nature of the deficiency, and that future complaints could be grounds for more serious sanctions.

2. Continuing legal education:

The subject could be urged, or required, to attend an appropriate legal education course.

3. Mentoring:

The subject could be urged, or require, to utilize the services of a mentor provided by the Screening Committee, for one or more court-appointed cases.

4. Second chair:

The subject could by urged, or required, to sit as second chair to an experienced attorney, selected by the Screening Committee, for a specified number of cases.

5. Probation:

The Subject could be placed on probation for a specified period of time or number of cases, during which the subject's right to receive appointments could be conditioned upon such remedial measures as the Hearing Committee believes necessary. One member of the Prima Facie Panel should be named to monitor the subject during the probationary period.

6. Suspension:

The subject can be suspended from receiving any appointments for a specified period of time or a number of cases, and can be required to undergo remedial measures during the period of suspension.

7. Decertification:

If the deficiencies are considered very serious, and/or other remedial measures have not resulted in improvement, then the subject can be decertified from receiving appointments in a specific category or from all appointments. Any attorney decertified under this Rule may not reapply for appointments until at least one year has elapsed from the date of decertification and proof of satisfactory remediation is shown.

Comment: The above are subject to the requirements of Pa. R. Crim. P. 801.