

**COMMONWEALTH OF MASSACHUSETTS  
THE EXECUTIVE OFFICE OF THE TRIAL COURT**

**Rules Governing Bail Magistrates and Bail Commissioners**

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## **RULE 1. Application**

These rules shall apply to out of court releases by Bail Magistrates and Bail Commissioners, whether on a defendant's personal recognizance or upon the posting of a monetary bail. These rules also apply to bails set during court hours or by a judge after court hours.

## **RULE 2. Purpose.**

These rules outline the procedures to be followed in the out of court bail process.

## **RULE 3. Definitions.**

- a) "Bail" is the temporary release of an accused person awaiting trial, sometimes on condition that a sum of money be paid to the court to guarantee their appearance in court. A defendant may be bailed on his personal recognizance or by having the defendant or a surety deposit money with the court with the understanding that said money may be forfeited if the defendant does not appear in court.
- b) "Bail Commissioner" denotes a person other than a statutorily authorized Magistrate or a Superior Court Assistant Clerk appointed by the Trial Court Bail Committee to admit to bail after court hours.
- c) "Bail Magistrate" denotes a Clerk-Magistrate or Assistant Clerk-Magistrate of the District Court or the Boston Municipal Court Departments, or a Clerk of Court of the Superior Court Department or an Assistant Clerk of the Superior Court who has been approved by the Trial Court Bail Committee to release people on bail.
- d) "Jurisdiction" refers to the territory within which a Bail Magistrate or Bail Commissioner may set or take bail or release on personal recognizance and/or set conditions of release.

- i. **Jurisdiction of Superior Court Clerks and Assistant Clerks.** The jurisdiction of Superior Court Clerks and Assistant Clerks shall encompass the county in which they are elected or appointed, respectively. They may bail any person eligible for release held within their county even if such person is held on charges outside of that county.
  - ii. **Jurisdiction of District Court and Boston Municipal Court Clerk- Magistrates and Assistant Clerk-Magistrates.** The jurisdiction of Clerk- Magistrates or Assistant Clerk-Magistrates of the District and Boston Municipal Courts is limited to the district or division, respectively, to which they are appointed. They may release any person eligible for release held within their district or division even if such person is held on charges outside of that district or division.
  - iii. **Jurisdiction of Bail Commissioners.** The jurisdiction of Bail Commissioners shall be limited to the geographical area contained in their commission. They may release any person eligible for release held within their geographical area even if such person is held on charges outside of that geographical area.
- e) “Personal Recognizance” is the pretrial release of an arrested person who has promised in writing to appear for court at a later date, without a requirement that cash or surety be deposited with the court.
- f) “Surety” denotes a person who agrees to pay the defendant’s bail and vouch for the defendant’s compliance with any terms of release.

#### **RULE 4. Registration of Bail Magistrates**

All statutorily authorized Clerk-Magistrates and Assistant Clerk-Magistrates must register with the State Bail Administrator on a form approved by the Trial Court Bail Committee prior to releasing on bail after court hours. Any person who does not register in accordance with these rules shall be prohibited from setting or taking bail outside of court hours.

**RULE 5. Bail Commissioners. Appointment and Administration of Oath**

Upon their appointment by the Trial Court Bail Committee, a Bail Commissioner must be duly sworn by a justice of the court of jurisdiction. Upon the administration of the oath, the person is duly commissioned to perform after hours bails. At the expiration of the term of the appointment, the Bail Commissioner may be invited to apply for re-appointment. The initial appointment of a Bail Commissioner shall be for a period of one year. Any reappointments shall be for a period of two years.

**RULE 6. Interference with Court Duties**

Bail Magistrates and Bail Commissioners, when employed by the Trial Court, must ensure that their out of court bailing activities do not interfere with their regular attendance at or the proper functioning of the court.

**RULE 7. Coverage within Jurisdiction**

Clerk-Magistrates and Assistant Clerk-Magistrates are entitled to participate in the out of court bailing activity in their jurisdiction so long as they are willing and able to respond to all calls for their services with reasonable promptness. A Clerk-Magistrate shall not unreasonably restrict or exclude any Bail Magistrate from participating in the out of court bailing activity in their jurisdiction.

In the event of a dispute between the Clerk-Magistrate and an Assistant Clerk-Magistrate concerning out of court bailing, the State Bail Administrator shall endeavor to resolve any conflict. If no resolution is reached, the State Bail Administrator, in order to effectuate the purposes of this rule and to provide prompt out of court bailing services to all jails and holding facilities in a jurisdiction, shall with the knowledge and authorization of the Trial Court Bail Committee prepare and implement an equitable plan for such coverage. All Bail Magistrates and Bail Commissioners in a jurisdiction affected by such a plan shall comply with it.

In the event that there are not a sufficient number of Bail Magistrates within a jurisdiction to provide coverage, the State Bail Administrator is authorized to designate Bail Magistrates and Bail Commissioners from outside the jurisdiction to ensure appropriate coverage. See Rule 8 below.

**RULE 8. Extension of Jurisdiction**

The jurisdiction of Bail Magistrates and Bail Commissioners may be

temporarily extended to any other judicial district or division by the State Bail Administrator upon notification that assistance is required from the Clerk-Magistrate requiring assistance that coverage is required. Such coverage authorizations shall be for a specific period of time, up to one year. If the need for the extension continues subsequent extensions may be granted after consultation with the Clerk-Magistrate of the judicial district or division.

**RULE 9. Knowledge of and Compliance with the Laws**

Bail Magistrates and Bail Commissioners shall be responsible for knowing all provisions of law governing their activities including, but not limited to, statutes, case law and these rules and shall strictly comply with such provisions.

Failure to comply with such laws or rules may result in the suspension or termination, after a hearing before the Bail Committee, of the power of the Bail Magistrate or Bail Commissioner to admit persons to bail.

**RULE 10. Education and Training**

Bail Magistrates and Bail Commissioners shall comply with training and educational requirements established by the Chief Justice of the Trial Court, the Trial Court Bail Committee and the State Bail Administrator. Failure to attend such training shall be grounds for the Trial Court Bail Committee to impose discipline including a period of suspension until the required training has been completed.

**RULE 11. Demeanor**

Bail Magistrates and Bail Commissioners shall perform their duties impartially, with dignity and in a manner that befits the performance of a judicial act.

**RULE 12. Timely Response**

Bail Magistrates and Bail Commissioners shall respond to all calls with reasonable promptness and shall not unduly delay the release of a defendant for the purpose of stacking or combining multiple defendants for release at police holding facilities or jails in their jurisdictions.

A defendant arrested for any act that would constitute abuse, as defined in G.L. c. 209A, s. 1 or for a violation of G.L. c. 265, s. 13M or G.L. c. 265, s. 15D is not entitled to be released from custody until six hours after the time of arrest. During

the six hour waiting period the Bail Magistrate or Bail Commissioner shall have immediate access to all criminal offender record information, board of probation records, and pending and prior police incident reports related to the person detained, upon oral, telephonic, facsimile or electronic mail request “to the extent practicable.” G.L. c. 276, § 42A, § 57, § 58 (as amended by Act §§ 28, 31-32). Bail Magistrates and Bail Commissioners are expected to obtain as much information as possible in domestic violence cases prior to making a bail determination.

**RULE 13. Who May Summons Bail Magistrate or Bail Commissioner**

No Bail Magistrate or Bail Commissioner shall respond to a call to set bail or to take bail by anyone other than the authorities holding the person in custody.

**RULE 14. Bail Determinations: Conditions of Release**

Before releasing a person charged with a crime constituting domestic abuse, the Bail Magistrate or Bail Commissioner shall not release the person unless he has first made a determination (a) that the person will appear in court as ordered and (b) that such release will not endanger the safety of the alleged victim, any other individual, or the community.

A person charged with a new offense other than domestic abuse is required to be released on his personal recognizance unless the Bail Magistrate or Bail Commissioner determines that in the exercise of his discretion such a release will not reasonably assure the appearance of the person at court.

The Bail Magistrate or Bail Commissioner may impose conditions on the defendant’s release to ensure the defendant’s appearance before the court, the safety of the alleged victim, and the safety of any other individual or the community.

In making a determination as to whether to release a person on personal recognizance or bail, the Bail Magistrate or Bail Commissioner shall consider the factors set forth in G.L. c. 276, § 58. Each decision shall be reached on the basis of all available information pertaining to the factors set forth in the statute.

**RULE 15. Fees**

A Bail Magistrate or Bail Commissioner shall not receive anything other than the statutory fee for admitting a person to bail.

The statutory fee received by a Bail Magistrate or Bail Commissioner is

governed by G.L. c. 262, § 24. The statutory fee shall only be paid to the Bail Magistrate or Bail Commissioner that travels to the place of detention and completes the release. Fee splitting arrangements are prohibited.

The statutory fee paid to the Bail Magistrate or Bail Commissioner must be paid at the time of the release. Payments cannot be paid the following day or at any time following the defendant's release from custody.

This rule does not prohibit the taking of bail or releasing on personal recognizance for less than the statutory bail fee or without payment of the fee.

If the defendant is entitled to be released on personal recognizance and the defendant is not able to pay the statutory bail fee, he must be released from custody without payment of the statutory fee.

Bail Magistrates and Bail Commissioners employed by the court shall not receive any fee for releasing a prisoner from custody during regular court hours.

#### **RULE 16. Delegation Prohibited**

A Bail Magistrate or Bail Commissioner shall not delegate the authority to release a defendant from custody to any police officer, jail official, or any other person.

#### **RULE 17. Knowledge and Comprehension**

The Bail Magistrate or Bail Commissioner shall take all necessary steps to make certain that all defendant released from custody and all sureties fully understand their obligations. This applies especially where such persons are impaired by, or under the influence of, drugs or alcohol or not familiar with the English language.

Bail Magistrates and Bail Commissioners must be equally certain that they understand the responses made to them by the persons admitted to bail and/or the sureties under examination.

Where the services of an interpreter are necessary the interpreter must first be administered an oath that he will do his work faithfully, impartially and to the best of his ability.

#### **RULE 18. Sureties**

A Bail Magistrate or Bail Commissioner shall satisfy himself beyond a



reasonable doubt that the surety is the person he claims to be.

A Bail Magistrate or Bail Commissioner shall not knowingly accept as surety any attorney or any such attorney's relative or employee if such attorney is directly or indirectly employed by the person being released.

A Bail Magistrate or Bail Commissioner shall not be a creditor of a surety.

#### **RULE 19. Separate Recognizance**

Each defendant being released from custody by a Bail Magistrate or Bail Commissioner shall have one Recognizance Form for each case for which he is being released.

Two or more defendants cannot be joined in one recognizance, even if they are jointly charged with the same crime.

#### **RULE 20. Oaths**

Every defendant being released from custody and every surety vouching for a defendant shall be administered an oath. Oaths administered in the course of releasing a defendant from custody shall be given with solemnity and dignity.

A Bail Magistrate or Bail Commissioner shall only administer an oath or affirmation if the affiant is physically present. An oath or affirmation shall not be administered by telephone or any other remote means of communication.

#### **RULE 21. Oath to Defendant**

A Bail Magistrate or Bail Commissioner shall administer an oath to a defendant admitted to bail.

The oath shall state explicitly that the defendant promises to appear at his next court appearance and every court appearance as ordered until the conclusion of the case and that the defendant will abide by all conditions of release.

Every defendant released from custody shall be advised that, should said person be charged with a crime during the period of his release, his bail may be revoked in accordance with G.L. c. 276, s.58.

The Bail Magistrate or Bail Commissioner shall ensure that the defendant understands that any bail posted shall not be released until the Legal Counsel Fee,

if imposed by the court, is satisfied in accordance with G.L. c. 211D, s. 2(A)(g).

Every defendant released from custody shall also be advised of G.L. c. 276, § 82A, which provides that a person who fails to appear in court without sufficient excuse shall be punished by a fine of not more than \$10,000 or by imprisonment in a house of correction for not more than one year, or both, in the case of a misdemeanor, and by a fine of not more than \$50,000 and imprisonment in a state prison for not more than five years, or a house of correction for not more than two and one-half years, or by fine and imprisonment, in the case of a felony.

**RULE 22. Oath to Surety**

The Bail Magistrate or Bail Commissioner shall administer an oath to the surety that the he is the person so named, that he understands that if the defendant fails to appear for any court appearance the bail may be forfeited and that any bail posted shall not be released until the Legal Counsel Fee, if imposed by the court, is satisfied in accordance with G.L. c. 211D, s.A (g).

**RULE 23. Prohibited Conduct**

A Bail Magistrate or Bail Commissioner shall not act in a manner that would cause a reasonable person to think that he would show favor toward someone, or that he can be improperly influenced or that his relationships and affiliations could prevent him from acting fairly and objectively when he releases defendants from custody after court hours. Therefore, a Bail Magistrate or Bail Commissioner shall not:

release a member of his immediate family (parents, children, siblings, spouse, and spouse's parents, children and siblings), a friend, an employer, or anyone with whom he is in business or with whom he shares a financial interest;

release any defendant in any proceeding in which he has acted or expects to act as counsel;

act as counsel in any proceeding in which he has at any time released a defendant from custody;

offer or give any gift, compensation, or reward to anyone for procuring or influencing the selection of a Bail Magistrate or Bail Commissioner or for selecting any particular attorney;

directly or indirectly provide legal advice to a defendant being released;

directly or indirectly, lend or procure the lending of money, bonds, bank books, or other securities to a defendant or to any person for the benefit of the defendant for use in depositing as bail or security with himself or any other Bail Magistrate or Bail Commissioner, or for use in paying, rewarding, or giving security to any attorney, or other advisor;

take or receive any gift, commission, pay, or reward, tangible or intangible, from any person who lends money or offers bonds, bank books, or other securities to a person in custody or to any other person for the benefit of the defendant for use in depositing bail or security;

procure or recommend a particular person to lend the defendant money or property;

refer a defendant to any attorney, a firm of attorneys, or other advisor, nor shall he, directly or indirectly, contact any such person on a defendant's behalf.

In the event of any conflict, the Bail Magistrate or Bail Commissioner should request that the custodial officer contact another Bail Magistrate or Bail Commissioner to set any bail and/or terms of release. If a substitute Bail Magistrate or Bail Commissioner cannot be located, the custodial officer should contact the State Bail Administrator.

#### **RULE 24. Form of Bail**

A Bail Magistrate or Bail Commissioner may accept bail from a defendant or surety in the form of cash, a bank check, treasurer's or cashier's check, or U.S. Government money order. Any bank check, treasurer's check or cashier's check shall be made payable directly to the Bail Magistrate or Bail Commissioner.

#### **RULE 25. Accounting for Cash Bails over \$10,000**

Bail Magistrates and Bail Commissioners who receive cash bail over \$10,000 from a defendant, or a surety on behalf of a defendant, for an offense requiring a Form 8300 shall comply with the rules of the Internal Revenue Service, FINCEN, and the rules and procedures established by the Chief Justice of the Trial Court in accounting for that bail.

#### **RULE 26. Dedicated Checking Account**

All Bail Magistrates and Bail Commissioners shall maintain a dedicated checking account with his name and the title "Bail Magistrate" listed on numbered

checks. It shall be used exclusively for depositing and transferring bail funds, and must be of a type where monthly statements include copies of cancelled checks. Personal funds shall not be commingled with bail funds collected and deposited into the dedicated account. Personal funds may, however, be used to pay bank fees. All bail funds not delivered to a court the following day shall be deposited into the dedicated checking account at the earliest feasible time. Bail funds to be delivered to courts outside of the Bail Magistrate's home court must be remitted using a check from the dedicated bail account and shall include on the memo line the name of each defendant and the docket number of the case, if available.

No later than five days after the dedicated bail account has been opened, the Bail Magistrate or Bail Commissioner shall notify the State Bail Administrator in writing of the name of the bank and the account number. A complete and accurate written register of account activity must be maintained at all times.

Bail Magistrates and Bail Commissioners shall forward to the State Bail Administrator copies of their monthly dedicated bail checking account statements including copies of the cancelled checks, if any. The bank statements may be mailed with the Monthly Bail Report or under separate cover, or by scanning and emailing to the State Bail Administrator or by facsimile within seven days of receipt of the bank statement.

If a Bail Magistrate or Bail Commissioner is remitting funds for more than one defendant or case on a single check, the relevant check number shall be recorded on each recognizance submitted to the court. No more than five bails may be submitted on one check.

#### **RULE 27. Delivery of Funds and Recognizances to Courts**

The Bail Magistrate or Bail Commissioner shall deliver all recognizances, other necessary documents, and all funds to the Clerk-Magistrates' office of the appropriate court within the time frames established by this rule.

If the defendant is required to appear at the court of the Bail Magistrate or Bail Commissioner's jurisdiction, the recognizance, bail funds, and all other related items shall be delivered to the court no later than 8:30 a.m. on the next court day.

If the defendant is required to appear at a court outside of the Bail Magistrate or Bail Commissioner's jurisdiction, the recognizance, bail funds and all other related items must be received by the appropriate court within five days of the defendant's release.

In addition, all Bail Magistrates or Bail Commissioners shall send by facsimile transmission or other authorized electronic means a copy of the

recognizance form to the appropriate court no later than 8:30 a.m. the day after the release. This responsibility may be satisfied where the jail or police authorities fax the recognizance, but the ultimate responsibility remains with the Bail Magistrate or Bail Commissioner.

#### **RULE 28. Monthly Reporting Requirements**

Each Bail Magistrate or Bail Commissioner shall submit to the State Bail Administrator a monthly report setting forth the total number of releases, the amount of cash bails collected, the statutory bail fees collected during the prior calendar month and the number of cash bails over \$10,000. Such report shall also indicate if any required IRS Form 8300 was required to be filed.

The report shall be in a form approved by the Trial Court Bail Committee and shall be delivered to the Office of Bail Administration by the fifteenth day of every month.

The Bail Report Cover Sheet shall certify that the report is a full and complete listing of after-hours releases and that the Rules Governing Bail Magistrates and Bail Commissioners, relevant statutes and case law have been complied with.

Bail Magistrates and Bail Commissioners shall send the State Bail Administrator a copy of the dedicated checking account statement, including copies of the cancelled checks, each month even if there is no activity on the account.

The Trial Court Bail Committee may at any time amend such forms to require that additional information be reported.

The forms to be used for this purpose are the Bail Report Cover Sheet and the report page (yellow copy) from the Recognizance form approved by the Court pursuant to G.L. c. 276, § 65. They are included by reference as part of these rules. For every cash bail received over \$10, 000, the Bail Magistrate or Bail Commissioner must also submit a copy of the completed IRS Form 8300.

All persons authorized to admit to bail that are registered as active with the State Bail Administrator shall submit a report and bank statement each month even if no releases have been authorized during that reporting period.

#### **RULE 29. Inactive Status**

Bail Magistrates and Bail Commissioners may elect to be placed on inactive status by notifying the State Bail Administrator in writing. Once such an election is made the Bail Magistrate or Bail Commissioner shall no longer be authorized to

admit anyone to bail out of court. The Office of Bail Administration shall ensure that all police holding facilities and jails within a Bail Magistrate's or Bail Commissioner's jurisdiction are notified of his inactive status.

A Bail Magistrate or Bail Commissioner may return to active status by submitting a written request to the Office of Bail Administration provided that a Bail Commissioner's term of appointment has not expired. The reactivation status shall be reactivated upon acknowledgment in writing by the State Bail Administrator. The Bail Magistrate or Bail Commissioner may be required to participate in training sessions before being returned to active status.

#### **RULE 30. Trial Court Bail Committee**

The Chief Justice of the Trial Court shall establish a Trial Court Bail Committee for the purpose of appointing Bail Commissioners, drafting rules governing after those performing after-hours releases and implementing progressive discipline as needed.

The Committee shall have the authority to impose any discipline on Bail Magistrates and Bail Commissioners. The Committee shall have the authority to suspend for a definite period of time or permanently remove a Bail Magistrate or Bail Commissioner from the taking of bail outside of court hours. The Chair of the Committee shall appoint a rotating three-member panel consisting of members of the Committee, who will serve on said panel for a period of six-months, to review and decide any matter where there is a recommendation by the State Bail Administrator for, or consideration of, disciplinary action against a Bail Magistrate or Commissioner. A member of the disciplinary panel may recuse himself or herself from the panel in any disciplinary proceeding that involves a Bail Magistrate or Bail Commissioner with which the member has a professional or personal relationship. Where a member of the panel has recused themselves, the Chair of the Committee shall replace that panel member with another member of the Committee.

#### **RULE 31. Emergency Suspension**

Upon receipt or discovery of credible information of serious misconduct or malfeasance, the State Bail Administrator may suspend a Bail Magistrate or Bail Commissioner for a period of up to ten days pending further review by the Trial Court Bail Committee. If substantiated, such suspension may be extended or made permanent following a hearing and the decision of the Trial Court Bail Committee in accordance with Rule 30.

### **Rule 32. Clerk-Magistrate Duties**

**The Clerk-Magistrate of each of the District and Boston Municipal Courts, or his designee, shall be responsible for the creation and maintenance of a calendar scheduling the out of court bailing assignments for their jurisdiction. A copy of the schedule shall be provided to all Bail Magistrates and Bail Commissioners authorized to take bail in the jurisdiction, all police departments and other places of detention within the jurisdiction and the State Bail Administrator.**

**The Clerk-Magistrate shall notify the State Bail Administrator if he does not have sufficient coverage for his jurisdiction.**

**Each Clerk-Magistrate shall have an affirmative duty to report to the State Bail Administrator any violations of these rules, issues or serious concerns regarding any of the Bail Magistrates and Bail Commissioners in his jurisdiction.**

**Effective: ??????**