

## LEHIGH COUNTY CRIMINAL RULES

### **Leh.R.Cr.P. 101.1. CONSTRUCTION OF RULES; CONSISTENCY WITH STATEWIDE RULES.**

(a) All rules of construction adopted by the Supreme Court of Pennsylvania shall apply to local rules adopted by the Court of Common Pleas of Lehigh County that govern the practice and procedure in criminal matters.

(b) Any requirement imposed by these rules is in addition to, and not in lieu of, the requirements under the Pennsylvania Rules of Criminal Procedure.

(c) No pleading or other legal paper shall be refused for filing by the clerk of courts based upon a failure to comply with a requirement imposed by these rules. No case shall be dismissed nor request for relief granted or denied because of a failure to comply with such a requirement. If a party fails to comply with such a requirement, the court shall notify the party of the failure and provide a reasonable time for the party to comply with the requirement.

### **Leh.R.Cr.P. 102. CITATION OF RULES.**

All criminal rules of procedure adopted by the Court of Common Pleas of Lehigh County shall be cited as Lehigh Rules of Criminal Procedure ("Leh.R.Cr.P."). Rule 1901 shall be cited as Lehigh Rule of Judicial Administration ("Leh.Cr.R.J.A. 1901").

*Note:* The language of this Rule was derived from Leh.R.C.P. 51.

### **Leh.R.Cr.P. 103. DEFINITIONS.**

Unless the context clearly indicates otherwise, the words and phrases used in any criminal rule adopted by the Court of Common Pleas of Lehigh County shall be given the same meaning as is given those words and phrases in the Pennsylvania Rules of Criminal Procedure with the following exceptions and additions: (1) "Court", means the Court of Common Pleas of Lehigh County; (2) "Rule", means any rule of criminal court adopted by the Court of Common Pleas of Lehigh County; (3) "Clerk of Courts–Criminal" means the Clerk of Courts–Criminal of the Court of Common Pleas of Lehigh County; and (4) "except as otherwise provided", means except as provided by statute, by the Pennsylvania Rules of Criminal Procedure, or by specific local criminal court rule.

*Note:* The language of this Rule was derived from Leh.R.C.P. 76.

### **Leh.R.Cr.P. 103.1. DEFINITIONS.**

(a) Definitions contained in Pa.R.Crim.P. 103 shall apply to all local rules

heretofore and hereafter adopted which govern practice and procedure in criminal matters.

(b) The following words and phrases, when used in any Lehigh County Rule of Criminal Procedure, shall have the following meanings:

*Bail Bondsman* is as defined at 42 Pa.C.S.A. § 5741.

*Bail Enforcement Agent* is an individual who performs services or takes action for the purpose of enforcing the terms and conditions of a defendant's release from custody on bail, including locating, apprehending and surrendering a defendant released from custody on bail who has failed to appear at a specified time and place pursuant to Order of Court. The term does not include police officers, sheriffs, court officers or law enforcement personnel who execute warrants of arrest for bail forfeitures pursuant to their official duties.

*Clerk* is the Lehigh County Clerk of Judicial Records, Criminal Division.

*Department* is as defined at 42 Pa.C.S.A. § 5741.

*Insurer* is as defined at 42 Pa.C.S.A. § 5741.

*Surety* is as defined at 42 Pa.C.S.A. § 5741.

*Department of Law* is the Lehigh County Department of Law.

*Pretrial Services* is Lehigh Valley Pretrial Services, Inc.

*President Judge* is the President Judge of the Court of Common Pleas of Lehigh County.

#### **Leh.R.Cr.P. 105. EFFECTIVE DATES OF RULES.**

(a) A Rule or amendment to a Rule shall become effective upon the date specified by the court in adopting or amending such rule, but in no case until after the requirements of Pa.R.Crim.P. 105(C) and (D) are met.

(b) If no effective date is specified, the Rule or amendment to the Rule shall become effective on the first day of January or July, whichever is earlier, following the thirtieth day after its adoption, filing and publication in the *Pennsylvania Bulletin* (Pa.B.).

*Note:* The language of this Rule was derived from Leh.R.C.P.52.

#### **Leh.R.Cr.P. 114. SERVICE OF ORDERS AND COURT NOTICES**

(a) Except as otherwise provided in Paragraph (B) of this local rule, the Clerk of Courts-Criminal shall serve copies of all orders and court notices filed with the Clerk.

(b) Copies of orders and court notices generated by the Court Administrator shall be served by the Court Administrator, who shall indicate on the original transmitted to the Clerk for filing, each attorney or party served, including their names, as well as addresses, dates, and methods of service.

**Leh.R.Cr.P. 117. COVERAGE: ISSUING WARRANTS; PRELIMINARY ARRAIGNMENTS AND SUMMARY TRIALS; AND SETTING AND ACCEPTING BAIL.**

1. Magisterial District Judge Offices shall be open for regular business on Mondays through Fridays, excluding holidays, during such hours as established by Order of the President Judge, and as may be modified with the approval of the President Judge to meet the needs of the public and the court.

2. Continuous coverage for the issuance of warrants, the holding of preliminary arraignments and summary trials, and the setting and accepting of bail and collateral shall be by the traditional on-call system as presently established. The President Judge shall establish the schedule of assignment of Magisterial District Judges to on-call duty.

3. An on-call Magisterial District Judge, while on-call, and the Clerk of Courts– Criminal, on any day and at any time, are authorized to accept bail in accordance with the provisions, and subject to the limitations, of the Pennsylvania Rules of Criminal Procedure.

**Leh.R.Cr.P. 202. APPROVAL OF SEARCH WARRANT APPLICATIONS BY ATTORNEY FOR THE COMMONWEALTH.**

The District Attorney of Lehigh County having filed a certification pursuant to Pa.R.Crim.P. 202, search warrants, in all circumstances, shall not be issued by any judicial officer unless the search warrant application has the approval of an attorney for the Commonwealth prior to filing.

*Note:* This Rule, previously and most recently numbered 2002A, and prior to that 707, has been in effect since July 1, 1982, and has required approval of all search warrant applications since that date by the attorney for the Commonwealth prior to filing with an issuing authority. The original Rule 707 was published at 12 Pa.B. 2278 (July 17, 1982).

**Leh.R.Cr.P. 300. ACCELERATED REHABILITATIVE DISPOSITION IN SUMMARY CASES.**

The District Attorney of Lehigh County has filed a certification pursuant to Pa.R.Crim.P. 300, and has elected that no summary offenses or offenders, including those which are statutorily excluded, are eligible for summary case A.R.D. before the minor judiciary except for Underage Drinking offenses under 18 Pa.C.S. §§6307, 6308 and 6310.3.

*Note:* This Rule was originally adopted August 23, 1994; and “corrected” August 30, 1994, with an accompanying Administrative Order filed to No. 338- M-1994. The Rule conforms to the last election made by the District Attorney and prohibits a District Justice from granting ARD except in cases charging violations of 18 Pa.C.S. §§6307, 6308 and 6310.3. The Administrative Order of August 30, 1994, was published at 24 Pa.B. 4672 (September 1, 1994),

**Leh.R.Cr.P. 320. EXPUNGEMENT UPON SUCCESSFUL COMPLETION OF ARD**

1. The following procedure is to be effective for both DUI and Non-DUI criminal cases;
2. Criminal defendants accepted into the ARD Program will be charged appropriate fees to cover expungement which *shall* take place upon successful completion of the Program;
3. Expungement fees collected are *in addition to* any and all other applicable costs, fees and restitution assessed as part of the ARD Program;
4. At the expiration of the designated supervision period, the Adult Probation department will determine all those defendants who have successfully completed the ARD Program and whose cases shall be closed for supervision;
5. Successful completion includes full payment of all costs and restitution;
6. All ARD case closures will be reported to the Clerk of Judicial Records - Criminal Division who will forward a list of the successful completions to the Office of the District Attorney;
7. The District Attorney shall review the list of successful completions and may object to the expungement of the records of any particular defendant;
8. Such objection must be filed in a petition with proper service to all parties and a hearing shall be scheduled before the Court;
9. Once reviewed and approved by the District Attorney, the Clerk of Judicial Records - Criminal Division shall prepare Orders of Dismissal and Expungement to be signed by the Court;
10. Records will *not* be expunged for those defendants whose cases have been closed for supervision but who have not successfully completed all conditions;
11. Expungement fees collected from those defendants who do not successfully complete the ARD Program and, therefore, are not entitled to expungement will be refunded; Upon satisfactory completion of all outstanding conditions subsequent to case closure, a defendant may petition the Court for dismissal of charges and expungement upon payment of

the appropriate filing fee; *pro se* petitions may be obtained online at [lccpa.org](http://lccpa.org) or in the office of the Court Administrator and the Clerk of Judicial Records - Criminal Division;

12. Expungement after successful completion of ARD is **expressly prohibited** for certain offenses specifically delineated in 18 Pa.C.S.A. §9122(b.1) and will not be granted.

*Note:* This Rule was adopted by an Administrative Order dated May 22, 2012 and published in the *Pennsylvania Bulletin*, and became effective 30 days from the date of publication.

#### **Leh.R.Cr.P. 506. PRIVATE CRIMINAL COMPLAINTS.**

(a) If the attorney for the Commonwealth disapproves a private criminal complaint, the affiant may file a Petition with the Clerk of Courts–Criminal captioned with the name of the affiant, and not the name of the alleged Defendant, for review by the Court..

(b) Such filing shall consist solely of the Petition, a copy of the disapproved criminal complaint and the affidavit(s) of probable cause previously submitted to the attorney for the Commonwealth, together with a copy of the attorney for the Commonwealth’s statement of reasons for disapproval if such statement is not contained on the face of the complaint.

(c) Upon the receipt of such filing, the Clerk of Courts–Criminal shall forthwith notify the attorney for the Commonwealth in writing of the filing and that he has ten (10) days from the date of said notification within which to present to the Judge assigned to review the Petition, for the latter’s confidential review, any investigative reports which the attorney for the Commonwealth may deem relevant to approval or disapproval of the complaint. The Court shall thereafter review the filing and any material submitted by the attorney for the Commonwealth and enter an order approving or disapproving the private criminal complaint.

(d) If the private criminal complaint is approved, the Clerk of Courts–Criminal shall give written notice to the attorney for the Commonwealth and the affiant of the decision and transmit the complaint to the appropriate issuing authority. If the private criminal complaint is disapproved written notice thereof shall be given as aforesaid and the complaint shall be returned to the affiant.

*Comment:* This Rule is intended to supplement Pa.R.Crim P. 506(B)(2) by providing a procedure for filing and review of disapproved private criminal complaints. The affiant or the affiant’s attorney must file a Petition with the Clerk of Courts–Criminal accompanied by the complaint and affidavits previously acted upon by the attorney for the Commonwealth, as well as a copy of the reasons for disapproval if those reasons are contained on a document other than the complaint itself. The Caption of the Case shall read: “In re: Private Criminal Complaint filed by (Affiant’s Name).” The name of the alleged Defendant shall not appear in that caption. The Clerk of Courts–Criminal shall advise the attorney for the Commonwealth of the filing of these documents with the Court. Reference on that notice should be made to the attorney for the Commonwealth’s case number (such as “D.A. 04-101”) which appears on the complaint form in the incident number block. The attorney for the

Commonwealth is allowed ten (10) days after receipt of this notice to file a copy of any investigative material generated by or for the Office of the Attorney for the Commonwealth, if desired. The Rule contemplates that this investigative material remain confidential, and that the attorney for the Commonwealth will notify the Court if nothing is to be filed by his office. "... the trial court may review all evidence that the district attorney considered in making her decision and is not limited to reviewing the four corners of the private criminal complaint." In re: Private Complaint of Adams, 764 A.2d 577, 578 (Pa. Super. 2000). No hearing is provided for by this Rule, nor is one legally required. Piscanio Appeal, 344 A.2d 658, 661, n.5 (Pa. Super.1975).

The standard for review is not the existence of probable cause, but rather whether there has been a gross abuse of discretion. Commonwealth v. Eisemann, 419 A.2d 591, 593 (Pa. Super. 1980). "[A] trial court should not interfere with a prosecutor's policy-based decision to disapprove a private complaint absent a showing of bad faith, fraud, or unconstitutionality." Commonwealth v. Brown, 708 A.2d 81, 84 (Pa. 1998).

"Where the district attorney's denial is based on a legal evaluation of the evidence, the trial court undertakes a de novo review of the matter. Commonwealth v. Cooper, 710 A.2d 76 (Pa.Super.1998). Where the district attorney's disapproval is based on policy considerations, the trial court accords deference to the decision and will not interfere with it in the absence of bad faith, fraud or unconstitutionality. Id. at 79. In the event the district attorney offers a hybrid of legal and policy reasons for disapproval, deference to the district attorney's decision, rather than de novo review, is the appropriate standard to be employed." In re: Private Complaint of Adams, 764 A.2d 577, 579 (Pa. Super. 2000)

*Note:* This Rule in its basic form was adopted in 1981 and published in 11 Pa.B. 1316 (April 18, 1981). The *Comment* has been expanded based upon more recent case law.

**Leh.R.Cr.P. 507. APPROVAL OF POLICE COMPLAINTS AND ARREST WARRANT AFFIDAVITS BY ATTORNEY FOR THE COMMONWEALTH.**

The District Attorney of Lehigh County having filed a certification pursuant to Pa.R.Crim.P. 507:

1. Enumerated Offenses.

Criminal complaints and arrest warrant affidavits by police officers, as defined in the Rules of Criminal Procedure, charging one or more of the following offenses 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:

- a. Criminal homicide in violation of 18.Pa.C.S. §2501
- Murder of any degree in violation of 18.Pa.C.S. §2502
- Voluntary manslaughter in violation of 18.Pa.C.S. §2503
- Involuntary manslaughter in violation of 18.Pa.C.S. §2504
- Drug delivery resulting in death 18.Pa.C.S. §2506

- Criminal homicide of unborn child 18 Pa.C.S § 2604
- Murder of unborn child 18 Pa.C.S. §2604
- Voluntary manslaughter of unborn child 18 Pa.C.S. § 2605
  
- b. Homicide by vehicle 75 Pa.C.S. §3732
- Homicide by vehicle while driving under influence in violation of 75 Pa.C.S § 3735
- Accidents involving death or serious bodily injury 75 Pa.C.S. §3742(b)(2) and (3)
  
- c. Aggravated assault 18 Pa.C.S. §2702
- Assault by prisoner 18 Pa.C.S. §2703
- Assault by life prisoner 18 Pa.C.S. §2704
- Kidnapping 18 Pa.C.S. §2901
- Recklessly endangering another person 18 Pa.C.S. §2705
  
- d. Rape 18.Pa.C.S. §3121
- Statutory sexual assault 18.Pa.C.S. §3122
- Involuntary deviate sexual intercourse 18.Pa.C.S. §3123
- Sexual assault 18 Pa.C.S. §3124.1
- Institutional sexual assault 18 Pa.C. §3124.2
- Aggravated indecent assault 18 Pa.C.S. §3125
- Sexual abuse of children 18 Pa.C.S. §6312
- Neglect of care-dependent person 18 Pa.C.S. §2713
  
- e. Arson 18 Pa.C.S. §3301
- Causing or risking a catastrophe 18 Pa.C.S. §3302
- Burglary 18 Pa.C.S. §3502
- Robbery 18 Pa.C.S. §3701
- Robbery of motor vehicle 18 Pa.C.S. §3702
  
- f. Person not to possess firearm 18 Pa.C.S. §6105
- Firearms not to be carried without a license 18 Pa.C.S. §6106
- Possession of firearm by a minor 18 Pa.C.S. §6110.1
- Possession of firearm with altered serial number 18 Pa.C.S. §6110.2
- Certain bullets prohibited 18 Pa.C.S. §6121
- Theft and Receiving stolen property (firearms) 18 Pa.C.S. §3903(a)(2) and (a.1)
- Discharge of a firearm into an occupied structure 18 Pa.C.S. §2707.1
  
- g. Ethnic intimidation 18 Pa.C.S. §2710
- Bribery in official and political matters 18 Pa.C.S. §4701
- Threats and other improper influences in official and political matters 18 Pa.C.S. §4702
- Perjury 18 Pa.C.S. §4902
- Interception, disclosure or use of wire, electronic or oral communications 18 Pa.C.S. §5703

Election code violations 25 Pa.C.S. (all offenses)

- h. Controlled substance, drug device and cosmetic act 35 P. S. § 780-113  
(all felonies)
- i. Criminal attempt to commit any of the above offenses 18 Pa.C.S. §901  
Criminal solicitation to commit any of the above offenses 18 Pa.C.S. §902  
Criminal conspiracy to commit any of the above offenses 18 Pa.C.S. §903
- j. Any offense excluded by Section 6302(2)(i),(ii) and (iii) of the Juvenile  
Act, 42 Pa.C.S. §6302(2) (i), (ii) and (iii)<sup>1</sup>, from the definition of a  
“delinquent act.”

## 2. Re-Arrests and Refilings

Police criminal complaints or arrest warrant affidavits 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 where the complaint or arrest warrant are for the rearrest of a defendant previously discharged, or to reinstitute a charge or charges previously dismissed by an issuing authority for failure to prove a prima facie case, provided the current and the former cases arise out of the same criminal episode.

## 3. Arrest Warrant Affidavits Requiring Sealing.

Arrest warrant affidavits shall not hereafter be accepted by any judicial officer unless the arrest warrant affidavit has the approval of an attorney for the Commonwealth prior to filing in any case where the affidavit contains information, the disclosure of which, in the opinion of the police, would endanger the safety of an informant, jeopardize the integrity of an ongoing criminal investigation, or which for any other reason should not be disclosed at or about the time of the execution of the warrants. The judicial officer shall ask the police, prior to accepting an affidavit, whether it contains any such information, and if the police indicate it does, the judicial officer shall require that it be submitted to an attorney for the Commonwealth for approval in accordance with this Rule. If the police indicate it does not, the judicial officer shall accept the affidavit.

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<sup>1</sup> The term [“delinquent act”] shall not include:(i) The crime of murder.(ii) Any of the following prohibited conduct where the child was 15 years of age or older at the time of the alleged conduct, and a deadly weapon as defined in 18 Pa.C.S. §2301 (relating to definitions) was used during the commission of the offense, which, if committed by an adult, would be classified as:(A) Rape as defined in 18 Pa.C.S. §3121 (relating to rape).(B) Involuntary deviate sexual intercourse as defined in 18 Pa.C.S. §3123 (relating to involuntary deviate sexual intercourse).(C) Aggravated assault as defined in 18. Pa.C.S. §2702(a)(1) or (2) (relating to aggravated assault).(D) Robbery as defined in 18. Pa.C.S. §3701(a)(1)(I), (ii) or (iii) (relating to robbery).(E) Robbery of motor vehicle as defined in 18. Pa.C.S. §3702 (relating to robbery of motor vehicle).(F) Aggravated indecent assault as defined in 18. Pa.C.S. §3125 (relating to aggravated indecent assault).(G) Kidnapping as defined in 18. Pa.C.S. §2901 (relating to kidnapping).(H) Involuntary manslaughter.(I) An attempt, conspiracy or solicitation to commit murder or any of these crimes, as provided in 18. Pa.C.S. §§901 (relating to criminal attempt), 902 (relating to criminal

solicitation) and 903 (relating to criminal conspiracy).(iii) Any of the following prohibited conduct where the child was 15 years of age or older at the time of the alleged conduct, and has been previously adjudicated delinquent of any of the following prohibited conduct, which, if committed by an adult, would be classified as:(A) Rape as defined in 18 Pa.C.S. §3121.(B) Involuntary deviate sexual intercourse as defined in 18. Pa.C.S. §3123.(C) Robbery as defined in 18 Pa.C.S. §3701(a)(1)(I), (ii) or (iii).(D) Robbery of motor vehicle as defined in 18. Pa.C.S.§3702.(E) Aggravated indecent assault as defined in 18. Pa.C.S. §3125.(F) Kidnapping as defined in 18. Pa.C.S. §2901.(G) Voluntary manslaughter.(H) An attempt, conspiracy or solicitation to commit murder or any of these crimes as provided in 18 Pa.C.S. §§901, 902 and 903.

*Note:* This Rule has required approval of the enumerated offenses listed in Paragraph 1, since it was adopted by an Administrative Order dated September 3, 2002, File No. 1971-M2002, 32 Pa.B. 4693 *et seq.* (September 28, 2002). The original rule on this subject was numbered 706 and adopted by an order dated June 1, 1982, and published at 12 Pa.B. 2278 (July 17, 1982).

#### **Leh.R.Cr.P. 528. PERCENTAGE CASH BAIL SYSTEM.**

(1) Where percentage cash bail has been authorized by the bail authority, the Defendant for whom bail has been set (and any private third party surety/depositor acting on behalf of a the Defendant) shall execute the bail bond and deposit with the issuing authority or the Clerk a sum of money equal to ten per cent (10%) of the amount of bail set, but in no event less than Twenty- five (\$25.00) Dollars. A Bail Bondsman is expressly prohibited from posting the deposit for the percentage cash bail system as provided in this Rule. However, where 10% cash bail is authorized, a Bail Bondsman may, nevertheless, post bond, provided they do so for the full amount of the bail.

(2) Prior to setting 10% cash bail, the bail authority shall generally seek and review the recommendations of the court designated bail agency.

(3) Where a third-party becomes the depositor of the 10% cash on behalf of a defendant, that third-party shall become a surety for the balance of the full amount of the bail, and shall execute the bond as a surety.

*Note:* This Rule was part of the original bail rules numbered 4006, 4006A, 4006B, 4006C and 4006D. They were adopted by an order dated March 23, 1984, and published at 14 Pa.B. 833 *et seq.* (March 17, 1984).

**Leh.R.Cr.P. 530. DESIGNATION OF LOCAL COURT BAIL AGENCY.**

(1) Lehigh Valley Pretrial Services, Inc., is designated as the bail agency to monitor and assist defendants released on bail in criminal cases instituted in Lehigh County. This agency shall perform the duties and have the powers set forth in Pa.R.Crim.P.530(A).

(2) When a Defendant is released on any of the types of bail set forth in Pa.R.Crim.P. 524(C)(1) through (4), or on 10% cash bail pursuant to Pa.Rs.C.P. 524(C)(5) and 528(D)(1), and the bail agency has been designated by the bail authority to act as surety or supervising agency for the defendant, the defendant shall then become subject to the rules and regulations of the bail agency. The bail agency shall not be required to sign the bail bond.

(3) Whenever a defendant who is supervised by the bail agency fails to comply with the conditions of his or her release, or the rules and regulations of the bail agency, a bail piece may issue pursuant to Pa.R.Crim.P. 536(B) to the bail agency, and the defendant may be brought before the court to determine if additional bail shall be set or bail revoked.

*Note:* This Rule was part of the original bail rules numbered 4006, 4006A, 4006B, 4006C and 4006D. They were adopted by an order dated March 23, 1984, and published at 14

Pa.B. 833 *et seq.* (March 17, 1984). The Rule was later amended to reflect the reorganization and renaming of the bail agency.

**Leh.R.Cr.P. 531. QUALIFICATIONS OF BAIL BONDSMEN AND INSURERS IN LEHIGH COUNTY**

**A. INSURERS**

1. Every Insurer duly authorized to do business in Pennsylvania and who appoints a bail bondsman to serve as a surety on any bail bond may be qualified by the Lehigh County Court of Common Pleas provided that it files with the Clerk shall file a current Certificate of Authority issued to it by the Department, and a current annual financial statement, in a form and manner prescribed by these rules.. All Insurers approved by the Court of Common Pleas have a continuing obligation to remain qualified in Lehigh County and no bond shall be issued by any Bail Bondsman appointed by an Insurer after May 15 of any year unless the Insurer has filed a current Certificate of Authority issued after March 31 of the same year and a current annual financial statement with the Clerk.

2. An Insurer is precluded from insuring bonds under any circumstance where they have any outstanding and unpaid bail forfeitures, as determined by the Department of Law, in violation of 42 Pa.C.S.A. §5747.1 or these local rules. In circumstances where the Insurer has any outstanding and unpaid forfeitures, any and all Bail Bondsman who are appointed by that

Insurer in Lehigh County shall be precluded from serving as surety on any bail bond until such time as appropriate financial settlement has been made. The Department of Law shall immediately notify the Clerk, the District Attorney, the Magisterial District Judges of Lehigh County, the Court of Common Pleas-Criminal Division, any Bail Bondsman who is appointed by the Insurer and the Insurer when the Insurer is precluded from insuring any bonds due to a violation of the terms of 42 Pa. C.S. 5747.1 or these local rules. The Clerk and the Magisterial District Judges shall immediately cease accepting bonds from the Insurer and any of its appointed Bail Bondsmen. When the forfeitures have been paid in full or appropriate financial settlement has been made with the County of Lehigh, the Department of Law shall notify the Clerk and Magisterial District Judges that execution of bonds by the Insurer and its appointed Bail Bondsmen may resume.

## B. BAIL BONDSMEN

1. A Bail Bondsman authorized to conduct business in Pennsylvania pursuant to 42 Pa. C.S. §§5742-5743.1 may be qualified to serve as surety on any bail bond filed in the criminal courts of Lehigh County provided that he or she file with the Clerk a Qualifying Power of Attorney issued by an Insurer by whom the Bail Bondsman has been appointed setting forth the maximum limit of liability per bond, and a copy of their license issued by the Department, in form and manner prescribed by these rules. No bond shall be executed by any Bail Bondsman after the expiration of such Qualifying Power of Attorney until a new Qualifying Power of Attorney has been filed with the Clerk.

2. A Bail Bondsman is precluded from acting as surety on any bail bond under any circumstance where they have any outstanding and unpaid bail forfeitures as determined by the Department of Law in violation of 42 Pa. C.S. §5747.1, these local rules or the Insurer who has issued the Power of Attorney is precluded from issuing bonds for any reason. The Department of Law shall immediately notify the Clerk, the District Attorney and the Magisterial District Judges, the Court of Common Pleas-Criminal Division, the Insurer who has appointed the Bail Bondsman and the Bail Bondsman when the Bail Bondsman is precluded from acting as surety on a bail bond due to a violation of the terms of 42 Pa. C.S. 5747.1, these local rules or that the Insurer who has issued their Power of Attorney is precluded from insuring bonds. The Clerk and Magisterial District Judges shall immediately cease accepting bonds by the Bail Bondsman upon such notice. When appropriate financial settlement has been made with the County of Lehigh, the Department of Law shall notify the Clerk, the District Attorney, the Magisterial District Judges, the Court of Common Pleas-Criminal Division, the Insurer, and the Bail Bondsman that execution of bonds by the Bail Bondsman may resume.

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*Note:* This Rule in substantially the same form was adopted as CR 4011, by Order dated November 7, 1995, and published at 25 Pa.B. 5238 *et seq.* (November 25, 1995).

### **Leh.R.Cr.P. 531.2. APPROVAL AND REGULATION OF BAIL BONDSMEN AND INSURERS IN LEHIGH COUNTY**

(a) *Seeking Approval as Insurer or Bail Bondsman.* A Bail Bondsman, or an Insurer on behalf of a Bail Bondsman, may seek approval to serve as surety on any bail in the

Thirty-first Judicial District by filing a petition with the Clerk. The petition must provide the information and have attached as exhibits any documents and certifications required in subsection (b) herein. Upon filing, the petition will be assigned to a Judge for determination.

(b) *Requirements to Become Qualified.* To become qualified to post bond in Lehigh County:

(1) Each petition must state that the Bail Bondsman and Insurer is in compliance with all laws, statutes, local and state rules of court as may be established from time to time;

(2) Each petition must include as an attachment a current and valid Certificate of Authority issued by the Department showing that the Insurer is authorized under 40 P.S. §382(1) shall be attached to the petition seeking approval to operate as a Bail Bondsman;

(3) Each petition must include as an attachment a current and valid Appointment Form showing that the Bail Bondsman has been appointed as a producer for the Insurer with the Department shall attached to the petition. The execution of any bail bond by any Bail Bondsman appointed by the Insurer shall create a valid and binding obligation of the Insurer;

(4) Each petition must include as an attachment a copy of the license of the Bail Bondsmen issued by the Department

(5) In the event that a Bail Bondsman is acting as an agency, who employs or contracts with more than one individual person who serves as a Bail Bondsman, that agency must attach to the petition a list of all individuals who are licensed and appointed with an Insurer to act as a duly appointed Bail Bondsman who are authorized to act on its behalf of the agency;

(6) Each Insurer and Bail Bondsman must attach to the petition a Statement of Official Address which shall provide an address to which service of correspondence, notices, orders and other legal communications shall be made. The mailing by any Lehigh County governmental entity, including but not limited to the Lehigh County Court of Common Pleas, the Lehigh County Clerk of Courts and the Lehigh County Department of Law, of correspondence, notices, orders and other communications by first class mail to said address shall be deemed presumptive proof of service of same and no objection shall be made by any party that the mailing was sent to an improper or incorrect address, provided that no statute or Pennsylvania Rule of Criminal Procedure requires alternative method of service. In the event that statute or Pennsylvania Rule of Criminal Procedure specifically sets forth a means of service, service shall be made in accordance with the relevant statute or Pennsylvania Rule of Criminal Procedure;

(7) Every Bail Bondsman, who conducts any business in Lehigh County shall keep at its office the usual and customary records pertaining to bail bonds posted in Lehigh County, including, but not limited to, such records of bail bonds executed or countersigned by the Insurer or Bail Bondsman, to enable the court to obtain all relevant information concerning such bail bonds for at least three (3) years after the liability of the Insurer has been terminated. Such records of bail bonds posted shall be subject to immediate examination, inspection or copying by the Court or its representative at the Bail Bondsman's place of business or, upon request, a copy will be made available to the Court at its place of business or as otherwise directed. Any and all information shall be furnished in such manner or form as the Court requires;

(8) Each Bail Bondsman shall file an Affidavit with the Clerk of

Judicial Records, Criminal Division, disclosing any convictions for non-summary criminal offenses, with the exception of misdemeanors under the Pennsylvania Vehicle Code, by Bail Bondsman or, if the Bail Bondsman is an agency, by any owner, officer, director of the Bail Bondsman. The Affidavit must attach a copy of a criminal history records check conducted by the Pennsylvania State Police or, for persons residing in another state, the comparable document for that state, for each such person. A conviction may render the Bail Bondsman or, if the Bail Bondsman is an agency, by any owner, officer, director of the Bail Bondsman ineligible to conduct business in the Thirty-first Judicial District as determined by the Lehigh County Court of Common Pleas in its sole discretion;

(9) Each petition for approval shall be filed in the name of the Bail Bondsman who is seeking approval to serve as a surety on bail in Lehigh County. The name of the Bail Bondsman shall appear on the petition identically to the name of the Bail Bondsman on the license and appointment forms attached to the petition. Any Bail Bondsman who is authorized by law and approved to serve as surety on bail in Lehigh County shall only do so in the Bail Bondsman's name as it appears on the petition. The Bail Bondsman shall only use the approved name on any bail bond form or surety information page submitted to the Clerk on bail bonds issued by that Bail Bondsman. Any petitions, correspondence, court appearances or similar activities may only be filed in the name of the Bail Bondsman as approved by the Court and appointed by the Insurer who is obligated through the Bail Bondsman to insure bail bonds. No third party has standing to participate in any petitions correspondence, court appearances or similar activities on behalf of the Bail Bondsman or Insurer;

(10) , A copy of the rates to be charged by the Bail Bondsman as an appointed producer of the Insurer and approved by the Department shall be attached to the petition;

(11) Each Bail Bondsman must attach to the petition a schedule of the fees, in addition to the rates filed by the Insurer, to be charged for issuing the bail bond in the event that the Bail Bondsman charges such fees;

(12) Upon approval of a petition required in subsection (a) of this rule, each Bail Bondsman shall pay to the Clerk an initial registration fee of \$500.00, or such amount as may be established from time to time by the Clerk ; and

(c) *Requirements to Remain Qualified.* To remain qualified to post bond in Lehigh County:

(1) Each Insurer and Bail Bondsman must fully comply with all laws, statutes, local rules, rules of court and procedures as may be established from time to time;

(2) Each Insurer and Bail Bondsman must maintain compliance with the requirements specified in subsection (b) of this rule to the extent applicable to each;

(3) Each Bail Bondsman must annually update the documents required in subsection (b) of this rule by filing a Praecipe with the Clerk and attaching the relevant documents to that Praecipe;

(4) Each Bail Bondsman, , must, within 30 days, notify, in writing, the President Judge and the Department of Law if the Bail Bondsman has been charged with any non-summary criminal offense with the exception of misdemeanors under the Pennsylvania Vehicle Code, or if the license submitted with the petition for approval has been revoked, suspended or not renewed in any jurisdiction;

(5) No Bail Bondsman or any employees and/or agents thereof may represent or identify itself, directly or indirectly, as employees or agents of the

Commonwealth of Pennsylvania or Thirty-first Judicial District or the County of Lehigh. Bail Bondsman or any employees or agents thereof shall not wear clothing or present badges or any other form of law enforcement credentials that create the impression of employment by the Commonwealth of Pennsylvania, the Thirty-first Judicial District or any of its units, including Pre-trial Services or the Lehigh County Sheriff's Department or the County of Lehigh;

(6) Each Bail Bondsman must renew the required registration with the Thirty-first Judicial District, provide all certifications required by this rule and pay to the Clerk an annual renewal fee of \$100.00, or such amount as may be established from time to time by the Clerk with the approval of the President Judge; and

(7) No Bail Bondsman, or its agents and employees, may engage in Prohibited Conduct as set forth in §531.2(e) hereunder.

(d) *Opportunity to be Heard.* A Bail Bondman whose petition seeking approval to post bail in the Thirty-first Judicial District is denied will be provided an opportunity to be heard and to contest the denial. Any Bail Bondman seeking to contest the denial of its petition for approval to post bail in the Thirty-first Judicial District must file a petition with the Clerk of Judicial Records, Criminal Division and serve the Department of Law within thirty (30) days of the date of denial of its initial petition, and set forth the relief requested and the factual basis therefor. Similarly, a Bail Bondman which has received approval to post bail in the Thirty-first Judicial District as provided in this rule but which has been subsequently prohibited from posting additional bail, whose right to post bail has been revoked or is otherwise ineligible to post bail in the Thirty-first Judicial District, will be provided an opportunity to be heard, unless the revocation is due to unpaid forfeitures at which the the opportunity to be heard shall be governed by 42 Pa.C.S.A. §5741.1. Any Bail Bondman seeking to contest prohibition from posting additional bail, that its right to post bail has been revoked, or that it is otherwise ineligible to post bail in the Thirty-first Judicial District must file a petition with the Clerk of Judicial Records, Criminal Division and serve the Department of Law within thirty (30) days of the date of the prohibition, revocation or determination of ineligibility, and set forth the relief requested and the factual basis therefor.

(e) *Prohibited Conduct.* Each Bail Bondsman, or any, employee and/or agents thereof, may not engage in prohibited conduct as set forth below. The following constitutes prohibited conduct:

- (1) violating any laws, statutes, local rules or rules of court related to the bail business;
- (2) violating any of the rules herein;
- (3) having a license as Bail Bondman revoked in the Commonwealth;
- (4) being involved in any transaction which shows unfitness to act in a fiduciary capacity or a failure to maintain the standards of fairness and honesty required of a fiduciary;
- (5) being convicted of any non-summary criminal offense with the exception of misdemeanors under the Pennsylvania Vehicle Code;
- (6) failing to advise the Clerk within fourteen (14) days (or such other

time period as may be specifically set forth) of any change in circumstances which would materially affect any of the statements, information or certifications required by 531.2(b) or (c) herein;

(7) using an unregistered or unlicensed agent on behalf of an Insurer or Bail Bondsman;

(8) using an individual or entity not appointed by the Insurer who has issued a Power of Attorney for the Bail Bondsman to serve as surety on bail;

(9) signing, executing or issuing bail bonds by a person or entity who or which is not the Bail Bondsman on the bond;

(10) executing a bond without the appropriate counter signature by a licensed and/or authorized Bail Bondsman at time of issue;

(11) failing to account for or pay any premiums held as a Bail Bondsman on behalf of an Insurer;

(12) misstating or misrepresenting any material fact in the initial petition or any subsequent filings, including but not limited to certifications, required by these rules, or in any of the statements, information or certifications required by these rules;

(13) failing to preserve, and to retain separately, any movable tangible collateral, including cash and cash equivalent, obtained as security on any bond;

(14) failing to return collateral taken as security on any bond to the depositor of such collateral, or the depositor's designee, within forty-five (45) business days following the conclusion of the case as defined by the Pennsylvania Rules of Criminal Procedure.;

(15) offering or providing any consideration or gratuity to any person employed by, or incarcerated in, a jail facility, any person who has the power to arrest or to hold any person in custody, or to any court officers and attorneys to obtain or secure business;

(16) failing to deliver to the defendant, and any person providing collateral on the defendant's behalf, prior to the time the defendant is released from jail, a one-page disclosure form which, at a minimum, must include:

- (A) the amount of the bail;
- (B) the defendant's bail obligations;
- (C) the conditions upon which the bond may be revoked; and
- (D) the conditions under which the bond may be exonerated.

(17) failing to provide to the Clerk the fully completed one-page disclosure form required at the time bond is posted;

- (18) charging excessive fees not authorized by law or rule of court;
- (19) failing to provide an itemized statement of any and all expenses deducted from collateral to the owner thereof, if any;
- (20) requiring that, as a condition for posting a bail, a defendant engage the services of a particular law firm or attorney;
- (21) preparing or issuing a fraudulent or forged bail bond, power of attorney or other document;
- (22) knowingly violating, advising, encouraging, aiding, abetting or assisting the violation of any applicable law, statute, local rule or rule of court;
- (23) soliciting, procuring or demanding sexual favors as a condition of or compensation for obtaining, maintaining or exonerating a bail bond, regardless of the identity of the person who performs such favors;
- (24) providing legal advice or a legal opinion in any form;
- (25) failing to notify and inform law enforcement and the Court that the defendant has committed an act subject to or referenced in 42 Pa. C.S.A. §5750,;
- (26) holding oneself out by manner of dress as being a public official including wearing clothing or presenting badges or any other form of law enforcement credentials that might create the impression of employment of the Commonwealth of Pennsylvania, the County of Lehigh, the Thirty-first Judicial District or any of its units, including Pre-trial Services or the Lehigh County Sheriff's Department of the Thirty-first Judicial District or the County of Lehigh; and
- (27) engaging in verbal or other abusive behavior and/or unprofessional conduct, including but not limited to the use of profanity, directed toward a County employee

(f) Any violation of or failure to comply with the rules set forth herein may, upon petition by the Department of Law and after hearing thereon, result in the revocation by the Court of Common Pleas of Lehigh County of the bail posting privileges of an the Bail Bondsman.

**Leh.R.Cr.P. 535. RETURN OF CASH DEPOSITS. CHARGES.**

Upon full and final disposition of the case, the issuing authority or the Clerk of Courts–Criminal shall retain thirty per cent (30%) of the amount deposited, but in no event less than Ten (\$10.00) Dollars, as administrative costs, which includes the Clerk's poundage fee for

the percentage cash bail program and shall return the balance to the depositor, unless the depositor at the time the balance is to be returned otherwise agrees in writing. The thirty percent (30%) to be retained shall be considered as earned at the time the bail undertaking is executed and the cash is deposited by the defendant or the third party surety.

*Comment:* Nothing in this Rule is intended to preclude the application of the seventy per cent (70%) cash balance being applied to fines, costs, restitution, or, if funds remain after payment of fines, costs and restitution, to fees due the Defendant's attorney of record, if agreed to in writing by the depositor at the time the money would otherwise be returned to the depositor. See Pa.R.Crim.P. 535, the Comment to that Rule, and the Report of the Criminal Procedural Rules Committee, 33 Pa.B. 6409 (December 27, 2003).

*Note:* This Rule was part of the original bail rules numbered 4006, 4006A, 4006B, 4006C and 4006D. They were adopted by an order dated March 23, 1984, and published at 14 Pa.B. 833 *et seq.* (March 17, 1984).

#### **Leh.R.Cr.P 536.1. FORFEITURES AND BAIL PIECES.**

(a) *Forfeitures.*

(1) A bail that is revoked shall be deemed forfeited pursuant to Pa. C.S. §5747.1, and shall be paid to the Clerk by any surety by close of business on the 91<sup>st</sup> day following the entry of the order revoking the bail pursuant to the terms of Pa. C.S. §5747.1, or unless otherwise extended or set aside by Order of Court.

(2) In order for a surety to seek to have the forfeiture order set aside or remitted in whole or in part, the party seeking remission, set aside or exoneration shall present a petition to the Court, and serve a copy thereof upon the Department of Law. The petition shall set forth in detail the reasons for seeking the set aside, remission or exoneration. In order to facilitate the assessment and investigation of petitions requesting remittance, the surety is required to delineate within the petition the following insofar as applicable:

(A) a recitation of the history of the case including the charges, the date the bond was set, the amount of the bond, and the name and district of the issuing authority;

(B) the date of forfeiture and nature of the proceeding at which forfeiture occurred;

(C) a statement establishing the fact that the defendant was apprehended including the date of apprehension and the agency responsible for the apprehension;

(D) a detailed summary of all efforts by the petitioner to apprehend the defendant including the name, phone number and address

of all agents hired or assigned to effectuate the apprehension, and all times, dates, and locations searched;

(E) a declaration that the apprehension or return of the defendant was affected by the efforts of the surety or that those efforts at least had a substantial impact on the defendant's apprehension; and

(F) clear and specific factual recitation in support of the above declaration.

(3) Any Bail Bondsman or Insurer who files with the Court of Common Pleas of Lehigh County a petition for bail relief, including but not limited to a petition to vacate bail forfeiture or a petition to exonerate surety, shall be responsible for the payment of court costs and/or filing fees as determined by the Clerk of Judicial Records, Criminal Division and may be amended from time to time.

*Bail Pieces.* After a bail piece is issued pursuant to Pa.R.Crim.P. 536 and the defendant is apprehended by or on behalf of the surety, the defendant must be brought before the Judge or a designee in accordance with Pa.R.Crim.P. 150. Bail pieces shall not be utilized to exonerate the surety.

**Leh.R.Cr.P. 542. CONTINUANCES OF PRELIMINARY HEARINGS BEFORE DISTRICT JUSTICES.**

(a) Preliminary hearings before District Justices in court cases shall be scheduled initially as required by the Pennsylvania Rules of Criminal Procedure.

(b) Thereafter a District Justice may grant continuances of the preliminary hearing upon the request either of the Defendant or the Commonwealth provided that such continuances are limited to the minimum period necessary and do not, in the aggregate number of days for all continuances in the case, exceed twenty-one (21) days from the date upon which the preliminary hearing was first scheduled.

(c) Except as provided in section (b) of this Rule, all requests for continuances of preliminary hearings shall be presented to the District Justice Court Administrator, or in his absence to an appropriate Judge of the Court of Common Pleas, in the form of a written motion setting forth good cause for the same with forty-eight (48) hours advance notice to the defendant or his counsel or the attorney for the Commonwealth.

(d) If a continuance is granted pursuant to section (c) of this Rule, the order of court granting the same shall set a time at which the preliminary hearing shall be held.

(e) For purposes of this Rule all co-defendants shall be regarded as one (1) party.

*Comment:* The appropriate common pleas judge under (c) would normally be the judge assigned to hear cases emanating from the District Justice Office or the common pleas judge specially assigned to the case.

*Note:* This rule, originally numbered 703, was adopted by an order dated March 20, 1984, and published at 14 Pa.B. 1388 *et seq.* (April 21, 1984). It has been slightly revised to reflect changes in the current case assignment process.

## **Leh.R.Cr.P. 571.      ARRAIGNMENT**

(a) Criminal court arraignments shall be held at such times and places as the Court shall direct. A first status conference shall be held at the same time as the court arraignment. Written notice of the arraignment and first status conference shall be given to the Defendant as provided Pa.R.Crim.P. 113 (1)(a) by the District Justice at the time the case is bound over or waived to court.

(b) Prior to the date scheduled for arraignment, or at the arraignment, defense counsel, who has filed a written entry of appearance with the Clerk of Courts–Criminal and the attorney for the Commonwealth, may file a written waiver of arraignment properly executed by counsel and the Defendant.

(c) Attendance at the status conference is considered mandatory and cannot be waived.

(d) The Defendant, at the time of arraignment, may enter a plea of not guilty, guilty or, with the consent of the judge, *nobo contendere*. If a guilty or *nobo contendere* plea is entered, the Court shall proceed as set forth in Pa.R.Crim.P. 590. If the case is not disposed of at this time, the Defendant shall be given notice of the next required court appearance.

*Comment:* This rule implements Pa.R.Crim.P. 571. It contemplates that attendance at the arraignment and status conference is mandatory, except that the arraignment, but not the status conference, may be waived by a defendant who is represented by counsel as provided in section (b). Incarcerated defendants who are represented by counsel may waive arraignment in writing and appear in court only for their status conference. Where counsel cannot appear for the arraignment, counsel should obtain approval in advance from the arraignment judge for the Defendant to appear without counsel. A suitable date for the next listing of the case should be tentatively set at the time of the approval; and a waiver of arraignment should be filed.

The waiver of arraignment form, which must be signed by the defendant and by counsel, shall contain an acknowledgment that the Defendant: (a) understands the nature of the charges; (b) understands the rights and requirements contained in Pa.R.Crim.P. 571(C); and (c) waives his or her right to appear for arraignment.

*Note:* This Rule was originally adopted at R. 702; it was readopted as CR 303 by Order dated November 20, 1991, and published at 21 Pa.B. 5639 *et seq.* (December 7, 1991). The Rule has been amended to reflect current practices.

**Leh.R.Cr.P. 700. SENTENCING JUDGE.**

The sentence following a plea of guilty or *nobo contendere* may be imposed by a judge other than the judge who received such plea whenever such substitution of judges shall enhance the efficient disposition of cases. In such instances, the defendant shall be given due notice at the time of entering the plea.

*Note:* This Rule was adopted as R. 1401(a) by Order dated April 16, 1976, and published at 6 Pa.B. 1041 (September 8, 1976).

**Leh.Cr.R.J.A. 1901. TERMINATION OF INACTIVE CRIMINAL CASES.**

The Clerk of Courts–Criminal shall prepare for call on the first Monday of November of each year, or on such other date as the Court may by special order direct, a list of all criminal proceedings in which no steps or proceedings have been taken for two years or more. The Clerk shall give notice thereof to the attorney for the Commonwealth, any private prosecutor, the Defendant, and the Defendant’s attorney of record, as provided by Pa.R.J.A. No. 1901(c). If no good cause for continuing a proceeding is shown at the call of the list, the Court shall enter an order dismissing the proceedings.

*Note:* This Rule implements Pa.R.J.A. No. 1901 for Criminal Cases in Lehigh County. Former L.C. Rule 532(b)(1) was not given a new criminal number in Administrative Order 174 - M - 1987 (17 Pa.B.3406), when the Criminal Rules were renumbered and spun off from the Civil Rules, nor was it included in Civil Rule 239 adopted on July 20, 1990, File No. 90- J-4, 20 Pa.B. 4176 *et seq.*(August 14, 1990). The Rule subsequently was contained in an Administrative Order adopted August 29, 1990, File No. 381-M-1990, 20 Pa.B. 4953 (September 29, 1990).