

**Rule 124. [In Forma Pauperis (Reserved)] Waiver of Fees and Costs.**

- (a) **General Rule.** A defendant may seek or obtain a waiver of any fees or costs pursuant to Pa.R.J.A. 1990 that would otherwise operate to impede access to the courts.
- (b) **Exception.** This rule shall not apply to restitution or to fees, costs, or other financial assessments imposed as a result of conviction.

**Comment:** Subdivision (a) is intended to establish a procedure to seek a waiver of fees and costs for indigent parties that would otherwise operate to impede access to the courts. See Pa. Const. art. I, § 11. The administrative costs and expenses for admission into an accelerated rehabilitative disposition program are subject to subdivision (a). See Pa.R.Crim.P. 300(D)(2)(a), Pa.R.Crim.P. 316(a)(2).

Fees, costs, or other financial assessments imposed as a result of conviction are excepted from this rule pursuant to subdivision (b) but may be reduced or waived pursuant to 42 Pa.C.S. §§ 9721, 9730, Pa.R.Crim.P. 706, or other authority. Per subdivision (b), restitution, either as a condition of an accelerated rehabilitative disposition program or imposed as a result of a conviction, is not subject to subdivision (a).

Regarding a defendant's ability to pay restitution and entrance into an accelerated rehabilitative disposition program, "the district attorney and the court must inquire into the reasons for the petitioner's inability to pay restitution. If the petitioner shows a willingness to make a bona fide effort to pay whole or partial restitution, the State may not deny entrance to the ARD program." *Commonwealth v. Melnyk*, 548 A.2d 266, 272 (Pa. Super. 1988).

Pennsylvania Rule of Judicial Administration 1990 (Application to Waive Fees and Costs) sets forth the procedure for seeking or obtaining a waiver of the payment of filing fees. The eligibility criteria at Pa.R.J.A. 1990(c) should inform the defendant whether to proceed by application or *praecipe*.

For an expungement, an application for a waiver or a *praecipe* of counsel should be filed at the same docket containing the records the defendant seeks to expunge.

## **Rule 316. Conditions of the Program.**

**[(A)](a)** The conditions of the program may **include:**

**[a.](1)[be such as may be] those** imposed with respect to probation after conviction of a crime, including restitution, except that a fine may not be imposed[.];

**[b.](2)[In addition, the conditions of the program may include] the** imposition of costs[, **the imposition of] and** a reasonable charge relating to the expense of administering the program[.]; and

**[c.](3)** such other conditions as may be agreed to by the parties.

**[(B)](b)** The period of such program for any defendant shall not exceed two years.

**Comment: [Paragraph (A)] Subdivision (a)** makes it clear that reasonable charges for the expense of administering the program may be imposed on defendants. It is intended that these charges may be imposed on those admitted into the program and that no separate fees be required for application for admission into the program.

The practice has been to permit qualified individuals who are indigent to participate in the ARD program without payment of costs or charges. The 1983 amendment is not intended to change this practice; rather, it is intended that such practice will continue.

Concerning restitution, see 42 Pa.C.S. § 9728 (Collection of restitution, reparation, fees, costs, fines, and penalties).

A defendant may be required to accept conditions of the program as provided by statute. See, e.g., 75 Pa.C.S. § 3807 (Accelerated **[Rehabilitation] Rehabilitative** Disposition).

**[Official Note: Rule 182 approved May 24, 1972, effective immediately; amended January 28, 1983, effective February 1, 1983; Comment revised April 10, 1989, effective July 1, 1989; Comment revised September 26, 1996, effective immediately; renumbered Rule 316 and amended March 1, 2000, effective April 1, 2001; Comment revised September 21, 2012, effective November 1, 2012.**

***Committee Explanatory Reports:*** Report explaining the September 26, 1996 Comment revision published with the Court's Order at 26 Pa.B. 4894 (October 12, 1996). Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000). Final Report explaining the September 21, 2012 correction of the reference to the

**Vehicle Code in the last paragraph of the Comment published with the Court's Order at 42 Pa.B. 6251 (October 6, 2012).]**

**Rule 704. Procedure at Time of Sentencing.**

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(C) SENTENCING PROCEEDING.

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- (3) The judge shall determine on the record that the defendant has been advised of the following:

\* \* \*

(b) of the rights,

- (i) if the defendant is indigent, **[to proceed *in forma pauperis*] to seek waiver of costs as provided for in Rule 124 (Waiver of Fees and Costs)** and to proceed with appointed counsel as provided in Rule 122, or,

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**Comment:**

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SENTENCING PROCEDURES

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After sentencing, following a conviction in a trial *de novo* in a summary case, the judge should advise the defendant of the right to appeal and the time limits within which to exercise that right, the right **[to proceed *in forma pauperis*] to seek waiver of costs as provided for in Rule 124 (Waiver of Fees and Costs)** and with appointed counsel to the extent provided in Rule 122(A), and of the qualified right to bail under Rule 521(B). See paragraphs (C)(3)(a), (b), and (e). See *also* Rule 720(D) (no post-sentence motion after a trial *de novo*).

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**Rule 708. Violation of Probation, Intermediate Punishment, or Parole: Hearing and Disposition.**

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(D) Sentencing Procedures

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(3) The judge shall advise the defendant on the record:

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- (b) of the rights, if the defendant is indigent, **[to proceed *in forma pauperis*] to seek waiver of costs as provided for in Rule 124 (Waiver of Fees and Costs)** and to proceed with assigned counsel as provided in Rule 122.

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**Rule 720. Post-Sentencing Procedures; Appeal.**

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(B) OPTIONAL POST-SENTENCE MOTION.

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(4) Contents of Order.

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(c) the rights, if the defendant is indigent, **[to appeal *in forma pauperis* to seek waiver of costs as provided for in Rule 124 (Waiver of Fees and Costs)** and to proceed with assigned counsel as provided in Rule 122; and

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**Rule 900. Scope; Notice In Death Penalty Cases.**

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**(B) Notice in Death Penalty Cases**

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- (4) Pursuant to Rule 904 (**Entry of Appearance and** Appointment of Counsel; **[in Forma Pauperis] Waiver of Fees and Costs**), the trial judge will appoint new counsel for the purpose of post-conviction collateral review, unless:

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**Rule 902. Content of Petition for Post-Conviction Collateral Relief; Request for Discovery.**

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**Comment:**

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Paragraphs (A)(16) and (E) were added in 1997 to address requests for discovery. Paragraph (A)(16) requires that a request for discovery be included in the petition, if applicable. Paragraph (E) sets forth the standards for permitting discovery. Under paragraph (E)(1), which applies in all cases except on the first counseled petition in a death penalty case, no discovery is permitted at any stage of the proceedings, except upon leave of the court with a showing of exceptional circumstances. See 42 Pa.C.S. § 9545(d)(2). Under paragraph (E)(2), which applies to first counseled petitions in death penalty cases, discovery is permitted only upon leave of court for good cause shown. For purposes of paragraph (E)(2), “first counseled petition” includes petitions on which defendants have elected to proceed pro se pursuant to Rule **[904(F)(1)(a)] 904(h)(1)(i)**.

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## **Rule 903. Docketing and Assignment.**

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### **Comment:**

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If a defendant in a death penalty case files a petition before the trial judge has made a determination concerning the appointment of counsel as required by Rule **[904(G)]** **904(h)**, after making the docket entry and placing the petition in the criminal case file, the clerk promptly must forward a copy of the petition to the trial judge for that determination.

**Rule 904. Entry of Appearance and Appointment of Counsel; [*In Forma Pauperis*] Waiver of Fees and Costs.**

**[(A)](a)** Counsel for defendant shall file a written entry of appearance with the clerk of courts promptly after being retained, and serve a copy on the attorney for the Commonwealth.

- (1) If a firm name is entered, the name of an individual lawyer shall be designated as being responsible for the conduct of the case.
- (2) The entry of appearance shall include the attorney's address, phone number, and attorney ID number.

**[(B)](b)** When counsel is appointed, the filing of the appointment order shall enter the appearance of appointed counsel.

**[(C)](c)** Except as provided in **[paragraph (H)] subdivision (h)**, when an unrepresented defendant satisfies the judge that the defendant is unable to afford or otherwise procure counsel, the judge shall appoint counsel to represent the defendant on the defendant's first petition for post-conviction collateral relief.

**[(D)](d)** On a second or subsequent petition, when an unrepresented defendant satisfies the judge that the defendant is unable to afford or otherwise procure counsel, and an evidentiary hearing is required as provided in Rule 908, the judge shall appoint counsel to represent the defendant.

**[(E)](e)** The judge shall appoint counsel to represent a defendant whenever the interests of justice require it.

**[(F)](f)** When counsel is appointed,

- (1) the judge shall enter an order indicating the name, address, and phone number of the appointed counsel, and the order shall be served on the defendant, the appointed counsel, the previous attorney of record, if any, and the attorney for the Commonwealth pursuant to Rule 114 (Orders and Court Notices: Filing; Service; and Docket Entries); and
- (2) the appointment of counsel shall be effective throughout the post-conviction collateral proceedings, including any appeal from disposition of the petition for post-conviction collateral relief.

**[(G)](g)**[When a defendant satisfies the judge that the defendant is unable to pay the costs of the post-conviction collateral proceedings, the judge shall order that the defendant be permitted to proceed *in forma pauperis*.] **A defendant may seek waiver of the costs of the post-conviction collateral proceedings as provided for in Rule 124 (Waiver of Fees and Costs).**

**[(H)](h)**Appointment of Counsel in Death Penalty Cases.

- (1) At the conclusion of direct review in a death penalty case, which includes discretionary review in the Supreme Court of the United States, or at the expiration of time for seeking the review, upon remand of the record, the trial judge shall appoint new counsel for the purpose of post-conviction collateral review, unless:

**[(a)](i)** the defendant has elected to proceed pro se or waive post-conviction collateral proceedings, and the judge finds, after a colloquy on the record, that the defendant is competent and the defendant's election is knowing, intelligent, and voluntary;

**[(b)](ii)** the defendant requests continued representation by original trial counsel or direct appeal counsel, and the judge finds, after a colloquy on the record, that the petitioner's election constitutes a knowing, intelligent, and voluntary waiver of a claim that counsel was ineffective; or

**[(c)](iii)** the judge finds, after a colloquy on the record, that the defendant has engaged counsel who has entered, or will promptly enter, an appearance for the collateral review proceedings.

- (2) When counsel is appointed,

**[(a)](i)** the judge shall enter an order indicating the name, address, and phone number of the appointed counsel, and the order shall be served on the defendant, the appointed counsel, the previous attorney of record, if any, and the attorney for the Commonwealth pursuant to Rule 114 (Orders and Court Notices: Filing; Service; and Docket Entries); and

**[(b)](ii)** the appointment of counsel shall be effective throughout the post-conviction collateral proceedings, including any appeal

from disposition of the petition for post-conviction collateral relief.

- (3) **[When the defendant satisfies the judge that the defendant is unable to pay the costs of the post-conviction collateral proceedings, the judge shall order that the defendant be permitted to proceed *in forma pauperis*.] A defendant may seek waiver of the costs of the post-conviction collateral proceedings as provided for in Rule 124 (Waiver of Fees and Costs).**

Comment: If a defendant seeks to proceed without an attorney, the court may appoint standby counsel. See **[Rule] Pa.R.Crim.P. 121.**

Consistent with Pennsylvania post-conviction practice, it is intended that counsel be appointed in every case in which a defendant has filed a petition for post-conviction collateral relief for the first time and is unable to afford counsel or otherwise procure counsel. However, the rule now limits appointment of counsel on second or subsequent petitions so that counsel should be appointed only if the judge determines that an evidentiary hearing is required. Of course, the judge has the discretion to appoint counsel in any case when the interests of justice require it.

**[Paragraph (B)] Subdivision (b)** was added in 2005 to make it clear that the filing of an order appointing counsel to represent a defendant enters the appearance of appointed counsel. Appointed counsel does not have to file a separate entry of appearance.

**[Paragraphs (F)(1) and (H)(2)(a)] Subdivisions (f)(1) and (h)(2)(i)** require that (1) the judge include in the appointment order the name, address, and phone number of appointed counsel, and (2) the order be served on the defendant, appointed counsel, the previous attorney of record, if any, and the attorney for the Commonwealth pursuant to Rule 114 (Orders and Court Notices: Filing; Service; and Docket Entries).

Pursuant to **[paragraphs (F)(2) and (H)(2)(b)] subdivisions (f)(2) and (h)(2)(ii)**, appointed counsel retains his or her assignment until final judgment, which includes all avenues of appeal through the Supreme Court of Pennsylvania. In making the decision whether to file a petition for allowance of appeal, counsel must (1) consult with his or her client, and (2) review the standards set forth in Pa.R.A.P. 1114 (**[Considerations] Standards** Governing Allowance of Appeal) and the note following that rule. If the decision is made to file a petition, counsel must carry through with that decision. See *Commonwealth v. Liebel*, **[573 Pa. 375, ]**825 A.2d 630 (**Pa.** 2003). Concerning counsel's obligations as appointed counsel, see *Jones v. Barnes*, 463 U.S. 745 (1983). See also *Commonwealth v. Padden*, 783 A.2d 299 (Pa. Super. 2001).

**[Paragraph (H)] Subdivision (h)** was added in 2000 to provide for the appointment of counsel for the first petition for post-conviction collateral relief in a death penalty case at the conclusion of direct review.

**[Paragraph (H)(1)(a)] Subdivision (h)(1)(i)** recognizes that a defendant may proceed pro se if the judge finds the defendant competent, and that the defendant's election is knowing, intelligent, and voluntary. In *Indiana v. Edwards*, 128 S.Ct. 2379, 2388 (2008), the Supreme Court recognized that, when a defendant is not mentally competent to conduct his or her own defense, the U.S. Constitution permits the judge to require the defendant to be represented by counsel.

An attorney may not represent a defendant in a capital case unless the attorney meets the educational and experiential requirements set forth in Rule 801 (Qualifications for Defense Counsel in Capital Cases).

**[Official Note: Previous Rule 1504 adopted January 24, 1968, effective August 1, 1968; rescinded December 11, 1981, effective June 27, 1982; rescission vacated June 4, 1982; rescinded February 1, 1989, effective July 1, 1989, and replaced by Rule 1507. Present Rule 1504 adopted February 1, 1989, effective July 1, 1989; amended August 11, 1997, effective immediately; amended January 21, 2000, effective July 1, 2000; renumbered Rule 904 and amended March 1, 2000, effective April 1, 2001; amended February 26, 2002, effective July 1, 2002; Comment revised March 12, 2004, effective July 1, 2004; Comment revised June 4, 2004, effective November 1, 2004; amended April 28, 2005, effective August 1, 2005; Comment revised March 29, 2011, effective May 1, 2011.]**

***Committee Explanatory Reports:*** Final Report explaining the August 11, 1997 amendments published with the Court's Order at 27 Pa.B. 4305 (August 23, 1997). Final Report explaining the January 21, 2000 amendments adding paragraph (F) concerning appointment of counsel published with the Court's Order at 30 Pa.B. 624 (February 5, 2000). Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000). Final Report explaining the February 26, 2002 amendments concerning entry of appearance by counsel published with the Court's Order at 32 Pa.B. 1393 (March 16, 2002). Final Report explaining the Comment revision concerning duration of counsel's obligation published with the Court's Order at 34 Pa.B. 1672 (March 27, 2004). Final Report explaining the April 28, 2005 amendments concerning entry of appearance and content of appointment order published with the Court's Order at 35 Pa.B. 2859 (May 14, 2005). Final Report explaining the March 29, 2011 revision of the Comment concerning right to counsel published with the Court's Order at 41 Pa.B. 2000 (April 16, 2011).]

**Rule 906. Answer to Petition for Post-Conviction Collateral Relief.**

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**Comment:**

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“First counseled petition,” as used in paragraph (E)(1), includes petitions on which defendants have elected to proceed pro se pursuant to **[Rule 904(F)(1)(a)] Rule 904(h)(1)(i)**. See *also* the Comment to Rule 903.

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**Rule 907. Disposition Without Hearing.**

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**Comment:**

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For the requirements for appointment of counsel on second and subsequent petitions, **see Rule [904(B)] 904(d)**.

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