

INRE: : IN THE COURT OF COMMON PLEAS  
LOCAL RULES OF CRIMINAL : OF ERIE COUNTY, PENNSYLVANIA  
PROCEDURE NOS. 106,117,310, : CRIMINAL DIVISION  
541,570,571,590,600

No. AD-48-07

**ORDER**

AND NOW, TO-WIT, this 19<sup>th</sup> day of September, 2007, the attached Local Rules of Criminal Procedure having been consented to by the Criminal Practice Section and approved by the Court are hereby **ORDERED** adopted and effective as to Erie County 30 days after publication of same in the Pennsylvania Bulletin.

BY THE  
COURT,



ELIZABETH K. KELLY, PRESIDENT JUDGE

Local Rules of Criminal Procedure  
Erie County, Erie, Pennsylvania

Updated June 2021

## TABLE OF CONTENTS

106	Continuances
117	Magisterial District Judge Coverage for Issuing Warrants; Preliminary Arraignments and Summary Trials; and Setting and Accepting Bail
177	A.R.D. (with sample application)
181	A.R.D.
184	A.R.D.
300	Case Assignment
301	Continuances
302	Procedure for Attorney Changes
303	Arraignment (with sample waiver)
305	Pre-Trial Discovery
310	A.R.D.
319	Plea Bargains
319A	Post Arraignment Pleas
541	Waiver of Preliminary Hearing; Filing for Expedited A.R.D. (with sample waiver)
570	Pretrial Conference
571	Arraignment
590	Pleas and Plea Agreements
600	Trial Term
700	Sentencing Judge
1100	Trial Term
1102	Non-Jury Trials
9022	Motion, Filing of
9023	Motion, Service

## **RULE 106 - CONTINUANCES**

A deadline shall exist for the filing of continuances by either the Commonwealth or a defendant for cases listed for a particular trial term. This deadline shall be the second business day of the week immediately preceding the trial term. The deadline may be extended by the Court. Any motions for continuance filed prior to the deadline shall be considered by the pre-assigned judge. After the deadline, all motions for continuance must be considered by the judge who will preside over the case at trial. Notice as to the last date for continuances shall be published by the court in its annual schedule.

## **RULE 117 - MAGISTERIAL DISTRICT JUDGE COVERAGE FOR ISSUING WARRANT; PRELIMINARY ARRAIGNMENTS AND SUMMARY TRIALS; AND SETTING AND ACCEPTING BAIL**

- A. To the extent required by Pa.R.Crim.P. 117, Magisterial District Judges shall be available to provide continuous coverage for the issuance of search warrants, the issuance of arrest warrants, to accept and set bail, to conduct summary trials, and to conduct preliminary arraignments.
1. The provision of continuous coverage shall be by the traditional on-call system as presently established and exercised in Erie County. Specifically, the Magisterial District Judges shall remain on-call during non-regular business hours on a rotating basis. The Assistant Court Administrator shall maintain a copy of said rotating schedule.
  2. The hours of 6:00 a.m. to 10:00 p.m. for conducting a summary trial or bench warrant hearing pursuant to Pa.R.Crim.P. 431 shall not be extended.
- B. Magisterial District Judges, the Clerk of Courts and the Warden of the Erie County Prison shall be authorized to accept bail pursuant to, and subject to the limitations of, the Pennsylvania Rules of Criminal Procedure. The Warden's authority is limited to accepting the bail deposit, delivering the bail to the issuing authority or clerk of courts and, under

Pennsylvania Rule of Criminal Procedure 525, releasing the defendant upon execution of the bail bond.

- C. Regular business hours for each Magisterial District Judge Office shall be Monday through Friday from 8:30 a.m. until 4:30 p.m.

**RULE 177 - A.R.D.**

An original application for entry into the Accelerated Rehabilitative Disposition (A.R.D.) program shall be filed with the District Attorney, and a copy shall be filed at the Office of the Criminal Court Administrator. The Criminal Court Administrator shall mark the date of filing on the copy. A sample Application is attached.

COMMONWEALTH OF : IN THE COURT OF COMMON PLEAS  
 PENNSYLVANIA : OF ERIE COUNTY, PENNSYLVANIA  
 v. : CRIMINAL DIVISION  
 : No. of  
 : OTN:

**APPLICATION FOR DISPOSITION UNDER PROGRAM OF  
 ACCELERATED REHABILITATIVE DISPOSITION/PROBATION  
 WITHOUT VERDICT**

Application is hereby made for disposition of this case under the Accelerated Rehabilitative Disposition/Probation Without Verdict Program. To assist the District Attorney's Office in evaluating the suitability of this case for the ARD/PWOV Programs, the following information is provided: **INSTRUCTIONS:** Answer all questions that apply. If a question does not apply, answer it with the initials "N.A."

1. Full Name of the Defendant: \_\_\_\_\_
  2. Maiden Name of Defendant; or other last names previously used: \_\_\_\_\_
  3. Date of Birth: \_\_\_\_\_ Social Security Number: \_\_\_\_\_
  4. Present Address: \_\_\_\_\_  
 phone (Home) \_\_\_\_\_ (work) \_\_\_\_\_
  5. Previous Addresses and length of time at each (go back 10 years): \_\_\_\_\_  
 \_\_\_\_\_
  6. Present Employment \_\_\_\_\_
  7. Education--Schools and Highest Year attained: \_\_\_\_\_
- 
- 8A. Have you ever been found guilty or pleaded guilty or no contest to any criminal violation of any kind in any court other than for summary offenses, whether in Pennsylvania or anywhere else? If so, explain giving date, place, charge(s), and disposition. \_\_\_\_\_
  - 8B. Do you have any other pending criminal charge(s) or have you ever been placed on ARD or PWOV? If so, explain giving date, place, charges and disposition. \_\_\_\_\_
  - 8C. If charged with Driving Under the Influence: Have you ever been adjudicated a delinquent or entered into a consent agreement as a juvenile after being charged with Driving Under the Influence of Alcohol? If so, explain giving details. \_\_\_\_\_
  9. Explanation of your present case, including all details (use reverse side if needed): \_\_\_\_\_
-

10. By applying for ARD/PWOV and by signing this application, I acknowledge, certify and understand each of the following rights and responsibilities:

A. I have been advised and I understand that I have a constitutional right to a speedy trial; that pursuant to Pa.R.Crim.P.1100, the Commonwealth must bring my case to trial within 365 days from the date of the filing of the Criminal Complaint charging me. If my case is not brought to trial within 365 days from the filing of the Criminal Complaint, I understand that I can ask the Court to dismiss all charges against me. Furthermore, I understand that in the event I am incarcerated on these charges, the Commonwealth must bring my case to trial within 180 days from the date of the filing of the Criminal Complaint; if the Commonwealth fails to do so, I can ask the Court for nominal bail.

I hereby waive (give up) all of my constitutional rights to a speedy trial as set forth from the date I sign this Application until I either complete the ARD Program or am revoked from it, should I violate the conditions the Court imposes on me. In the event my Application for ARD is denied, I waive (give up) all of my constitutional rights to a speedy trial as set forth from the date I sign this Application until the last scheduled day of the term of Criminal Court next following the date of my rejection. I have been advised and I understand that by signing this waiver I am waiving (giving up) any and all rights I may have to be tried within 180th (if in jail) or 365th day following the filing of the Criminal Complaint against me. I am signing the waiver because I understand it is to my benefit to do so and to allow the District Attorney as much time as he needs to evaluate my suitability for the ARD Program. I have not been made any promises, nor have I been forced or coerced to sign this waiver.

B. I understand I have the right to be represented by an attorney on my charge(s) and also in connection with my ARD/PWOV Application, if I cannot afford counsel, the Court will provide me free counsel through the Erie County Public Defender's Office.

C. It is my responsibility to notify the District Attorney's Office, **in writing** of my arrest and/or conviction for **any** offense occurring after this Application is made and before it is rejected or I am accepted into the Program by the Court. Failure to comply with this requirement is grounds for refusal of the Application and/or may be treated as a false statement subjecting me to prosecution and/or for removal from the Program.

D. If charged with Driving Under the Influence: I understand that it is my responsibility to arrange for a CRN evaluation. I understand that I cannot be placed in the A.R.D. program unless such evaluation is completed. I further understand that I am to contact D.W.I. Program, 36 North Park Row, Erie, PA 16501 at 814-454-3326 between 9:00 a.m. and 3:30 p.m. to arrange an appointment.

E. I acknowledge that I have completed (or will complete prior to my A.R.D. hearing) all processing (e.g. fingerprinting, etc.) required of me. I understand that failure to do so may delay my acceptance into the program.

**F. The information I have provided above is true and correct. I understand if I have provided false information on this Application, that reason alone is sufficient to refuse this Application. In addition, I understand that by providing false information I can be prosecuted for offenses including, but not limited to, perjury, false swearing and/or unsworn falsification to authorities.**

DATE: \_\_\_\_\_

DEFENDANT

DATE: \_\_\_\_\_

ATTORNEY FOR DEFENDANT

DATE: \_\_\_\_\_

\*WITNESS

\*When defendant has no attorney

**Revised 1/99**



**RULE 181 - A.R.D.**

The filing deadlines imposed in Pa.R.Crim.P. 304, 305, and 307 shall be specially calculated in those instances where a defendant is either refused entry into the A.R.D. program or when revoked from the program.

- (a) When the application is made BEFORE arraignment, all filing deadlines are preserved and calculations shall commence upon date of refusal or revocation.
- (b) When the application is made AFTER arraignment, filing of the application shall toll the running of the deadlines. Any number of days remaining shall remain and calculations will re-commence upon date of refusal or revocation.
- (c) When any filing deadline has passed before the filing of the A.R.D. application, that deadline shall be deemed missed and unavailable except upon motion and order of the court.

**RULE 184 - A.R.D.**

If properly waived by the defendant, as indicated in an application for A.R.D. or in an additional filing, each case which is refused entry into the A.R.D. program or revoked therefrom shall go to trial during the session of court determined by Court Administration based upon Rule 1100 calculations. Proper waiver, as indicated above, exists when the defendant signs a Rule 1100 waiver which specifically extends the period of waiver 60 days beyond the date of rejection or revocation. A sample application is set forth with sample waiver language included.

**RULE 300 - CASE ASSIGNMENTS**

A. Pre-trial: All cases bound to Court will be assigned to one of the Judges in the Criminal Division. This will be done by the Court Administrator at or about the time of arraignment or waiver thereof. The assigned judge will hear and resolve all pre-trial matters pertaining to the case.

B. Sentencing: In all cases disposed of by plea (except post-arraignment pleas) the assigned judge shall be the sentencing judge. In all cases wherein a jury trial has been held and a verdict entered, the trial judge shall be the sentencing judge. However, in any case where the designated judge may be unavailable for sentencing, another judge, designed by the President-Judge, may be substituted.

C. Sentencing Date: A sentencing date shall be set for all cases at the time of plea or verdict. Any change requested in this date must be made directly with the assigned sentencing judge and subject to his/her discretion.

### **RULE 301 - CONTINUANCES**

A deadline shall exist for the filing of continuances by either the District Attorney or defendant for cases listed for a particular trial term. This deadline will not be sooner than the Wednesday prior to the first day of the trial session. Any motions for continuance filed prior to the deadline shall be filed with the pre-assigned judge. After the deadline, all motions for continuance must be filed with the Administrative Judge of the Criminal Division. Notice as to the last date for continuances shall be published by the court in its annual schedule.

### **RULE 302 - PROCEDURE FOR ATTORNEY CHANGES**

1. If, prior to or at the arraignment, another attorney files an appearance, or files any papers on behalf of the defendant (including signing the rights sheet) that attorney will be listed as the attorney of record. It would not be necessary, in that instance, for the previous attorney to file a motion to withdraw as counsel. If no attorney files an appearance or represents the defendant at the arraignment, the previous attorney will need to file a motion to withdraw.

2. After the arraignment, any attorney who is listed as attorney of record will have to file a motion, with the Court, requesting permission to withdraw from the case. If the original attorney has not presented a motion to withdraw, both his/her name and the name of any attorney filing an appearance will be listed on the daily court schedule.

3. This procedure will apply to the public defender except when the change is merely from one public defender to another.

4. When a new attorney takes over a case, it is the responsibility of the previous attorney to notify new counsel of any upcoming hearings, trial subpoenas, etc. If the defendant was previously pro se, it is the responsibility of the Criminal Court Administrator to notify new counsel of the above.

### **RULE 303 - ARRAIGNMENT**

The defendant and counsel (or a representative thereof) shall be required to appear at the scheduled time of arraignment. The presence of the defendant and/or counsel may be waived by the filing of a signed "Waiver of Arraignment" prior to the scheduled date of arraignment. A sample waiver is attached. Copies should be sent to the Clerk of Records, Trial Court Administrator, defense attorney and defendant.

**IN THE COURT OF COMMON PLEAS, COUNTY OF ERIE, PENNSYLVANIA**

**-CRIMINAL DIVISION-**

COMMONWEALTH OF PENNSYLVANIA

No. (s) \_\_\_\_\_

vs.

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**WAIYER OF ARRAIGNMENT**

You, as defendant, are hereby notified of your right to be formally arraigned on the above-captioned docket(s), and: You, as defendant, are further advised that:

1. If you wish to plead guilty you should contact the Court Administrator's Office to schedule the date for your guilty plea;
  
2. If you are entering a plea of not guilty, you are hereby advised of the time limitations for the filing of the following motions:
  - (a) request for a bill of particulars under Pa.R.Crim.P. 572 must be made within 7 days thereafter, and
  - (b) motion for pre-trial discovery under Pa.R.Crim.P. 573 must be made within 14 days thereafter, and
  - (c) omnibus motion for relief under Pa.R.Crim.P. 578 must be filed and served within 30 days thereafter, NOTE: These time periods will commence the date of your scheduled arraignment.

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On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, after having conferred with counsel of my choice, and after having been advised of my right to be arraigned on any all information(s) in this matter, I hereby waive my right to be so arraigned.

If you have a change in your address, please contact the Criminal Court Administrator's Office at (814) 451-6305.

\_\_\_\_\_  
DEFENDANT

\_\_\_\_\_  
ATTORNEY FOR DEFENDANT

\_\_\_\_\_  
ADDRESS

NOTE:  
Attorneys not member of the Erie County Bar, please  
Provide address and telephone number

\_\_\_\_\_  
CITY, STATE, ZIP

\_\_\_\_\_  
TELEPHONE NUMBER

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## **RULE 305- PRE-TRIAL DISCOVERY**

Within fourteen (14) days of arraignment, all parties shall send a written request to the opposing party for information required under Rule 305 of the Pennsylvania Rules of Criminal Procedure. When there are items requested by one party which the other party refuses to disclose, the demanding party may then make appropriate motion to the court as part of its omnibus pre-trial motion. In such a motion the party must set forth the fact that a good faith effort to discuss the request of material has taken place and proved unsuccessful. Further, the motion shall set forth the fact that a written request was made to the other party within fourteen (**14**) days of arraignment.

## **RULE 310 - A.R.D.**

- A. An original application for entry into the Accelerated Rehabilitation Disposition (A.R.D.) program shall be filed with the Commonwealth, and a copy shall be filed at the Office of the Criminal Court Administrator. The Criminal Court Administrator shall mark the date of filing on the copy. The application shall include language that waives Pa.R.Crim.P. 600. A sample application is set forth herein.
- B. The filing deadlines imposed by Pa.R.Crim.P. 304, 305, 307, 567, 568, 572, 573, 578 and 579 shall be specially calculated in those instances where a defendant applies for, is refused entry into, or is revoked from the A.R.D. program as follows:
  - 1. When the application is made BEFORE arraignment, all filing deadlines are preserved and calculations shall commence upon date of refusal or revocation.
  - 2. When the application is made AFTER arraignment, filing of the application shall toll the running of the deadlines. Any number of days remaining shall remain and calculations will recommence upon date of refusal or revocation.
  - 3. When any filing deadline has passed before the filing of the A.R.D. application, that deadline shall be deemed missed and unavailable except upon motion and order of the court.

## **RULE 319 - PLEA BARGAINS**

A deadline shall exist, after which the Court will not accept a plea to lesser or reduced offenses. This deadline will not be sooner than the Wednesday prior to the first day of the trial session.

After said date, if a case is called to trial by the Court Administrator, the District Attorney and defendant shall (1) proceed to trial; (2) enter a plea as charged; or (3) the court shall dismiss the case. Notice as to the last date for plea bargain shall be published by the court in its annual schedule.

## **RULE 319A - POST ARRAIGNMENT PLEAS**

If a defendant enters a plea before the Court no later than ten (10) days after arraignment or refusal from the ARD/PWOV program, said defendant may have the option of assignment to another judge, other than the original assigned judge, for purposes of sentencing. The assignment of alternative sentencing judges under this section shall be determined by the President Judge.

## **RULE 541 - WAIVER OF PRELIMINARY HEARING: FILING FOR EXPEDITED A.R.D.**

A. **Expedited A.R.D.** An Original application for entry into the Expedited Accelerated Rehabilitative Disposition ("Expedited A.R.D.") program may be filed with the Magisterial District Judge who is assigned to preside over the preliminary hearing. The Magisterial District Judge shall forward the application to the Clerk of Courts and the Criminal Court Administrator. A sample application is set forth herein.

Note - Expedited A.R.D. applies only to DUI cases that meet the following minimum criteria:

(1) The BAC must be no greater than .30%; (2) The defendant must have no criminal history exclusive of summary offenses; and (3) The case must not involve a motor vehicle accident.

## **RULE 570 - PRETRIAL CONFERENCE**

- A. **Treatment Court.** After the filing of a criminal information, an original application for entry into the Drug Court or Mental Health Court programs shall be filed with the Commonwealth, and a copy shall be filed with the Criminal Court Administrator. The Criminal Court Administrator shall mark the date of filing on the copy. A sample application is set forth herein.
- B. **Case Assignments.** All cases bound to Court will be assigned to one of the Judges in the Trial Division by the Court Administrator at or about the time of arraignment or waiver thereof. The assigned judge will hear and resolve all pretrial matters pertaining to the case. If a case proceeds to trial before a judge other than the assigned judge, the trial judge shall entertain motions *in limine* and any other pretrial motions.

## **RULE 571 - ARRAIGNMENT**

The defendant and counsel (or a representative of counsel) shall be required to appear at the scheduled time of arraignment unless a waiver is filed. The defendant and counsel may waive appearance at arraignment by the filing of a signed "Waiver of Arraignment and Entry of Appearance" prior to the scheduled date of arraignment. A sample Waiver of Arraignment and Entry of Appearance is set forth herein.

## **RULE 590 - PLEAS AND PLEA AGREEMENTS**

A defendant may enter a plea of guilty or, with the consent of the judge, *nolo contendere* pursuant to a plea agreement at any time prior to the verdict.

If a defendant enters a plea of guilty or, with the consent of the judge, *nolo contendere* before the Court no later than ten (10) days after arraignment, the defendant may have the option of assignment to another judge of the trial division, other than the original assigned judge, for purposes of sentencing.

If a defendant applies for ARD/PWOV or Treatment Court programs within ten (10) days after arraignment but the application is denied, the defendant may enter a plea of guilty or, with the consent of the judge, *nolo contendere* before the Court no later than ten (10) days after the denial of the application and may have the option of assignment to another judge of the trial division, other than the original assigned judge, for purposes of sentencing.

## **RULE 600 – TRIAL TERM**

- A. **Criminal Trial Calendar.** The Court calendar shall be divided into six (6) two-month sessions, each containing two (2) two-week trial terms.
- B. **Separate Trial List.** All DUI cases and certain other cases where the most serious offense involves simple assault, bad checks, or identity theft or as may be necessary to comply with Rule 600 shall be handled as a separate trial list and scheduled during the second month of each session.
- C. **Notice.** All cases listed for a trial session shall be subpoenaed by the Court Administrator at least one (1) month prior to the start of the session. Late additions may be made for Rule 600 problem cases or by Order of Court.

## **RULE 700 - SENTENCING JUDGE**

A sentence on a plea of guilty or *nolo contendere* may be imposed by a judge other than the judge who received a plea of guilty or *nolo contendere*. In such event, the defendant must be so notified at the time of making the plea. *See* Pa.R.Crim.P. 700(B). The defendant shall have the option, with the consent of the judge, to be immediately sentenced by the judge taking the plea; however, if the sentence is deferred, the sentence shall be imposed by the judge who was originally assigned the case.

In the event a defendant enters a plea of guilty or *nolo contendere* within (10) days after arraignment or refusal from the ARD/PWOV or Treatment Court programs, the post-arraignment plea judge shall be responsible for sentencing the defendant.

## **RULE 1100-TRIAL TERM**

The Court calendar will be divided into six (6) two-month sessions, each (except for November) containing two (2) two-week trial terms with four (4) presiding judges. All cases listed for a trial session shall be subpoenaed by the Court Administrator at least one (1) month prior to the start of the session. Late additions may be made for Rule 1100 problem cases.

DUI cases will be handled as a separate trial list and scheduled during the second month of each session.



## **RULE 1102 - NON-JURY TRIALS**

Effective with the September 1992 court term, one judge of the eight scheduled to preside over trials will initially be assigned to hear non-jury criminal trials. For a case to proceed non-jury during the trial session, the non-jury colloquy must take place no later than the Wednesday preceding the start of the trial session. Furthermore, the non-jury trial itself shall take place during the two-month period of the court session. The cases, if necessary, will be prioritized according to the date of the waiver of jury trial. Any cases not reached during the two-month period will be assigned to the judge hearing non-jury cases during the following court session. Any guilty pleas on cases prior to verdict shall be referred back to the assigned judge for sentencing. All rules regarding plea bargaining and continuances will still apply.

## **RULE 9022 - MOTION, FILING OF**

1. In all court cases a specific judge of the criminal division shall be assigned to each case at or before the time of Common Pleas Court arraignment.
2. Unless otherwise specified within these rules, all pre-trial motions shall be presented to the assigned judge of the criminal division.
3. If the assigned judge is the current criminal duty judge at the time of motion filing, the motion shall be presented in motion court.
4. If the assigned judge is not the current presiding criminal duty judge at the time of motion filing, the motion shall be left with the assigned judge's secretary.
5. A rule to show cause must be attached to all criminal motions unless the motion is not objected to by the opposing party and the authorized original signature of counsel for the opposing party appears indicating the lack of objection thereto.

## **RULE 9023 - MOTION, SERVICE**

1. Once a rule to show cause or a final order has been signed by the assigned judge, the original and a copy must be taken to the Criminal Court Administrator where a copy will be left and the original will be stamped as proof of service. A copy will not be accepted without the original.

2. The original should then be time stamped and filed with the Clerk of Courts.
  
3. Time stamped copies of the rule to show cause or final order should then be served on the opposing party personally or by United States First Class Mail.