

Rules of Criminal Procedure

Chapter 1. Scope of Rules, Construction and Definitions

Rule 2. Purpose and Construction

Rule 3. Definition

Rule 4. Citing the Rules

Rule 5. Design of Forms

Rule 6. Sessions of Criminal Court

Chapter 20. Issuing Authorities: Venue, Location and Recording of Proceedings Central Court

Rule 22. Central Court

Rule 23. Continuous Availability and Temporary Assignment of Issuing Authorities

Rule 27. Stenographic Record

Chapter 50. Summary Cases

Rule 51. Means of Instituting Proceedings in Summary Cases

Rule 86. Appeals from Summary Conviction

Chapter 100. Procedure in Court Cases

Rule 101.1. Approval of Police Complaints and Arrest Warrant Affidavits and Search Warrants and Search Warrant Affidavits by Attorney for the Commonwealth

Rule 101.2. Approval of Search Warrant Applications by Attorney for the Commonwealth

Rule 122. Appointment of Counsel

Rule 130. Procedure in Court Cases Initiated by Arrest Without Warrant

Rule 141. Private Counsel

Rule 175. Application for Accelerated Rehabilitative Disposition

Rule 176. Review of and Qualifications for Ard

Rule 177. Application Process and Notice

Rule 187. Probation Without Verdict

Chapter 300. Pretrial Procedures

Rule 300. Trial List

Rule 301. Continuances

Rule 302. Attorneys' Appearances and Withdrawals

Rule 303. Arraignment

Rule 306. Omnibus Pretrial Motions for Relief

Rule 307. Time for Omnibus Pretrial Motion and Service

Rule 308. Other Pretrial Motions

Rule 319. Plea Agreements

Rule 319.1. Notice of Plea Agreements

Rule 319.2. Ard Notices

Rule 319.3. Guilty Plea Colloquy Form

Chapter 500. Bail

Rule 525. Bail Bond

Chapter 1100. Trial

Rule 1119. Request for Instructions and Charge to the Jury

Chapter 1400. Sentencing

Rule 1404. Disclosure of Reports

Chapter 1600. Defense of Criminal Cases

Rule 1601. Other Available Criminal Defense

Chapter 4000. Bail

Rule 4006. Types of Bail

Rule 4006.1. Ten Percent Bail

Rule 4006.2. Requirements for Real Estate Bail
Rule 4006.3. Valuation of Real Estate for Bail
Rule 4007.1. Corporate Sureties & Bondsmen
Rule 4011. Termination of Case
Rule 4015. Receipt for and Return of Deposit
Rule 4015.1. Authorization to Pay Attorney
Rule 4016. Forfeiture of Bail
Rule 4017. Material Witnesses

Lacka. Co. R. Crim. P. 2

Rule 2. Purpose and Construction

Currentness

These rules are intended and shall be construed to supplement the Pennsylvania Rules of Criminal Procedure.

Lacka. Co. R. Crim. P. 3

Rule 3. Definition

Currentness

The definitions of terms used in these rules shall be the same as those set forth in the Pa.R.Crim.P. 3 except:

- (a) "court" shall mean the Court of Common Pleas of Lackawanna County unless otherwise indicated;
- (b) "rule" shall mean any rule of the Court of Common Pleas of Lackawanna County unless otherwise indicated;
- (c) "Clerk" shall mean the Clerk of Judicial Records, Criminal Division.

Lacka. Co. R. Crim. P. 4

Rule 4. Citing the Rules

Currentness

These rules shall be known as the Lackawanna County Rules of Criminal Procedure and shall be cited as "Lacka. Co. R. Crim. P. ____."

Lacka. Co. R. Crim. P. 5

Rule 5. Design of Forms

Currentness

The design of all forms used pursuant to these rules shall be determined by the Court Administrator of Lackawanna County.

Lacka. Co. R. Crim. P. 6

Rule 6. Sessions of Criminal Court

Currentness

Regular sessions of criminal trials shall be held during the several periods designated on the court calendar as published annually by the court. Special sessions thereof may be held at such other times as will conform most conveniently to the business of the court, the rules relating to the trial of cases, and the necessities of the occasion.

Sentencing on guilty pleas and probation or parole violations, and hearings on other matters shall be fixed as the court may from time to time direct.

Rule 22. Central Court

Currentness

(a) Except as otherwise provided herein, the Lackawanna County Court House, Scranton, Pennsylvania, is designated as the place for the conducting of all preliminary hearings, concerning all misdemeanor and/or felony complaints received by District Justices within Lackawanna County. This place will be known as "Central Court" of Lackawanna County.

(b) Preliminary hearings in Central Court shall be held pursuant to Pa.R.Crim.P. 141. Such preliminary hearings shall be held in Central Court on Monday through Friday of each week, unless such day shall constitute a "legal holiday."

(c) Central Court shall be open for such business as shall properly come before it from 9:00 a.m. to 12:00 o'clock noon and from 1:00 p.m. to 4:00 p.m. prevailing time.

(d) Cases requiring a preliminary hearing shall be transferred forth-with from the issuing authority's office to Central Court by the respective issuing authorities for further processing.

(e) The Lackawanna County Court Administrator for District Justices shall exercise administrative control over the operation of Central Court and shall supervise and administrate the operation of same.

(f) The District Justices within Lackawanna County will be assigned to Central Court on a rotating basis and will conduct said preliminary hearings in Central Court.

(g) District Justices, when presiding in Central Court, shall exercise all powers given by law to District Justices by the laws of the Commonwealth of Pennsylvania.

(h) Jurisdiction and venue in cases arising within Lackawanna County is conferred on the District Justice who is presiding at Central Court.

(i) When the defendant or his counsel and the attorney for the Commonwealth agree, a preliminary hearing may be held at the established office of the issuing authority who received the complaint.

Rule 23. Continuous Availability and Temporary Assignment of Issuing Authorities

Currentness

The President Judge shall, by order of court, insure the availability at all times within this judicial district of at least one issuing authority. Such order shall be filed with the Clerk where it shall be available for interested persons.

Lacka. Co. R. Crim. P. 27

Rule 27. Stenographic Record

Currentness

In the event that an official court stenographer is employed to make a verbatim transcript at a hearing before a District Justice, opposing counsel or the District Justice shall be entitled to receive a copy of the transcript if ordered within twenty-four (24) hours after the conclusion of the hearing, on the condition that said counsel or District Justice pays a proportionate share of the total costs of preparation of the transcript.

Lacka. Co. R. Crim. P. 51

Rule 51. Means of Instituting Proceedings in Summary Cases

Currentness

Criminal proceedings in summary cases shall be instituted pursuant to Pa.R.Crim.P. 51. In order for summary proceedings to be instituted for the violation of any ordinance, such ordinance must provide for the possibility of imprisonment as a penalty for its violation.

Lacka. Co. R. Crim. P. 86

Rule 86. Appeals From Summary Conviction

Currentness

(a) The Clerk is designated as the officer to receive any notice of appeal from a summary conviction.

(b) Hearings on all summary appeals shall be heard at such times as shall be fixed by the court.

Lacka. Co. R. Crim. P. 101.1

Rule 101.1. Approval of Police Complaints and Arrest Warrant Affidavits and
Search Warrants and Search Warrant Affidavits by Attorney for the Commonwealth

Currentness

The District Attorney of Lackawanna County having filed a certification pursuant to Pa.R.Crim.P. 101A, criminal complaints and arrest warrant affidavits by police officers, as defined in the Pennsylvania Rules of Criminal Procedure, charging:

- (a) murder in the 1st, 2nd, and 3rd degree;
- (b) voluntary manslaughter;
- (c) involuntary manslaughter;
- (d) homicide by motor vehicle;
- (e) all felonies of the 1st degree as such are designated in the 1973 Crimes Code of Pennsylvania, as amended;

(f) all offenses under the Controlled Substance, Drug, Device and Cosmetic Act of 1972, as amended, 35 Pa.C.S.A. §§ 780-101 et seq.;

(g) all offenses charged against public or elected officials, including:

(1) bribery and corrupt influence

(i) bribery in official and political matters, 18 Pa.C.S.A. § 4701

(ii) threats and other improper influence in official and political matters, 18 Pa.C.S.A. § 4702

(iii) retaliation for past official action, 18 Pa.C.S.A. § 4703;

Rule 101.1. Approval of Police Complaints and Arrest..., PA R LACKAWANNA...

(2) obstructing administration of law and other governmental functions, 18 Pa.C.S.A. § 5101

(3) abuse of office

(i) official oppression, 18 Pa.C.S.A. § 5301

(ii) speculating or wagering on official action or information, 18 Pa.C.S.A. § 5302;

(h) all aggravated assaults, 18 Pa.C.S.A. § 2702(a)(1)(4);

(i) all sexual offenses, including but not limited to:

(1) rape, 18 Pa.C.S.A. § 3121

(2) statutory rape, 18 Pa.C.S.A. § 3122

(3) involuntary deviate sexual intercourse, 18 Pa.C.S.A. § 3123

(4) aggravated indecent assault, 18 Pa.C.S.A. § 3125

(5) indecent assault, 18 Pa.C.S.A. § 3126

(6) indecent exposure, 18 Pa.C.S.A. § 3127

(7) spousal sexual assault, 18 Pa.C.S.A. § 3128

(8) corruption of minors, 18 Pa.C.S.A. § 6301 shall not hereafter be accepted by any judicial officer in the County of Lackawanna unless the complaint and affidavit have the approval of the attorney for the Commonwealth prior to filing.

Rule 101.2. Approval of Search Warrant Applications by Attorney for the Commonwealth

Currentness

The District Attorney of Lackawanna County having filed a certification pursuant to Pa.R.Crim.P. 101A, all search warrant applications in the County of Lackawanna shall not hereafter be issued by a judicial officer in the County of Lackawanna unless the search warrant application has the approval of the attorney for the Commonwealth prior to filing.

Lacka. Co. R. Crim. P. 122

Rule 122. Appointment of Counsel

Currentness

(a) The Lackawanna County Public Defender's Office shall provide an attorney to represent any adult charged with a crime who properly completes a timely application (at least Forty-Eight (48) hours before the first Court proceeding) and is determined to be eligible for free legal services.

(b) An applicant is eligible for a public defender if, and only if, after reviewing all relevant factors, including but not limited to available sources of income, assets and the seriousness of the charges, the Chief Public Defender determines the eligibility of the applicant.

Credits

[Adopted Nov. 21, 2013, effective 30 days after publication in the *Pennsylvania Bulletin*.]

Lacka. Co. R. Crim. P. 130

Rule 130. Procedure in Court Cases Initiated by Arrest Without Warrant

Currentness

An arresting officer, when the officer deems it appropriate, may promptly release from custody a defendant who has been arrested without warrant, rather than taking the defendant before the issuing authority, when the following conditions are met:

(a) the most serious offense charged is a misdemeanor of the second degree;

(b) the defendant is a resident of the Commonwealth;

(c) the defendant poses no threat of immediate physical harm to any other person or to himself or herself;

(d) the arresting officer has reasonable grounds to believe that the defendant will appear as required; and,

(e) the defendant does not demand to be taken before an issuing authority.

When a defendant is released pursuant to Pa.R.Crim.P. 130(b) or pursuant to this rule, a complaint shall be filed against the defendant within five (5) days of the defendant's release. Thereafter, a summons, not a warrant of arrest, shall be issued and the case shall proceed as provided in Pa.R.Crim.P. 110.

If the District Attorney after notice by the District Justice does not appear to assume charge of the prosecution of a summary offense or of a private complaint approved by his office, then the affiant may employ an attorney to assume charge of the prosecution unless the District Attorney affirmatively objects thereto.

(a) A written application for acceptance into the ARD program shall be filed with the Clerk and a copy transmitted to the office of the District Attorney within ten (10) days following the preliminary hearing. Failure to file said application with the Clerk and transmit a copy to the District Attorney's office within ten (10) days of the preliminary hearing will result in rejection of the ARD application. The ARD application must be in the form provided by the District Attorney's office and must include an executed waiver of Pa.R.Crim.P. 1100. Said application shall be reviewed by the District Attorney's office to determine if consent will be granted to allow the applicant to be considered for the ARD program.

(b) An application for the ARD program must contain the following:

(1) applicant's name, age, residence;

(2) applicant's educational background;

(3) applicant's social security number;

(4) applicant's operator's license number;

(5) applicant's marital status and occupation or place of employment;

(6) a statement of all offenses with which the applicant is charged in this and any other jurisdiction;

(7) a written statement of the criminal and motor vehicle records of the applicant, if any, and if none, so stating;

(8) the name(s) of any victim(s) and nature of injury and damage caused, as well as the amount of restitution owed by the applicant;

(9) any other facts which may be relevant to the consideration of the ARD application;

Rule 175. Application for Accelerated Rehabilitative Disposition, PA R LACKAWANNA...

(10) the appointment date for the treatment services. If the offense is a DUI or any other alcohol related crime, the applicant must have scheduled his or her drug and alcohol treatment services appointment prior to the filing of application, and the date of such appointment must appear in the application. Failure to attend said appointment will result in rejection of the ARD application;

(11) the name of the attorney for the accused, and a statement that he has advised his client that:

(i) acceptance into and satisfactory completion of the program offers applicant an opportunity to earn a dismissal of the charges pending against him;

(ii) should applicant fail to complete the program satisfactorily, the Commonwealth may proceed on the charges as provided by law;

(iii) applicant agrees that, if he is accepted into the program, he waives the appropriate statute of limitations and his right to a speedy trial under applicable federal and state constitutions, statutes, and rules of court during the period of enrollment in the program;

(iv) applicant agrees to abide by whatever conditions are imposed upon him by a judge;

(v) the period of the program can range up to two years; and,

(vi) applicant has read the application and consents to the same as evidenced by written signature; and,

(12) a consent form that the District Attorney has read the application and consents to the same.

Rule 176. Review of and Qualifications for ARD

Currentness

(a) ARD applications will be reviewed by the District Attorney's office to determine whether the applicant qualifies, complies with the rules, and warrants a hearing.

(1) If it appears from the face of the application that the applicant is a first time offender and that the offense qualifies for the ARD treatment, the District Attorney will endorse the consent form, and approve the application.

(2) If additional facts are necessary to make the determination, the District Attorney shall notify the defendant or his attorney of the need to provide additional information.

(3) If the defendant is not a first offender or if the offense charged does not qualify for ARD treatment, the District Attorney will disapprove the application unless there are exceptional and compelling reasons set forth in the application or in an amendment thereto. ARD applications disapproved shall be so endorsed by the District Attorney and transmitted to the Clerk.

(b) When an application for ARD is approved by the District Attorney:

(1) if the case involves any restitution, a restitution plan must be drawn up prior to the date scheduled for the ARD hearing; and,

(2) all costs involved in the ARD program must be paid in full prior to the date of the ARD hearing.

(c) A first offender within the meaning of these rules is a person who has not previously been convicted of or on ARD for a misdemeanor or felony. A summary offense is not deemed to be a criminal conviction under these rules. Where the date of the previous conviction is remote and where the circumstances warrant, the District Attorney may approve the application and/or the court may accept the applicant into the program.

(d) The following offenses do not qualify for ARD treatment:

(1) crimes causing death, endangering life, causing or threatening serious intentional violence, e.g., robbery, forcible rape, aggravated assault, involuntary manslaughter, pointing or threatening with a deadly weapon, etc. However, persons, who commit simple assault and battery or burglary, may qualify for the ARD program provided the applicant meets all the other requirements of these rules and the Pennsylvania Rules of Criminal Procedure applicable to the ARD program and the victim does not object;

(2) any motor vehicle violation causing serious personal injury to another, e.g., driving under the influence, failure to stop at the scene of an accident, etc.;

(3) drug cases; and,

(4) serious morals offenses involving children, e.g., statutory rape, incest, corruption of minors, etc.

(e) A person charged with driving under the influence where serious personal injury is not involved may be considered for entrance to the ARD program provided that the District Attorney approves; the circumstances of the case are such as warrant such treatment; and, the applicant meets all the other requirements of these Rules and the Pennsylvania Rules of Criminal Procedure applicable to the ARD program.

(f) Nothing herein shall impair or affect the availability of the provisions of Sections 17, 18 and 19 of the Controlled Substance Act as amended, 35 P.S. §§ 780-117--119, providing for probation without verdict, disposition in lieu of trial, and expunging criminal records.

Rule 177. Application Process and Notice

Currentness

- (a) Upon receipt of an endorsed ARD application, the Clerk shall make the appropriate docket entry, and the applicant or his attorney shall then transmit a copy of the application to the District Attorney.
- (b) If the application has been approved by the District Attorney, the case will then be scheduled for a hearing. After the hearing date has been set, the District Attorney will then notify all parties involved.
- (c) If a case that has been approved for ARD has been scheduled twice and the applicant has failed to appear for the hearing dates, the ARD application will automatically be rejected and the applicant will not be allowed to refile except for cause shown.
- (d) If the application has been disapproved, either party may request a conference with the court.

Lacka. Criminal Procedure Rule 177, PA R LACKAWANNA CTY CT RCRP Rule 177
Current with amendments received through June 1, 2017.

Rule 187. Probation Without Verdict

Currentness

(a) When a written application for consideration of probation without verdict pursuant to the Uniform Controlled Substance, Drug, Device and Cosmetic Act, 35 P.S. §§ 780-119 et seq., is prepared by the attorney for the defendant and filed in the office of the Clerk, said application shall be presented to the District Attorney for review to determine if the District Attorney will consent and agree to have the defendant placed on probation without verdict.

(b) Applications for probation without verdict shall contain the following:

(1) applicant's name, age and place of residence;

(2) applicant's educational background;

(3) applicant's marital status and occupation or place of employment;

(4) a statement of the offense with which the applicant is charged in this court;

(5) a statement to the effect that he desires to proceed in accordance with Section 17 of the Controlled Substance, Drug, Device and Cosmetic Act;

(6) a statement to the effect that he has not previously been convicted of an offense under the Act or under a similar act of the United States or any state, and that he is eligible for probation without verdict if he pleads nolo contendere or guilty;

(7) any other facts considered relevant to his application for probation without verdict;

(8) a statement to the effect that he has been thoroughly advised by his attorney that probation without verdict shall be available to him only once; that, upon successful completion of the probation, the court shall discharge him and dismiss the proceedings forthwith; and, that he understands that upon violation of a term or condition of his probation the court may enter a judgment and proceed as in any criminal case or may continue the probation without verdict; and,

(9) a consent form to the effect that the District Attorney has read the application and consents to the same.

(c) After the application for probation without verdict has been reviewed by the District Attorney's office and if it appears that from the face of the application that the defendant has not been previously convicted of an offense under the Act or under a similar act of the United States or any state, the District Attorney's office shall transmit said application to the county probation office for a pre-probation investigation and interview. No statement or information provided by the defendant during said interview may subsequently be used against him.

(d) After the probation office has conducted a pre-probation investigation, the said application will be returned to the District Attorney's office which will set a date for entry of the plea.

(e) After the date has been set, the District Attorney's office will notify the applicant and his attorney of the date and time set for the taking of the plea and will also notify the prosecutor.

(f) On the date set for taking the plea, the court, prior to accepting or taking the plea, will question the defendant to determine if he understands that:

(1) he waives his right to a speedy trial and to any claim he may have for exceeding the statute of limitations by accepting probation without verdict;

(2) he may be placed on probation for a specific time period, not to exceed the maximum sentence for the offense charged, on such reasonable terms and conditions as the court may direct;

(3) upon violation of a term or condition of the probation, the court may enter a judgment and proceed as in any criminal case, or may continue the probation without verdict;

(4) upon fulfillment of the terms and conditions of the probation, the court shall discharge the defendant and dismiss the proceedings against him, and that discharge and dismissal shall be without adjudication of guilt and shall not constitute a conviction for any purpose whatever, including the penalties imposed for second or subsequent convictions;

(5) probation without verdict shall be available to any person only once; and,

(6) upon successful completion of the probation period, he may have the records expunged.

(g) If the defendant agrees to the conditions of the probation, the court may, without entering a judgment and with the consent of the defendant, defer further proceedings and place the defendant on probation for a specific time period, not to exceed the maximum sentence for the offense charged, on such reasonable terms and conditions as it may require.

(h) Upon violation of a term or condition of probation, the court may enter a judgment and proceed as in a criminal case, or may continue the probation without verdict.

(i) Upon successful completion of the probationary period and after the probation officer has reported to the District Attorney and the court that the defendant has satisfactorily fulfilled the terms and conditions of probation, the court will order that the defendant be discharged and the proceedings against him be dismissed and will further order all keepers of records of arrest or prosecution or both, made in preparation or as a result of the criminal offense of which the defendant is charged, to expunge and destroy defendant's records.

(j) After the Clerk has received the order directing the records to be expunged and destroyed, the Clerk, within thirty (30) days, shall file an affidavit with the court stating that such records have been expunged and destroyed.

(k) The District Attorney shall file with the Governor's Council on Drug and Alcohol Abuse a list of those persons whose records were expunged and the District Attorney shall keep a list to determine eligibility for probation without verdict, but the names on such lists may be used for no other purpose whatsoever.

Lacka. Co. R. Crim. P. 300

Rule 300. Trial List

Currentness

The District Attorney is designated to prepare the criminal trial list for each session of criminal trials as set forth on the court calendar.

Additional lists may be prepared and cases called for trial with one week of appropriate notice to the parties at such other times during the calendar year as the court may designate.

Lacka. Co. R. Crim. P. 301

Rule 301. Continuances

Currentness

Motions for continuances, if made at any time after the criminal trial list has been prepared but prior to the scheduled trial date, shall be in writing and served on the defendant and his counsel or the Commonwealth, as the case may be.

Lacka. Co. R. Crim. P. 302

Rule 302. Attorneys' Appearances and Withdrawals

Currentness

(a) Counsel for the defendant shall file an appearance in all cases in writing in the office of the Clerk at or before the time of arraignment. A written appearance shall be filed immediately if employment follows arraignment.

(b) An endorsement of an information or an indictment shall constitute a written entry of appearance.

(c) No appearance may be withdrawn except by leave of court upon good cause shown.

Rule 303. Arraignment

Currentness

(a) Arraignment shall take place no later than ten (10) days after the indictment or information has been filed, unless otherwise postponed by the court for cause shown.

(b) At the conclusion of a preliminary hearing in which a defendant is bound over for action by the Court of Common Pleas, the issuing authority will provide written notices of arraignment in accordance with the following form:

DATE

**NOTICE OF ARRAIGNMENT
NOTICE TO APPEAR**

COMMONWEALTH OF PENNSYLVANIA) IN THE COURT OF
.....) COMMON PLEAS
VS.) OF LACKAWANNA
.....) COUNTY
.....) CRIMINAL DIVISION
.....) CR.

You are directed to appear under penalty of forfeiture of bail at the Office of the District Attorney, First Floor, Courthouse, Scranton, Pennsylvania on ___ at 10:30 A.M. for arraignment.

INSTRUCTIONS

You have been directed to appear for arraignment on the above date and time. At this time you will be brought before one of the Judges of the Court of Common Pleas of Lackawanna County for the reading of the charges against you as contained in this information. Also at the arraignment you will be informed of your rights, particularly the time period in which you must file all pre-trial motions.

If you fail to appear at the arraignment, a bench warrant will be issued for your immediate arrest, and new criminal charges under Section 5124 of the Crimes Code for Failure to Appear may be brought against you.

You must immediately upon receipt of this letter seek the services of an attorney if you have not already done so. If you cannot afford an attorney, you are instructed to contact the PUBLIC DEFENDER'S OFFICE, 1st Floor Courthouse, Scranton, Pennsylvania 18503 (717-963-6761).

If you or your attorney have any questions, please contact the District Attorney's Office at 717-963-6717.

I, _____, hereby acknowledge receipt of this notice to appear on the above date and time for arraignment, and realize a Bench Warrant will be issued for me if I fail to appear.

(c) Upon receiving notice of arraignment, a defendant who is represented by counsel may waive the formal arraignment by executing the following document:

COMMONWEALTH OF PENNSYLVANIA) IN THE COURT OF
VS.) COMMON PLEAS
.....) OF LACKAWANNA
) COUNTY
) CRIMINAL DIVISION
) CR.

PRAECLP TO ENTER APPEARANCE

SIR: Please enter my appearance for the above-mentioned Defendant.

ATTORNEY FOR DEFENDANT

WAIVER OF ARRAIGNMENT

I, _____, hereby acknowledge that I have received "NOTICE OF ARRAIGNMENT" and copies of the information containing criminal charges against me.

It is my choice to enter a plea of "NOT GUILTY" and to waive my rights to be formally arraigned in Open Court.

I have consulted with my attorney, and he/she and I are aware of my rights to file:

1. A request for a "BILL OF PARTICULARS" within SEVEN (7) DAYS following the date of my arraignment pursuant to Pennsylvania Rules of Criminal Procedure 304.

2. A "MOTION FOR PRETRIAL DISCOVERY AND INSPECTION" within FOURTEEN (14) DAYS following the date of my arraignment pursuant to Pennsylvania Rules of Criminal Procedure 305.

3. Various other pretrial motions available to me which must be stated in a single document titled "OMNIBUS PRETRIAL MOTION" to be filed and served within THIRTY (30) DAYS following the date of my arraignment pursuant to Pennsylvania Rules of Criminal Procedure 306 and 307.

My attorney and I understand that the time for the filing of the above motions is mandatory except where unusual circumstances exist or the time has been extended by the Court.

My attorney and I are aware that if I don't file the above motions in accordance with the Rules of Criminal Procedure as outlined above, I may jeopardize my right to file them at a later date.

.....

ATTORNEY FOR
DEFENDANT

DEFENDANT

DATED:

COURT ACTION

The above Waiver of Arraignment and plea of Not Guilty are hereby accepted.

J.

Lacka. Co. R. Crim. P. 306

Rule 306. Omnibus Pretrial Motions for Relief

Currentness

(a) An omnibus pretrial motion shall:

(1) have attached thereto a proposed order for the fixing of a date and time for a hearing on said motion; and,

(2) be presented to a judge or the court by the moving party.

(b) Upon a determination that a hearing should be held on the motion, a judge shall sign the order and direct the Court Administrator to fix a date and time for hearing.

(c) The Court Administrator, after fixing a date and time for hearing, shall return said motion to the presenting attorney who shall then file the same with the Clerk.

(Comment: Certain matters which may be presented by way of an omnibus motion are often subject to amicable resolution. Where practicable, the moving party must attempt to resolve such matters with opposing counsel before instituting the procedure above.)

Rule 307. Time for Omnibus Pretrial Motion and Service

Currentness

(a) The moving party shall present, file, and serve the omnibus pretrial motion within thirty (30) days after arraignment as is provided by Pa.R.Crim.P. 307, unless the time is extended by the court.

(b) A moving party presenting an omnibus pretrial motion beyond the thirty (30) day period above must so state in his motion and must so advise the court during his presentation.

Lacka. Co. R. Crim. P. 308

Rule 308. Other Pretrial Motions

Currentness

Pretrial motions, not within the purview of Pa.R.Crim.P. 305, for cases that are to be called for trial are to be filed prior to the first day of the criminal court term.

Lacka. Co. R. Crim. P. 319

Rule 319. Plea Agreements

Currentness

All plea agreements presented to the court must be in written form with signatures of all parties affixed prior to acceptance.

Lacka. Co. R. Crim. P. 319.1

Rule 319.1. Notice of Plea Agreements

Currentness

Upon notice to any defendant or to counsel of record of a time and date to enter a guilty plea, that aforementioned time and date is a required court appearance at which the defendant or counsel must appear before the court to either plea as agreed or indicate to the court that a plea of guilt will not be entered.

Lacka. Co. R. Crim. P. 319.2

Rule 319.2. ARD Notices

Currentness

Upon the District Attorney giving notice to the defendant or counsel of an ARD date, the defendant or counsel must appear before the court to be accepted into the ARD program or be informed the ARD application will not be accepted or inform the court that the ARD application is being withdrawn.

Rule 319.3. Guilty Plea Colloquy Form

Currentness

(a) The Court Administrator shall make available to a defendant and/or his counsel a written guilty plea colloquy form that shall contain such questions and be in a form as the court directs.

(b) The court shall not accept a guilty plea or conduct any oral colloquy if a completed written guilty plea colloquy form is not of record.

Lacka. Co. R. Crim. P. 525

Rule 525. Bail Bond

Currentness

1. Magisterial District Judges, the Clerk of Courts and certain designated officials at the Lackawanna County Prison are authorized to accept bail in accordance with the provisions and subject to the limitations of the Pennsylvania Rules of Criminal Procedure. (See Pa.R.Crim.P. 117(c), 520, and 525.)

2. Prior to the filing of the transcript with the Clerk of Judicial Records, Criminal Division, bail may be posted from 9:00 a.m. to 4:00 p.m. at the office of the Magisterial District Court where the case is pending.

3. After the filing of the transcript with the Clerk of Judicial Records, Criminal Division, bail may be posted from 9:00 a.m. to 4:00 p.m. at the Clerk of Judicial Records, Criminal Division.

4. Bail may be posted at any other time at the Lackawanna County Prison. Said bail shall be posted with those corrections officers designated by the Warden of the Lackawanna County Prison and deputized by the Clerk of Judicial Records, Criminal Division. The corrections officer is authorized to accept the bail, and pursuant to Pa.R.Crim.P. 525 to release the defendant upon the execution of the bail bond. The official who releases the defendant shall also sign the bail bond witnessing the defendant's signature.

5. The defendant shall not be released until he or she signs the bail bond. After the defendant signs the bail bond, a copy of the bail bond shall be given to the defendant, and the original shall be included in the record.

6. Bail accepted at the Prison along with the original bail bond shall be forwarded immediately to the office of the Clerk of Judicial Records, Criminal Division. Upon receipt of the bail, if the transcript has not been filed, the Clerk of Judicial Records, Criminal Division, shall notify the Magisterial District Court where the case is pending that the defendant posted bail.

7. Posting of real estate to satisfy the monetary condition of release may not be done at the Lackawanna County Prison.

Credits

[Adopted May 25, 2007, effective 30 days after publication in the *Pennsylvania Bulletin*.]

Rule 1119. Request for Instructions and Charge to the Jury

Currentness

Points for charge, which shall cite the authority upon which they are based, shall be handed to the trial judge at the earliest possible time and, in no event, will points for charge be received or considered if not handed to the trial judge before the closing statements to the jury begin.

Lacka. Co. R. Crim. P. 1404

Rule 1404. Disclosure of Reports

Currentness

The party seeking to review a presentence report shall be responsible for making inquiry of the probation office as to the report's date of completion. When it has been completed, counsel may examine his/her client's presentence report and take notes therefrom either in the office of the person who prepared the report or in the judge's chambers if the report has been forwarded to a judge.

Lacka. Co. R. Crim. P. 1601

Rule 1601. Other Available Criminal Defense

Currentness

The Lackawanna County Court Administrator shall compile and make available to the public a list of all attorneys who are willing to represent criminal defendants, not eligible for a public defender, for an amount per hour to be periodically set by the court. If an applicant's application for a public defender is rejected, he or she shall be provided with said list.

The Court Administrator shall update the list annually, and, if it is determined any attorney charged in excess of the applicable approved hourly rate, he or she shall be stricken from the list.

Lacka. Co. R. Crim. P. 4006

Rule 4006. Types of Bail

Currentness

Bail shall be as provided for in Pennsylvania Rule of Criminal Procedure 4006.

Lacka. Co. R. Crim. P. 4006.1

Rule 4006.1. Ten Percent Bail

Currentness

An issuing authority or the court may release a defendant upon the posting by or for the defendant of ten (10%) percent of the amount of bail set, but in no event less than \$100.00. Defendant or a private third party surety shall execute the bail bond and post the sum required with the issuing authority or the Clerk. Corporate sureties or professional bail bondsmen or agents are expressly prohibited from posting the deposit for bail set under this section.

Rule 4006.2. Requirements for Real Estate Bail

Currentness

(a) If real estate is offered to satisfy the bail set for a defendant, whether before an issuing authority or the court, the owner of the real estate to qualify as a surety and post the real estate as bail must provide the following to the issuing authority or Clerk of Judicial Records of Lackawanna County:

(1) an affidavit of justification of surety;

(2) the original deed or a true and correct copy, certified by the Recorder of Deeds from the appropriate county, for the realty being posted showing it is situated within the Commonwealth;

(3)(i) if the value of the real estate is to be set by assessed value pursuant to Lacka. Co. R.Crim.P. 4006.3(a), a certificate from the tax assessment office of the county in which the property is located, setting forth a general description of the property, the tax book references, and the assessed valuation of the realty as of the time the bail is requested, or a current tax bill showing the assessed valuation of the realty as of the time the bail is requested;

(ii) if the value of the real estate is to be set by appraisal pursuant to Lacka. Co. R.Crim.P. 4006.3(a), a written appraisal by a reputable licensed real estate broker in the county in which the property is situated setting forth a general description of the property and the fair market value as of the time the bail is requested;

(4) a lien, judgment, and last owner search, dated not more than two (2) days prior to the posting of the bail, prepared by a reputable title insurance company or an attorney licensed to practice in the Commonwealth of Pennsylvania or, in the case of real estate located in Lackawanna County, a reputable local abstractor;

(5) a bond in the amount of the bail; and,

(6) proof of entry of judgment on and in the amount of the bond in favor of the Commonwealth in the office of the Prothonotary or Clerk of Judicial Records in the county in which the property is situated.

(b) The affidavit of justification of surety shall require the following information to be given under oath by the owner of realty:

- (1) his or her name, address, age and occupation;
- (2) a general description of real estate in the Commonwealth of which he is the owner;
- (3) a statement of the manner in which he obtained title, or, if the property is located in Lackawanna County and he cannot produce evidence of title, the deed book reference of the recording of the instrument by which he obtained the title;
- (4) a statement of all encumbrances, including taxes, upon said real estate and that the realty posted is not subject to any outstanding lien, encumbrances, or agreement not shown in the search required by Lacka. Co. R.Crim.P. 4006.2(a)(4);
- (5) a statement of all other surety undertakings;
- (6) a statement of the assessed, market, and rental value of the real estate; and,
- (7) a statement that he is not contemplating or negotiating the sale of the real estate.

Lacka. Co. R. Crim. P. 4006.3

Rule 4006.3. Valuation of Real Estate for Bail

Currentness

- (a) The value of any piece of realty, for purposes of posting bail, shall be determined by multiplying the assessed valuation of said property by the applicable county common level ratio factor and subtracting therefrom any mortgages, liens, or encumbrances. Alternatively, or if such calculation shall yield a value insufficient for the posting of bail, the surety may present a verified appraisal report from a licensed real estate broker doing business in the county where the realty is located establishing a higher valuation for the realty from which any mortgages, liens, or encumbrances will be subtracted.
- (b) Upon review of the above documents, a determination will be made by the issuing authority or the Clerk whether the actual net value of the realty equals or exceeds the amount of bail. Only after necessary documentation is provided to and such a determination is made by the issuing authority or the Clerk may realty be accepted for bail.
- (c) If the same realty is offered as surety for bail in other cases or for other defendants, then the actual net value shall be reduced by the amount of bail set in each instance.

Rule 4007.1. Corporate Sureties & Bondsmen

Currentness

(a) Surety companies, fidelity companies, and bondsmen are not qualified to act as sureties in Lackawanna County except as otherwise provided in these rules.

(b) The Clerk shall compile, maintain, and make available for public inspection a list of approved surety companies, fidelity companies, and professional bondsmen qualified to act as sureties in Lackawanna County.

(c) A professional bondsman, as defined in 42 Pa.C.S.A. § 5741, may not be included on the approved list unless he:

(1) has filed with the Clerk a copy of a currently valid registration and license from the Insurance Department of the Commonwealth of Pennsylvania, pursuant to 42 Pa.C.S.A. § 5742;

(2) presents proof that he maintains an office in Lackawanna County from which he conducts his business, pursuant to 42 Pa.C.S.A. § 5744; and,

(3) posts and maintains as security with the Clerk the sum of twenty-five thousand dollars (\$25,000.00) in United States currency or securities of the United States government.

(d) Any fidelity or surety company authorized to act as surety within the Commonwealth may not be included on the approved list unless the company:

(1) has filed with the Clerk a copy of a currently valid registration and license from the Insurance Department of the Commonwealth of Pennsylvania pursuant to 40 P.S. §§ 831 et seq.;

(2) files with the District Attorney and with the Clerk, for the last calendar quarter ending before the date of the application, a report of the sort required to be filed quarterly pursuant to 42 Pa.C.S.A. § 5747; and,

(3) posts and maintains as security with the Clerk the sum of twenty-five thousand dollars (\$25,000.00) in United States currency or securities of the United States government.

(e) Upon order of the court, after hearing held on not less than ten (10) days notice to the bondsman or fidelity or surety company, the Clerk may remove the name of the bondsman or company from the approved list. Grounds for suspension or revocation shall include, in the discretion of the court:

(1) failure of the bondsman or fidelity or surety company to comply with any requirement of these rules;

(2) suspension of the license of a bondsman by any other court of common pleas within the Commonwealth of Pennsylvania for reasons other than failing to maintain an office in the county in which he was suspended;

(3) suspension of the license of a bondsman or fidelity or surety company by the Insurance Department of the Commonwealth of Pennsylvania;

(4) those reasons set forth in 42 Pa.C.S.A. § 5746(b).

(f) Whenever the court orders bail forfeited and allows execution on the bond with respect to a defendant for whom bail has been posted by a professional bondsman or fidelity or surety company, the amount of said forfeited bail shall, pursuant to Pa.R.Crim.P. 4016, be deducted and withdrawn by the Clerk for the Commonwealth for the use of Lackawanna County from the security posted by the said bondsman or company pursuant to these rules. Within ten (10) days after notice to the bondsman or company of such withdrawal by the Clerk, the said bondsman or company shall replenish the posted security to maintain twenty-five thousand dollars (\$25,000.00) as security. Failure, after such notice, to replenish the security shall:

(1) require notice by the Clerk of such failure to the District Attorney; and,

(2) be grounds for removal of the name of the bondsman or fidelity or surety company from the approved list.

(g) The Clerk may make additions to or deletions from the approved list at any time. When there is an addition to or deletion from the list, the Clerk shall distribute copies of the list to the District Attorney of Lackawanna County, Public Defender of Lackawanna County, warden, and Court Administrator. The Court Administrator shall distribute the list to all sitting judges and District Justices of the 45th Judicial District. An updated list shall be distributed as aforesaid at least once every twelve months, notwithstanding the absence of any additions or deletions from the list.

(h) No person or office may accept bail from a bondsman or a fidelity or surety company that is not included on the current approved list.

Lacka. Co. R. Crim. P. 4011

Rule 4011. Termination of Case

Currentness

In cases where a defendant has been sentenced to a term of imprisonment, commencement of which sentence has been deferred, full and final disposition of the case shall not be deemed to occur prior to defendant's surrender to authorities for commencement of the sentence of imprisonment.

Lacka. Co. R. Crim. P. 4015

Rule 4015. Receipt for and Return of Deposit

Currentness

(a) At the time of posting of any bail, including percentage bail, but excluding a surety bond, the office at which the bail is posted shall issue to the person posting the bail a receipt itemizing the bail and the fees and costs which will apply in the absence of a violation or forfeiture.

(b) Within twenty (20) days after the full and final disposition of a case before an issuing authority or the court in which full cash bail has been posted, the issuing authority or Clerk shall retain the lawful fees or commissions provided by the Judicial Code and shall return the balance to the defendant or his assignee or the third party surety less any sums to be applied to make restitution or to pay a fine and costs under subparagraphs (e) or (f).

(c) Within twenty (20) days after the full and final disposition of a case in which realty has been posted as bail, the issuing authority or Clerk shall notify the surety to present to the Clerk for execution by the Clerk a praecipe to remove the judgment previously entered.

(d) Within twenty (20) days after full and final disposition of a case where ten (10%) percent of the amount of the bail has been deposited, the issuing authority or Clerk shall deduct an administrative fee from the amount deposited. The fee shall be in an amount of twenty (20%) percent of the amount deposited or two (2%) percent of the bail, but in no case shall the fee be less than fifty (\$50.00) dollars or greater than five hundred (\$500.00) dollars. The issuing authority or Clerk shall return the balance to the defendant or his assignee or the third party surety less any sums to be applied to make restitution or to pay a fine and costs under subparagraphs (e) or (f).

(e) If the issuing authority or court, upon sentence, orders the defendant to make restitution or to pay a fine and costs of prosecution, the amount deposited by the defendant shall be first applied, in the case of percentage bail, to the administrative fee pursuant to subparagraph (d) and, in other cases, to fees and commissions authorized by the Judicial Code pursuant to subparagraph (b), then, in all cases, to any restitution ordered by the issuing authority or court, then to any fine, and then to other costs ordered to be paid.

(f) Where a third party surety has deposited money as bail, with the voluntary written authorization of the person who deposited the bail, any balance, after the administrative fee or lawful fees or commissions under the Judicial Code are deducted, shall be first applied to any restitution ordered by the issuing authority or court, then to any fine, and then to other costs ordered to be paid.

Rule 4015.1. Authorization to Pay Attorney

Currentness

When authorized in writing by the defendant and, if applicable, by any third party surety who posted the deposit, the balance of such deposit, which is refundable to the defendant or the third party surety, may be paid to the defendant's attorney of record upon the filing of written authorization with the Clerk.

Lacka. Co. R. Crim. P. 4016

Rule 4016. Forfeiture of Bail

Currentness

If the defendant does not comply with the conditions of the bail bond, the issuing authority or court shall enter an order declaring the bail forfeited. Notice of such order of forfeiture shall be given forthwith to the surety and the defendant at the last-known addresses either personally or by certified mail. If the defendant does not appear and surrender to the court within fifteen (15) days from the date of the forfeiture or, within such period, satisfy the court that appearance and surrender by the defendant is impossible and not his fault, the court may enter judgment for the Commonwealth for the use of Lackawanna County in the full amount of the bail.

Lacka. Co. R. Crim. P. 4017

Rule 4017. Material Witnesses

Currentness

Lacka Co. R.Crim.P. 4006-4016 shall apply equally to witnesses detained under Pa.R.Crim.P. 4017. Applicability of these Rules in interstate witness situations under 42 Pa.C.S.A. § 5963(c) or § 5964(b) shall be subject to the discretion of the court.