

**BERKS COUNTY
RULES OF CRIMINAL PROCEDURE**

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TITLE AND CITATION OF RULES

Rule 10

These rules shall be known as Berks County Rules of Criminal Procedure and shall be cited as "B.C.R.Crim.P."

Effective January 2, 2006

ADDRESS AND TELEPHONE NUMBER CHANGES OF DEFENDANTS

Rule 15 Duty to Notify of Change in Address and/or Telephone Number

(A) Before arraignment pursuant to Pa.R.Crim.P. 571, as a condition of bail, or his or her release without bail, a Defendant shall notify in writing the issuing authority, the District Attorney and the County bail agency of any change in said Defendant's address and/or telephone number, if any, within forty-eight (48) hours after the change of address and/or telephone number first occurs.

(B) After arraignment pursuant to Pa.R.Crim.P. 571, as a condition of bail, or his or her release without bail, a Defendant shall notify in writing the Clerk of Courts, the District Attorney and the county bail agency of any change in said Defendant's address and/or telephone number within forty-eight (48) hours after the change of address and/or telephone number first occurs.

Effective January 2, 2006

Rule 16 Filing of Change of Address and/or Telephone Number

Upon receipt of notice from the Pennsylvania Board of Probation and Parole, the Berks County Probation Office, the District Attorney, the county bail agency, or a Defendant himself or herself that the Defendant has changed his or her address and/or telephone number, the Clerk of Courts shall immediately file said change of address and/or telephone number notice in the Defendant's file, if not already filed therein, and promptly notify the criminal court computer office with court administration of said change of address and/or telephone number.

Effective January 2, 2006

Rule 20 Witness Fees

A witness for the Commonwealth in a criminal case shall be entitled to only one (1) witness fee per day and to mileage for only one (1) round trip per session, regardless of the number of cases for which he has been subpoenaed and regardless of the number of days he appears in court. Where the witness has been subpoenaed for more than one (1) case, his fee and mileage shall be prorated among the cases for which he has appeared during such session. It shall be the duty of the Clerk of Courts to keep a list of the witnesses and of the cases for which a witness has appeared. The Clerk of Courts shall charge and prorate the witness fee and mileage in accordance with this Rule.

Effective January 2, 2006

Rule 30 Computation of Time

In computing the time within which anything is to be done under these Rules or any special order, where such time does not exceed five (5) days, Saturdays, Sundays and legal holidays shall be excluded, otherwise they shall be included.

Effective January 2, 2006

Rule 40 Priority of Criminal and Juvenile Proceedings

Whenever an attorney is scheduled to appear before more than one Judge during the same time period, the procedure as set forth by Berks County Rule of Judicial Administration (B.R.J.A.) 102 shall be followed.

Effective January 2, 2006

Rule 50 Presence of Prosecuting Officer

Except for good cause shown, the prosecuting police officer shall not be subject to a sequestration order at any stage of criminal proceedings. The prosecuting police officer shall be permitted to sit at counsel table and fully assist in preparation and presentation of the Commonwealth's case. Where multiple criminal dockets have been joined or where there are multiple prosecuting police officers on a single criminal docket, all prosecuting police officers shall be permitted to sit in front of the bar of the court and, to the extent space allows, at counsel table.

Effective January 2, 2006

TRIAL LIST

Rule 60 Assignment of Case to Judge

Each criminal case shall be assigned to a particular Judge of the Court of Common Pleas at arraignment. The Court of Common Pleas Judge to whom it is assigned shall handle the case throughout all its proceedings, unless reassigned by Order of the Court.

Effective January 2, 2006

Rule 61 Preparation of Trial List

Absent specific order of the assigned judge, the District Attorney of Berks County is solely responsible for determining when cases are brought to trial in each courtroom.

Effective January 2, 2006

Rule 62 Deadline for Continuances

Each Judge of the Court of Common Pleas shall from time to time designate the last day on which he or she will entertain motions for routine continuances of matters set for trial. No continuance requested after that date will be granted, unless required by law or unless the reason for the continuance first arose after the date designated.

Effective January 2, 2006

Rule 63 Unavailability of Counsel

If counsel in a case listed for trial expects to be unavailable on a particular day or days on which the case could be called for trial, he shall make application to the assigned Judge of the Court of Common Pleas, after advance reasonable written or oral notice of intention so to do to opposing counsel, to excuse him for that day or days. The Common Pleas Judge shall determine whether or not counsel has valid reason for being unavailable and shall either refuse or grant the request to be excused.

Effective January 2, 2006

Rule 113 Notice and Docketing of Orders, Decrees and Opinions

In addition to the requirements of Pa.R.Crim.P. 113 applicable to the Clerk of Courts, the Clerk of Courts shall serve written notice of every order, decree, appointment and copy of every opinion entered by the court to affected counsel of record and parties without counsel, and shall note the name of the individual who made the service, the date, time and method of service, the party served, the name of the individual who was handed the document, and the place at which service was made, or the address to which mailed, on the subject document and shall note on the docket the date, time and method of service and the name of the party served.

Effective January 2, 2006

Rule 117 Availability Of Issuing Authorities

Coverage: Issuing Warrants; Preliminary Arraignments and Summary Trials; and Setting and Accepting Bail.

- A. All Magisterial District Judge Offices shall be open for business Mondays through Fridays, excluding legal holidays, from 9:00 AM to 5:00 PM unless a change to these business hours is approved by the President Judge. Magisterial District Judges shall be available during these hours for all court business.
- B. Reading Central Court, a centralized preliminary hearing court designated as Magisterial District 23-0-02, shall be open every Friday beginning at 8:30 AM until preliminary hearings are completed, excluding legal holidays, in the Berks County Courthouse.
 - 1. The Magisterial District Judges of Magisterial Districts 23-1-02, 23-1-03, 23-1-04, 23-1-05, 23-2-01 and 23-3-09 shall serve in Reading Central Court on a rotating basis in accordance with the schedule prepared by Special Courts Administration. If a Magisterial District Judge is unable to serve when scheduled for whatever reason, it shall be his/her responsibility to find a replacement and to notify Special Courts Administration.
- C. The Berks County Central Arraignment Court (BCCAC), an after hours court designated as Magisterial District 23-0-01, shall be open Mondays through Fridays, 6:00 PM to 6:00 AM the following day, each Saturday 9:00 AM to Sunday 6:00 AM, each Sunday 9:00 AM to Monday 6:00 AM, and all legal holidays from 9:00 AM to 6:00 AM the following day.
 - 1. All Magisterial District Judges and/or Senior Magisterial District Judges on temporary assignment in the Twenty-Third Judicial District shall be scheduled in the BCCAC in accordance with the schedule prepared by Special Courts Administration and approved by the President Judge.
 - 2. A Magisterial District Judge or Senior Magisterial District Judge scheduled in the BCCAC shall be available to provide coverage for emergency petitions brought under the Protection from Abuse Act or the Older Adult Protective Services Act, the issuance of search warrants pursuant to Pa.R.Crim.P. 203 and arrest warrants pursuant to Pa.R.Crim.P. 513, accepting bail, and providing the services required by Pa.R.Crim.P. 117(A)(2)(a), (b), (c), and (d). If a Magisterial District Judge is unable to serve when scheduled for whatever reason, it shall be his/her responsibility to find a replacement and to notify Special Courts Administration and the Communications Center.

- D. All Magisterial District Judges shall be scheduled for countywide emergency duty in accordance with an emergency duty schedule prepared by Special Courts Administration and approved by the President Judge.
1. The Magisterial District Judge on emergency duty shall provide continuous coverage for the issuance of search warrants pursuant to Pa.R.Crim.P. 203 and arrest warrants pursuant to Pa.R.Crim.P. 513 when the Magisterial District Judge Offices and the Berks County Central Arraignment Court are closed. If a Magisterial District Judge is unable to serve when scheduled for whatever reason, it shall be his/her responsibility to find a replacement and to notify Special Courts Administration and the Communications Center.
- E. Magisterial District Judges and the Clerk of Courts shall be authorized to accept bail in accordance with the provisions and subject to the limitations of the Pennsylvania Rules of Criminal Procedure.

Effective February 15, 2010

IN RE: ADMINISTRATIVE ORDER : IN THE COURT OF COMMON PLEAS
AMENDING BERKS COUNTY RULE : OF BERKS COUNTY, PENNSYLVANIA
OF CRIMINAL PROCEDURE 117 :

: No.: 09-116
: Prothonotary

: No. CP-06-AD-0000028-2009
: Clerk of Courts

ORDER

AND NOW, this 28th day of December, 2009, it is ORDERED that Berks County Rule of Criminal Procedure 117 - Coverage: Issuing Warrants; Preliminary Arraignments and Summary Trials; and Setting and Accepting Bail is amended as follows. It is further ORDERED that the amended B.R.Crim.P. 117 shall become effective thirty days after publication in the *Pennsylvania Bulletin*.

The District Court Administrator of Berks County is ORDERED and DIRECTED to provide copies to the appropriate entities pursuant to Pa.R.Crim.P. 105:

1. File one (1) certified copy of this Administrative Order and Local Rule with the Administrative Office of Pennsylvania Courts.
2. Distribute two (2) certified paper copies of this Administrative Order and Local Rule and one (1) computer diskette or CD-ROM containing this Order and Rule to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
3. Publish a copy of the Administrative Order and Local Rule on the Unified Judicial System's web site at <http://ujportal.pacourts.us/localrules/ruleselection.asp> of said court.

BERKS COUNTY PA
09 DEC 29 19:44
CLERK OF COURTS

Extracted from <http://ujportal.pacourts.us/localrules/ruleselection.asp>
Certified this 29th day of December 2009
JAMES P. TROUTMAN
Clerk of Common Pleas - Criminal Division
Per Denise L. Yeaman Deputy

4. Keep continuously available for public inspection copies of the Administrative Order and Local Rule in the office of the Prothonotary or Clerk of Courts.

BY THE COURT:



JEFFREY L. SCHMEHL,
PRESIDENT JUDGE

ACCELERATED REHABILITATIVE DISPOSITION

Rule 310 Application

All applications for consideration for Accelerated Rehabilitative Disposition shall be filed, upon order of the court, with the Clerk of Courts not later than seven (7) days after arraignment. The application shall be on the form prescribed by the court and shall set forth, inter alia, the name and address of the Defendant, date complaint filed, if arraigned on information the date of arraignment, criminal charges set forth in the information, or if not yet filed the criminal charges for which Defendant was held for court by the issuing authority, criminal court number, or if not yet available the OTN number, and shall be signed by the applicant, i.e., the District Attorney, or by Defendant and defense counsel who has entered a written appearance.

Effective January 2, 2006

Rule 310.1 Action by District Attorney

If the application is filed by other than the District Attorney, within seven (7) days after such filing, the District Attorney shall determine whether or not the application merits consideration. During that time period, the District Attorney may request the Adult Probation Officer to furnish any additional information concerning Defendant, and within thirty-five (35) days after the original filing date of the application the District Attorney shall either (1) reject the application, or (2) approve the application. The application form indicating either rejection or approval and the reason(s) therefore shall be filed with the Clerk of Courts.

Effective January 2, 2006

Rule 310.2 Expedited Procedure

(A) The District Attorney shall supply to the issuing authorities of Berks County, and the Court, a list of the types of offenses approved for the expedited procedure authorized by this rule.

(B) The application for consideration for the Accelerated Rehabilitative Disposition Program on the form prescribed by the Court in B.C.R.Crim.P. 310 shall be filed by the Defendant or his counsel with the issuing authority immediately after the charges are either waived into Court or after hearing held, bound over to Court. The issuing authority shall establish a hearing date and subpoena the Defendant for an Accelerated Rehabilitative Disposition Hearing in accordance with the Court of Common Pleas calendar and written instruction from the Court Administrator.

(C) If the District Attorney, after review of the application and information supplied by the Probation Office decides to reject the application, the District Attorney shall submit an Order to the Court striking the case from the Accelerated Rehabilitative Disposition Hearing List and fixing a date for Arraignment of the Defendant.

Effective January 2, 2006

Rule 320 Expungement of the Arrest Record upon Successful Completion of the A.R.D. Program

(A) A Defendant presenting a motion for dismissal of the charges against him/her upon successful completion of the A.R.D. Program pursuant to Pa.R.Crim.P. 319 shall file with the motion a proposed order for expungement of his/her arrest record substantially in the form set forth in B.C.R.Crim.P. 320.2 The moving party shall also file an adequate number of copies of the proposed order for distribution.

(B) The moving party shall list in the proposed order all criminal justice agencies that will be served with a certified copy of the order for expungement.

Effective January 2, 2006

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(B) The moving party shall list in the proposed order all criminal justice agencies that will be served with a certified copy of the order for expungement.

Effective January 2, 2006

Rule 320.1 Service of the Order for Expungement

The Clerk of Court shall serve certified copies of the order for expungement upon the District Attorney, the Magisterial District Judge and Defendant's attorney or unrepresented Defendant, and expunge his own record. The moving party shall serve certified copies of the order upon all other criminal agencies listed in the order.

Effective January 2, 2006

Rule 320.2 Form of Proposed Order for Expungement

ORDER OF DISMISSAL AND EXPUNGEMENT

AND NOW, this _____ day of _____, 20____, pursuant to Pa. R.Crim.P. 320, it is hereby **ORDERED AND DECREED** that:

1. The specific charge(s) as appearing on the (Complaint/Information), of:

arising from the Defendant's arrest on _____, made by the _____ Police Department, (is/are) hereby **DISMISSED** by the virtue of the Defendant's successful completion of the ARD program.

2. **FURTHERMORE**, in light of the Defendant's successful completion of the ARD Program and the above dismissal of the charges, it is ordered that all information collected by criminal justice agencies concerning the individual, and arising from the initiation of this criminal proceeding, consisting of identifiable descriptions, dates and notations of the arrest, in indictments, informations or other formal criminal charges and any dispositions arising therefrom be **RETRIEVED AND EXPUNGED** in regard to:

Defendant Name:
Date of Birth: _____ Social Security # _____
Court of Common Pleas Docket # _____ OTN _____
Magisterial District Judge Docket # _____ Magisterial District # _____

3. In the event the Defendant was arrested for an offense enumerated in 75 Pa. C.S.A. §3802 (relating to the offense of Driving under the Influence of Alcohol or Controlled Substance) this Order does not apply to the Department of Transportation pursuant to 75 Pa. C.S.A. §1534(b).

4. The Berks County District Attorney's Office shall, and the Berks County Adult Probation Office may, maintain a list of the persons whose records are required by this court to be expunged upon the successful completion of any partial or post-trial diversion or probation program. Such information shall be used solely for the purpose of determining subsequent eligibility for such programs. 18 Pa. C.S.A. §9122(c).

5. The Clerk of Courts shall seal the entire record and Court Information Management shall seal the electronic records to prohibit public access to them.

6. **This order shall be served on and applies to the following:**
(1) The Pennsylvania State Police Department; (2) _____ Police Department;
(3) Berks County Adult Probation; (4) Berks County Central Warrant Agency;
(5) Berks County Sheriff; (6) Berks County Bail Agency; (7) Berks County District Attorney's Office; (8) _____, Attorney for the Defendant;
(9) Defendant's last known address of _____.

BY THE COURT:

Effective January 2, 2006

**RULE 507. APPROVAL OF POLICE COMPLAINTS AND ARREST
WARRANT AFFIDAVITS BY ATTORNEY FOR THE COMMONWEALTH**

The District Attorney of Berks 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:

- A. Murder(all types)- 18 Pa. C.S.A. §2502,
- B. Voluntary Manslaughter- 18 Pa. C.S.A. §2503,
- C. Involuntary Manslaughter- 18 Pa. C.S.A. §2504,
- D. Causing or Aiding Suicide- 18 Pa. C.S.A. §2505,
- E. Drug Delivery Resulting in Death- 18 Pa. C.S.A. §2506,
- F. Murder of an Unborn Child(all types)- 18 Pa. C.S.A. §2604,
- G. Voluntary Manslaughter of Unborn Child- 18 Pa. C.S.A. §2605,
- H. Homicide by Vehicle- 75 Pa. C.S.A. §3732,
- I. Homicide by Vehicle while DUI- 75 Pa. C.S.A. §3735,
- J. Homicide by Watercraft while Operating Under Influence- 30 Pa. C.S.A. §5502.1,
- K. Homicide by Watercraft- 30 Pa. C.S.A. §5502.2; or
- L. Any inchoate form of the foregoing- Criminal Attempt- 18 Pa. C.S.A. §901, Criminal Solicitation- 18 Pa. C.S.A. §902, Criminal Conspiracy- 18 Pa. C.S.A. §903
- M. Rape – 18 Pa. C.S.A. §3121
- N. Statutory Sexual Assault – 18 Pa. C.S.A. §3122.1
- O. Involuntary Deviate Sexual Intercourse – 18 Pa. C.S.A. §3123
- P. Sexual Assault – 18 Pa. C.S.A. §3124.01
- Q. Institutional Sexual Assault – 18 Pa. C.S.A. §3124.2
- R. Aggravated Indecent Assault – 18 Pa. C.S.A. §3125

shall not hereafter be accepted by any judicial officer unless the complaint and affidavit has the approval of an Attorney for the Commonwealth prior to filing.

Effective January 2, 2009

BAIL

Rule 530 County Bail Agency

(A) BCPS Pretrial Services, is hereby designated as the county bail agency. Its duties and powers shall be as follows:

- (1) To investigate and evaluate the bail risk of Defendants accused of crimes for purposes of nominal bail or percentage cash bail programs.
- (2) To be surety on certain nominal bail bonds or percentage cash bail bonds.
- (3) To furnish the results of such investigations to a Defendant applying for percentage cash bail or nominal bail, to the Magisterial District Judge and to the court, as may be appropriate, for release of said Defendant on nominal or percentage cash bail, such recommendation to include any special conditions for release that should be imposed in connection with such release.
- (4) To keep account of the whereabouts and supervise the activities of the Defendants released on such nominal bail or percentage cash bail programs.
- (5) To make reasonable rules and regulations to enable it to carry out its functions as bail agency, such rules and regulations being subject to review by the court.
- (6) The sum of money furnished as percentage cash bail shall be retained by the County of Berks and applied to the cost of operating the percentage cash bail program, including, but not limited to, the cost incurred by the county bail agency in supervising and monitoring Defendants in the percentage cash bail program.
- (7) Each Defendant who posts percentage cash bail shall accept, as a condition of said bail, monitoring and supervision by the county bail agency and shall report in person to the county bail agency not later than 11:00 A.M. on the first working day after his or her release on percentage cash bail and shall follow all of the supervisory and monitoring regulations of the county bail agency, so long as such Defendant remains free on percentage cash bail.

(B) Any information obtained by the county bail agency in carrying out its duties as bail agency which was obtained from, or concerns, a Defendant shall not be disclosed to any person or entity other than the Defendant, counsel for the Defendant, the Magisterial District Judge or the Court, and then only to the extent necessary or helpful in determining whether bail should be allowed, and if so, the amount and type of bail.

(C) A Magisterial District Judge or the Court may impose such special conditions for release of Defendant as deemed necessary with special conditions shall be set forth in the bail bond and may include supervision of Defendant by BCPS Pretrial Services as bail agency in accordance with bail agency rules and regulations. The county bail agency shall inform the Magisterial District Judge or the Court, as appropriate, of any violation by a Defendant of any of the terms or conditions of his or her release and such Defendant shall be brought before the Magisterial District Judge or the Court by the bail agency to determine if bail should be revoked or forfeited or additional bail should be required. If a Defendant cannot be produced or otherwise fails to appear when wanted, the Magisterial District Judge or the Court may take appropriate action for requiring compliance by Defendant, including the revocation or forfeiture of bail.

Effective January 2, 2006

Rule 531 (A) (6) – (9) Qualifications of Surety

(6) Corporate Surety.

(a) Every corporate surety company duly authorized to do business in Pennsylvania may become surety on any bail bond required to be filed in the Court provided that a current Certificate of Authority issued to it by the Insurance Department of the Commonwealth of Pennsylvania, evidencing such right, along with the current financial statement, shall be filed with the Clerk of Courts. No bond shall be executed by any corporate surety after May 15 of any year until such a certificate is issued after March 31 of the same year and the financial statement shall have been filed with the Clerk of Courts.

(b) No bond shall be executed by any corporate surety where the aggregated maximum amount of unsettled and outstanding bail forfeitures, as determined by the Berks County Solicitor, is Five Hundred Thousand (\$500,000.00) Dollars. The County Solicitor shall immediately notify the Clerk of Courts, the District Attorney and the Magisterial District Judges of Berks County, of any corporate surety having reached this maximum limit. The Clerk of Courts and Magisterial District Judges shall immediately cease executing bonds by the corporate surety. When appropriate financial settlement has been made with the County of Berks, as determined by the County Solicitor, he shall notify the Clerk of Courts and Magisterial District Judges that execution of bonds by the corporate surety may resume.

(7) Surety Agents.

(a) Every agent, acting on behalf of a corporate surety, may execute a bail bond required to be filed in this Court provided that a Power of Attorney issued by the corporate surety setting forth the maximum limit of liability per bail along with proof of licensing by the Insurance Department of the Commonwealth of Pennsylvania, shall be filed with the Clerk of Courts. No bond shall be executed by any surety agent after the expiration of such Power of Attorney until a new Power of Attorney shall have been filed with the Clerk of Courts.

(b) No bond shall be executed by a surety agent of any corporate surety authorized to do business in Berks County where the aggregate maximum amount of unsettled and outstanding bail forfeitures for all corporate sureties for which the surety agent is writing bonds, as determined by the Berks County Solicitor, is Five Hundred Thousand (\$500,000.00) Dollars. The County Solicitor shall immediately notify the Clerk of Courts, the District Attorney and the Magisterial District Judges of Berks County, of any surety agent having reached this maximum limit. The Clerk of Courts and Magisterial District Judges shall immediately cease executing bonds by the surety agent. When appropriate financial settlement has been made with the County of Berks, as determined by the County Solicitor, he shall notify the Clerk of Courts and Magisterial District Judges that execution of bonds by the surety agent may resume.

(8) Professional Bail Bondsman.

(a) Every professional bail bondsman, duly authorized to do business in Pennsylvania, may become surety on any bail bond required to be filed in this Court, provided that a currently valid registration and license from the Insurance Department of the Commonwealth of Pennsylvania, pursuant to 42 Pa.C.S. §5742, evidencing such right shall be filed with the Clerk of Courts. Every professional bail bondsman must present proof that he or she maintains an office in Berks County from which his or her business is conducted pursuant to 42 Pa.C.S. §5744, and he or she must post and maintain as security with the Clerk the sum of Fifty Thousand (\$50,000.00) Dollars in United States currency or securities of the United States Government.

(b) No bond shall be executed by any professional bail bondsman where the aggregate maximum amount of unsettled and outstanding bail forfeitures, as determined by the Berks County Solicitor is Five Hundred Thousand (\$500,000.00) Dollars. The County Solicitor shall immediately notify the Clerk of Courts, the District Attorney and the Magisterial District Judges of Berks County of any professional bail bondsman having reached this maximum limit. The Clerk of Courts and Magisterial District Judges shall immediately cease executing bonds by the professional bail bondsman. When appropriate financial settlement has been made with the

County of Berks, as determined by the County Solicitor, he shall notify the Clerk of Courts and Magisterial District Judges that execution of bonds by the professional bail bondsman may resume.

Effective January 2, 2006

Rule 531(C) Spouse of Issuing Authority Ineligible

In addition to the limitations of Pa.R.Crim.P. 531(C), the husband or wife of any issuing authority shall not be permitted in any proceeding to become surety in an individual capacity or as a professional bondsman under 42 Pa.C.S.A. §5741, or to execute as an officer, agent, attorney or employee of a surety company, any bail entered before any issuing authority of Berks County or entered before the court.

Effective January 2, 2006

Rule 537 Professional Bondsmen

(A) A professional bondsman, licensed under Chapter 57, Subchapter B, of the Judicial Code, 42 Pa.C.S. §§ 5741-49, before acting as a surety in any proceeding pending before this court, shall post cash and/or own real estate in the amounts herein set forth and shall comply with the following procedures:

(1) Cash

- (a) A professional bondsman may post cash with the Clerk of Courts as security for bail to be written, and the clerk shall receive said cash and give the professional bondsman a receipt therefore.
- (b) The Clerk of Courts shall deposit all sums that a professional bondsman has posted with said clerk into a federally insured interest bearing account with any federally insured financial institution. The clerk shall deposit said funds, subject to withdrawal upon thirty (30) days written notice to the financial institution, or subject to such longer period of notice, not exceeding one (1) year, as the professional bondsman may direct.
- (c) The clerk shall pay the interest from time to time received on such deposit to the professional bondsman, who deposited the same, less any amount which the clerk is by law authorized to retain.
- (d) A professional bondsman may, at any time, upon ten (10) days notice to the clerk, and upon presentation and surrender of the clerk's receipt for the sum deposited, withdraw the whole or any part of the cash deposited, not required for bail then written and outstanding on the security thereof, less any penalty for early withdrawal charged by the financial institution in which the clerk has deposited said sum, and less any amount which the clerk is, by law, authorized to retain. If the professional bondsman does not withdraw the entire sum, which he or she deposited, the clerk shall issue to the professional bondsman a new receipt for the remaining balance of the deposit.
- (e) A professional bondsman, may, at any time, increase the cash on deposit with the clerk. Whenever the professional bondsman increases his or her cash on deposit, he or she shall surrender the clerk's receipt for the sum therefore deposited and the clerk

shall issue to the professional bondsman a new receipt for the new total balance on deposit.

- (f) If a professional bondsman loses or is otherwise unable to produce the clerk's receipt for cash deposited, he or she shall petition the court and the court, upon being satisfied that the receipt cannot be produced, may direct the clerk to issue to the professional bondsman a duplicate receipt for the amount deposited. The clerk shall clearly and legibly mark or stamp the duplicate receipt "DUPLICATE" and shall note thereon the date on which the original receipt was issued, the date on which the duplicate was delivered, and the date of the court order authorizing said duplicate.
- (g) Whenever a professional bondsman desires to write bail on the security of cash deposited with the clerk and thereby act as surety in any case pending before the Magisterial District Judge, he or she shall file with the Magisterial District Judge a copy of the clerk's current receipt for said cash, and in addition, an affidavit sworn to before any official authorized to administer oaths, setting forth the then total amount of cash then on deposit with the clerk, the total amount of bail offered and accepted on the security of said cash and still in force, the amount of bail then desired to be written, and the total fee, premium and/or charge which the bondsman has received and/or is entitled to receive for the bail about to be written.
- (h) Whenever a professional bondsman desires to write bail on the security of cash deposited with the clerk and thereby act as surety in any cash pending in the Court of Common Pleas, he or she shall file with the clerk an affidavit sworn before any official authorized to administer oaths, setting forth the then total amount of cash then on deposit with the clerk, the total amount of bail offered and accepted on the security of said cash, and still in force, the amount of bail then desired to be written, and the total fee, premium and/or charge which the bondsman has received and/or is entitled to receive for the bail about to be written.
- (i) No bail shall be accepted from any professional bondsman at any time when the total amount of bail then written on the security of cash deposited with the clerk is, or when added to the bail about to be written, will exceed ten times the cash then on deposit.

(2) Real Estate

- (a) A professional bondsman who desires to write bail against real estate shall record the deed or deeds for such real estate in the county or counties where the same is situated and shall file with the Clerk of Courts a statement, under oath, approved by the court, listing the real estate owned by him or her and situated in Pennsylvania. Such statement shall also set forth:
 - i. The description of each tract of real estate, its location by county, municipality and post office address, if any, the deed book volume and page where a copy of the deed is recorded and the acreage or square footage contained in each tract;

- ii. An averment that the professional bondsman filing the statement is the sole equitable and legal owner of said real estate and the exact name in which said bondsman holds title;
 - iii. The fair market value of each tract of real estate as of the date of said statement as determined by an experienced real estate broker and appraiser. The professional bondsman shall attach a copy of said appraisal to the statement;
 - iv. The cost of each tract of real estate when first acquired, the latest assessed valuation for county tax purposes, the mortgages, liens and encumbrances against the real estate, and the balance unpaid on each encumbrance as of the date of the statement;
 - v. The net value of said real estate. (The total fair market value of all tracts of real estate less the total of all encumbrances against the same.)
- (b) The professional bondsman shall file the statement required by subsection (a) hereof before writing any bail on the basis of said real estate, and thereafter on or before January 31st of each year. If the ownership of any tract or tracts of real estate set forth on said statement changes after the statement has been filed, or if the mortgages, liens and encumbrances increase in principal amount after the statement has been filed, the professional bondsman shall file a revised statement setting forth each such change not later than ten (10) days after such change first occur.
- (c) Whenever a professional bondsman desires to write bail on the security of said real estate and thereby act as surety in any case pending before a Magisterial District Judge, he or she shall file with the Magisterial District Judge a copy of his or her latest statement filed with the Clerk of Courts pursuant to subsection (a) hereof, and in addition an affidavit sworn to before any official authorized to administer oaths, setting forth the then total amount of bail offered and accepted against said real estate and still in force, the amount of bail then desired to be written, and the total fee, premium and/or charge which the bondsman has received and/or is entitled to receive for the bail then about to be written.
- (d) Whenever a professional bondsman desires to write bail on the security of said real estate and thereby act as surety in any case pending in the Court of Common Pleas, he or she shall file, in addition to the statement required to be filed with the Clerk of Courts pursuant to subsection (a) hereof, an affidavit sworn to before any official authorized to administer oaths, setting forth the then total amount of bail offered and accepted against said real estate, and still in force, the amount of bail then desired to be written, and the total fee, premium and/or charge which the bondsman has received and/or is entitled to receive for the bail then about to be written.
- (e) No bail shall be accepted from any professional bondsman whenever the total amount of bail written on the security of the professional bondsman's real estate is, or when added to the bail then about to be written will, exceed five (5) times the net value of said real estate as the net value has been determined pursuant to subparagraph (A)(2)(a) hereof.

(B) Neither the Clerk of Courts nor any Magisterial District Judge shall accept bail from any professional bondsman if the fee, premium and/or charge received, or to be received, by said professional bondsman for writing said bail exceeds the amount from time to time authorized by the Judicial Code.

Comment to (B):

The Judicial Code presently limits the fees which can be charged by a professional bondsman to ten (10%) percent of the first one hundred (\$100.00) dollars of bail written in any case and five (5%) percent of any amount in excess of one hundred (\$100.00) dollars. Section 5748(a).

(C) The Magisterial District Judge shall make the copy of the receipt and the affidavit filed by a professional bondsman pursuant to subsection (A)(1)(g) hereof, or the statement and affidavit filed with him by a professional bondsman pursuant to subsection (A)(2)(c) hereof, a part of the proceedings in the case in which the same was filed and shall forward said receipt copy and affidavit, or said statement and affidavit with the other papers in said case to this court at the same time as the transcript of the proceedings in said case are returned to this court, and the same shall become a part of the record of the case.

(D) Whenever any bail written by a professional bondsman has been forfeited, the professional bondsman shall not write any additional bail until he or she had made settlement for the forfeiture obligation and paid the same or the forfeiture has been remitted by the court.

(E) A professional bondsman shall not accept or receive, in addition to the fee permitted by law, any cash, securities, assets and/or property of any kind, whether to secure compliance with the terms of the bail or for any other reason relating to his or her writing bail.

(F) No bail shall be accepted from any professional bondsman at any time when such bondsman is not in full compliance with the provisions of this rule.

Effective January 2, 2006

Rule 543 Evidence of Summary Offenses at Preliminary Hearings

(A) The Commonwealth shall have no duty to present evidence to establish a *prima facie* case for summary offenses at a preliminary hearing. As long as at least one Felony or Misdemeanor charge is bound over to the Court of Common Pleas, all summary charges shall also be bound over to the Court of Common Pleas.

(B) Should all Felony and Misdemeanor charges be dismissed at a preliminary hearing, the issuing authority shall schedule a separate hearing for evidence on the summary offenses to be heard.

Effective January 2, 2006

Rule 560 Initiation of Proceedings

Initiation of criminal proceedings in the court shall be by Information filed by the District Attorney instead of grand jury indictment, in accordance with 42 Pa. C.S.A. §8931 and the Pennsylvania Rules of Criminal Procedure.

Effective January 2, 2006

ARRAIGNMENT

Rule 571 Arraignment

Each Defendant in a criminal case shall be arraigned before a Judge of the Court of Common Pleas or before the court administrator or a deputy court administrator or a criminal court master when such court administrator or deputy is designated and authorized by an order of the president judge.

Effective January 2, 2006

Rule 571.1 Time for Arraignment

Arraignment shall take place within ten (10) days after the filing of the Information at a time fixed from time to time by the court calendar or by special order of the court.

Effective January 2, 2006

Rule 571.2 Waiver of Arraignment

The provisions of B.C.R.Crim.P. 571 notwithstanding, in all cases in which a Defendant is charged with crime, other than murder, the Defendant, if represented by counsel who has entered his appearance in writing, may enter a plea of "not guilty", or by notation on the Information stands mute in the presence of counsel without appearing at arraignment court. Where a notation is made that the Defendant stands mute, the Clerk of Courts shall enter a plea of "not guilty" on behalf of the Defendant. Such plea or notation that the Defendant stands mute may be entered in the District Attorney's office at any time prior to 5:00 P.M. of a day preceding arraignment court, providing the Defendant enters the plea of "not guilty" in writing upon the face of the information, or in the case where the Defendant stands mute enters such notation in writing upon the face of the information, and that the attorney who has appeared for the Defendant approves such action by likewise endorsing his name upon the information; and providing further that the Defendant and his counsel sign a waiver of the right to arraignment; further, Defendant shall be furnished documents required by the applicable Pennsylvania Rules of Criminal Procedure and Defendant and his counsel shall execute a receipt therefore.

Effective January 2, 2006

Rule 571.3 Arraignment Before Court Administrator, Deputy Court Administrator or a Criminal Court Master

(A) Whenever arraignments are held before the court administrator or a deputy court administrator, or a criminal court master, designated and authorized by order of the president judge, and the Defendant stands mute, the clerk is authorized and directed to enter a plea of not guilty for the Defendant.

(B) Whenever arraignments are held before the court administrator or a deputy court administrator, or a criminal court master, designated and authorized by order of the president judge, and the Defendant fails to appear, the court administrator, or deputy court administrator, or criminal court master, shall report such fact in writing to a Judge of the Court of Common Pleas, and the court may authorize that a bench warrant be issued for the apprehension and arrest of the Defendant so that he or she may be brought before the court.

Effective January 2, 2006

Rule 571.4 Appearance of Defendant at Arraignment Without Counsel

(A) Whenever a Defendant appears for arraignment without counsel, such Defendant shall be advised of his or her right to counsel of his or her own choice, and that if he or she cannot afford counsel of his or her own choice, that counsel will be provided free without charge to such Defendant.

(B) Whenever a Defendant appears for arraignment without counsel, he or she shall be considered to have stood mute, and the clerk is authorized and directed to enter a plea of not guilty on such Defendant's behalf.

Effective January 2, 2006

Rule 571.5 Place and Manner of Arraignment

Arraignment shall take place at the Berks County Courthouse, at the Berks County Prison in Bern Township, Berks County, Pennsylvania, or at such other places in the County of Berks as may from time to time be designated by a Judge of the Court of Common Pleas and may be conducted by means of video conferencing.

Effective January 2, 2006

Rule 571.6 Change of Address and Telephone Number Noted

At arraignment the Defendant shall be asked on the record if his or her address and telephone number has been changed from the last address and/or telephone number as shown in the record, and if so, shall be asked to give his or her then current address and telephone number, if any. Such information shall be noted in the Defendant's court file.

Effective January 2, 2006

Rule 571.7 Requirement to Notify of Change in Address and/or Telephone Number

At arraignment the District Attorney shall advise the Defendant in writing that, as a condition of bail, the Defendant is required to notify in writing the Clerk of Courts, the District Attorney and the county bail agency of each change in Defendant's address and/or telephone number within forty-eight (48) hours after the change of address and/or telephone number first occurs.

Effective January 2, 2006

MOTIONS

Rule 575 Form

Except for motions made orally during a trial or hearing, all motions, petitions and applications shall be written, shall contain a caption setting forth the name of the court, the number of the action, nature of the proceeding and names of the parties, and the motion, petition or application shall contain the name of counsel presenting the motion, petition or application, and if there is no counsel of record, the name of the party making the pro se motion, petition or application, with the name of such counsel or party without counsel endorsed thereon together with an address within the Commonwealth at which papers may be served. Only the proposed order then being sought shall be presented with the motion. These requirements are in addition to the requirements of Pa. R.Crim.P. 575(A).

Effective January 2, 2006

Rule 575.1 Presentation of Motions, Petitions and Applications

(A) All motions, petitions and applications, including omnibus pretrial motions for relief, petitions for writ of habeas corpus, motions for change of venue or change in venue motion for new trial, motion in arrest of judgment, and all other motions which can be filed as a matter of right, except emergency motions, petitions and applications and except motions for continuance, shall be filed in the office of the Clerk of Courts for transmission to the assigned Judge of the Court of Common Pleas for disposition.

(B) All emergency motions, petitions and applications and motions for a continuance shall be made in the courtroom of the Common Pleas Judge assigned to the case either at 9:30 A.M. or 1:30 P.M. on a day he is scheduled to sit. If the motion, petition or application is of such nature that the opposing party has a right to be heard, the moving party shall give such opposing party at least forty-eight (48) hours notice of the time when the moving party will appear and present such motion, petition or application, unless the emergency nature of the motion prevents such notice. In the latter situation the moving party shall give as much notice as is reasonably possible.

(C) If a case has not been assigned to a particular Common Pleas Judge, the emergency motion, petition or application shall be made in the courtroom of the emergency motions judge either at 9:30 A.M. or 1:30 P.M.

(D) No emergency motion, petition or application shall be made or presented to the judge assigned to the case in chambers without pre-arrangement with that judge. No request for appointment in chambers shall be granted except for compelling reasons.

(E) All emergency motions, petitions or applications which require immediate action in cases where the assigned judge is unavailable or in cases where no Common Pleas Judge has been assigned to the case, shall be presented to the emergency motions judge in his courtroom at 9:30 A.M. or 1:30 P.M., or by pre-arrangement with the emergency motions judge in his chambers.

(F) A party filing or presenting a motion, petition or application for an order shall file with the motion, petition or application a proposed form of the order sought, together with one copy of such proposed order for the moving party and one copy for each other party and one copy for the criminal court computer office as well as a certification directed to the Clerk of Courts setting forth the names and addresses of those to be served.

(G) If a party presents a motion, petition or application without the required number of copies, the clerk shall file and docket said motion, petition or application, but the court need not act upon the same until the required number of copies is provided.

Effective January 2, 2006

Rule 576 Papers Presented by Persons Unauthorized by State Rules

Any papers or documents that are submitted on behalf of a Defendant by someone other than the Defendant's attorney of record as defined by Pa. R.Crim.P. 120 or by the Defendant pro se where the Defendant is represented by counsel, shall be accepted by the Clerk of Courts as a communication only and no further action shall be taken. Such papers will not be forwarded to the assigned Common Pleas Judge for further consideration. A copy of the papers accepted will be sent to the Defendant's attorney of record or the Defendant if no attorney has entered an appearance for the Defendant. The following notice shall be attached to the returned copies:

NOTICE:

The attached papers were accepted on (date). These papers were not forwarded to the assigned judge due to failure to the failure to comply with B.R.J.A. 401.1, Pa. R.Crim.P. 576 and B.C.R.Crim. P. 576.

Comment: This rule serves to clarify B.R.J.A. 401.1 for criminal cases. The rule is written to be consistent with Pa. R.Crim.P. 576(A)(4) and (C), its main purpose is to add the requirement of the written notice to be included on returned documents.

Effective January 2, 2006

Rule 580 Evidence of Summary Offenses at Omnibus Pretrial Hearings

(A) Unless specifically ordered by a Judge of the Court of Common Pleas after a motion by a Defendant, the Commonwealth shall have no duty to present evidence to establish a *prima facie* case for summary offenses at a hearing on an Omnibus Pretrial Motion. As long as at least one Felony or Misdemeanor charge remains pending after the hearing, all summary charges shall remain pending and be scheduled for trial or other disposition.

(B) Should all Felony and Misdemeanor charges be dismissed after an Omnibus Pretrial Hearing, the Court shall either schedule a disposition hearing on the summary charges or remand the summary charges to the appropriate Magisterial District Judge for disposition.

Effective January 2, 2006

COSTS

Rule 706 Costs to be Paid by Defendant

In all criminal cases where the Defendant shall have been sentenced to pay the costs of the proceeding, or where by order the court has directed the Defendant to pay certain costs, the Clerk of Courts shall deliver a copy of the bill of costs as stated to the adult probation and parole office of the court. The amount of the bill of costs as rendered shall be the amount to be collected from the Defendant, subject, however, to the right by any party to have the costs retaxed in accordance with the rules of court.

Effective January 2, 2006

Rule 706.1 Taxation of Costs

Exceptions

Decision

Appeal

Collection

(A) A bill of costs drawn, certified and filed in accordance with these rules, shall be taxed in the first instance by the Clerk of Courts.

(B) Exceptions to such bill of costs must be filed with the Clerk of Courts, accompanied by an affidavit of the truth of the allegations made therein within five (5) days after such bill of costs is filed with the Clerk of Courts. Within five (5) days after the exceptions are filed, the Clerk of Courts shall issue a rule for retaxation and shall forthwith notify the parties of the time and date for hearing on such retaxation. The hearing shall be held not less than five (5) days after notice is served on the parties.

(C) The Clerk of Courts shall serve a copy of his decision on the parties within five (5) days of the hearing. Any party may file an appeal to the court from such decision or retaxation within ten (10) days after receipt thereof by filing a specification of items to which objection is taken along with the grounds for such objection in the office of the Clerk of Courts. Upon filing of such appeal, the Clerk of Courts shall file a written report in which he shall set forth the facts upon which he based his decision. Objections not raised before the Clerk of Courts shall be deemed abandoned.

(D) Neither a rule for retaxation nor an appeal therefrom shall prevent the collection of the costs, but upon application, the court may direct that the costs to which objections have been taken are not to be paid without order of court.

(E) At any time prior to payment, either party may file exceptions to any costs taxed by the Clerk of Courts other than those shown on a party's bill of costs. such exceptions shall be accompanied by an affidavit of the truth of the allegations contained therein. Thereafter, the proceedings for retaxation shall be in accordance with the rules pertaining to the retaxation of items listed on a party's bill of costs.

Effective January 2, 2006