

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA**

PRESIDENT JUDGE GENERAL COURT REGULATION

No. 99 - 05

In re: Wiretapping and Electronic Surveillance

18 Pa.C.S.A. § 5701 et seq.

The Superior Court of Pennsylvania recently held, in Commonwealth v. Darush, ___ A.2d ___, 1999 Pa. Super. 248 (filed September 27, 1999), that a warrant is required where a consenting law enforcement officer telephones an individual at home and records that conversation. Further, the Supreme Court of Pennsylvania held, in Commonwealth v. Brion, 652 A.2d 287 (Pa. 1994), that the probable cause determination and warrant requirement for participant monitoring of oral communications within a private home, pursuant to 18 Pa.C.S. § 5704(2), must follow the same procedures set forth in the Wiretap Act, 18 Pa.C.S. § 5701 et seq., for other probable cause determinations. 18 Pa.C.S. § 5704(2)(iv) requires that the President Judge, or his designee who shall also be a judge of a court of common pleas, issue an order authorizing the in-home interception.

Pursuant to 18 Pa.C.S. § 5704(2)(iv) the following procedure is to be utilized to obtain warrants pursuant to 18 Pa.C.S. § 5701 et seq.:

(a) Applications shall be prepared by the Attorney for the Commonwealth and will include necessary affidavits, proposed Order and a request to seal the record. The application shall be filed in Active Criminal Records, Room 206 Criminal Justice Center, where it will be docketed and assigned a miscellaneous number. The Application shall be presented to the Criminal Motion Court during normal business hours for review and signature. Approved Applications shall be returned by the Attorney for the Commonwealth to Room 206 Criminal Justice Center, where the approving judge's name will be entered on the docket, the Court seal will be affixed to the Order and the record will be sealed and securely stored.

(b) During normal business hours, in the event the Criminal Motions Judge is unavailable the entire day, the Attorney for the Commonwealth may present the application to any Common Pleas Court Judge sitting in the Criminal Division.

(c) Under extreme circumstances, after normal business hours, the Attorney for the Commonwealth, absent a miscellaneous docket number, may present the petition to the Common Pleas Court Emergency Judge for signature. The Attorney for the Commonwealth will obtain a miscellaneous docket number from Active Criminal Records the morning of the following business day.

This General Court Regulation is issued in accordance with 18 Pa.C.S. 5704(2)(iv) and shall become effective immediately. As required by Pa.R.Crim.P.No.6, the original General Court Regulation shall be filed with the Prothonotary in a Docket maintained for General Court Regulations issued by the President Judge of the Court of Common Pleas of Philadelphia County, and copies shall be submitted to the Administrative Office of Pennsylvania Courts, the Legislative Reference Bureau and the Criminal Procedure Rules Committee. Copies of the Regulation shall also be submitted to American Lawyer Media, The Legal Intelligencer, Jenkins Memorial Law Library, and the law library for the First Judicial District. The General Court Regulation will also be posted on the First Judicial District's website at <http://courts.phila.gov>.

Date:December 9, 1999

/s/ Alex Bonavitacola

**ALEX BONAVITACOLA
PRESIDENT JUDGE
COURT OF COMMON PLEAS OF
PHILADELPHIA COUNTY**