

Rule 39-1. Scope of Rules

Except where specifically limited to the Franklin County Branch, these rules shall govern criminal procedures in the Court of Common Pleas, Criminal Division, of both branches of the 39th Judicial District of Pennsylvania, and, where specifically so stated, in the District Magistrate Courts of both of said branches, and shall be cited as 39th Jud. Dist. R. Crim. P. ____.

Rule 39-2. Purpose and Construction

These rules are intended to provide for the just determination of every criminal proceeding. They shall be construed to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay as nearly as may be consonant with the rules of statutory construction. These rules shall govern all situations in which they may be applicable unless superseded by Pennsylvania Rules of Criminal Procedure. Where no criminal rule has been promulgated to govern particular procedural questions, and the 39th Judicial District Civil Action Rules are appropriate, they shall apply. In all other cases, special orders of the court shall govern.

Rule 39-3. Definitions

Nothing set forth in any of these rules shall be interpreted to redefine any of the terms defined in Pa. R. Crim. P.3. The following definitions shall apply in the 39th Judicial District of Pennsylvania, insofar as the same shall be consistent with the provisions of the Pennsylvania Rules of Criminal Procedure:

(A) In these rules, except where the context clearly indicates otherwise, the singular shall include the plural and the plural, the singular. Words used in the masculine gender shall include the feminine and neuter. Words used in the past or present tense shall include the future.

(B) In these rules, except where the context clearly indicates otherwise, the word COURT shall mean a court of record, and specifically, the Court of Common Pleas of the 39th Judicial District, Pennsylvania, Criminal Division.

Rule 39-86. Appeals from Summary Conviction

In any appeal from a summary proceeding before a District Justice, the notice of appeal shall be filed in the office of the Clerk of Courts.

Rule 39 - 117. Continuous Coverage: Issuing Warrants; Preliminary Arraignments and Summary Trials; Setting and Accepting Bail; Emergency Orders Under the Protection From Abuse Act

- A. In both branches of the 39th Judicial District of Pennsylvania, all Magisterial District Judge offices shall be open for regular business on Mondays through Fridays, excluding holidays, from 8:30 a.m. to 4:30 p.m., prevailing time.
- B. Magisterial District Judges shall be available twenty-four hours per day, every day of the calendar year, to provide continuous coverage for the issuance of search warrants, arrest warrants, warrants issued in summary cases, for the issuance of emergency orders under the Protection From Abuse Act, and for those services set forth in Pa.R.Crim.P. 117(A)(2)(a), (b), (c) and (d).

The Magisterial Judges shall satisfy this rule by remaining "on-call" during non-regular business hours on a rotating basis pursuant to a schedule prepared by the District Court Administrator and approved by the President Judge. The "on-call" schedule for each year shall be filed with the Clerk of Courts and be available for public inspection, as well as distributed and publicized pursuant to the order of the President Judge.

- C. Magisterial District Judges, the Clerk of Courts and the Warden of the Franklin County Prison, or his designee, shall be authorized to accept bail in accordance with the provisions and subject to the limitations of the Pennsylvania Rules of Criminal Procedure, specifically Pa.R.Crim.P.535.

39-120. Franklin County Jail Courtroom Facilities.

Pursuant to the authority granted by Part II, Article C, Chapter 9, Section 913 of the *Judicial Code* [42 Pa.C.S.A. 913] relating to "Seats of the courts" the President Judge of the 39th Judicial District in accordance with the general supervisory powers of the President Judge provided in Pennsylvania Rules of Criminal Procedure, Rule 116 hereby directs and authorizes regular sessions of the Court of Common Pleas for the 39th Judicial District – Franklin and Fulton Counties to be held at the Courtroom Facilities of the Franklin County Jail located at 1804 Opportunity Avenue, Chambersburg, Pennsylvania 17201.

The Court Administrator of the 39th Judicial District will maintain and be responsible for scheduling and providing notice of any court proceedings held at this location as authorized by the Court.

Inquiries concerning the schedule for sessions to be held at this location may be made to the Court Administrator for the 39th Judicial District at the Franklin County Courthouse, 157 Lincoln Way East, Chambersburg, Pennsylvania 17201 or by phone at 717-261-3848.

Public access will be granted in accordance with the law for all proceedings held at this location.

Rule 39-130. Procedure in Court Cases Initiated by Arrest without Warrant

(A) Pursuant to the provisions of Pennsylvania Rule of Criminal Procedure 130(c), when a defendant has been arrested without a warrant in a court case, the arresting officer, if he deems it appropriate, may promptly release the defendant from custody rather than taking the defendant before the issuing authority, when the following conditions have been met:

- (1) The most serious offense charged is a misdemeanor of the second degree;
- (2) The defendant is a resident of the Commonwealth;
- (3) The defendant poses no threat of immediate physical harm to any other person or to himself or herself;
- (4) The arresting officer has reasonable grounds to believe that the defendant will appear as required; and
- (5) The defendant does not demand to be taken before an issuing authority.

(B) When a defendant is released pursuant to Paragraph (A), 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.

Rule 39 – 150. Bench Warrants

- A. In all cases where an individual is committed to the Franklin County Prison pursuant to an executed bench warrant, the Warden, or his designee, shall promptly, or in no case later than the beginning of the next business day, notify the District Court Administrator who shall:
 - 1. promptly schedule a hearing for bench warrants within the time permitted by Pa.R.Crim.P. 150.
 - 2. give prompt notice of the hearing to the Office of the Public Defender, the District Attorney's Office, the Clerk of Courts and the Sheriff.
- B. If the individual is committed to the Franklin County Prison pursuant to a bench warrant issued by another judicial district, the Warden, or his designee shall promptly notify the proper authorities in the judicial district of issuance.
- C. Any judge of the Court of Common Pleas of the 39th Judicial District may conduct a bench warrant hearing if the judge who issued the bench warrant is unavailable. Any magisterial district judge within the 39th Judicial District may conduct a bench warrant hearing if the magisterial district judge who issued the bench warrant is unavailable.
- D. If the bench warrant hearing does not occur within the time limit permitted by Pa.R.Crim.P. 150, the Franklin County Prison shall release said individual by operation of law.

RULE 39-300 Business of the Court

With respect to the Franklin County Branch, criminal cases shall be listed for trial as follows:

- (A) On the Monday at least two weeks prior to each criminal trial term, each defendant who is free on bond and whose case is listed for that term of court, shall appear, with their attorney, for a preliminary call of the court list at which time the court will entertain motions, pleas, and any other appropriate matters. Defendants whose cases are not disposed of on that date will be required to appear for jury selection on the first day of the trial term.
- (B) On the Friday at least two weeks prior to each criminal trial term, all incarcerated defendants shall be transported to and appear in court for purposes of conducting the preliminary call of the trial list as outlined in paragraph (A).
- (C) All defendants, at the time of mandatory arraignment or waiver thereof, will be notified in writing of their obligation to appear as set forth in paragraphs (A) and (B). Failure to appear shall result in the issuance of a bench warrant for the arrest and detention of the defendant.
- (D) In the event either of the court appearances required in Paragraphs (A) or (B) falls on a recognized holiday, the Court Administrator shall designate the date on which the defendant shall appear. The defendant shall be notified of said date as set forth in Paragraph (C).

RULE 39-311**CRIMINAL PRETRIAL CONFERENCES**

1. In the Franklin County Branch, one full court day each criminal term shall be scheduled for the purpose of holding pretrial conferences in cases scheduled for trial during that term which have a significant potential for trial. The pretrial conferences will be conducted by the assigned judge in accordance with Pa.R.Crim. P. 311 and the following procedures:
 - A. At the time of the call of the list for both incarcerated defendants and defendants on bail, the District Attorney and counsel for the defendant will make an effort to determine which cases have a significant potential for trial by jury. Subsequent to the completion of the call of the list for both incarcerated defendants and defendants on bail, a written notice of the pretrial conference will be given to defendants who have requested a jury trial and whose cases have a significant potential for trial. The District Attorney will prepare a list of these cases and submit it to the Court Administrator for distribution to the assigned judge, the Franklin County Sheriff's Department, the office of the Public Defender, the Franklin County Probation Department and any other appropriate agency
 - B. The Court Administrator will schedule the dates for the call of the list in sufficient time prior to the conferences to allow the District Attorney and defense counsel to evaluate the cases with potential for trial.
 - C. The conferences will be scheduled for the Thursday prior to the date for jury selection and will begin promptly at 9:00 a.m.
 - D. The Court Administrator will divide the list of cases for conference and half will be assigned to the morning session which will begin at 9:00 a.m. and half will be assigned to an afternoon session which will begin at 1:30 P.M.
 - E. The District Attorney will prepare transportation Orders for all those incarcerated defendants whose cases are scheduled for conference.
 - F. At the time of the conference the Commonwealth and counsel for the defendant will be prepared to discuss plea negotiations and/or preparation of the case for trial. All counsel must be thoroughly prepared to discuss witness testimony, time for trial, voir dire issues, evidentiary issues and any other matters related to trial preparation. The Court will not require written pretrial memorandum. In the event the matter is not settled, the conference judge will proceed in accordance with the Pa.R.Crim.P. 311 and issue any orders necessary to prepare the matter for trial. The Court Administrator will schedule a date certain for trial in all cases not settled. *Once the matter has been scheduled for trial, no plea agreement will be accepted by the court, except in extraordinary circumstances.*

G. This Order is not intended to preclude any timely request to the Court Administrator for separate listing of a pretrial conference in accordance with Pa.R.Crim.P. 311.

Rule 39-319. Pleas and Plea Agreements

(A) In accordance with Pa. R. Crim. P. 319, the prerequisites of a valid guilty colloquy may be met by the use of a written colloquy that is read, completed, signed by the defendant and made part of the record of the plea proceedings.

(B) The form for the written colloquy shall be drafted and updated from time to time by the criminal procedural rules committee of the 39th Judicial District with approval by the court.

Rule 39-4016. Breach of Bail and Forfeiture of Bond; Process and Bail Pieces; Exoneration of Surety

A. BAIL FORFEITURE PROCEDURE

(1) Upon the failure of the principal for whom bail has been posted to appear before the court at the designated time and place, or any other breach of the conditions of bail, as provided in Pa. R. Crim. P. 4013, the bail bond or recognizance posted shall be forfeitable subject to the following procedures.

(2) Within fifteen days of the breach of bail as provided in paragraph (1) above, the Franklin County District Attorney shall petition the Court for the issuance upon the principal or the surety, as appropriate, a rule to show cause why the bail bond or recognizance should not be forfeited.

(3) Upon receipt of the District Attorney's petition, there shall issue upon the principal or the surety, as appropriate, a rule to show cause why the bail bond or recognizance relating to which there has been a breach as stated in paragraph (1) above shall not be forfeited. The rule shall be returnable on a date set by court in the rule which date shall not exceed forty-five (45) days from the date of the issuance of the rule. The rule shall be served personally or by certified mail at the surety's last known address.

(4) In the event the bail bond or recognizance is forfeited, the order of court directing forfeiture shall direct the principal or the surety, as appropriate, to deliver to the Clerk of Courts, in cash, the sum forfeited on or before the date specified in the order. The order of forfeiture shall be filed in the office of the Clerk of Courts and the office of Prothonotary. Upon filing with the Prothonotary, the order shall be recorded among the judgment records for Franklin County and shall constitute sufficient judgment upon which execution may be taken at any time after said filing.

Failure to deposit cash in the amount of the forfeited bail bond or recognizance with the Clerk of Courts on or before the date set in the order of court directing forfeiture shall constitute an act of criminal contempt to be addressed by the court in accord with the rules appertaining to such procedures. In addition, in the discretion of the court, in accord with the authority granted by 42 P.S. §5746, the Court may direct suspension or revocation of the bail bond license of any licensed bail bondsman who fails to deposit forfeited bail bonds in accord with the Court's order.

(5) Any principal or surety who has deposited a forfeited bail bond or recognizance with the Clerk of Courts, shall have six months from the date of the order of forfeiture to petition the Court for relief from the forfeiture, provided, however, no such petition shall be entertained by the Court until the forfeited bond or recognizance has been paid to the Clerk of Courts.

(6) Upon the expiration of six months from the date of the forfeiture order, subject to any modification directed by the Court, the forfeited bail bond or recognizance shall be paid by the Clerk to the persons entitled thereto as provided by law. Any person who feels they may have a statutory or equitable basis for sharing in any such distribution shall file a petition with

the Clerk on or before the expiration of the six month time period. Upon receipt of any such petition within the six month time period, the Court shall set a date for hearing on said petition and the Clerk shall provide notice to Franklin County and any persons who may have filed a petition to share in said distribution. Following any such hearing, the Clerk shall distribute the forfeited bail bond or recognizance in accord with the order of court directing disposition of said funds. If no petition to share in any such distribution is received by the clerk within the six month time period, upon petition of the County, the Court shall order distribution of said forfeited bail or recognizance to be paid into the general funds of the County.

When the forfeited bail bonds or recognizance is distributed in accord with the court order issued pursuant to this paragraph (7), the court will not entertain any further action on behalf of the principal or the surety for remission of the forfeiture.

(7) All forfeited bail bonds or recognizances deposited with the Clerk of Courts shall be held in an interest bearing account and any accrued interest shall be paid to the County at the time of distribution of principal.

(8) The Clerk of Courts shall file with the County Commissioners a quarterly report of forfeited bail bonds and recognizances on deposit in his office.

B. APPLICATION FOR BAIL PIECE

The application for bail piece under Pa. R. Crim. P. 4016(c)(3) shall be in writing and be verified and shall set forth sufficient reason why the court should order a bail piece to issue. Upon examining the petition, the court may, without further hearing, direct that such bail piece issue. If the court is not satisfied on examining the petition, that the bail piece should issue, the court may require a hearing on the issue. At such a hearing the surety shall come forth with evidence to justify the court in directing the clerk to issue a bail piece which would authorize the surety, or his duly designated representative, to apprehend the defendant wherever or whenever he may be found and bring the defendant before the issuing authority or the court without unnecessary delay. In the meantime, upon apprehension the surety may commit the defendant to the Franklin County Prison.

Rule 39-703(d). Distribution of Pre-Sentence Reports on Offenders Participating in the Day Reporting Program.

The Franklin County Adult Probation Department may release a copy of the Pre-Sentence Report prepared on offenders required to participate in and successfully complete the Franklin County Day Reporting Program operated by Behavioral Interventions, that the report shall be made available to the Franklin County Day Reporting Center upon the admission of the offender to the program, that the Pre-Sentence Report shall be used by the staff of the Franklin County Day Reporting Center as an informational tool in assessing the offender's risks/needs to determine appropriate treatment programming, that the Pre-Sentence Report contains information which may also be controlled by State and Federal Confidentiality statutes and any information contained therein shall not be copied, released to, shared with, re-released or otherwise disseminated to the offender, researchers, attorneys, or any other individual, program or entity, and that upon discharge from or completion of the Franklin County Day Reporting Program the Pre-Sentence Report shall be returned immediately to the Franklin County Adult Probation Department.

RULE 39-708. Rules and Special Conditions for Probation and Parole Supervision and Procedures for Adding Special Conditions by the Probation Department Subsequent to Sentencing.

(A) The Franklin and Fulton County Probation Departments are directed and authorized to implement the following Rules and Conditions which have been approved by the Court for probation and parole supervision and which shall be standard Rules of Supervision applicable to all offenders placed under the supervision of the respective County Adult Probation Departments:

- 1. Rules and Special Conditions for General Supervision.**
- 2. Rules and Conditions for House Arrest/Electronic Monitoring and Intense Supervision.**
- 3. Rules and Conditions for the Pre-Trial Release Program** which shall comply with the conditions of Pennsylvania Rules of Criminal Procedure 520 et seq.
- 4. Rules and Conditions for the Pre-Release Program.**

Each Probation Department will be required to maintain all of the above Rules for Probation and Parole Supervision on file at the Probation Department.

From time to time the Chief Adult Probation Officer will review the Rules and Conditions and make recommendations to the Court for any updates and modifications.

Such modifications and updates must be approved by the Court. The Rules and Conditions currently in effect must be available for inspection and copying by probationers and parolees, their counsel and for any other interested parties, including the public, in general. The Probation Department is responsible for insuring that any modifications or updates approved by the Court are immediately included in the Probation Department's file of Rules and Conditions.

(B) Probationers and parolees placed under the supervision of either Franklin or Fulton County Adult Probation Department shall be subject to the Conditions of Supervision approved by the Court as described above, as well as any Special Conditions imposed by the Court at the time of sentencing or by Order of Court thereafter.

Probationers and parolees shall be subject to any Special Conditions of supervision relating to the protection of society and/or the likelihood of the defendant's success in rehabilitation and/or living as a law-abiding citizen. In the event it is necessary to add or modify Special Conditions of probation/parole subsequent to the imposition of sentence, the conditions must be approved by the Court and an appropriate Order must be entered.

Each Probation Department must provide notice to all interested parties and an opportunity to be heard unless a voluntary Waiver of these rights is obtained from the probation/parolee.

In the event Special Conditions of supervision must be added by either the Franklin or Fulton County Adult Probation Department after the imposition of sentence, the probation officer must obtain the approval of the sentencing judge. The probation/parole officer will complete the Special Conditions of Supervision Form, which notifies the defendant, in writing, of the Special Condition(s) being imposed and the reasons for imposing the conditions. The defendant may agree to the additional conditions and sign a Waiver of his right to a hearing before the Court prior to the imposition of the new conditions. In the event the defendant does not agree to the addition of Special Condition(s) after sentencing, the Probation Department will schedule the matter for a hearing before the Court and provide notice thereof to the defendant. The Special Conditions of Supervision Form must be signed by the supervising officer, a supervisor or the Chief Adult Probation Officer, in addition to the defendant. The completed form will be sent to the Sentencing Judge for review. If approved by the Judge, the Order of Court imposing the Special Condition(s) will be signed and filed with the Clerk of Courts.

Rule 39-1107. Juror Information Questionnaires

Rule 39-1107.1. General

Confidential Juror Information Questionnaires (“questionnaires”) will be maintained securely in the office of the court-appointed official custodian. The questionnaires shall *not* constitute a public record.

Rule 39.1107.2. Copies

Complete and accurate copies of the original questionnaires (“copies”) shall be collated into numbered binders which shall be available only to judges, attorneys for the Commonwealth and defendants’ attorneys. Attorneys and judges may examine copies prior to jury selection by making arrangements with the designated custodian. In the Franklin County Branch, the Court Administrator shall be the official custodian; in the Fulton County Branch, the Clerk of Courts shall be the official custodian. Copies shall be made available and shall be signed out from and returned to the office of the official custodian. Copies shall *not* constitute official records.

Rule 39.1107.3. Restrictions

Copies shall not be removed from the designated area except upon prior court order for good cause shown. In the Franklin County Branch, the designated area shall be any floor of the Courthouse or Courthouse Annex on which any courtroom is located; in the Fulton County Branch, the designated area shall be the first and second floors of the Courthouse. Copies shall not be duplicated, distributed or published. Defendants may not be given copies of the questionnaires.

Rule 39.1107.4 Disposition of Questionnaires and Copies

(A) Impaneled jurors; original questionnaires. *All original questionnaires* of all impaneled jurors shall be retained by the Court Administrator in a sealed file and shall not be destroyed until the commencement of the trial term one (1) year after the trial term in which they were selected, unless otherwise ordered by the Court.

(B) Impaneled jurors; copies. At the completion of selection of all juries for each trial term, *all copies* shall be returned to the trial judge and destroyed, unless otherwise ordered by the trial judge upon timely request of any defendant, any defendant’s attorney, or the attorney for the Commonwealth.

(C) Jurors not impaneled. *All originals and all copies* of questionnaires of all prospective jurors not impaneled and not selected for any trial service shall be destroyed upon completion of the jurors’ service.

Rule 39.1107.5 Supplemental Questionnaire

The Court Administrator is hereby authorized to require the completion of

a supplemental confidential juror information questionnaire, in addition to the standard confidential juror information questionnaire mandated by Pa.R.Crim.P. 1107.

Rule 39.1107.6 Completion of Questionnaires and Supplemental Questionnaires

The Court Administrator of the judicial district shall develop appropriate procedures for distributing or mailing, collecting, collating, copying, maintaining, securing, and destroying questionnaires, supplemental questionnaires and all copies, as provided and required by law. In addition, the Court Administrator shall develop an information sheet advising jurors of the procedures for maintaining the confidentiality of the questionnaires.

Rule 39-1401. Sentencing Judge

Pursuant to Pa. R. Crim. P. 1401(b), the sentence on a plea of guilty or nolo contendere may be imposed by a judge other than the judge who received the plea of guilty or nolo contendere. In such event, the defendant must have been so notified at the time of entering the plea.