

# Internal Operating Procedures

## 210 Pa. Code

### ADMINISTRATIVE OFFICES AND STAFF

#### § 65.1 Executive Administrator.

The President Judge may appoint an Executive Administrator who shall be the administrative officer of the Superior Court and who shall report directly to the President Judge. The Executive Administrator shall carry out assignments necessary to the efficient operation of the Court including:

1. analyzing administrative operations;
2. conducting independent research;
3. preparing the budget and providing for expenditure control, financial accounting, procurement of supplies, facilities management, and telecommunications.

#### § 65.2 Prothonotary.

A. The Prothonotary is an officer of the Superior Court who is charged with the clerical duties and responsibilities of the business of the Court. The duties and responsibilities of the Prothonotary include but are not limited to:

1. keeping the records and seal of the Court;
2. issuing, processing, and entering judgments and orders at the direction of the Court;
3. certifying copies from the records of the Court;
4. scheduling all hearings and arguments before the Court, preparing the calendar, and coordinating judicial schedules;
5. supervising the collection of all fees collected by the Court and ensuring the proper receipt and distribution of such fees;
6. overseeing the preparation of the Court's official record of proceedings, attesting to their accuracy, and providing for distribution;

7. promptly securing all records wherein appeals have been filed and, where provided by Rule of Appellate Procedure, dismissing an appeal for failure to comply with the Rules or Order of the Court;
  8. any other such duties as required by the Court.
- B. Opinions filed with the Prothonotary are to be made available to the parties and the public promptly thereafter.

**§ 65.3 Reporter.**

The Reporter shall be a member of the administrative staff of the Court whose duties and responsibilities include:

1. maintaining accurate journals and recording the votes and miscellaneous correspondence on all opinions, memoranda, and petitions for reargument for each case before the Court;
2. preparing statistical reports, in cooperation with the legal systems coordinator, which shall indicate the number of decisions rendered each year by the Court;
3. compiling assignment lists and records of the case assignments of the judges;
4. maintaining a record of all panels and compiling paperbooks which shall be kept until cases have been reported to the printer;
5. preparing and preserving for a reasonable period of time correspondence to and from the Superior Court printer.

**§ 65.4 Court Crier.**

Court Criers shall be responsible for courtroom operations including:

1. opening and adjourning the Court and maintaining order in the courtroom;
2. assembling and making proper distribution of case briefs and records;
3. preparing the journals of the Court and of the Prothonotary;
4. maintaining a list of the Cases Book, which shall contain the date of argument or hearing, the judges present, and the names of counsel for the parties;
5. coordinating security in the courtroom;
6. performing related work as required by the Court.

**§ 65.5 Panels.**

- A. Except as otherwise provided by these rules, all appeals, whether argued or submitted, shall be assigned to and decided by panels consisting of three judges. A panel may make any order or render any judgment therein. Every such order made or judgment rendered by a panel shall be made and given effect as an order or judgment of the Court and shall be so entered by the clerk.
- B. The President Judge shall appoint the panels, assign cases to the panels, and designate the time, date, and place in which the panels shall sit.
- C. If a member of a panel is unable to attend or is disqualified from sitting on a particular case, the presiding judge of that panel shall secure another judge to sit on that case. If a member of a panel is unable to attend or is disqualified from sitting on a particular panel, the President Judge shall designate and assign another judge to sit on the panel.
- D. The presiding judge of each panel shall be the commissioned judge highest in seniority, except where the panel includes the President Judge who shall then be the presiding judge. The presiding judge shall preside at all panel sessions, assign the cases, and record the assignment of cases. The presiding judge shall transmit to the members of the panel and the Reporter a record of all assignments and/or other actions taken by the panel.
- E. All discussions, votes, and drafts of decisions prior to the filing of the final decision shall remain confidential.

*Comment: In accordance with Pa.R.A.P. 3102(a), a panel of three judges constitutes a quorum of the Court. 42 Pa.C.S. §325(e)(1) authorizes the President Judge to make assignments. Subdivision (C) of this rule does not alter the effect of Pa.R.A.P. 3102(b).*

**§ 65.6 Courts En Banc.**

- A. A Court en banc shall consist of not more than nine commissioned judges of the Superior Court.
- B. The President Judge shall assign the judges to each en banc panel and shall designate the location, the time, and the date of each session. The identity of the members of the en banc panel shall be confidential prior to the session. The presiding judge of a Court en banc shall be the commissioned judge highest in seniority, except where the Court en banc includes the President Judge, who shall then preside.

- C. At the conclusion of each en banc session, the presiding judge shall forward to all judges, the Prothonotary, the Chief Staff Attorney, the Administrative Assistant to the President Judge, and the Reporter a record of all assignments and other action taken during the session.

*Comment: In accordance with Pa.R.A.P. 3103(a), the Court en banc shall consist of no more than nine active members of the Court.*

**§ 65.7 Central Legal Staff.**

Central Legal Staff is an office of the Court created for the purpose of assisting the Court in reviewing and processing motions, preparing memos for the Court as directed, screening cases, certifying cases to advise the Court of apparent conflicts, preparing a newsletter to inform the Court of recent Supreme and Superior Court decisions, and accepting such other responsibilities as may be assigned by the Court or the President Judge.

**§ 65.8 Composition of Staff.**

- A. The Central Legal Staff is comprised of members of the Bar of the Commonwealth of Pennsylvania and serves the interests of the Court as a whole and assists the judges in procedural and substantive matters under the direction of the President Judge.
- B. The staff is supervised by the Chief Staff Attorney. The Chief Staff Attorney shall prepare and make available to the members of the Court written Internal Operating Procedures for all aspects of Central Legal Staff's operations.

**§ 65.9 Confidentiality Considerations.**

A member of staff owes a duty of confidentiality to the judges of the Superior Court. This duty extends to matters concerning any opinions, statements, or events with respect to the decision-making process of the Court. A staff member should avoid even informal contact with attorneys or litigants with respect to a matter pending before the Court. An attorney should refrain from discussions outside the Court, public or private, regarding the merits of pending proceedings. Matters involving the decision-making process are inappropriate for discussion outside the Court, including but not limited to the assignment of a case to a particular judge, the motions assignment judge, or the identity of the judge who may have signed an order in a case per curiam.

*[As amended, effective 8/5/98]*

**§ 65.10 Disqualification Considerations.**

A member of staff shall disqualify himself or herself in a proceeding in which his or her impartiality might reasonably be questioned.

**§ 65.11 Practice of Law.**

Staff attorneys must be members of the Bar of the Commonwealth of Pennsylvania; however, they may not engage in the practice of law outside the Court. The prohibited practice of law, for the purpose of this rule, includes the acceptance of appointment to, or participation in the deliberations of, arbitration panels appointed pursuant to 42 Pa.C.S. §§7361-7362. This prohibition, however, does not extend to the limited representation of relatives who may be in need of legal assistance.

**§ 65.12 Initial Review of Docketing Statements.**

Staff is responsible for the screening of docketing statements filed pursuant to Pa.R.A.P. 3517. These statements are to be initially screened to determine if the appeal is jurisdictionally or procedurally defective. No appeal shall be subject to being quashed on the basis of the docketing statement review alone; rather, if a defect is apparent, a letter shall be addressed to counsel to verify same. Following notification to counsel, the appeal is subject to being quashed by the assigned monthly motions judge.

**§ 65.13 Political Activity.**

Appointed judicial employees are not permitted to engage in partisan political activities.

*Comment: See Supreme Court Order of June 29, 1987, 82 Judicial Administration Docket No. 1., In re: Prohibition of Political Activities by Court-Appointed Employees.*

**65.14. Children's Fast Track and Other Family Fast Track Appeals**

- A. In accordance with Pa.R.A.P. 102, revised in 2009, and in accordance with a program first established in this court in 2000, the court shall expedite handling of appeals involving parent-child relationships as follows:
1. Children's Fast Track: All cases involving dependency, termination of parental rights, adoption, custody, or paternity shall be designated as Children's Fast Track in the Superior Court.
  2. Other Family Fast Track: Central Legal Staff in its discretion may expedite other appeals involving the parent-child relationship. Such cases shall be designated "Other Family Fast Track."

- B. For all cases designated as Children's Fast Track or Other Family Fast Track, primary responsibility for monitoring the receipt of the record shall rest with the Central Legal Staff.
1. Upon receipt of an appeal that has been designated Children's Fast Track appeal by the trial court and/or the parties, the Prothonotary shall forward a letter from the President Judge of the Superior Court to the trial court judge, with copies to the clerk of the lower court, counsel for the parties or to the parties themselves if they are proceeding *pro se*, and Central Legal Staff. The letter shall stress the importance of the trial court's duty to send the record to the Superior Court in a timely manner, and shall stress the Superior Court's internal operating policy with respect to extensions of time for briefing, as set forth in I.O.P. 65.21 B.2.
  2. In all cases designated Other Family Fast Track by the Superior Court, the Central Legal Staff shall forward the letter from the President Judge as set forth in the preceding paragraph B.1.
  3. Upon receipt of an appeal that has not been designated Children's Fast Track by the trial court or the parties, the Prothonotary or Central Legal Staff may designate the appeal as a Children's Fast Track appeal if the circumstances so warrant. In such a case, the procedures set forth in paragraph B.1. or B.2. above will apply.

[As amended, effective 3/16/09]

## MOTIONS PRACTICE

### § 65.21 Motions Review Subject to Single Judge Disposition.

- A. Except as otherwise provided in § 65.22, a single judge of this Court, whether commissioned or specially assigned, may entertain and may grant or deny any request for relief which under the Rules of Appellate Procedure may properly be sought.

A party may file an answer to an application, Pa. R.A.P. 123(b); a speaking application shall be verified unless the interest of justice requires action without it, Pa. R.A.P. 123(c); oral argument will not be permitted unless otherwise ordered by the Court, Pa. R.A.P. 123(d). The action of a single judge may be reviewed by the Court.

*Comment: Section 65.21(A) merely reaffirms the procedure codified in Pa.R.A.P. 123. A single judge may grant or deny relief requested by a proper application, Pa.R.A.P. 123(e). However, the Court may by order or rule*

*provide that an application or class of applications must be acted upon by the Court.*

- B. All petitions for extension of time shall be referred by the Prothonotary to the motions judge. Such petitions should be acted upon as soon as possible unless the motion judge feels an answer is necessary.
  - 1. Petitions for extension shall be granted only on cause shown and in any event the filing of the brief is required, particularly in criminal cases, even though the right to argue is lost. Central Legal Staff shall be notified of the filing of the motion and the disposition. However, if the petition for extension is accompanied by a substantive motion, such as a motion to quash, remand, or withdraw, Central Legal Staff shall review the motion in an expeditious manner pursuant to the procedures set forth in Section 65.21(C) herein. Whenever an order is entered granting a petition for extension of time, and the order provides that no further extensions will be granted, any subsequent petition for extension of time shall be referred by the Prothonotary to the judge who issued the original order.
  - 2. Notwithstanding any contrary procedures set forth above, all petitions for extension of time to file a brief in cases designated Children's Fast Track or Other Family Fast Track, upon receipt by the Prothonotary, shall be sent to Central Legal Staff for processing. All such petitions shall be presented to a motions judge for disposition within three days of receipt of the petition by Central Legal Staff. Petitions for extension of time to file a brief in Children's Fast Track or Other Family Fast Track cases shall be granted only upon a showing of good cause and extraordinary circumstances. Generalities such as purpose of the motion is not for delay or that counsel is too busy will not constitute either good cause or extraordinary circumstance. Extensions should rarely be granted, and when granted should rarely be for a period in excess of seven days.

*[As amended, effective 3/16/09]*

- C. All other motions, petitions or applications for relief subject to this rule, shall, upon receipt by the Prothonotary, be transmitted to Central Legal Staff.
- D. Central Legal Staff, upon receiving an application for relief pursuant to subsection C, shall review the application and prepare a recommendation and present the application and recommendation to the assigned motions judge at a time and place convenient to the motions judge.
- E. The motions judge may decide the application on the basis of the application or may require the filing of an answer or briefs, or the motions judge may schedule

a hearing thereon.

- F. Unless ordered by the Court, oral argument will not be permitted.
- G. It is within the discretion of a single judge to whom an application has been referred to decide the motion or to have it presented to a motions panel. Pa.R.A.P. 123(e).

*[As amended, effective 1/1/97]*

- H. Once a case is scheduled before a panel, all motions filed thereafter shall be referred to that panel.
- I. Motions for continuance are to be referred to the presiding judge of the panel who alone may decide the motion, or who may obtain a vote of the other judges of the panel by letter or phone.
- J. Any motions for mandamus, prohibition and writs of habeas corpus where no direct appeal is pending shall be referred by the Chief Staff Attorney to the assigned motions judge.

*Comment: See Municipal Publications v. Court of Common Pleas of Philadelphia County, 507 Pa. 194, 489 A.2d 1286 (1985).*

**§ 65.22 Motions Review Subject to Motions Panel Disposition.**

- A. Motions to Quash or Dismiss Appeals, Petitions for Permission to Appeal pursuant to Pa.R.A.P. 312, 1301-1323 and 42 Pa.C. S. §702(b), and Petitions for Review pursuant to Pa.R.A.P. 1501 et seq. shall be subject to review and disposition by a panel of three judges.

*[As amended, effective 10/25/07]*

- B. After a motion subject to this Rule has been filed with the Prothonotary's office, the Prothonotary shall forward the motion to Central Legal Staff which shall prepare and circulate to the motions panel a legal memorandum and recommendation.
  - 1. Votes thereon shall be due three weeks from the date on which the motion and accompanying document are sent by Central Legal Staff, unless the case has been designated Children's Fast Track or Other Family Fast Track.
  - 2. Votes on cases which have been identified as Children's Fast Track or Other Family Fast Track shall be due two weeks from the date on which the motion and accompanying documents are sent by Central Legal Staff.

*[As amended, effective 3/16/09]*

- C. If, in reviewing motions to be referred to a motions panel, Central Legal Staff determines that the motion is patently defective or the appeal is clearly defective or can be disposed of based upon established case law, the motion may be presented to the assigned motions judge.

**§ 65.23 Discontinuances.**

- A. Before argument or submission of a case on briefs, an appeal may be withdrawn without approval of the Court.
- B. After argument or submission of a case on briefs, a petition for discontinuance is referred to the presiding judge of the panel. The panel will determine whether to grant or deny the petition.

*Comment: Fugitive appeals will be quashed rather than discontinued on motion of the District Attorney or sua sponte by the Court. See Pa.R.A.P. 1972(6), Commonwealth v. Passaro, 504 Pa. 611, 476 A.2d 346 (1984)*

**§ 65.24 Pro Se Policy.**

All pro se petitions, motions, and briefs shall be filed in this Court and docketed by the Prothonotary. If the litigant himself or herself files a petition, motion, or brief and is represented by counsel, copies of the said document filed shall be forwarded to his or her counsel of record.

**§ 65.25 Assignment of Judges to Motions Duty.**

- A. The President Judge shall be responsible for assigning the Commissioned, Senior and specially assigned Judges of the Court to Motions Duty in the Western, Middle and Eastern Districts. All motions shall be presented to the judge assigned motions duty unless otherwise provided in these Rules or in exigent circumstances.
- B. The President Judge shall set the motions panel. Each motions panel shall consist of three judges and shall serve for a period of two months. During each two-month period, the motions panel shall consider all Section 65.22 motions ready for disposition during the two-month period.

*[As amended, effective 10/25/07]*

## DECISIONAL PROCEDURES

**§ 65.31 Argument Sessions and Submit Panels.**

- A. Argument sessions shall be held in the cities of Harrisburg, Philadelphia, and Pittsburgh. Special argument sessions may be scheduled in other locations by decision of the President Judge. Argument sessions shall begin at 9:30 a.m. unless otherwise designated.
- B. Submit panels shall be governed by I.O.P. 65.36.
- C. The Prothonotary shall give Children's FastTrack and Other Family Fast Track cases priority in listing before argued and submitted panels, and may schedule special sessions of the court at any time that the unlisted and eligible number of Children's Fast Track plus Other Family Fast Track cases which cannot be listed before a scheduled argued or submitted panel within thirty days exceeds six in any district.

*[As amended, effective 3/16/09]*

**§ 65.32 Daily List.**

- A. The Prothonotary shall periodically prepare daily lists of cases for assignment to specific panels of the Court from those cases which are ready for oral argument.
- B. A case shall be ready and available for assignment to a daily list on the date on which the appellee's brief is due, regardless of whether the brief has been filed, unless the case has been designated Children's Fast Track or Other Family Fast Track. Cases designated Children's Family Fast Track or Other Family Fast Track shall be eligible for listing before an argument panel at the time the brief for the appellant is filed.

*[As amended, effective 3/16/09]*

- C. The daily list for each panel shall include cases filed in the district in which the panel is scheduled to sit. Ordinarily, cases will be assigned only to a daily list for an argument session which is to be held in the district in which the appeal was filed. The Court, on motion of a party for good cause shown, or on its own motion, may assign cases to a daily list for a panel sitting in a district other than the one in which the appeal was filed.
- D. As soon as practical after a case has been assigned to a daily list, the Prothonotary shall notify the parties of the date, time, and location of the argument. Ready cases shall be assigned to a daily list four to six weeks before the scheduled argument date, except in exceptional circumstances upon request of the parties for cause

shown and except for expedited matters which may be assigned to a daily list until one (1) week before the argument date.

**§ 65.33 Reading of Briefs.**

Counsel should prepare for oral argument in a manner consistent with the policy of the Court that judges participating in a panel or en banc argument have read the briefs in advance of oral argument.

**§ 65.34 Oral Argument.**

- A. Except in unusual circumstances, oral argument shall not exceed a total of fifteen (15) minutes for appellant and a total of fifteen (15) minutes for appellee. Where there are two or more appeals from the same order raising different or unrelated issues and in joint appeals, counsel addressing the court for each side shall be allowed ten (10) minutes to present argument. The total time allowed any side shall not exceed thirty (30) minutes. At the discretion of the presiding judge, the amount of time for argument may be increased or decreased.
- B. Counsel filing briefs late shall not be permitted to argue but shall be available to answer any questions the Court may ask.
- C. Counsel may use exhibits and graphic aids during argument. Copies of all such exhibits must be appended to the presenting party's brief in compliance with the requirements of Pa.R.A.P. 2134. Arrangements must be made by counsel with the Court Crier prior to argument for use of a blackboard or easel.
- D. Pro se arguments, except from parties then incarcerated, shall be heard in the same manner and on the same basis as arguments of counsel.

**§ 65.35 Oral Motions.**

When oral motions are considered by the Court at oral argument, or when the Court issues an order sua sponte at oral argument, the presiding judge shall complete the form for the issuance of an appropriate order, which forms shall be available in all Superior Court courtrooms. The Court Crier shall transmit the completed form to the Prothonotary for preparation and docketing of a written order.

**§ 65.36 Submitted Cases.**

- A. All post-conviction hearing cases shall be submitted on the briefs and record unless otherwise directed by the Court upon its own motion or upon application of a party.
- B. On a weekly basis, the Prothonotary shall assign to the next available submit panel

cases filed in all three districts which are to be submitted and which are ready to be assigned. A case is ready to be assigned to a submit panel as of the date that appellee's brief is due, regardless of whether the brief has been filed. As submitted cases are assigned to a panel, the briefs and reproduced records shall be sent to the panel. At the same time as the panel receives notification of assignment of a case, the parties shall receive notice that the case has been submitted for consideration on the briefs.

*Comment: See Pa.R.A.P. 2311(a) and (b)*

**§ 65.37 Unpublished Memoranda Decisions.**

- A. An unpublished memorandum decision shall not be relied upon or cited by a Court or a party in any other action or proceeding, except that such a memorandum decision may be relied upon or cited (1) when it is relevant under the doctrine of law of the case, res judicata, or collateral estoppel, and (2) when the memorandum is relevant to a criminal action or proceeding because it recites issues raised and reasons for a decision affecting the same defendant in a prior action or proceeding. When an unpublished memorandum is relied upon pursuant to this rule, a copy of the memorandum must be furnished to the other party and to the Court.
- B. After an unpublished memorandum decision has been filed, the panel may sua sponte, or on the motion of any party to the appeal, or on request by the trial judge, convert the memorandum to a published opinion. In the case of a motion of any party to the appeal or a request from the trial judge, such motion or request must be filed with the Prothonotary within 14 days after the entry of the judgment or other order involved. The decision to publish is solely within the discretion of the panel.

**§ 65.38 Petition for Reargument.**

- A. A petition for reargument before a Court en banc shall be referred to Central Legal Staff for review and the preparation of a memorandum for circulation to the full court. Central Legal Staff shall thereafter record the votes of the commissioned judges and shall prepare and file an order disposing of the petition within the sixty (60) days allowed therefor by Pa.R.A.P. 1113(a).
- B. Reargument is not a matter of right, but of sound judicial discretion. A petition for reargument will be denied unless there are compelling reasons therefor. Such reasons include, but are not necessarily limited to, the following:
  - 1. Where it appears that a decision of a panel of the court may be inconsistent with a decision of a different panel of the court;
  - 2. Where it appears that a panel may have overlooked relevant precedent, statute, or rule of court;

3. Where it appears that a panel may have overlooked or misapprehended one or more material facts of record;
  4. Where a panel relied upon relevant legal authority which has been reversed, modified, overruled, discredited or materially altered during the pendency of the appeal sub judice; and
  5. Where the issues have potential for a significant impact upon developing law or public policy.
- C. The court will not entertain a petition for reargument of an appeal which has been decided by a court en banc.
- D. Untimely petitions for reargument shall be referred immediately by Central Legal Staff to the President Judge for entry of an order dismissing the petition.

*[As amended, effective 4/29/92]*

**§ 65.39 Reconsideration.**

- A. Petitions requesting panel reconsideration shall be submitted to the members of the panel who rendered the decision.
- B. Panel reconsideration, if granted, will be without reargument.
- C. A petition requesting reargument before a Court en banc shall not deprive a panel of the right to withdraw and reconsider the decision which prompted the motion for reargument.

**§ 65.40 En Banc Policy.**

*[Repealed, effective 4/29/92]*

**§ 65.41 Argument Before a Court En Banc.**

- A. When argument before an en banc Court is granted, pursuant to Section 65.38, the President Judge shall direct the Prothonotary to schedule such argument at the next available session. The judges to hear argument shall be selected by the President Judge and shall include, insofar as practicable, the author of the panel opinion, the author of a dissenting opinion, and, where appropriate, the author of a prior opinion which is being reconsidered. Assignments to the Court en banc as far as possible shall be equalized during the course of each year. The presiding judge shall be the commissioned judge highest in seniority except when the Court en banc includes the President Judge, who shall then be the presiding judge.

*[As amended, effective 5/30/91]*

- B. Where en banc argument is limited to one or more but less than all issues raised by an appellant, counsel shall be notified regarding the specific issues on which the Court en banc desires to hear argument.
- C. Before or after argument before the Court en banc, the Court may vote that en banc consideration was improvidently granted. In such event, the previous panel decision in the matter shall be reinstated or, if there is no previous panel decision in the matter, the case shall be listed before the next available panel of this Court.

**§ 65.42 Circulation and Voting in Children’s Fast Track and Other Family Fast Track Appeals.**

Notwithstanding any contrary procedures set forth above, panels shall give priority in both circulation of and voting on proposed decisions, first in Children’s Fast Track, and then in Other Family Fast Track cases.

*[As adopted 3/16/09, effective immediately]*

## **WIRETAPS**

**§ 65.51 Policy.**

Pursuant to §5704(5) of the Wiretapping and Electronic Surveillance Control Act, 18 Pa.C.S. §§5701-5781, it is the policy of the Court not to entertain applications for the installation and use of Pen Registers.

*[As amended, effective 5/6/96]*

**§ 65.52 Confidential Docket Number.**

The applicant is to call the Prothonotary, the President Judge or the Supervising Judge designated by the President Judge to make assignments, for a confidential docket number. The confidential docket number is to be written on the envelope containing the application for interception which envelope will subsequently be sealed.

*[As amended, effective 5/6/96]*

**§ 65.53 Assignment to a Particular Judge.**

The Prothonotary or Deputy is to call the President Judge, or the Supervising Judge designated by the President Judge to make assignments, and request assignment of a judge to entertain the application. The President Judge, or the Supervising Judge, after first ascertaining the locale of the proposed interception from the Attorney General, the District Attorney or designee, shall then assign a judge of the Court with due consideration of the nature and location of the proposed interception and the offense

being investigated. The Prothonotary or Deputy is to then call the assigned judge to determine availability.

*[As amended, effective 5/6/96]*

**§ 65.54 Submission of Application to Assigned Judge.**

The applicant should submit the application, affidavit and proposed order to the assigned judge in chambers. This ex parte proceeding need not be on the record if all the necessary information required by the judge is contained within the four corners of the application. However, any additional testimony or explanation, if supplied orally, must be made of record. A tape recorder or court reporter may be utilized. The judge should be requested to direct the court reporter to transcribe the proceedings as expeditiously as possible and to submit the stenographic notes and original transcript to the Court for sealing at the earliest possible moment. The Court should instruct all present concerning the need for confidentiality.

*Comment: It is up to the issuing judge whether to simply conduct the entire proceeding on the record. If a tape recorder is utilized, at the close of the hearing, the tape is to be sealed with the application. Further, the judge may require that all additional information be in writing instead of the taking of any oral testimony.*

*[As amended, effective 5/6/96]*

**§ 65.55 Additional Testimony or Documentary Evidence.**

In the event the judge requires the applicant to provide additional testimony or documentary evidence, such additional matters must be presented by the Attorney General or the District Attorney or their designee.

**§ 65.56 Request for Identity of Informant.**

Where, pursuant to §5710(b) of the Act, the judge requests the identity of an informant, such proceedings must be on the record save for any information that could lead to the identification of the informant.

*Comment: The request of the judge for information concerning the informant should be on the record; however, the actual name of the informant must remain confidential.*

*[As amended, effective 5/6/96]*

**§ 65.57 Content of Affidavit.**

In the event a pen register has been or is being utilized to support the affidavit under this Rule, the Attorney General, District Attorney, or designee shall, as part of the application, certify that the authority for the use of the pen register which was or is being utilized was obtained pursuant to the probable cause requirement of *Commonwealth v. Melilli*, 521 Pa. 405, 555 A.2d 1254 (1989). A copy of the affidavit of probable cause submitted in support of the application for the pen register must accompany the application for the wiretap.

*[As amended, effective 5/6/96]*

**§ 65.58 Consensual Participant Monitoring of Oral Communications within Private Home.**

*[Rescinded, effective 9/6/02]*

**§ 65.59 Order: In General. Notice of Confidentiality**

Section 5710 of the Wiretapping and Electronic Surveillance Control Act, 18 Pa.C.S. §5710 provides that upon consideration of the application, the Court may enter an ex parte order authorizing interception anywhere in the Commonwealth.

All proposed orders **shall** include, on the first page, the following notice of confidentiality to third parties:

**WIRETAP CONFIDENTIALITY****NOTICE**

You have been served with an intercept order pursuant to Pennsylvania's Wiretapping and Electronic Surveillance Control Act, 18 Pa.C.S. §§ 5701-5781 (the "Wiretap Act").

In order to implement wiretaps and electronic surveillance authorized by intercept order, the assistance of third parties, those outside of law enforcement, is required. You have been made aware of an intercept order because your assistance is required to facilitate wiretapping or other surveillance in an on-going criminal investigation.

This is a very serious and highly confidential matter and must be treated with the utmost care and discretion. Except as specifically authorized under the Wiretap Act, **IT IS A CRIME TO WILLFULLY USE OR DISCLOSE THE EXISTENCE OF AN INTERCEPT ORDER. SUCH USE OR DISCLOSURE IS PUNISHABLE BY IMPRISONMENT OF UP TO 2 YEARS, AND A FINE OF UP TO \$5,000.**

The Wiretap Act provides as follows:

**§ 5719. Unlawful use or disclosure of existence of order concerning intercepted communication**

Except as specifically authorized pursuant to this subchapter any person who willfully uses or discloses the existence of an order authorizing interception of a wire, electronic or oral communication is guilty of a misdemeanor of the second degree.

(A misdemeanor of the second degree is punishable by imprisonment of up to two years, 18 Pa.C.S. § 1104, and a fine of up to \$5,000, *id.* § 1101.)

**See also 18 Pa.C.S. §§ 5725, 5726**