

**IN THE COURT OF COMMON PLEAS**  
**FOR THE STATE OF DELAWARE**

**ORDER AMENDING RULE 63**  
**OF THE COURT OF COMMON PLEAS**  
**RULES OF CRIMINAL PROCEDURE**

This 14<sup>th</sup> day of June, 2011, IT IS ORDERED that:

1) Court of Common Pleas Criminal Rule 63 is amended by including the material underlined as follows:

**Rule 63. Commissioners.**

(A) Each Commissioner shall have all powers and duties conferred or imposed upon Commissioners by law, by the Rules of Criminal Procedure for the Court of Common Pleas and by Administrative Directive of the Chief Judge, including, but not limited to:

(1) the power to administer oaths and affirmations, to issue orders pursuant to Chapter 21, Title 11 of the Delaware Code concerning release or detention of persons pending trial and to take acknowledgements, affidavits, and depositions;

(2) the power to accept pleas of not guilty to any offenses within the jurisdiction of the Court of Common Pleas and to appoint counsel to represent indigent defendants;

(3) the power to accept a plea of guilty to a misdemeanor or to a violation and, with the consent of the parties, to enter sentence thereon;

(4) the power to conduct violation of probation proceedings or accept pleas of guilty to violations of Title 21 of the Delaware Code and with consent of the parties, to enter a sentence thereon;

(5) the power to conduct Preliminary Hearings to determine whether probable cause exists to hold the person charged for Indictment by the Grand Jury or proceedings in the Superior Court, pursuant to Court of Common Pleas Rule 6.

(6) Non case-dispositive matters. The power to conduct non case-dispositive hearing, including non case-dispositive evidentiary hearings (excluding motions to suppress evidence in a criminal case) and the power to hear and determine any pretrial or other non case-dispositive matter pending before the Court.

(i) The Commissioner shall file an order under subparagraph (6) with the Clerk of the Court and shall mail copies forthwith to all parties. It shall not be necessary for the Commissioner to include proposed findings of fact and recommendations in any order under this subparagraph.

(ii) Within 10 days after filing of a copy of the Commissioner's order under subparagraph (6), any party may serve and file written objections to the Commissioner's order which set forth with particularity the basis for the objections. The written objections shall be entitled "Motion for Reconsideration of Commissioner's Order." A copy of the written objection shall be served on the other party, or to the other party's attorney, if the other party is represented. The other party shall then have 10 days to file and serve a written response to the written objections.

(iii) The party filing written objections to a Commissioner's order shall cause a transcript of the proceedings before the Commissioner to be prepared, served, and filed unless, subject to the approval of a Judge, all parties agree to a statement of facts.

(iv) A judge may reconsider any hearing or pretrial matter under subparagraph (6) where it has been shown that the Commissioner's order is based upon findings of fact that are clearly erroneous, or is contrary to law, or an abuse of discretion.

(v) Orders entered under this subparagraph shall be effective immediately, and no motion for reconsideration of a Commissioner's order shall stay execution of the order unless such stay shall be specifically ordered by a judge.

(7) Case-dispositive matters. The power to conduct case-dispositive hearings including case-dispositive evidentiary hearings, motions to suppress evidence in a criminal case (whether case-dispositive or non case-dispositive), motions to dismiss informations, or hearings involving post-conviction relief pursuant to Court of Common Pleas Rule 35, and to submit to a judge of the Court proposed findings of fact and recommendations for disposition, by a judge, of any such matter.

(i) The Commissioner shall file proposed findings of fact and recommendations under subparagraph (7) with the Clerk's Office, and shall mail copies forthwith to all parties, or to the party's attorney, if the party is represented.

(ii) Within 10 days after filing a copy of a Commissioner's proposed findings of fact and recommendations under subparagraph (7), any party may serve and file written objections to the Commissioner's order which set forth with particularity the basis for the objections. The written objections shall be entitled "Appeal from Commissioner's Findings of Fact and Recommendations." A copy of the written objections shall be served on the other party, or the

other party's attorney, if the other party is represented. The other party shall then have 10 days to file and serve a written response to the written objections.

- (iii) The party filing written objections to a Commissioner's order shall cause a transcript of the proceedings before the Commissioner to be prepared, served, and filed unless, subject to approval of a Judge, all parties agree to a statement of facts.
- (iv) A judge shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which an objection is made. A judge may accept, reject, or modify, in whole or in part, the findings of fact or recommendations made by the Commissioner. A judge may also receive further evidence or recommit the matter to the Commissioner with instructions.

(B) A party seeking reconsideration of an order of a Commissioner under subparagraph (6) or appealing the findings of fact and recommendations of a Commissioner under subparagraph (7) who fails to comply with the provisions of this rule may be subject to dismissal of said motion for reconsideration or appeal.

(C) The time periods specified in this Rule may be shortened or enlarged, for good cause, by a Judge.

(D) A Commissioner may be assigned such additional duties and powers by the Chief Judge, or the Chief Judge's designee, as are not inconsistent with the Constitution and laws of the State of Delaware, with the Criminal Rules of the Court of Common Pleas with an Administrative Directive of the Chief Judge.

(E) A defendant may appeal a Commissioner's judgment of conviction or sentence to a judge within 10 days of its entry. To appeal, the defendant must file a notice with the Clerk's Office specifying the judgment being appealed and must serve a copy on the attorney general.

- 2) This amendment is effective September 1, 2011.