

**FIRST JUDICIAL DISTRICT OF PENNSYLVANIA**  
**COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY**

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**President Judge General Court Regulation No. 2014-3**

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*In re: Adoption, Amendment and Rescission of various Philadelphia Criminal Rules*

**Order**

AND NOW, this 4th day of June, 2014, the Board of Judges of Philadelphia County having voted at the Board of Judges' meeting held on May 15, 2014 to adopt, amend or rescind various Philadelphia Criminal Rules as specifically set forth in the attached Table,

IT IS HEREBY ORDERED that any reference to the "Clerk of Courts" (also formerly known as the "Clerk of Quarter Sessions") in any Philadelphia Criminal Rule shall be changed to the "Office of Judicial Records" and that the Philadelphia Criminal Rules identified in the attached Table are adopted, amended or rescinded, as attached.

As required by Pa.R.Crim.P. No. 105 (D), the proposed Philadelphia Criminal Rules have been submitted to the Supreme Court's Criminal Procedural Rules Committee for review and written notification has been received from the Committee certifying that the proposed adopted and amended rules are not inconsistent with any general rule of the Supreme Court. The original Order and Philadelphia Criminal Rules shall be filed with the Office of Judicial Records in a docket maintained orders issued by the President Judge of the Philadelphia Court of Common Pleas, and, as required by Pa.R.Crim.P. No. 105(E), two certified copies of this Order and rules as well as a copy on a computer diskette shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*. The rule changes will become effective thirty (30) days after publication in the *Pennsylvania Bulletin*. As required by Pa.R.Crim.P. No. 105 (F) one certified copy of this General Court Regulation and amended local rules shall be filed with the Administrative Office of Pennsylvania Courts and the local rule will also be published on the Unified Judicial System's web site at <http://ujportal.pacourts.us/localrules/ruleselection.aspx> and posted on the First Judicial District's website at <http://courts.phila.gov>. Copies of this General Court Regulation and amended local rules shall be published in *The Legal Intelligencer* and will be submitted to *American Lawyer Media*, *Jenkins Memorial Law Library*, and the Law Library for the First Judicial District.

BY THE COURT:

/s/ **Sheila Woods-Skipper**

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**HONORABLE SHEILA WOODS-SKIPPER**  
**President Judge, Court of Common Pleas**

**Adoptions, Rescissions, Amendments to the Court of Common Pleas  
Local Criminal Rules Adopted by Board of Judges at 5-15-14 Meeting**

<b>#</b>	<b>Local Rule</b>	<b>Current #</b>	<b>Comment</b>
1	*100. Scope of Rules	None	New Rule.
2	*102. Citing the Local Criminal Procedural Rules	None	New Rule.
3	*103. Definitions	None	New Rule.
4	*104. Design of Forms	None	New Rule.
5	*105. Local Rules	None	New Rule.
6	*107. Contents of Subpoena	None	New Rule.
7	*115. Recording and Transcribing Court Proceedings	None	New Rule.
8	400. Emergency Criminal Court Operation Plan	same	Rescinded.
9	*122-1. Homicide Appointments System	same	Rescinded
10	*122. Standards for Appointment of Counsel	406 <sup>i</sup>	Renumbered; Amended.
11	*122-1. Standards for Appointment in Homicide Cases	406-1	Rescinded in 2011; # reserved
12	406-2. Appeals in Death Penalty Cases	same	Rescinded in 2011
13	*122-2 Standards for Appt. of Appellate Counsel in Cases Where the Death Penalty Has Been Imposed		New Rule No.; # Reserved
14	*122-3. Standards for Appt. of Appellate Counsel in Cases Where the Death Penalty Has Not Been Imposed	406-3 & 8	Renumbered
15	406-4 Post Conviction Petitions by Prisoners Under Sentence of...	same	Rescinded in 2011
16	*122-4 Standards for Appt. of PCRA Counsel in Cases Where the Death Penalty Has Not Been Imposed etc.	406-5 & 9	Renumbered; Amended
17	*122-5 Standards for Appointment in Felony Cases	406-6	Renumbered; Amended
18	*122-6 Standards for Appointment of Counsel in Misdemeanor Cases	406-7	Renumbered
19	406-10 Standards for Appointment in Major Felony Juvenile Cases	same	Rescinded.
20	406-11 Standards for Appt. of Counsel in Non-Major Felony Juvenile	same	Rescinded
21	*122-7 Experience Exception To Standards	406-12	Renumbered; Amended
22	*122-8 Performance Standards; Processing Complaints	406-14	Renumbered; Amended
23	*122-9 Remedial Measures	406-15	Renumbered
24	410 Appointment of Counsel in Homicide cases	same	Rescinded in 2011
25	*122-10 Appointment of Counsel in Multiple Defendant Cases	415	Renumbered
26	420 Appointment of Counsel for Cases Appealed to Supreme Court	same	Rescinded in 2011
27	421 Petition for Leave to Withdraw as Private or Court Appointed...	same	Rescinded in 2011
28	*122-11 Compensation Rates for Court-Appointed Counsel	424	Renumbered. Amended
29	*122-12 Guidelines for Court-Appointed Counsel Who Request Compensation and Reimbursement in Criminal Cases	425	Renumbered; Amended
30	*122-13 Procedure in Cases Involving Ineffective Assistance of Counsel	427	Renumbered
31	*122-14 Attorneys with Twenty (20) or More Cases	430	Renumbered
32	435 Cases in which Victim if a Minor	435	Renumbered
33	440 Expungement Petition Procedure	same	Rescinded
34	441 Automated Expungement under Section 17, 18 and 19 of the...	same	Rescinded
35	442 Automated Expungement under the Accelerated Rehabilitative...	same	Rescinded
36	*202 Approval of Search Warrant Applications by Attorney for the Commonwealth	402	Renumbered; Amended
37	*462 Trial <i>De Novo</i> . Summary Appeals	None	New Rule
38	*507 Approval of Police Complaints and Arrest Warrant Affidavits by the Attorney for the Commonwealth	401	Renumbered; Amended
39	*520 Regulations Pertaining to Bail, Court of Common Pleas and Municipal Court	500	Renumbered
40	528 Ten Percent (10%) Deposit of Bail	same	Amended in 2012
41	*530 Duties and Powers of Bail Agency	505	Renumbered
42	*536 Procedures upon Violation of Conditions: Revocation of Bail etc.	510 & 520	Renumbered; Amended
43	*540 Preliminary Arraignment	550	Renumbered; Amended
44	*542 Preliminary Hearing	555	Renumbered
45	560 Arraignment	same	Rescinded
46	*571 Arraignment	New rule	New Rule

<sup>i</sup> The 406 rules not rescinded have been renumbered (122-x) to be consistent with the state rules numbering scheme. References to renumbered local rules have similarly been updated throughout.

**FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
COURT OF COMMON PLEAS  
TRIAL DIVISION – CRIMINAL  
LOCAL RULES**

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

Rule \*100. Scope of Rules.

These local rules shall govern criminal proceedings in the Trial Division of the Court of Common Pleas of Philadelphia County unless otherwise specifically provided.

Rule \*102. Citing the Local Criminal Procedure Rules.

These rules shall be known as the Philadelphia Court of Common Pleas Criminal Rules and shall be cited as “Phila.Crim.R.”

**PART A. BUSINESS OF THE COURTS.**

Rule \*103. Definitions

The following words, phrases and descriptive functions shall clarify and supplement the definitions set forth in Pa.R.Crim.P. 102 and 42 Pa.C.S. § 102 *et seq.*:

*“Office of Judicial Records.”* The office formerly known as the *Office of the Clerk of Quarter Sessions* (which was abolished by the Council of the City of Philadelphia effective on July 1, 2010) and the *Clerk of the Courts*. The *Office of Judicial Records* is responsible for maintaining the official criminal case file, maintaining docket entries in each criminal case, and performing such other duties as required by law.

Rule \*104. Design of Forms

All local forms shall comply with the Pennsylvania Rules of Criminal Procedures, shall be approved by the Administrative Judge of the Trial Division, may be amended from time to time at the direction of the Administrative Judge of the Trial Division, and shall become effective upon compliance with Pa.R.Crim.P. 105. All local forms shall be posted on the First Judicial District’s website (<http://courts.phila.gov/forms>).

Rule \*105. Local Rules.

The term "local rule" shall include General Court Regulations and Administrative Orders issued by the Administrative Judge of the Trial Division and President Judge of the Court of Common Pleas.

Rule \*107. Contents of Subpoena.

(a) Forms. Consistent with the requirements of Pa.R.Crim.P. 107, a *Personal Appearance Subpoena* and *Subpoena Duces Tecum* are adopted substantially as appended to these rules, and may be amended from time to time. All parties shall request subpoenas from the *Office of Judicial Records* which shall issue same upon payment of any requisite fees.

(b) A subpoena may be used to command a person to attend and to produce documents or things at trial or hearing in an action or proceeding pending in court.

(c) Subpoenas Served on the First Judicial District or any of its Employees. All subpoenas directed to the First Judicial District or any of its Employees shall be served on the Deputy Court Administrator for Legal Services, Room 369 City Hall, Philadelphia, PA who has been designated as the agent for acceptance of service of process and subpoenas directed to the First Judicial District or any of its employees.

*Explanatory Note: Act 81 of 2006 requires the payment of \$43.00 plus mileage to the “First Judicial District of Pennsylvania” if District records are subpoenaed.*

Rule \*115. Recording and Transcribing Court Proceedings.

(a) Unless otherwise ordered by the Court, proceedings before a Trial Commission need not be recorded.

(b) (1) The request for a transcript of all or part of the testimony of a trial or other proceeding must be made on a *Transcript Order Form* or *Digital Recording Transcript Form*, as required by Philadelphia Rule of Judicial Administration No. 5000.5. Copies of official transcripts cannot be provided by the Office of Judicial Records but must be requested from Court Reporter and Interpreter Administration.

(2) The court may determine and designate those portions of the record that are to be transcribed as follows:

(i) *Pre-Trial and Post-Trial Motions.* The court may, upon receipt of a copy of a request for partial transcript, or upon receipt of a partial transcript, request that the Official Court Reporter transcribe additional portions of the transcript, or the entire transcript, if the transcription of the increased portion of the transcript is deemed necessary for the disposition of the outstanding post-trial motions. The cost of such transcription shall be incurred by the party who filed the post-trial motions. In the event more than one party has filed post-trial motions, the cost of transcription shall be borne equally between or among such parties.

(ii) *Appeals.* Upon receipt of the order for transcription of notes of testimony in connection with an appeal, and the requisite payment or deposit thereon, the Official Court Reporter shall prepare a full transcript of the case on appeal, unless the appellant or a cross-appellant has requested and obtained an order of diminution of transcription from the trial court. Pa.R.A.P. 1922 requires that an application for an order providing for less than the entire proceeding shall be made in civil cases within two days after the order for transcript is filed, and

in criminal cases as provided in Pa.R.Crim.P. 115. As provided in Pa.R.A.P. 1911, the appellant must request and pay for the transcription of testimony; however, cross-appellants shall share the initial expense equally with all other appellants.

## PART B. COUNSEL.

### Rule \*122 *Standards for Appointment of Counsel*

#### (A) *Lists of Qualified Attorneys*

The Appointment Clerk will maintain a list of attorneys qualified for appointment in each of the following categories of cases:

- (1) Homicide
- (2) Capital homicide appellate
- (3) Non-capital homicide appellate
- (4) Non-capital-PCRA

#### (B) *Selection of Attorneys*

(1) Each attorney who desires appointment in each of the above categories of cases must fill out a questionnaire which will be submitted to a Screening Committee of the Philadelphia Bar Association. The Committee shall consist of seven members, each appointed for a staggered fixed term. All members of the Screening Committee will be appointed by the Board of Judges of Philadelphia County. Neither the Chief Defender, nor any attorney from the Defender's Office, nor any attorney from the District Attorney's Office shall be eligible for appointment to the Screening Committee. In making such appointments, the Board of Judges shall consider the recommendation of the Criminal Justice Section of the Philadelphia Bar Association, which shall submit to the Board of Judges a list of not less than fifteen names. Each member of the Screening Committee must be familiar with the practice of criminal law in Philadelphia.

(2) The Screening Committee will periodically review all questionnaires submitted, and will designate attorneys who are qualified for handling each category of case; the committee will maintain such lists of attorneys. It will be the duty of the Screening Committee to review these lists regularly, to add new applicants who meet the qualifications, and to remove from the lists names of attorneys who no longer meet the standards, who consistently refuse to accept appointments, or who, though qualified, refuse appointments in certain types of cases.

No member of the Screening Committee will be permitted to accept an appointment during his or her term on the Selection Committee.

(3) The Criminal Justice Section is authorized to adopt rules of procedure governing: the recommendation of the members for the Screening Committee, the frequency of meetings, and the methods for establishing and maintaining lists of qualified attorneys.

(4) The lists of approved attorneys will be transmitted to the Appointment Clerks in their respective offices of Criminal Listings and Secretary of the Board of Judges; these offices will then provide the lists to the judges authorized to make appointments.

Rule \*122 – 1 *Standards for Appointment in Homicide Cases.*

Rescinded March 10, 2011, effective January 2, 2012. Supplanted by Pa.R.Crim.P. 801.  
Rule number reserved for future use.

Rule \*122 – 2. *Standards for Appointment of Appellate Counsel in Cases Where the Death Penalty Has Been Imposed*

*Reserved*

Rule \*122 – 3 *Standards for Appointment of Appellate Counsel in Cases Where the Death Penalty Has Not Been Imposed.*

(A) *Qualifications for Counsel*

An attorney may be appointed as appellate counsel in cases in which the death penalty has not been imposed only if that attorney:

- (1) Has been admitted to the Bar of the Pennsylvania Supreme Court, or admitted to practice pro hac vice;
- (2) Has submitted a writing sample to the Screening Committee;
- (3) Has filed briefs within the past two years, as appellate counsel in either the Pennsylvania Supreme or Superior Court in no fewer than three criminal cases, or has completed at least one Continuing Legal Education Program on Pennsylvania appellate practice within the past year, or has otherwise demonstrated to the Screening Committee appellate experience and a knowledge of Pennsylvania appellate practice;
- (4) Is readily available to accept appointments.

Rule \*122 – 4 *Standards for Appointment of PCRA Counsel in Cases Where the Death Penalty Has Not Been Imposed or of Counsel in Other Post-Conviction Evidentiary Hearings.*

(A) *Qualifications for Counsel*

An attorney may be appointed as PCRA counsel, or as counsel in other post-conviction hearings, only if that attorney:

- (1) Has been admitted to the Bar of the Supreme Court of Pennsylvania or has been admitted to practice pro hac vice;
- (2) Has experience, within the past two years, as PCRA counsel in no fewer than two cases in which a PCRA hearing has been held, or has completed one Continuing Legal

Education program on Pennsylvania post-conviction practice within the past year;

(3) Has participated in the preparation and litigation of three adversary hearings where factual issues were contested. (This may include the two PCRA hearings required in paragraph 2.);

(4) Is readily available to accept appointments.

Rule \*122 – 5     *Standards for Appointment in Felony Cases.*

(A)     *Qualifications for Counsel*

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

(1) Has been admitted to the bar of the Pennsylvania Supreme Court, or admitted to practice pro hac vice;

(2) Is an active trial and/or appellate practitioner with at least two years litigation experience (trial and/or appellate) in the field of criminal law in this or any other jurisdiction;

(3) Has prior experience as counsel in no fewer than five criminal trials which were tried to completion in this or any other jurisdiction;

(4) Has been counsel in at least two felony trials within the past two year period, or has completed at least one Continuing Legal Education program in the field of criminal law within the past year;

(5) Is familiar with the practice and procedure of the Pennsylvania Supreme Court, and the Philadelphia Court of Common Pleas, and is reasonably available to accept appointments;

(6) 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; and

(6) All attorneys certified in this category automatically shall be certified to handle non-homicide appellate and non-homicide PCRA matters.

***Editor's note:*** The Board of Judges voted on February 17, 2005 to amend the preceding rule, pending final approval in May of 2005; amended July 14, 2005.

Rule \*122 – 6     *Standards for Appointment of Counsel in Misdemeanor Cases*

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

(1) been admitted to the Bar of the Pennsylvania Supreme Court or admitted to practice pro hac vice;

(2) completed at least one course or has viewed one videotaped program on Municipal Court practice within the past year, is familiar with the Pennsylvania Rules of Criminal Procedure, including, but not limited to, Rules 1000-1013 and is readily available to accept appointments or has demonstrated experience in Municipal Court cases.

***Editor’s note:*** Amended by the Municipal Court Board of Judges on November 18, 2005; effective March 15, 2006.

Rule \*122 – 7      *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 \*122-9 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 \*122-8.

***Editor’s note:*** Adopted by the Board of Judges, General Court Regulations 89-3, May 31, 1989, effective immediately; the Board of Judges voted on February 17, 2005 to amend the preceding rule, pending final approval in May of 2005; amended July 14, 2005.

Rule \*122 – 8      *Performance Standards; Processing Complaints.*

A. General: The Screening Committee may refuse to approve applicants as provided in Rule \*122-7 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 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 and 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 \*122 – 9 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 \*122 – 9 infra.

D. 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 122-13.

***Editor's note:*** The Board of Judges voted on February 17, 2005 to adopt the preceding rule, pending final approval in May of 2005; adopted July 14, 2005.

Rule \*122 – 9            *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 required, 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 be 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 rights 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.

*Editor's note* The Board of Judges voted on February 17, 2005 to adopt the preceding rule, pending final approval in May of 2005; adopted July 14, 2005.

Rule \*122 – 10            *Appointment of Counsel in Multiple Defendant Cases.*

In any multiple defendant case, the Defender Association may be appointed to represent only one of the defendants. It shall be the duty of the Commissioner at Common Pleas arraignment to appoint the Defender for the first indigent defendant identified and to arrange for the appointment of private counsel for the remaining indigent defendant(s).

**Source: Administrative Regulation 72-5, July 19, 1972.**

Rule \*122 – 11            *Compensation Rates for Court- Appointed Counsel.*

A.     Non-Homicide Criminal Cases

- (1) Counsel, not exceeding one, who has been assigned to represent:
  - (a) a defendant charge with a non-homicide criminal offense;
  - (b) an individual in any post-conviction proceedings or,
  - (c) a juvenile formally charged with delinquency, shall, at the conclusion of the representation, or any segment thereof, be compensated for his/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. \*122-12, 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 reasonably expended out of Court. For representation of a defendant in a case in which one or more felonies are charged or for proceedings under the Post Conviction Review Act, the compensation paid to an attorney shall not exceed fifteen hundred dollars (\$1,500). In a case in which only misdemeanors or juvenile delinquencies 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 Court to whom the application is made certifies to the Administrative Judge of the Trial Division 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 Administrative Judge of the Trial Division.

(5)(a) 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. \*122-12 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).

(b) In order to expedite reimbursement to counsel for services rendered by investigators or other experts authorized by the Court, at the conclusion of such expert services rendered on behalf of the defendant counsel may submit a Petition and Order for reimbursement to counsel of such expert fees. Said Petition and Order shall be submitted to either the Trial Judge, if there is a trial, or to the Judge presiding over the disposition of the matter and may be submitted at any stage of the proceedings. The Petition and Order for reimbursement must contain all information and exhibits relevant to the reimbursement of expenses as described in Phila.Crim.R. \*122-12 (D)(1) and (2). Upon submission by counsel of the Petition and Order for reimbursement, the appropriate Judge shall immediately review the Petition and authorize payment to counsel of such expert fees as are considered reasonable and necessary in accordance with Phila.Crim.R. \*122-12 (G)(2). The reviewing Judge will then forward the Petition and Order for reimbursement to the Deputy Court Administrator for Fiscal Affairs for review and payment.

(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. Homicide Cases

(1) The appointment of counsel in homicide cases shall be made as may be provided by the Administrative Judge from time to time.

(2) Counsel appointed pursuant to Section B(1) of this Rule shall not exceed one, except that in cases of extreme complexity or where the interest of justice would so require, the Trial Judge may, after consultation with, and the consent of the President Judge, appoint co-counsel.

(3) (a) 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. \*122-12 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.

(3) (b) In order to expedite reimbursement to counsel for services rendered by investigators or other experts authorized by the Court at the conclusion of such expert services rendered on behalf of the defendant counsel may submit a Petition and Order for reimbursement to counsel for such expert fee. Said Petition and Order shall be submitted to either the Trial Judge, if there is a trial, or to the Judge presiding over the disposition of the matter and may be submitted at any stage of the proceedings. The Petition and Order for reimbursement must contain all information and exhibits relevant to the reimbursement of expenses as described in Phila.Crim.R. \*122-12 (D) (1) and (2). Upon submission by counsel of the Petition and Order for reimbursement, the appropriate Judge shall immediately review the Petition and authorize payment to counsel of such expert fees as are considered reasonable and necessary in accordance with Phila.Crim.R. \*122-12 (G) (2). The reviewing Judge will then forward the Petition and Order for reimbursement to the Deputy Court Administrator for Fiscal Affairs for review and payment.

(4) 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. \*122-12, allow such counsel all reasonable personal and incidental expenses, and compensation for services rendered.

(5) Counsel shall be compensated for services rendered at a rate not exceeding fifty dollars (\$50) per hour for time reasonably expended in Court, and forty dollars (\$40) per hour for time reasonably expended out of Court. Such compensation shall not exceed four thousand dollars (\$4,000) where one counsel has been assigned, and shall not exceed a total of six thousand (\$6,000) where two counsel have been assigned. Payment in excess of the limits stated herein may only be made, if the Court to whom the application is made certifies to the President Judge 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. When two counsel have been assigned, their claims for compensation and reimbursement shall be stated separately. Each claim for compensation and reimbursement shall be made in accordance with the provisions of Phila.Crim.R. \*122-12.

(6) Counsel so assigned must file with the Judge an affidavit that he has not, directly or indirectly, received, nor entered into a contract to receive, any compensation for such services from any source other than herein provided.

C. Appointments. Appointments made pursuant to this Rule continue through all stages of the proceedings in accordance with Phila.Crim.R. \*122-12 (B).

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

E. 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 incurred 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.

**Note:** This Rule shall be effective as to all appointments made on or after July 1, 1986. Appointments made prior to July 1, 1986, shall be governed by Act 438 of January 19, 1968 (non-homicide criminal cases) and Act 180 of July 22, 1970 (homicide cases).

**Editor’s note:** Adopted by the Board of Judges February 27, 1986, General Court Regulation 86-1, effective July 1, 1986; further amended by the Board of Judges, General Court Regulation 89-4, May 18, 1989, effective immediately.

Rule \*122 – 12      *Guidelines for Court-Appointed Counsel Who Request Compensation and Reimbursement in Criminal Cases.*

A.    *Statutes:*

All petitions for compensation and reimbursement in cases where the defendant is charged with murder shall be treated under the provisions of Act 180 of July 22, 1970. This Act shall apply even where counsel is appointed for only a portion of the entire case and shall include appellate proceedings. All other charges fall within the requirements of Act 438 of January 19, 1968.

B.    *Appointments.* Appointments in criminal cases continue from the time of the appointment through and including appeals to the highest state Appellate Court, including new trials and violations of probation, if any. The Court shall not permit appointed counsel to withdraw unless upon good cause shown. In any case where there is a change of appointed counsel, the statutory limitation amount shall apply to limit the aggregate amount of appointment fees to be paid in the case.

C.    *Payments.* In order to receive payment for services rendered and costs incurred, each Court-appointed counsel must file an original and three (3) legible copies of a request for compensation and reimbursement in the form of a petition and order with the Deputy Court Administrator for Fiscal Affairs.

(1) Petitions requesting compensation for pretrial work, trial work, or work done in connection with post-trial motions may be filed only after judgment of sentence or verdict of acquittal has been rendered.

(2) Petitions requesting compensation for work done in connection with an appeal may be filed only after oral argument has been held unless the appeal is to be decided on briefs only in which cases petitions may be filed only after all briefs have been submitted.

(3) Petitions requesting compensation for PCRA work may be filed only after a hearing has been held and all required briefs have been submitted.

The above limitations do not apply where Court-appointed counsel has withdrawn his/her appearance prior to the time a filing is permitted. In such cases, petitions may be filed immediately after counsel's petition to withdraw has been granted. In all other cases, however, petitions for compensation may not be filed at a time other than specified except in the event of extraordinary circumstances which must be set forth in the body of the petition.

D.    *Content of Requests for Compensation:*

(1) The petition must include the following: the Trial Judge's name, the Court, term and number of the case, the defendant's name, the appointed counsel's name, the charge(s), the current status or final disposition of the case as of the time of the petition, an averment that neither compensation nor reimbursement was received from any other source, an averment that defense counsel personally performed the services set forth, a wherefore clause stating the total amount of compensation and reimbursement requested, any appropriate exhibits

and an affidavit of counsel. In addition, the following exhibits shall be attached as a part of the petition: a chronologically itemized list of the time expended, services rendered and expenses incurred as well as a copy of the appointment letter and other relevant orders, such as an authorization order for experts and investigative fees.

(2) The order must include the Trial Judge's name, the Court, term and number of the case, the defendant's name, the appointed counsel's name, the charge(s), and the appropriate blank spaces for the total amount of compensation and expenses to be paid.

E. Review by Deputy Court Administrator for Fiscal Affairs. The Deputy Court Administrator for Fiscal Affairs shall initially review the petition, and comment on the correctness of the mathematical calculations, the prior payments disbursed, the appropriate statute to be considered by the Judge, and any unusual aspects concerning the petition which should be brought to the attention of the reviewing Judge.

F. Substance of Review. Petitions for compensation and reimbursement shall be reviewed as follows:

(1) In those cases in which counsel has not requested a sum beyond the statutory limit, the Trial Judge shall review the petition and the calculation sheet of the Deputy Court Administrator for Fiscal Affairs and enter an order for payment in an appropriate amount which constitutes final approval.

(2) For Act 180 (murder) cases in which the sum requested exceeds the statutory limit, only the President Judge has the authority to approve payment beyond the statutory limit. Where such a sum is requested in counsel's petition, the Trial Judge shall forward the petition to the Deputy Court Administrator for Fiscal Affairs for submission to the President Judge. The Trial Judge shall attach his recommendation to the petition and a brief statement in support thereof. The order for payment by the President Judge will constitute final authority.

(3) In Act 438 (non-murder) cases in which counsel has requested a sum which is in excess of the statutory limit, the authorization of the appropriate Administrative Judge is required. Where such a sum is requested in counsel's petition, the Trial Judge shall forward the petition to the Deputy Court Administrator for Fiscal Affairs for submission to the appropriate Administrative Judge and attach a statement of his recommendation and a brief supporting statement thereof. The order for payment by the appropriate Administrative Judge will constitute final authority.

G. Standards. The following standards shall apply to determine the appropriate compensation and reimbursement:

(1) In-Court time is that time which counsel is actually engaged in Court representing the defendant in the assigned case in a judicial proceeding. Out-of-Court time is all other time reasonably expended in the representation of the defendant in the assigned case including time spent waiting in Court for the case to be reached. It is within the Judge's discretion to determine whether time is reasonably spent. The Court in determining reasonableness may consider whether the time spent was necessary or whether less time consuming alternatives



existed.

(2) Counsel may be reimbursed for reasonable extraordinary duly authorized expenditures necessary for the proper representation of the defendant including, but not limited to, unusual out-of-town travel, reproducing documents, filing fees, if an actual expense, witness fees including expert fees and fees for consulting with potential expert witness and investigatory fees.

(3) Expenditures which are not considered extraordinary and are not therefore reimbursable include, but are not limited to, normal travel, secretarial services, preparation of the petition and order for reimbursement and compensation or general legal research.

(4) Counsel should obtain an authorization order for the expenditure of sums for expert investigation fees and other extraordinary expenses. The petition, rule and order for authorization may be filed before the appropriate Calendar Judge, the motions Judge or to the assigned Trial Judge, depending on the status of the case. In extraordinary situations, the President Judge or the Administrative Judge of the appropriate division shall review the request. Any authorization petition filed should indicate whether any other similar requests have been filed or granted. In those cases where the actual expenditure exceeds the authorization order, the appropriate Judge shall decide whether the sum requested will be allowed. Where the Court orders reimbursement of expenses prior to a final disposition, the Court may also order payment forthwith where delay in reimbursement may cause difficulty in obtaining the services for which expenses are being awarded.

(5) Where an appeal is taken, counsel must file an affidavit of indigency with the appropriate Appellate Court to eliminate the payment of filing fees and therefore negating the necessity for counsel's subsequent request for reimbursement by the Court.

(6) Counsel should consider that appointment by the Court is a public trust and should keep requests for compensation and reimbursement to a fair and reasonable sum consistent with any other request for payment out of public funds. If counsel does not feel that such a request can remain within this standard, he should decline the appointment.

**Administrative Regulation No. 76-9, effective May 13, 1976; superseded by Administrative Regulation no. 79-6, November 7, 1980; paragraphs E and F amended June 1, 1981 by Administrative Regulation 81-2; paragraph B amended by General Court Regulation 85-5, effective May 7, 1985.**

## **PART E. MISCELLANEOUS WARRANTS**

### **Rule \*122-13 Procedure in Cases Involving Ineffective Assistance of Counsel.**

In all cases where an allegation of ineffective assistance of counsel has been finally sustained, whether by the Trial Court or an Appellate Court, and in all cases where relief is sought based on trial counsel's self-declared ineffectiveness (whether or not a finding of ineffectiveness is finally made by a Court) the following procedures shall be followed.

A copy of the Court’s Opinion and Order will be forwarded by the Trial Judge (or the supervisor of the Appeals Unit in appellate remands) to the Deputy Court Administrator for Criminal Listings together with relevant portions of the Notes of Testimony when available. It will be the responsibility of the Deputy Court Administrator to maintain a record of all such cases. After recording receipt of the case, three copies of the documents ordered will be forwarded to each member of a panel which shall consist of the Administrative Judge of the Trial Division, the Court Administrator and the Trial Judge. If after reviewing the record and consultation, a majority of the panel concludes there is probable cause for disciplinary action the case shall be referred to the Disciplinary Board of the Supreme Court.

Judges shall be notified through the Office of Court Administration of all cases wherein an allegation of ineffective assistance of counsel has been sustained or wherein relief was sought based on the self-declared ineffectiveness of trial counsel. Said notice shall serve as a guide to Judges when consideration is given to candidates for appointments to represent indigent defendants.

Nothing in this procedure shall prohibit a Judge, action *sua sponte*, from referring a case for investigation to the Disciplinary Board. However, in all such cases, the Judge shall notify the Deputy Court Administrator that such action has been taken, so that a record may be maintained and the proceeding followed.

**Editor’s note:** General Court Regulation 86-3, March 7, 1986, effective immediately; further amended May 9, 1986, General Court Regulation 86-4, effective immediately.

#### **Rule \*122-14 Attorneys with Twenty (20) or More Cases.**

Counsel representing defendants in twenty (20) or more criminal cases which have not been brought to trial within six months of the initiation of prosecution (such category will hereinafter be referred to as “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 in this county until such time as said inventory is reduced to less than twenty (20) cases.

(A) It shall be the duty of the Director for Data Processing and Technology, at the end of every month, to prepare a list of attorneys who, at such time, represent such an inventory. Said list shall include the attorney’s name, the number of cases in such inventory, the name of each defendant in each such case, the charges and the Court term and number. A copy of this list shall be furnished to the Deputy Court Administrator for Operations Criminal, to each counsel named and the Office of the District Attorney, with notice to counsel that this Rule will become operative, unless, within ten (10) days, a petition is filed in accordance with (B) hereof.

(B) Counsel affected by the application of this Rule shall have the right to petition the President Judge of Common Pleas 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 supersedeas.

(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.

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

(E) Where subject counsel has one or more partners or associates in the practice of law, entries of appearance by said partners or associates shall not be considered in determining the defendants represented by counsel whose cases have not been brought to trial within the prescribed time. In no event shall substitution of appearances be permitted by counsel where such substitution is to avoid compliance with this Rule. Defendants who are fugitives or whose cases are in deferred status by reason of incompetency or other good and sufficient reason, shall not be included in determining the number of cases outstanding for a period in excess of six months.

*Editor’s note:* General Court Regulation 73-3, July 5, 1973.

#### **Rule 435      Cases in which Victim is a Minor.**

All cases in which a victim is a minor are to be heard by the Family Court Division, Juvenile Branch.

### **CHAPTER 2. INVESTIGATIONS.**

#### **PART A. SEARCH WARRANTS.**

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

The District Attorney of Philadelphia County having filed a certification pursuant to Pa.R.Crim.P. 202, no search warrants shall be submitted to any judicial officer unless it has first been reviewed and approved by an attorney for the Commonwealth.

*Note: Former Philadelphia Criminal Rule 402.*

### **CHAPTER 4**

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

Rule \*462. Trial *De Novo*. Summary Appeals.

The court of common pleas may schedule a status or settlement conference prior to the *de novo* summary trial. In the event the attorney for the Commonwealth and the defendant reach a negotiated plea, the plea may be entered before a Trial Commissioner and, upon approval by a judge, the negotiated sentence will be recorded. In the event a negotiated plea is not reached or is

not approved by the court, the case shall be heard *de novo* by a judge of the court of common pleas sitting without a jury.

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

### **PART B (1). COMPLAINT PROCEDURES**

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

The District Attorney of Philadelphia 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 any misdemeanor or felony shall not be submitted to any judicial officer unless it has first been reviewed and approved by an attorney for the Commonwealth.

*Note: Source: Former Philadelphia Criminal Rule 401.*

### *PART C. BAIL*

Rule 520 Regulations Pertaining to Bail, Court of Common Pleas and Municipal Court.

**(A) Initial Determination of Bail.** Upon defendant's arrest, the initial determination of bail, where bail is applicable, to insure his appearance at proceedings concerning the charges for which he was arrested shall be made at Preliminary Arraignment by the Arraignment Court Magistrate regularly assigned. Appeals from the Arraignment Court Magistrate's decision shall be heard only by the Emergency Municipal Court Bail Appeal Judge specifically assigned by the Municipal Court President Judge. No other Municipal Court Judge may make such initial determination of bail, except upon prior written order of the President Judge of the Municipal Court, or, in the case of a Judge of the Court of Common Pleas, both the President Judge of the Municipal Court and the President Judge of the Court of Common Pleas.

**(B) Modification of Bail.**

(1) Modifications as to the form and amount of bail made as part of the Preliminary Hearing or Municipal Court trial shall be made only by the Judge assigned to the Preliminary Hearing or Municipal Court trial.

(2) Any modification as to the form and amount of bail between Preliminary Arraignment and Common Pleas Court trial (except as part of the Preliminary Hearing or Municipal Court trial) shall be made only by the Judge regularly assigned to the Common Pleas Court Criminal Motion Court, or on weekends and Court holidays to the Judge assigned in advance for this purpose by the President Judge of the Common Pleas Court.

The assignment to the Common Pleas Court Criminal Motion Court shall be for a seven-day

period, and the Judge so assigned, if not available in City Hall, will be available by telephone through the City Hall Message Center.

(3) An application for modification of bail shall be in writing and shall include the defendant's name, address, Municipal Court number, or, if the defendant has been indicted, the indictment number, the charges, the present bail, the date and name of the Judge or Bail Commissioner who presided at the Preliminary Arraignment or Municipal Court trial. During the normal hours of Court operation (9 a.m. to 5 p.m., Monday through Friday), the application shall be filed with the clerk of the Motion Court. The Clerk shall designate in writing the time and place of the hearing to be held in the Motion Court. The District Attorney shall be served with notice of the application by counsel for the applicant at least twenty-four (24) hours before the scheduled hearing unless waived by the Motion Court Judge or the District Attorney.

If the application for modification of bail is made during other than normal hours of Court operation, it shall be filed with the Judge assigned to the Common Pleas Court Criminal Motion Court, who shall indicate thereon the time, date, and place of the hearing. Notice of the application and the time, date and place of the hearing shall be communicated to the District Attorney at least twenty-four (24) hours prior to the hearing unless waived by the Judge assigned to the Motion Court or the District Attorney.

(4) No Judge shall rule upon such application without first providing the attorney for the defendant and the District Attorney opportunity to be heard and present evidence.

(5) The defendant need not be present. If defendant's counsel wishes to have the defendant present during the normal hours of Court operation, counsel must request the clerk to issue and deliver to the Sheriff an appropriate bring-down order.

(6) All evidence offered at hearings held in Motion Court shall be stenographically recorded. Evidence presented on weekends, or Court holidays need not be so recorded.

(7) At the conclusion of the hearing, whether stenographically recorded or not, the Judge shall issue a written order as to the amount and form of bail on a certificate provided by the clerk. Copies of the certificate which shall include the Municipal Court number or indictment number, shall be issued forthwith to the attorney for defendant and the District Attorney. Counsel for the defendant shall have the responsibility of delivering the original order to the clerk of the Motion Court. If the order is issued during other than the normal hours of Court operation, the attorney for the defendant shall file the original with the clerk of the Motion Court on the first regular Court day thereafter. The copy issued to defendant's counsel shall be surrendered by him at the time bail is entered.

(8) Only one such application for bail shall be made unless defendant can establish to the satisfaction of the Court that: 1) there has been a significant change in defendant's circumstances; 2) there has been a material change in applicable law; 3) defendant has newly discovered evidence; or 4) there has been an unreasonable delay on the part of the Commonwealth in bringing the defendant to trial. Any second or subsequent bail application under the provisions of this Rule must include in the written notice a statement of the earlier application or applications and reasons why further bail proceedings are warranted.

**(C) Modification at Trial.** Once indictments have been assigned to an individual Judge for trial, only that Judge may consider an application to modify the amount or form of bail. If the existing bail shall have been set by another Judge of the Court of Common Pleas, the Trial Judge shall not modify such order, except upon proof to his satisfaction of the existence of one of the reasons stated in Subsection B(8) of these Rules.

**(D) Habeas Corpus Bail.** Bail-pending proceedings on a petition for writ of habeas Corpus shall be determined by the Judge regularly assigned to the Criminal Motion Court, or, on weekends and Court holidays, by the Judge assigned pursuant to Subsection B of this Rule to hear bail applications. No other Judge may make such initial determination of bail on the petition, except upon written order of the President Judge.

(1) The amount and form of bail pending the petition shall be determined according to the procedures required by Subsection B of this Rule.

(2) If bail on the charges has been previously set by another Judge of the Court of Common Pleas, the Judge receiving the petition shall set bail on the petition in like amount and form. Any bail bond or other form of security accepted by the Court for defendant's release on the charges shall likewise be accepted for release on the petition.

(3) If bail on the charges was set by a Municipal Court Judge or has not been set at all, the Judge receiving the petition shall set bail as provided in these Rules and such bail shall apply both to the petition and the charges and shall supersede any bail on the charges as may have been set.

**(E) Scheduling Habeas Corpus Hearings.** In addition to setting bail, the Judge receiving the petition shall set a return date, not sooner than five calendar days from presentation of the petition, for a hearing in the Criminal Motion Court, and a copy shall be served forthwith on the District Attorney. A hearing on the petition may not be held before any Judge other than the Judge regularly assigned to the Criminal Motion Court or earlier than five calendar days from presentation except upon written order of the President Judge.

**(F) Invalid Orders.** Any action by a Judge not authorized to hear an application for bail shall be

invalid and the clerk shall not accept any bail entered pursuant thereto.

**(G) District Attorney Warrants.** Arrests made pursuant to District Attorney Warrants shall be scheduled for Preliminary Arraignment at the Police Administration Building.

**(H) Appeal by Way of Re-Arrest.** When a re-arrest is effected by the Commonwealth following dismissal of the earlier proceeding because of lack or want of prosecution, the Preliminary Arraignment shall be conducted by the designated Municipal Court Judge.

When a re-arrest is taken in the nature of an appeal by the Commonwealth from an earlier dismissal, the Judge assigned to the Common Pleas Court Motion Court shall hold the Preliminary Arraignment. The Preliminary Hearing shall likewise be scheduled in the Common Pleas Court Motion Court, within three to ten days after preliminary arraignment. Continuances may be granted in accordance with Local Court Rule 801, Continuances at Preliminary Hearings; no continuances shall be longer than two weeks, unless for cause shown or by agreement of both counsel.

### *PART C (1) RELEASE PROCEDURES*

#### **Rule 528 Ten Percent (10%) Deposit of Bail.**

(A) Any defendant who has been properly granted bail may obtain his release from custody as provided herein by depositing with the issuing authority or clerk of Court a sum of money equal to ten percent (10%) of the full amount of the bail, but in no event less than twenty-five dollars (\$25), and by executing a bail undertaking. A private individual who is not a surety or fidelity company or professional bail bondsman or agent thereof may act as a third-party surety and execute the aforementioned bail undertaking on behalf of the defendant. Except as provided in this section, no other individual or business entity may act as a third-party surety.

(B) With respect to deposited bail pursuant to subsection A, the Court is empowered by General Court Regulation to designate a minimum sum of money which shall be retained by the Court. This sum shall be considered earned at the time the bail undertaking is executed.

(C) Upon compliance with all the provisions of this Rule, the defendant shall be released from custody imposed in the criminal charge on which he has made bail.

(D) Upon the full and final disposition of the criminal case in which defendant has deposited bail in accordance with this Rule, the bail deposit, less the retention amounts provided in subsection B, shall be refunded to the individual who originally paid the deposit. To effect this return, the issuing authority or clerk of Court shall promptly notify the aforementioned individual of the full and final disposition of the case and include instructions for obtaining the return of the deposit. Said notice may be in writing, sent to the last recorded address of the party who deposited bail.

Any deposited funds not claimed within 180 days from the aforementioned notice shall be deemed forfeited to the Court.

(E) A defendant, or a third party surety as defined in this Rule, may post realty as security for bail. In this event, an encumbrance shall be created immediately on such realty before the defendant may be admitted to bail. The said encumbrance shall remain in force until the case is disposed as provided in Subsection (D).

Realty posted as security for bail shall be valued in an amount equal to the assessed value of the realty used for determining tax liability on the realty. Only realty with an unencumbered assessed value equal to, or in excess of, the full amount of bail shall be accepted as security for the bail.

Comment: The minimum retention figures designated pursuant to subsection (B) are a fee equal to 30% (thirty percent) of the amount of the deposit or 3% (three percent) of the total amount of the bail. However, the maximum amount retained shall not exceed \$1,500 regardless of the total amount of the bail or the amount of the cash deposit. In no event shall the amount retained by the Court be less than \$10 (ten dollars).

Editor’s note: Star Rule \*4008.1, adopted May 17, 1973; Star Rule \*4009.1, adopted May 17, 1973, and Star Rule \*4010(c), adopted May 20, 1971. Rule renumbered and Comment amended by Administrative Order 03 of 2012.

#### PART C (2). GENERAL PROCEDURES IN ALL BAIL CASES

Rule \* 530. Duties and Powers of Bail Agency. Pretrial Services Division.

In all cases where the defendant is released on bail, whether the bail be nominal or substantial, and including cases where the defendant is released on his own recognizance, the Pretrial Services Division may be designated as surety for the defendant. Such designation shall not relieve the defendant or any third-party surety of any obligation imposed by these rules or other provisions of law.

Where the Pretrial Services Division is designated as a surety, the defendant shall be subject to all reasonable supervisory rules and regulations imposed by the Pretrial Services Division. Where the defendant fails or refuses to comply with these rules, he may be brought before the Court to determine whether additional bail shall be set in the case.

Star Rule \*4007.1, adopted May 17, 1973; General Court Regulation 71-7, July 8, 1971.

Rule \*536. Procedures upon Violation of Conditions: Revocation of Release and Forfeiture; Bail Pieces; Exoneration of Surety.

(A) The presiding Judge may issue a bench warrant and order bail to be forfeited whenever the defendant does not appear on a day indicated, within one hour of the scheduled Court action.

At preliminary arraignment each defendant shall be given written notice of his next Court appearance. This notice shall state the date, time and place of the required appearance. It shall be the responsibility of the defendant to appear for any scheduled Court action. The defendant shall be served with written notice of any subsequent Court action, but failure to receive notice will not relieve the defendant of the responsibility of appearing.



THE SURETY IS UNDER OBLIGATION TO PRODUCE THE DEFENDANT FOR ALL REQUIRED COURT APPEARANCES UNDER PENALTY OF FORFEITURE OF HIS BAIL BOND. NO OTHER NOTICE TO THE SURETY SHALL BE REQUIRED.

(B) Any bench warrant issued may be withdrawn by the presiding Judge or Administrative Judge, for proper cause. A bail order sue-out may be withdrawn by the presiding Judge or Administrative Judge at any time before judgment is entered thereon.

(C) Rescinded.

(D) No bail order sue-out which is reduced to judgment may be rescinded or altered, except by the President Judge of the Common Pleas Court or his designee, in accordance with the following procedure:

(1) The surety shall file a petition with the Office of Judicial Records as may be provided from time to time.

(2) A hearing will be scheduled before a designated Court officer at which the surety will have the opportunity to demonstrate facts in support of his petition, and to make oral argument. The hearing officer will make findings of fact and submit them to the President Judge or his designee for review.

(3) As a general guideline, judgment on forfeited bail shall be reduced according to the following schedule, absent compelling reasons to the contrary:

Amount of time between bench warrant and defendant’s return to jurisdiction of the Court	Percentage of judgment which will be reduced
0 - 60 days	90%
61 - 90 days	70%
91 - 120 days	50%
121 - 180 days	30%
Over 180 days	0%

(4) For good cause shown, the President Judge or his designee may order all or partial vacation of judgment notwithstanding the schedule in subsection 3.

(E) Any surety, for proper cause finding his position insecure, may apply to and obtain a Bail Piece from the Office of Judicial Records. This Bail Piece shall entitle said surety to arrest the named defendant for which the surety has deposited bail and surrender him to the Superintendent of Prisons for incarceration. The Superintendent of Prisons shall accept said defendant for incarceration when a proper bail piece is submitted to him.

Editor’s note: General Court Regulation 71-3, July 1, 1971; Gen-eral Court Regulation 72-18, April 28, 1972; amended by General Court Regulation 85-3, effective May 6, 1985; section (C) rescinded February 29, 2012 by Administrative Order No. 01 of 2012.

## PART D. PROCEEDINGS IN COURT CASES BEFORE ISSUING AUTHORITIES

### Rule \* 540 Preliminary Arraignment.

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

(B) Police shall direct all requests for bedside arraignments to the Arraignment Court Magistrate sitting on the day shift at the Justice Juanita Kidd Stout Center for Criminal Justice.

Editor’s note: Former rule 550 rescinded and new rule adopted by the Municipal Court Board of Judges on November 18, 2005; ef-fective March 15, 2006.

### Rule \*542 Preliminary Hearing.

(A) A Municipal Court judge may dismiss a case at preliminary hearing when the Commonwealth witnesses 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 prelimi-nary hearing only where the case has previously been continued for the non-appearance of private counsel.

Editor’s note: Former rule 555 rescinded and new rule adopted by the Municipal Court Board of Judges on November 18, 2005; effective March 15, 2006.

## PART F. PROCEDURES FOLLOWING FILING OF INFORMATION

### Rule \*571. Arraignment.

Arraignments may be conducted by Trial Commissioners. As authorized by Pa.R. Crim. P. 571, the Arraignment is scheduled as a matter of course approximately twenty-one (21) days after the date the matter is held for court, or a Municipal Court Appeal is filed. The District Attorney shall file the Information at least five days (5) before the scheduled Arraignment date and must have discovery available at the Arraignment. If the Information has not been filed before the scheduled Arraignment date, and the Arraignment is not waived by the defendant, the Arraignment shall be continued until the Information is filed. However, the Arraignment may be waived, even if the Information has not been filed, consistent with Pa.R.Crim.P. 571.

*Note: Pa.R.Crim.P. 571(D) facilitates the Arraignment of a represented defendant by mail or through the execution of a court sanctioned Waiver Form.*