

THE COURTS

Title 234—RULES OF CRIMINAL PROCEDURE

PART I. GENERAL [234 PA. CODE CH. 1500]

Suspension of the Capital Unitary Review Act and Related Sections of Act No. 1995-32 (SSI); and Amendment of Chapter 1500; No. 224; Doc. No. 2

The Criminal Procedural Rules Committee has prepared a Final Report explaining the August 11, 1997 amendments of Chapter 1500 (Post-Conviction Collateral Proceedings) of the Rules of Criminal Procedure. The Final Report follows the Court's Order.

Order

Per Curiam:

And Now, this 11th day of August, 1997, pursuant to this Court's Authority under Article V, Section 10 of the Constitution of Pennsylvania, it is hereby *Ordered*:

(1) that the following provisions of the Act of November 17, 1995, P. L. 1118, No. 32 (SSI) and of the Act of June 25, 1997, P. L. , No. 33, are suspended permanently:

a. Sections 9570, 9571, 9572, 9573, 9574, 9575, 9576, 9577, 9578, 9579 (collectively known as the Capital Unitary Review Act) ("CURA");

b. Sections 9543(a)(4) and 9544(b) only insofar as they reference "unitary review";

c. Section 9545(c)(3);

d. Section 9545(d)(2);

e. the 1995 and 1997 amendments to Section 9546(d);

(2) upon the recommendation of the Criminal Procedural Rules Committee, the proposal having been published before adoption at 27 Pa.B. 2296 (May 18, 1996), and in the *Pennsylvania Reporter* (Atlantic Second Series Advance Sheets, Vol. 674), with a Final Report to be published with this Order, that Chapter 1500 is hereby amended in the following form;

(3) that this Order shall apply retroactively to all cases in which the death penalty was imposed on or after January 1, 1996. Appointments of counsel made pursuant to CURA shall remain in effect for purposes of challenges under the Post Conviction Relief Act (as amended in 1995 and by this Order), and under Chapter 1500 (as amended by this Order).

This *Order* shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective immediately.

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

PART I. GENERAL

CHAPTER 1500. POST-CONVICTION COLLATERAL PROCEEDINGS

(*Editor's Note:* Rule 1500 is a new rule. It is printed in regular type to enhance readability.)

Rule 1500. Scope.

The rules in Chapter 1500 apply to capital and noncapital cases under the Post Conviction Relief Act, 42 Pa.C.S. §§ 9541—9546, as amended by Act 1995-32 (SS1).

Official Note: Adopted August 11, 1997, effective immediately.

Comment

The 1995 amendments to the Post Conviction Relief Act specifically provide that, "except as specifically provided otherwise, all provisions of this subchapter shall apply to capital and noncapital cases." See 42 Pa.C.S. § 9542.

Committee Explanatory Reports:

Final Report explaining the August 11, 1997 adoption of Rule 1500 published with the Court's Order at 27 Pa.B. 4305 (August 23, 1997).

Rule 1501. Initiation of Post-Conviction Collateral Proceedings.

(1) A petition for post-conviction collateral relief shall be filed within one year of the date the judgment becomes final, except as otherwise provided by statute.

(2) A proceeding for post-conviction collateral relief shall be initiated by filing a [**motion**] petition and 3 copies with the clerk of the court in which the defendant was convicted and sentenced. The [**motion**] petition shall be verified by the defendant.

Official Note: Previous Rule 1501 adopted January 24, 1968, effective August 1, 1968; amended November 25, 1968, effective February 3, 1969; amended February 15, 1974, effective immediately; rescinded December 11, 1981, effective June 27, 1982, rescission vacated June 4, 1982; rescinded November 9, 1984, effective January 2, 1985. Former Rule 1501 adopted November 9, 1984, effective January 2, 1985; rescinded February 1, 1989, effective July 1, 1989[;], and replaced by present Rule 1502. Present Rule 1501 adopted February 1, 1989, effective July 1, 1989; amended March 22, 1993, effective January 1, 1994; **amended August 11, 1997, effective immediately.**

Comment

The rules in Chapter 1500 govern proceedings to obtain relief authorized by the Post Conviction Relief Act, 42 Pa.C.S. §§ 9541 et seq. (**hereinafter PCRA**).

By statute, a court may not entertain a request for any form of relief in anticipation of the filing of a petition for post-conviction collateral relief. 42 Pa.C.S. § 9545(a). For stays of execution, see 42 Pa.C.S. § 9545(c).

The [**motion**] petition for post-conviction relief under these rules is not intended to be a substitute for or a limitation on the availability of appeal or a post-sentence motion. See Pa.Rs.Crim.P. [**320 and**] 1410 and **360**. Rather, the Chapter 1500 Rules are intended to require that, in a single proceeding, the defendant must raise and the judge must dispose of all grounds for relief available after conviction and exhaustion of the appellate process, either by affirmance or by the failure to take a timely appeal.

Except as provided in Rule 1502(e)(2) for death penalty cases, no discovery is permitted at any

stage of the proceedings, except upon leave of the court with a showing of exceptional circumstances. See Rule 1502(e)(1), which implements 42 Pa.C.S. § 9545(d)(2).

As used in the Chapter 1500 Rules, “[motion] petition for post-conviction collateral relief” and “[motion] petition” are intended to include an amended [motion] petition filed pursuant to Rule 1505, except where the context indicates otherwise.

Under the 1995 amendments to the PCRA, a petition for post-conviction relief, including second and subsequent petitions, must be filed “within one year of the date the judgment becomes final,” 42 Pa.C.S. § 9545(b)(1), unless one of the statutory exceptions applies, see 42 Pa.C.S. § 9545(b)(1)(i)–(iii). Any petition invoking one of these exceptions must be filed within 60 days of the date the claim could have been presented. 42 Pa.C.S. § 9545(b)(2).

The 1995 amendments to the PCRA apply to petitions filed on or after January 16, 1996. A petitioner whose judgment has become final on or before the effective date of the Act is deemed to have filed a timely petition under the Act if the first petition is filed within one year of the effective date of the Act. See Section 3 of Act 1995-32 (SS1).

For the purposes of the PCRA, a judgment becomes final at the conclusion of direct review, which includes discretionary review in the Supreme Court of the United States and the Supreme Court of Pennsylvania, or at the expiration of time for seeking the review. See 42 Pa.C.S. 9545(b)(3).

Committee Explanatory Reports:

Final Report explaining the March 22, 1993 amendments published with the Court’s Order at 23 Pa.B. 1699 (April 10, 1993).

Final Report explaining the August 11, 1997 amendments published with the Court’s Order at 27 Pa.B. 4305 (August 23, 1997).

Rule 1502. Content of [Motion] Petition for Post-Conviction Collateral Relief; Request for Discovery.

(a) A [motion] petition for post-conviction collateral relief shall bear the caption, number, and court term of the case or cases in which relief is requested and shall contain substantially the following information:

* * * * *

(8) the court, caption, term, and number of any proceeding (including appeals, prior post-conviction collateral proceedings, and federal court proceedings) instituted by the defendant to obtain relief from conviction or [by] sentence, specifying whether a proceeding is pending or has been completed;

* * * * *

(13) whether any of the grounds for the relief requested were raised before, and if so, at what stage of the case; [and]

(14) a verification by the defendant that the facts set forth in the [motion] petition are true and correct to the best of the defendant’s personal knowledge or information and belief and that any false statements therein are made subject to the penalties [of Section 4904] of the Crimes Code, [() 18 Pa.C.S. § 4904, ()], relating to unsworn falsification to authorities[.];

(15) if applicable, any request for an evidentiary hearing. The request for an evidentiary hearing shall include a signed certification as to each intended witness, stating the witness’s name, address, and date of birth, and the substance of the witness’s testimony. Any documents material to the witness’s testimony shall also be included in the petition; and

(16) if applicable, any request for discovery.

The [motion] petition may, but need not, include concise argument or citation and discussion of authorities.

(b) Each ground relied upon in support of the relief requested shall be stated in the [motion] petition. Failure to state such ground in the [motion] petition shall preclude the defendant from raising that ground in any [subsequent] proceeding for post-conviction collateral relief [under these rules].

(c) The defendant shall state in the [motion] petition the name and address of the attorney who will represent the defendant in the post-conviction collateral proceeding. If the defendant is unable to afford or otherwise procure counsel, and wants counsel appointed, the defendant shall so state in the [motion] petition and shall request the appointment of counsel.

(d) The defendant shall attach to the [motion] petition any affidavits, records, documents, or other evidence which show the facts stated in support of the grounds for relief, or the [motion] petition shall state why they are not attached.

(e) Requests for Discovery

(1) Except as provided in paragraph (e)(2), no discovery shall be permitted at any stage of the proceedings, except upon leave of court after a showing of exceptional circumstances.

(2) On the first counseled petition in a death penalty case, no discovery shall be permitted at any stage of the proceedings, except upon leave of court after a showing of good cause.

Official Note: Previous Rule 1502 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 present Rules 1503 and 1505. Present Rule 1502 adopted February 1, 1989, effective July 1, 1989; amended August 11, 1997, effective immediately.

Comment

[This rule is derived from former Rule 1501.]

Pursuant to paragraph (a)(6), the [motion] petition should include specific information about the sentence imposed, including whether the defendant is currently serving a sentence of imprisonment or probation for the crime; awaiting execution of a sentence of death for the crime; or serving a sentence which must expire before the defendant may commence serving the disputed sentence; the minimum and maximum terms of the sentence[,]; the amount of fine or restitution, if any[,]; and whether the defendant is released on [probation or] parole. See [also, Section 9543(a) of the Post Conviction Relief Act,] 42 Pa.C.S. § 9543(a) [(Supp. 1988)].

[**Section**] Sections 9543(a)(2), (3), and (4) of the Post Conviction Relief Act, [(42 Pa.C.S. § 9543(a)(2), (3), and (4), [(Supp. 1988)]] [**requires**] require that to be eligible for relief, the defendant must plead and prove by a preponderance of the evidence **all of** the following:

[1. "That the conviction or sentence resulted from one or more of the following:

(I) A violation of the constitution of Pennsylvania or laws of this Commonwealth or the constitution of the United States which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.

(II) Ineffective assistance of counsel which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.

(III) A plea of guilty unlawfully induced where the circumstances make it likely that the inducement caused an individual to plead guilty.

(IV) The improper obstruction by Commonwealth officials of the petitioner's right of appeal where a meritorious appealable issue existed and was properly preserved in the trial court.

(V) A violation of the provisions of the constitution, law or treaties of the United States which would require the granting of federal habeas corpus relief to a state prisoner.

(VI) The unavailability at the time of trial of exculpatory evidence that has subsequently become available and that would have affected the outcome of the trial if it had been introduced.

(VII) The imposition of a sentence greater than the lawful maximum.

(VIII) A proceeding in a tribunal without jurisdiction."

2. "That the allegation of error has not been previously litigated and one of the following applies:

(I) The allegation of error has not been waived.

(II) If the allegation of error has been waived, the alleged error has resulted in the conviction or affirmance of sentence of an innocent individual."

"(III) If the allegation of error has been waived, the waiver of the allegation of error during pre-trial, trial, post-trial or direct appeal proceedings does not constitute a state procedural default barring federal habeas corpus relief."

3. "That the failure to litigate the issue prior to or during trial or on direct appeal could not have been the result of any rational strategic or tactical decision by counsel."]

"(2) That the conviction or sentence resulted from one or more of the following:

(i) A violation of the Constitution of this Commonwealth or the Constitution or laws of the United States which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.

(ii) Ineffective assistance of counsel which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.

(iii) A plea of guilty unlawfully induced where the circumstances make it likely that the inducement caused the petitioner to plead guilty and the petitioner is innocent.

(iv) The improper obstruction by government officials of the petitioner's right of appeal where a meritorious appealable issue existed and was properly preserved in the trial court."

[(v)] *Deleted by statute.*

"(vi) The unavailability at the time of trial of exculpatory evidence that has subsequently become available and would have changed the outcome of the trial if it had been introduced.

(vii) The imposition of a sentence greater than the lawful maximum.

(viii) A proceeding in a tribunal without jurisdiction."

"(3) That the allegation of error has not been previously litigated or waived."

"(4) That the failure to litigate the issue prior to or during trial . . . , or on direct appeal could not have been the result of any rational, strategic or tactical decision by counsel." 42 Pa.C.S. § 9543(a)(2), (3) and (4). (Note: the statutory reference to unitary review in this paragraph is not shown in view of the Court's 1997 suspension of the Capital Unitary Review Act.)

By statute, a court may not entertain a request for any form of relief in anticipation of the filing of a petition for post-conviction relief. 42 Pa.C.S. § 9545(a). For stays of execution, see 42 Pa.C.S. § 9545(c).

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 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*.

Second or subsequent petitions will not be entertained unless a strong *prima facie* showing is offered to demonstrate that a miscarriage of justice may have occurred. *Commonwealth v. Szuchon*, 633 A.2d 1098, 1099 (Pa. 1993) (citing *Commonwealth v. Lawson*, 549 A.2d 107 (Pa. 1988)). This standard is met if the petitioner can demonstrate either: (1) that the proceedings resulting in the petitioner's conviction were so unfair that a miscarriage of justice occurred which no civilized society can

tolerate; or (2) that the petitioner is innocent of the crimes charged. *Commonwealth v. Szuchon*, 633 A.2d 1098, 1100 (Pa. 1993).

It is expected that a form [**motion**] **petition** will be prepared incorporating the required contents set forth herein which will be available for distribution to uncounseled defendants. This rule is not intended to require an attorney to use a printed form or any other particular format in preparing a [**motion**] **petition** or an amended [**motion**] **petition** for post-conviction collateral relief, provided, of course, that the attorney must include in a [**motion**] **petition** or amended [**motion**] **petition** substantially all of the information set forth in this rule.

The [**motion**] **petition** should be typewritten or legibly handwritten.

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).

Rule 1503. Docketing and Assignment.

(a) Upon receipt of a [**motion**] **petition** for post-conviction collateral relief, the clerk of courts shall immediately docket the [**motion**] **petition** to the same term and number as the underlying conviction and sentence. The clerk shall thereafter transmit the [**motion**] **petition** and the record to the trial judge, if available, or to the administrative judge, if the trial judge is not available. If the defendant's confinement is by virtue of multiple indictments or informations and sentences, the case shall be docketed to the same term and number as the indictment or information upon which the first unexpired term was imposed, but the court may take judicial notice of all proceedings related to the multiple indictments or informations.

(b) When the [**motion**] **petition** is filed and docketed, the clerk shall transmit a copy of the [**motion**] **petition** to the attorney for the Commonwealth.

(c) The trial judge, if available, shall proceed with and dispose of the [**motion**] **petition** in accordance with these rules, unless the judge determines, in the interests of justice, that he or she should be disqualified.

(d) When the trial judge is unavailable or disqualified, the administrative judge shall promptly assign and transmit the [**motion**] **petition** and the record to another judge, who shall proceed with and dispose of the [**motion**] **petition** in accordance with these rules.

Official Note: Previous Rule 1503 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 present Rule 1504. Present Rule 1503 adopted February 1, 1989, effective July 1, 1989; amended June 19, 1996, effective July 1, 1996; **amended August 11, 1997, effective immediately.**

Comment

As used in this rule, "trial judge" is intended to include the judge who accepted a pleas guilty or nolo contendere.

The transmittal of the [**motion**] **petition** to the attorney for the Commonwealth does not require a re-

sponse unless one is ordered by the judge as provided in these rules, or required by Rule 1506(e).

Although most references to indictments and indicting grand juries were deleted from these rules in 1993 since the indicting grand jury had been abolished in all counties, see PA. CONST. art. I, § 10 and 42 Pa.C.S. § 8931(b), the reference was retained in this rule because there may be some cases still pending that were instituted prior to the abolition of the indicting grand jury.

Committee Explanatory Reports:

Final Report explaining the June 19, 1996 amendments published with the Court's Order at 26 Pa.B. 3128 (July 6, 1996).

Final Report explaining the August 11, 1997 amendments published with the Court's Order at 27 Pa.B. 4305 (August 23, 1997).

Rule 1504. Appointment of Counsel; *in Forma Pauperis*.

(a) 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 [**motion**] **petition** for post-conviction collateral relief.

(b) On a second or subsequent [**motion**] **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 1508, the judge shall appoint counsel to represent the defendant.

* * * * *

(d) An appointment of counsel shall be effective throughout the post-conviction proceedings, including any appeal from disposition of the [**motion**] **petition** for post-conviction collateral relief.

* * * * *

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.**

Comment

[This rule replaces former Rule 1503.]

If a defendant seeks to proceed without an attorney, the court may appoint standby counsel. See Rule 318.

Consistent with Pennsylvania post-conviction practice under former Rules 1503 and 1504, it is intended that counsel be appointed in every case in which a defendant has filed a [**motion**] **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 [**motions**] **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.

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).

Rule 1505. Amendment and Withdrawal of [**Motion**] **Petition** for Post-Conviction Collateral Relief.

(a) The judge may grant leave to amend or withdraw a [**motion**] **petition** for post-conviction collateral relief at any time. Amendment shall be freely allowed to achieve substantial justice.

(b) When a [**motion**] **petition** for post-conviction collateral relief is defective as originally filed, the judge shall order amendment of the [**motion**] **petition**, indicate the nature of the defects, and specify the time within which an amended [**motion**] **petition** shall be filed. If the order directing amendment is not complied with, the [**motion**] **petition** may be dismissed without a hearing.

(c) Upon the entry of an order directing an amendment, the clerk of courts shall serve a copy of the order on the defendant, the defendant's attorney, and the attorney for the Commonwealth.

(d) All amended [**motions**] **petitions** shall be in writing, shall comply substantially with Rule 1502, and shall be filed and served within the time specified by the judge in ordering the amendment.

Official Note: Previous Rule 1505 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 Rules 1506(b), 1508(a), and present Rule 1505(c). Present Rule 1505 adopted February 1, 1989, effective July 1, 1989[.]; **amended August 11, 1997, effective immediately.**

Comment

[**This rule replaces paragraph (a) of former Rule 1505 and paragraph (c) of former Rule 1502.**]

"Defective," as used in paragraph (b), is intended to include [**motions**] **petitions** that are inadequate, insufficient, or irregular for any reason; for example, [**motions**] **petitions** that lack particularity; [**motions**] **petitions** that do not comply substantially with Rule 1502; [**motions**] **petitions** that appear to be patently frivolous; [**motions**] **petitions** that do not allege facts which would support relief; [**motions**] **petitions** that raise issues the defendant did not preserve properly or where finally determined at prior proceedings.

When an amended [**motion**] **petition** is filed pursuant to paragraph (d), it is intended that the clerk of courts transmit a copy of the amended [**motion**] **petition** to the attorney for the Commonwealth. This transmittal does not require a response unless one is ordered by the judge as provided in these rules. See Rules 1503 and 1506.

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).

Rule 1506. Answer to **Petition** [**Motion**] for Post-Conviction Collateral Relief.

(a) **Except as provided in paragraph (e), [An]** answer to a [**motion**] **petition** for post-conviction collateral relief is not required unless ordered by the judge. When the judge has not ordered an answer, the attorney for the Commonwealth may elect to answer, but the

failure to file one shall not constitute an admission of the well-pleaded facts alleged in the [**motion**] **petition**.

(b) Upon the entry of an order directing an answer, the clerk of [**court**] **courts** shall serve a copy of the order on the attorney for the Commonwealth, the defendant, and the defendant's attorney.

* * * * *

(e) Answers in Death Penalty Cases

(1) First Counseled Petitions

(i) The Commonwealth shall file an answer to the first counseled petition for collateral review in a death penalty case.

(ii) The answer shall be filed within 120 days of the filing and service of the petition. For good cause shown, the court may order extensions, of up to 90 days each, of the time for filing the answer.

(2) Second and Subsequent Petitions

(i) An answer to a second or subsequent petition for post-conviction collateral relief is not required unless ordered by the judge. When the judge has not ordered an answer, the attorney for the Commonwealth may elect to file an answer.

(ii) The answer shall be filed within 120 days of the filing and service of the petition. For good cause shown, the court may order extensions, of up to 90 days each, of the time for filing the answer.

(3) Amendments to Answer

The judge may grant the Commonwealth leave to amend the answer at any time, and amendment shall be freely allowed to achieve substantial justice. Amended answers shall be in writing, and shall be filed and served within the time specified by the judge in granting leave to amend.

Official Note: Previous Rule 1506 adopted January 24, 1968, effective August 1, 1968; Comment revised April 26, 1979, effective July 1, 1979; rule rescinded December 11, 1981, effective June 27, 1982; rescission vacated June 4, 1982; Comment revised January 28, 1983, effective July 1, 1983; rule rescinded February 1, 1989, effective July 1, 1989, and replaced by Rule 1508. Present Rule 1506 adopted February 1, 1989, effective July 1, 1989; **amended August 11, 1997, effective immediately.**

Comment

As used in the Chapter 1500 Rules, "answer" is intended to include an amended answer filed pursuant to [**paragraph**] **paragraphs** (d) and (e)(3) of this rule, except where the context indicates otherwise.

Except as provided in paragraph (e), [When] when determining whether to order that the attorney for the Commonwealth file an answer, the judge should consider whether an answer will promote the fair and prompt disposition of the issues raised by the defendant in the [**motion**] **petition** for post-conviction collateral relief.

Paragraph (e)(1) was added in 1997 to require that the Commonwealth file an answer to the first counseled petition in a death penalty case. For second and subsequent petitions, paragraph (e)(2) would apply.

"First counseled petition," as used in paragraph (e)(1), includes petitions on which defendants have elected to proceed pro se. See also the Comment to Rule 1503.

[See Section 9543(B) of the Post Conviction Relief Act (42 Pa.C.S. § 9543(B) (Supp. 1988)) which, inter alia, authorizes the dismissal of the motion if "because of delay in filing . . . , the Commonwealth has been prejudiced either in its ability to respond to the petition or in its ability to re-try the petitioner."]

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).

Rule 1507. Disposition Without Hearing.

Except as provided in Rule 1509 for death penalty cases.

(a) [**The**] the judge shall promptly review the [**motion**] petition, any answer by the attorney for the Commonwealth, and other matters of record relating to the defendant's claim(s). If the judge is satisfied from this review that there are no genuine issues concerning any material fact and that the defendant is not entitled to post-conviction collateral relief, and no purpose would be served by any further proceedings, the judge shall give notice to the parties of the intention to dismiss the [**motion**] petition and shall state in the notice the reasons for the dismissal. The defendant may respond to the proposed dismissal within [**10**] 20 days of the date of the notice. The judge thereafter shall [**either**] order the [**motion**] petition dismissed, [**or**] grant leave to file an amended [**motion**] petition, or direct that the proceedings continue.

(b) A [**motion**] petition for post-conviction collateral relief may be granted without a hearing when the [**motion**] petition and answer show that there is no genuine issue concerning any material fact and that the defendant is entitled to relief as a matter of law.

(c) The judge may dispose of only part of a [**motion**] petition without a hearing by ordering dismissal of or granting relief on only some of the issues raised, while ordering a hearing on other issues.

(d) When the [**motion**] petition is dismissed without a hearing, the judge [**:**] shall issue an order to that effect and shall advise the defendant by certified mail, return receipt requested, of the right to appeal from the final order disposing of the petition and of the time within which the appeal must be taken.

[(1) shall issue an order to that effect and shall state in the order the grounds on which the case was determined; and

(2) shall advise the defendant by certified mail, return receipt requested, of the right to appeal from the final order disposing of the motion and of the time within which the appeal must be taken.]

Official Note: Previous Rule 1507 adopted January 24, 1968, effective August 1, 1968; rescinded December 11, 1981, effective June 27, 1982; rescission vacated June 4, 1982; amended January 28, 1983, effective July 1, 1983; rescinded February 1, 1989, effective July 1, 1989, and not replaced. Present Rule 1507 adopted February 1, 1989, effective July 1, 1989; amended August 11, 1997, effective immediately.

Comment

[Previous Rule 1507 was rescinded in 1989 as unnecessary in view of the enactment of the new Post Conviction Relief Act, Act 47 of 1988, 42 Pa.C.S. § 9541 et seq. (Supp. 1988). Present Rule 1507 replaces former Rule 1504.]

The judge is permitted, pursuant to paragraph (a), to summarily dismiss a [**motion**] petition for post-conviction collateral relief in certain limited cases. To determine whether a summary dismissal is appropriate, the judge should thoroughly review the [**motion**] petition, the answer, if any, and all other relevant information that is included in the record. If, after this review, the judge determines that the [**motion**] petition is patently frivolous and without support in the record, or that the facts alleged would not, even if proven, entitle the defendant to relief, or that there are no genuine issues of fact, the judge may dismiss the [**motion**] petition as provided herein.

A summary dismissal would also be authorized under this rule if the judge determines that a previous [**motion**] petition involving the same issue or issues was filed and was finally determined adversely to the defendant. See § 9545(b) for the timing requirements for filing second and subsequent petitions.

[A second or subsequent motion should be summarily dismissed when the judge determines that the defendant has failed to make a strong prima facie showing that a miscarriage of justice may have occurred. See *Commonwealth v. Lawson*, ___ Pa. ___, 549 A.2d 107 (1988).]

Second or subsequent petitions will not be entertained unless a strong prima facie showing is offered to demonstrate that a miscarriage of justice may have occurred. *Commonwealth v. Szuchon*, 633 A.2d 1098, 1099 (Pa. 1993) (citing *Commonwealth v. Lawson*, 549 A.2d 107 (Pa. 1988)). This standard is met if the petitioner can demonstrate either: (1) that the proceedings resulting in the petitioner's conviction were so unfair that a miscarriage of justice occurred which no civilized society can tolerate; or (2) that the petitioner is innocent of the crimes charged. *Commonwealth v. Szuchon*, 633 A.2d 1098, 1100 (Pa. 1993).

[See also Rule 1504 with regard to] For the requirements for appointment of counsel on second and subsequent petitions, [in these cases] see Rule 1504(b).

Relief may be granted without a hearing under paragraph (b) only after an answer has been filed either voluntarily or pursuant to court order.

[Upon disposition without a hearing under this rule, the judge should also comply with Rule 1508(d), to the extent that it reasonably applies.]

A PCRA petition may not be dismissed due to delay in filing except after a hearing on a motion to dismiss. 42 Pa.C.S. § 9543(b). See Rule 1508.

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).

Rule 1508. Hearing.

(a) Except as provided in Rule 1507, the judge shall order a hearing:

(1) whenever the Commonwealth files a motion to dismiss due to the defendant's delay in filing the petition, or

(2) when the petition for post-conviction relief or the Commonwealth's answer, if any, raises material issues of fact. [on all material issues of fact raised by the motion and answer, if any. The] However, the judge may deny a hearing on a specific issue of fact when a full and fair evidentiary hearing upon that issue was held at trial or at any proceeding before or after trial.

The judge shall schedule the hearing for a time that will afford the parties a reasonable opportunity for investigation and preparation, and shall enter such interim orders as may be necessary in the interests of justice.

(b) The judge, or [**motion**] **petition** or request, shall postpone or continue a hearing to provide either party a reasonable opportunity, if one did not exist previously, for investigation and preparation regarding any new issue of fact raised in an amended [**motion**] **petition** or amended answer.

* * * * *

(d) Upon the conclusion of the hearing the judge shall:

(1) determine all material issues raised by the **defendant's [motion] petition and the Commonwealth's answer, or by the Commonwealth's motion to dismiss, if any;**

(2) issue an order denying relief or granting a specific form of relief [**and stating the grounds on which the case was determined,**] and issue any supplementary orders appropriate to the proper disposition of the case [; **and**].

[(3) state on the record, or issue and serve upon the parties, findings of fact and conclusions of law on all material issues.]

(e) If the judge disposes of the case in open court at the conclusion of the hearing, the judge shall advise the defendant on the record of the right to appeal from the final order disposing of the [**motion**] **petition** and of the time within which the appeal must be taken. If the case is taken under advisement, the judge shall advise the defendant of the right to appeal by certified mail, return receipt requested.

Official Note: Adopted February 1, 1989, effective July 1, 1989; **amended August 11, 1997, effective immediately.**

Comment

[This rule replaces former Rule 1506.]

[With respect to "material issues" as used in this rule, see, e.g., *Commonwealth v. Sullivan*, 472 Pa. 129, 371 A.2d 468 (1977); *Commonwealth v. Rightnour*, 469 Pa. 107, 364 A.2d 927 (1976); *Commonwealth v. Webster*, 466 Pa. 314, 353 A.2d 372 (1975); *Commonwealth v. Hayes*, 462 Pa. 291, 341 A.2d 85 (1975); *Commonwealth v. Dancer*, 460 Pa. 95, 331 A.2d 435 (1975); *Commonwealth v. Slavik*, 449 Pa. 424, 297 A.2d 920 (1972).]

The judge's power, under paragraph (a), to deny a hearing on a specific factual issue is intended to apply when an issue of fact has already been heard fully, but has never been determined. The judge need not rehear such as issue, but would be required to determine it under paragraph (d).

The 1997 amendment to paragraph (a)(1) requires a hearing on every Commonwealth motion to dismiss due to delay in the filing of a PCRA petition. See 42 Pa.C.S. § 9543(b), as amended in 1995.

See also Rule 1509 for procedures in death penalty cases.

Except as provided in Rule 1502(e)(2) for first counseled petitions in death penalty cases, 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).

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).

(Editor's Note: Rule 1509 is a new rule. It is printed in regular type to enhance readability.)

Rule 1509. Procedures for Petitions in Death Penalty Cases: Hearing; Disposition.

(a) No more than 20 days after the Commonwealth files an answer pursuant to Rule 1506(e)(1) or (e)(2), or if no answer is filed as permitted in Rule 1506(e)(2), within 20 days after the expiration of the time for answering, the judge shall review the petition, the Commonwealth's answer, if any, and other matters of record relating to the defendant's claim(s), and shall determine whether an evidentiary hearing is required.

(b) If the judge is satisfied from this review that there are no genuine issues concerning any material fact, that the defendant is not entitled to post-conviction collateral relief, and that no purpose would be served by any further proceedings,

(1) the judge shall give notice to the parties of the intention to dismiss the petition and shall state in the notice the reasons for the dismissal.

(2) The defendant may respond to the proposed dismissal by filing a request for oral argument within 20 days of the date of the notice.

(3) No later than 90 days from the date of the notice, or from the date of the oral argument, if granted, the judge shall:

(i) dismiss the petition, issue an order to that effect, and advise the defendant by certified mail, return receipt requested, of the right to appeal from the final order disposing of the petition and of the time within which the appeal must be taken;

(ii) grant the defendant leave to file an amended petition; and/or

(iii) order that an evidentiary hearing be held on a date certain.

(c) If the judge determines that an evidentiary hearing is required, the judge shall enter an order setting a date certain for the hearing, which shall not be scheduled for fewer than 10 days or more than 45 days from the date of the order. The judge may, for good cause shown, grant

leave to continue the hearing. No more than 90 days after the evidentiary hearing, the judge shall dispose of the petition.

(d) Failure of the judge to dispose of the petition within 90 days as required by paragraphs (b)(3) and (c) may result in the imposition of sanctions.

Official Note: Previous Rule 1509 adopted February 1, 1989, effective July 1, 1989; renumbered Rule 1510 August 11, 1997, effective immediately. Present Rule 1509 adopted August 11, 1997, effective immediately.

Comment

It is intended that once a determination is made under this rule that an evidentiary hearing is required, the provisions of Rule 1508(c), (d), and (e) apply.

Committee Explanatory Reports:

Final Report explaining the August 11, 1997 adoption of new Rule 1509 published with the Court's Order at 27 Pa.B. 4305 (August 23, 1997).

Rule [1509] 1510. Appeal.

An order granting, denying, dismissing, or otherwise finally disposing of a [**motion**] **petition** for post-conviction collateral relief shall constitute a final order for purposes of appeal.

Official Note: Previously Rule 1509, [Adopted] adopted February 1, 1989, effective July 1, 1989; **renumbered and amended August 11, 1997, effective immediately.**

Comment

Disposition without a hearing under Rule 1507(a) and (b), or under Rule 1509(b)(3)(i), constitutes a final order under this rule. A partial disposition under Rule 1507(c) is not a final order until the judge has fully disposed of all claims.

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

New Pa.Rs.Crim.P. 1500 and 1509; Renumbering Rule 1509 as 1510; Amendments to Pa.Rs.Crim.P. 1501—1508, 1510

PROCEDURES UNDER THE POST CONVICTION RELIEF ACT

I. Introduction

On August 11, 1997, upon the recommendation of the Criminal Procedural Rules Committee, the Supreme Court of Pennsylvania adopted new Rules of Criminal Procedure 1500 (Scope) and 1509 (Procedures for Petitions in Death Penalty Cases; Hearing; Disposition), renumbered present Rule 1509 as 1510, and amended Rules 1501—1508 and 1510, effective immediately.¹

The changes to Chapter 1500 serve three purposes. First, they align the rules and Comments with the 1995 statutory amendments to the Post Conviction Relief Act (hereinafter PCRA). Second, several additions to the Comments are intended to alert judges and lawyers to

new provisions under the PCRA related to pleading and discovery. Third, the changes fill in the procedural gaps created by the suspension of the Capital Unitary Review Act, 42 Pa.C.S. §§ 9570—9579 (hereinafter CURA).

This Final Report highlights the Committee's considerations in formulating these amendments.²

II. Background

Chapter 1500 provides the procedural framework for proceedings under the PCRA, as it did for the Post Conviction Hearing Act. As such, the rules contained in Chapter 1500 have served, over time, to implement the various procedures for collateral review established by the Legislature.

In 1995, the Governor signed into law Act 1995-32(SS1), effective January 16, 1996. This Act amended the PCRA, 42 Pa.C.S. §§ 9542—9546, and enacted CURA, 42 Pa.C.S. §§ 9570—9579. Early in 1996, the Committee reviewed Act 1995-32 (SS1), and agreed that changes to Chapter 1500 were necessary to align Rules 1501—1509 with the amendments to the PCRA.

III. Discussion

1. Substitution of "petition" for "motion" throughout Chapter.

When new Chapter 1500 was drafted in 1988, see 18 Pa.B. 4235 (September 17, 1988), the Committee agreed to use the term "motion" throughout Chapter 1500 in accordance with the Court's express preference for that term. *Id.*, at 4240. After reviewing the rules in Chapter 1500 and the 1995 PCRA amendments, the Committee concluded that the use of the term "motion," while contributing to uniformity in one way, was confusing in light of the PCRA's consistent use of the word "petition." For this reason, the term "petition" replaces "motion" throughout Chapter 1500. This is the only change in the text of Rules 1503—1505 and Rule 1510.

2. Rule Changes

a. New Rule 1500 (Scope)

New Rule 1500 references the PCRA as amended in 1995, and makes it clear that the rules in Chapter 1500 apply to capital and noncapital cases under the PCRA.

b. Rule 1501 (Initiation of Post-Conviction Collateral Proceedings)

Present Rule 1501 contains the filing procedures for initiating PCRA proceedings. The text of the rule has been amended by the addition of a new paragraph (1), which implements the time limits for filing PCRA petitions mandated by 42 Pa.C.S. §§ 9545(b)(1) and (2).

The Rule 1501 Comment has been expanded to alert the reader to several of the PCRA amendments related to the initiation of PCRA proceedings.

(a) There is a new paragraph cautioning about the statutory prohibition on entertaining a request for any form of relief in anticipation of the filing of a PCRA petition. See 42 Pa.C.S. § 9545(a). In addition, in view of the applicability of the rules to capital and noncapital cases under the PCRA, a cross-reference to the statutory provision for stays of execution has been included. See 42 Pa.C.S. § 9545(c).

¹The Court also suspended the Capital Unitary Review Act, 42 Pa.C.S. §§ 9570—9579, and sections of the Post Conviction Relief Act, 42 Pa.C.S. §§ 9543—9546. See the Court's August 11, 1997 order, which precedes this *Final Report*.

²The Committee's *Final Reports* should not be confused with the official Committee *Comments* to the rules. Also note that the Supreme Court does not adopt the Committee's *Comments* or the contents of the Committee's explanatory *Final Reports*.

(b) As explained in greater detail in the discussion of Rule 1502(e), in section c below, the rules address discovery in capital and noncapital cases, and provide a separate "good cause" discovery standard for the first counseled petition in a death penalty case. Cf. 42 Pa.C.S. § 9545(d)(2). In all other cases, the statutory prohibition on discovery at any stage of the proceedings, except upon leave of court with a showing of exceptional circumstances, would apply. This is made clear in the Comment, which includes a cross-reference to Rule 1502(e)(1), which implements 42 Pa.C.S. § 9545(d)(2), and to Rule 1502(e)(2).

(c) Several new paragraphs in the Comment summarize the new PCRA timing requirements.

(i) The Comment refers the reader to the general one-year time limit for petitions filed on or after the effective date of the amendments to the PCRA, 42 Pa.C.S. § 9545(b)(1), and to the exceptions to that requirement, 42 Pa.C.S. §§ 9545(b)(1)(i)—(iii) and 42 Pa.C.S. § 9545(b)(2).

(ii) The Comment also references the timing provision for those petitioners whose judgment became final on or before the effective date of the amendments, i.e., the petition is deemed to have been timely filed if the first petition is filed within one year of the effective date of the Act. See Act 1995-32(SS1), Section 3.

(iii) Finally, the Comment contains a cross-reference to 42 Pa.C.S. § 9545(b)(3), explaining that, for the purposes of the PCRA, a judgment becomes final at the conclusion of direct review, which includes discretionary review in the Supreme Court of the United States and the Supreme Court of Pennsylvania.

c. Rule 1502 (Content of Petition for Post-Conviction Collateral Relief; Request for Discovery)

(1) Discovery

The Committee extensively discussed the issue of discovery in the context of PCRA proceedings in view of both 42 Pa.C.S. § 9545(d)(2), which prohibits discovery except upon leave of court with a showing of exceptional circumstances, and 42 Pa.C.S. § 9573(d), which provides, for first petitions in death penalty cases, that "[d]iscovery shall be permitted, and no reasonable discovery request of the petitioner shall be denied except upon demonstration of exceptional circumstances justifying denial of discovery requests." We considered whether discovery should be addressed in the rules, particularly in view of the suspension of CURA, and if so, what the standard should be—the more flexible standard of 42 Pa.C.S. § 9573(d), or the stricter standard of 42 Pa.C.S. § 9545(d)(2). Ultimately, the Committee settled upon a compromise position, as reflected in paragraphs (a)(16) and (e).

Paragraph (a)(16) requires that any request for discovery must be made in the petition. Paragraph (e)(2) provides that for the first counseled petition only in a death penalty case, a "good cause" standard applies, i.e., a standard less stringent than § 9545(d)(2) but stricter than § 9573(d). In all other cases, paragraph (e)(1) applies the stricter standard in § 9545(d)(2).

These new provisions are underscored in the Comment. In addition, the Comment explains that "first counseled petitions" as used in paragraph (e)(2) include petitions on which a petitioner elects to proceed pro se. The Committee agreed that the new discovery standard in death penalty cases should also apply when a defendant elects to proceed pro se.

(2) In addition to the changes related to discovery, the text of Rule 1502, which, inter alia, sets forth in considerable detail the requisite contents of a PCRA petition, has been amended in several other ways.

(a) First, paragraph (8) has been amended to require that the petition include the court, caption, term, and number of any prior post-conviction proceedings in the case. This provision is intended to alert the parties to the stricter standards for second and subsequent petitions enunciated in the new Rule 1502 Comment reference to *Commonwealth v. Lawson* and *Commonwealth v. Szuchon*, explained in detail in paragraph (3)(d) below.

(b) Paragraph (a)(15) implements 42 Pa.C.S. § 9545(d)(1), which requires, if the petitioner wants an evidentiary hearing, that the petitioner include that request in the petition, accompanied by (1) a signed certification as to each intended witness, stating the witness's name, address, and date of birth, and the substance of the witness's testimony, and (2) any documents material to the witness's testimony.

(c) Paragraph (b) has been amended by the deletion of the word "subsequent" to make it clearer that if the defendant does not state a ground relied upon in the petition, the defendant may not raise it later in a proceeding on that petition or in a proceeding on any subsequent petition.

(3) The Comment has been revised in several ways.

(a) The first paragraph, which contains rule history, has been deleted as no longer necessary.

(b) The paragraph which discusses the sentencing information required by paragraph (a)(6) has been revised to more completely mirror the statute, 42 Pa.C.S. § 9543(a).

(c) The present Comment sets forth, verbatim, the pleading requirements contained in 42 Pa.C.S. § 9543(a)(2) prior to the 1995 amendments. These paragraphs have been completely deleted, and replaced with the provisions in 42 Pa.C.S. §§ 9543(a)(2)—(4), as amended in 1995. Because the Comment tracks the statute verbatim, in view of the suspension of CURA, and to minimize confusion, ellipses have been substituted for the "unitary review" language in paragraph (4), and a Note explaining the deletion follows the provision.

(d) The Committee considered whether it should incorporate language from *Commonwealth v. Lawson*, 549 A.2d 107, 112 (Pa. 1988), where appropriate, to address standards for second and subsequent petitions in order to avoid repeated filings of frivolous PCRA petitions. During the course of the Committee's discussion, we reviewed the reference to *Commonwealth v. Lawson* presently included in the Comment to Rule 1507(Disposition without Hearing), and considered whether the standards for second and subsequent petitions should be included in a rule, in a Comment, or both. Ultimately, we concluded that the explanation of the standards more appropriately belonged in a Comment. The Rule 1507 Comment has been revised accordingly, and identical language has been included in the Rule 1502 Comment.

d. Rule 1503 (Docketing and Assignment)

As explained in the discussion of Rule 1506(e) below, the Commonwealth is required to file an answer in response to the first counseled petition in a death penalty case. Rule 1506(e) has been cross-referenced in the Rule 1503 Comment.

e. Rule 1504 (Appointment of Counsel; In Forma Pauperis)

No substantive changes have been made to the rule. See discussion concerning petitions in Section 1 above.

f. Rule 1505 (Amendment and Withdrawal of Petition for Post-Conviction Collateral Relief)

The first paragraph of the Comment, which contains rule history, has been deleted as no longer necessary. Other changes to the Comment are stylistic only.

g. Rule 1506 (Answer to Petition for Post-Conviction Collateral Relief)

In order to facilitate the disposition of PCRA petitions in death penalty cases in view of the suspension of CURA, the Committee agreed, after much discussion, that the Commonwealth should be required to file an answer in response to the first counseled petition in a death penalty case, reasoning that the Commonwealth's answer should serve to hone the issues presented to the judge for disposition. See paragraph (e)(1). Paragraph (e)(2) makes it clear that the Commonwealth is not required to answer a second or subsequent petition in these cases unless ordered by the judge. Paragraph (e)(3) authorizes the judge to permit the Commonwealth to amend an answer.

Both this rule and new Rule 1509 (Procedures for Petitions in Death Penalty Cases: Hearing; Disposition) contain time limits intended to move death penalty cases forward in an orderly fashion. The time limits are derived from CURA. See, e.g., 42 Pa.C.S. §§ 9574, 9575(a), and 9576(a)—(c). Rule 1506(e)(1)(ii) requires Commonwealth answers to be filed in 120 days, but permits the judge to grant extensions of up to 90 days for each extension. The time limits imposed on the Commonwealth's answer, in turn, trigger the time limits for disposition in new Rule 1509.

The Comment includes an explanation of the general purpose of paragraph (e). In addition, the Comment explains that "first counseled petitions" as used in paragraph (e)(1) includes petitions on which a petitioner elects to proceed pro se. The Committee agreed that the requirement should still apply, because the rationale for requiring a Commonwealth answer on first counseled petitions, i.e., the answer will serve to hone the issues submitted to the judge for disposition, is equally valid in a pro se context.

h. Rule 1507 (Disposition Without Hearing)

There are two substantive changes to Rule 1507. First, Rule 1509 is excepted from the provisions of Rule 1507 to the extent that Rule 1509 contains timing requirements for the disposition of petitions in death penalty cases. Second, paragraph (d) has been amended to reflect changes in the PCRA requirements concerning the content of a court's order dismissing a petition without a hearing. Present paragraph (d) contains a requirement that when a judge dismisses a petition without a hearing, the judge must state, in the order, the grounds "on which the case was determined." Pa.R.Crim.P. 1507(d)(1). This language was originally added to implement a statutory requirement to the same effect. See Committee Report at 18 Pa.B. 4239, 4242 (September 17, 1988). Because the 1995 PCRA amendments deleted this requirement, 42 Pa.C.S. § 9546, the Committee agreed to delete the parallel requirement from the rule.

The Rule 1507 Comment has been revised in several ways.

(a) The first paragraph containing rule history has been deleted as no longer necessary.

(b) A cross-reference to 42 Pa.C.S. § 9545(b) has been added to alert the reader to the timing requirements for second and subsequent petitions.

(c) As more fully discussed in the explanation of the Rule 1502 Comment above in Section c (3)(d), the paragraph concerning *Commonwealth v. Lawson* has been replaced by a new paragraph which incorporates the standards for disposition of second and subsequent petitions.

(d) Cross-references to Rule 1508 (Hearing) and to 42 Pa.C.S. § 9543(b) have been added to make it clear that a PCRA petition may be dismissed due to delay in filing only upon a Commonwealth motion to dismiss and only after a hearing.

(e) The paragraph referencing Rule 1508(d) has been deleted as unnecessary, because the provisions of Rule 1507(e), as amended, cover the applicable provisions of Rule 1508(d).

i. Rule 1508 (Hearing)

Formerly, Rule 1508(a) only required a hearing on issues of material fact raised by the petition and answer, if any. However, in view of the requirements of 42 Pa.C.S. § 9543(b) that there be a hearing whenever the Commonwealth moves to dismiss a petition due to the defendant's delay in filing the petition, paragraph (a) has been amended to incorporate this requirement.

Paragraph (d) sets forth the actions which the court must take at the conclusion of a hearing held under the rule. Paragraph (d)(1) has been amended to make it clear that the judge must determine all issues raised, not only issues raised by the defendant's petition, but also issues raised by the Commonwealth's answer, and issues raised by the Commonwealth's motion to dismiss, if any.

The requirement in paragraph (d)(2) that the judge state in the order the grounds on which the case was determined has been deleted, because this statutory requirement was deleted when the PCRA was amended in 1995. See 42 Pa.C.S. § 9546(b). Finally, paragraph (d)(3) has been deleted because the Committee's review of its history revealed that it was an anomaly inadvertently carried over from original Rule 1506, adopted in 1968.

The Rule 1508 Comment has been revised in several ways.

(a) The first paragraph, which was intended as an aid to the bench and bar when the rule was new, contains case law concerning what constitutes "material issues" under the rule. The Committee agreed that it was no longer necessary and should therefore be deleted.

(b) Several new paragraphs have been added to the Comment to highlight the 1995 amendments to the PCRA.

(i) The Comment underscores the statutory requirement that there must be a hearing on every Commonwealth motion to dismiss due to delay in the filing of a PCRA petition. See 42 Pa.C.S. § 9543(b).

(ii) A cross-reference to new Rule 1509, which provides the timing requirements for the hearing and disposition of petitions in death penalty cases, has been added.

(iii) The Comment cross-references the express statutory limitations on discovery, 42 Pa.C.S. § 9545(d)(2), and

the exception in the rules for first counseled petitions in death penalty cases, Rule 1502(e)(2).

j. Rule 1509 (Procedures for Petitions in Death Penalty Cases: Hearing; Disposition)

In view of the suspension of CURA, and in keeping with the rationale for requiring a Commonwealth answer on the first counseled death penalty petition within 120 days, see Rule 1506(e) and 42 Pa.C.S. § 9574, the Committee concluded that there was a need—for all parties and for the judicial system as a whole—to impose time limits on the disposition of petitions in death penalty cases. To this end, the Committee agreed that there should be a separate rule, Rule 1509, governing hearings and dispositions in death penalty cases. We examined the timing provisions in CURA, 42 Pa.C.S. §§ 9575—9576, and agreed to incorporate similar requirements in new Rule 1509, which applies to first, second, and subsequent petitions in death penalty cases. Accordingly, new Rule 1509 provides the following time frames for death penalty cases.

(a) Pursuant to paragraph (a), the filing of the Commonwealth's answer, or if no answer is required or filed, the expiration of the time limit for filing an answer, triggers the 20-day time limit on the judge's determination concerning whether an evidentiary hearing is required.

(b) If no evidentiary hearing is required, the judge proceeds under paragraph (b), which, except for the oral argument provision in (b)(2), largely parallels Rule 1507(a). Paragraph (b)(2) poses a 20-day limit on the time within which the defendant may respond to a proposed dismissal by filing a request for oral argument. The Committee agreed that 20 days was sufficient time for the defendant to respond to the judge's notice to dismiss.

(c) Paragraph (b)(3) sets forth a 90-day time limit for disposition of the petition under paragraph (b). This time limit is triggered by the judge's notice in paragraph (b)(1), when no oral argument has been requested, or by the date of oral argument, if granted pursuant to paragraph (b)(2).

(d) Paragraph (c) sets forth a 90-day time limit for the disposition of the petition following the evidentiary hearing.

(e) Paragraph (d) cautions that sanctions may be imposed if the judge fails to dispose of the petition within 90 days, as required by paragraphs (b)(3) and (c).

Because Rule 1509 is a timing rule, the Comment explains that the provisions of Rule 1508(c), (d), and (e), concerning the defendant's presence at the hearing and counsel, the judge's responsibilities at the conclusion of the hearing, and notice of appeal rights, apply in death penalty cases when an evidentiary hearing is to be conducted.

k. Rule [1509] 1510 (Appeal)

Former Rule 1509 has been renumbered Rule 1510, and the Comment has been revised to include a cross-reference to Rule 1509(b)(3)(i) for purposes of what constitutes a final order.

[Pa.B. Doc. No. 97-1341. Filed for public inspection August 22, 1997, 9:00 a.m.]

Title 249—PHILADELPHIA RULES

PHILADELPHIA COUNTY

Amendment of Phila. Civ. R. No. 7109; President Judge General Court Regulation No. 97-02

Order

And Now, this 8th day of August, 1997, in order to fully implement the aims of the Mental Health Procedures Act of 1976, as amended, *It Is Hereby Ordered, Adjudged and Decreed* that the following provisions of Phila. Civ. R. No. 7109, effective July 1, 1997, are amended as follows:

(1) Subsection (d) is amended to read as follows:

(d) **Form of Applications, Petitions and Certifications.** All Applications, Petitions and Certifications filed pursuant to the Mental Health Procedures Act shall be on forms approved by the Department of Public Welfare. **Provided, however, that the parties shall attach a cover sheet with all Applications, Petitions and Responses in the form set forth hereunder or as modified by the Court from time to time.**

(2) Subsection (e)(3) is amended to read as follows:

(e)(3) **Filing and Service of Petition.** The Petition must be filed with the Prothonotary within 120 hours of commencement of involuntary emergency treatment rendered pursuant to Section 302, and served by the Petitioner as soon as practicable on the person, **his/her attorney, the City Solicitor and the Mental Health Review Officer.**

(3) Subsection (e)(4) is amended to read as follows:

(e)(4) **Scheduling of Conference.** An informal conference shall be **[scheduled and held] listed** within 24 hours after the application is filed, **[and concluded] with Court intervention to occur** within 120 hours of the commencement of involuntary emergency treatment rendered pursuant to Section 302.

(4) Subsection (f)(1)(D) is amended to read as follows:

(f)(1)(D) **Scheduling of Hearing.** A hearing **[must be scheduled for a date] shall be held** not more than five (5) days after the filing of the Petition.

(5) Subsection (f)(1)(F)(iv) is amended to read as follows:

(f)(1)(F)(iv) Testimony by a physician who examined the person **[;]**.

(6) Subsection (f)(1)(F)(v) is deleted in its entirety.

(7) Subsection (f)(2)(F)(iii) is amended to read as follows:

(f)(2)(F)(iii) Any other information relevant to the issue of whether the person is severely mentally disabled and in need of treatment **[, even if such information is normally excludable under the rules of evidence, provided the information is found to be reliable.]**

(8) Subsection (g)(4) is amended to read as follows:

(g)(4) **Scheduling of Hearing.** A hearing [**must be scheduled and**] shall be held not more than five (5) days after the filing of the Petition.

(9) Subsection (g)(6)(D) is amended to read as follows:

(g)(6)(D) [**Any other relevant information, even if normally excludable under the rules of evidence, provided the information is found to be reliable.**] **Any other information relevant to the issue of whether the person is severely mentally disabled and in need of treatment.**

(10) Subsection (h)(2)(B) is amended to read as follows:

(h)(2)(B) transfers which constitute a greater restraint cannot be accomplished unless **before the expiration of the period of involuntary treatment a petition is filed as provided in this rule and** the Mental Health Review Officer [**holds**], **after** a hearing, [**and**] finds the transfer to be necessary and appropriate.

(11) Subsection (i)(3) is amended to read as follows:

(i)(3) **Preparation of Record for the Court.** The Mental Health Review Officer shall **produce the record of the proceedings held by the Mental Health Review Officer [cause the transcription of the underlying proceedings for presentation]** to the Review Judge no later than the hearing date, and shall ensure that the evidence relied upon by the Mental Health Review Officer is available to the Review Judge.

(12) Subsection (k) is amended to read as follows:

(k) **Appointment of Counsel.** [**The Public Defender is appointed**] **The President Judge, or his designee, shall appoint counsel** to represent all persons who may be subject to involuntary medical examination and treatment, unless it appears that any such person can afford, and desires to have, private representation. [**In the event a conflict prevents the Public Defender from representing any eligible person, conflict counsel shall be appointed as directed by the President Judge.**]

This General Court Regulation is issued in accordance with Phila. Civ.R.No. *51 and Pa.R.C.P. 239 and shall become effective immediately. As required by Pa.R.C.P. No. 239, 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 Civil Procedural Rules Committee. Copies of the Order shall also be submitted to Legal Communications, Ltd., *The Legal Intelligencer*, Jenkins Memorial Law Library, and the law library for the First Judicial District.

ALEX BONAVITACOLA,
President Judge

First Judicial District of Pennsylvania
Court of Common Pleas
Philadelphia County
Mental Health Procedures Act

In Re:

NAME	
SS #	DATE OF BIRTH
ADDRESS	

<p><i>Docket Number</i></p>

PETITIONER	
FACILITY	
TYPE OF FILING <input type="checkbox"/> 303 <input type="checkbox"/> 305 <input type="checkbox"/> 304(b) <input type="checkbox"/> 306 <input type="checkbox"/> 304(c) <input type="checkbox"/> Petition for Review <input type="checkbox"/>	

Instant Commitment Under Section _____ Expires on _____ at _____ AM/PM. Requested hearing date: _____ Time: _____ Location: _____

NAME OF PETITIONER'S ATTORNEY	
ADDRESS	
PHONE	SUPREME COURT I.D. NO.
SIGNATURE	

NAME OF PERSON/PATIENT'S ATTORNEY	
ADDRESS	
PHONE	SUPREME COURT I.D. NO.
SIGNATURE	

Order

AND NOW, this _____ day of _____, 19_____, upon consideration of the attached Application or Petition, an Informal Conference or Hearing shall be held by a Mental Health Review Officer pursuant to Phila. R. Civ. P. No. 7109 on the _____ day of _____, 19_____ at _____ AM/PM at the following location:

- | | |
|---|--|
| <input type="checkbox"/> Albert Einstein Medical Center | <input type="checkbox"/> Norristown State Hospital |
| <input type="checkbox"/> Allegheny University Hospital | <input type="checkbox"/> EPPI |
| <input type="checkbox"/> Girard Medical Center | <input type="checkbox"/> Kirkbride Center |
| <input type="checkbox"/> _____ | |

Petitioner shall serve all interested parties.

By the Court:


 Alex Bonavitacola
 President Judge, Court of Common Pleas

INSTRUCTIONS

1. The original Application, Petition and Cover Sheet must be filed with the Prothonotary's Office, First Filing, Room 278 City Hall. Service copies shall also be filed with the Prothonotary who will attest and return them to the Petitioner for service on all interested parties. No Filing Fee shall be payable.

2. Upon filing of the Application or Petition, the Court will enter an Order listing a conference or hearing. The Petitioner must serve a copy of the Application or Petition and Order on all interested parties: the Patient, his/her attorney, persons designated to be kept informed as provided in Section 302(c), the City Solicitor and the Mental Health Review Officer, as required by the Mental Health Procedures Act of 1976 as amended, and Phila. R.C.P. No. 7109. Petitions for Review shall be forthwith served on the City Solicitor, the patient, the patient's attorney of record, the Mental Health Review Officer and the Court. An Affidavit of Service shall be filed on the hearing date.

3. A hearing or conference will be listed or held as follows:

(a) within 24 hours after the filing of an Application pursuant to Section 303 of the Act; provided, however, that Applications filed on Friday will likely be listed for the next business day;

(b) within 5 days after the filing of a Petition pursuant to Sections 304, 305 and 306 of the Act;

(c) within 3 days after a Petition for Review is filed.

Location of Mental Health Hearing Sites

Albert Einstein Medical Center
5583 Park Avenue
Philadelphia, PA 19141
(215) 456-7095

Allegheny University Hospital
Broad and Vine Streets
11th Floor—South
Philadelphia, PA 19102
(215) 762-7403

Girard Medical Center
8th Street and Girard Avenue
Philadelphia, PA 19122
(215) 787-2048

Norristown State Hospital
1001 Stergiere, Bldg. 10 and 52
Norristown, PA 19406
(610) 270-1357

EPPI
3200 Henry Avenue
Main Building
Philadelphia, PA 19129
(215) 842-4377

Kirkbride Center
111 N. 49th Street
Philadelphia, PA 19139
(215) 471-2839

Please Note: The Information Contained Herein May Change Without Notice (8/97)

[Pa.B. Doc. No. 97-1342. Filed for public inspection August 22, 1997, 9:00 a.m.]

Title 25—LOCAL COURT RULES

CUMBERLAND COUNTY

Enactment of Rule Governing Approval of Police Complaints and Arrest Warrant Affidavits; 97-239 Miscellaneous

Order of Court

And Now, this 30th day of July, 1997, *whereas*, the District Attorney has filed a Certification with the Court pursuant to and in compliance with, Pa.R.Crim.P. 107, it is hereby *Ordered and Directed* that Rule 107.1 of the Cumberland County Local Rules of Court be enacted, said rule shall be effective thirty (30) days after the date of publication in the *Pennsylvania Bulletin* in accordance with Pa.R.Crim.R. 6, shall apply to all police complaints and arrest warrant affidavits filed on or after said date and shall read as follows:

Rule 107.1. Approval of Police Complaints and Arrest Warrant Affidavits by Attorney for the Commonwealth.

The District Attorney of Cumberland County having filed a certification pursuant to Pa.R.Crim.P. 107, criminal complaints and arrest warrant affidavits by police officers, as defined in the Rules of Criminal Procedure, charging one (1) or more of the following offenses:

(a) All offenses set forth in Chapter 25 of the Pennsylvania Crimes Code entitled "Criminal Homicide;"

(b) The following offenses set forth in Chapter 27 of the Pennsylvania Crimes Code entitled "Assault:"

(i) Aggravated Assault in violation of 18 Pa.C.S. § 2702;

(ii) Assault by Prisoner in violation of 18 Pa.C.S. § 2703;

(iii) Assault by Life Prisoner in violation of 18 Pa.C.S. § 2704;

(iv) Stalking (second or subsequent offense) in violation of 18 Pa.C.S. § 2709(b);

(v) Ethnic Intimidation in violation of 18 Pa.C.S. § 2710;

(vi) Neglect of care-dependent person (serious bodily injury suffered) in violation of 18 Pa.C.S. § 2713;

(c) The following offenses set forth in Chapter 29 of the Pennsylvania Crimes Code entitled "Kidnapping:"

(i) Kidnapping in violation of 18 Pa.C.S. § 2901;

(ii) Interference with Custody of Children in violation of 18 Pa.C.S. § 2904;

(iii) Interference with Custody of Committed Persons in violation of 18 Pa.C.S. § 2905;

(iv) Criminal Coercion in violation of 18 Pa.C.S. § 2906;

(v) Disposition of Ransom in violation of 18 Pa.C.S. § 2907;

(vi) Concealment of Whereabouts of a Child in violation of 18 Pa.C.S. § 2909;

(vii) Luring a Child into a Motor Vehicle in violation of 18 Pa.C.S. § 2910;

(d) The following offenses set forth in Chapter 31 of the Pennsylvania Crimes Code entitled "Sexual Offenses:"

(i) Rape in violation of 18 Pa.C.S. § 3121;

(ii) Statutory Sexual Assault in violation of 18 Pa.C.S. § 3122.1;

(iii) Involuntary Deviate Sexual Intercourse in violation of 18 Pa.C.S. § 3123;

(iv) Sexual Assault in violation of 18 Pa.C.S. § 3124.1;

(v) Aggravated Indecent Assault in violation of 18 Pa.C.S. § 3125;

(vi) Indecent Assault (if victim less than 16 years of age and/or impaired by mental disability or intoxicants) in violation of 18 Pa.C.S. § 3126;

(vii) Indecent Exposure (if victim present less than 16 years of age) in violation of 18 Pa.C.S. § 3127;

(e) All offenses set forth in Chapter 32 of the Pennsylvania Crimes Code entitled "Abortion;"

(f) The following offenses set forth in Chapter 33 of the Pennsylvania Crimes Code entitled "Arson, Criminal Mischief and Other Property Destruction:"

(i) Arson and Related Offenses in violation of 18 Pa.C.S. § 3301;

(ii) Causing or Risking Catastrophe in violation of 18 Pa.C.S. § 3302;

(iii) Criminal Mischief (pecuniary loss in excess of \$5,000) in violation of 18 Pa.C.S. § 3304;

(iv) Institutional Vandalism (pecuniary property loss in excess of \$5,000) in violation of 18 Pa.C.S. § 3307;

(v) Agricultural Vandalism (pecuniary loss in excess of \$5,000) in violation of 18 Pa.C.S. § 3309;

(g) The following offenses set forth in Chapter 35 of the Pennsylvania Crimes Code entitled "Burglary and Other Criminal Intrusion:"

(i) Burglary in violation of 18 Pa.C.S. § 3502;

(ii) Criminal Trespass in violation of 18 Pa.C.S. § 3503(a)(1)(i) and (ii);

(h) All offenses set forth in Chapter 37 of the Pennsylvania Crimes Code entitled "Robbery;"

(i) The following offenses set forth in Chapter 39 of the Pennsylvania Crimes Code entitled "Theft and Related Offenses:"

(i) Theft by Unlawful Taking or Disposition (over \$25,000 and/or committed during disaster as defined in 18 Pa.C.S. § 3903 and/or the property is a Motor Vehicle as defined by 75 Pa.C.S. § 102 and/or the property is a firearm as defined by 18 Pa.C.S. § 6102(2)) in violation of 18 Pa.C.S. § 3921;

(ii) Theft by Deception (over \$25,000 and/or victim over 60 years of age and/or the property is a Motor Vehicle as defined by 75 Pa.C.S. § 102 and/or the property is a firearm as defined by 18 Pa.C.S. § 6102(2)) in violation of 18 Pa.C.S. § 3922;

(iii) Theft by Extortion (over \$2,000 and/or the property is a Motor Vehicle as defined by 75 Pa.C.S. § 102 and/or the property is a firearm as defined by 18 Pa.C.S. § 6102(2)) in violation of 18 Pa.C.S. § 3923;

(iv) Theft of Property Lost, Mislaid or Delivered by Mistake (over \$25,000 and/or the property is a Motor Vehicle as defined by 75 Pa.C.S. § 102 and/or the property is a firearm as defined by 18 Pa.C.S. § 6102(2)) in violation of 18 Pa.C.S. § 3924;

(v) Theft by Receiving Stolen Property (over \$25,000 and/or committed during disaster as defined in 18 Pa.C.S. § 3903 and/or the receiver is in the business of buying or selling stolen property and/or the property is a Motor Vehicle as defined by 75 Pa.C.S. § 102 and/or the property is a firearm as defined by 18 Pa.C.S. § 6102(2)) in violation of 18 Pa.C.S. § 3925;

(vi) Theft of Services (over \$25,000) in violation of 18 Pa.C.S. § 3926;

(vii) Theft by Failure to Make Required Disposition of Funds Received (over \$25,000) in violation of 18 Pa.C.S. § 3927;

(viii) Unauthorized Use of Automobile and Other Vehicles (committed during disaster as defined in 18 Pa.C.S. § 3903) in violation of 18 Pa.C.S. § 3928;

(ix) Retail Theft (committed during disaster as defined in 18 Pa.C.S. § 3903) in violation of 18 Pa.C.S. § 3929;

(x) Theft of Trade Secrets in violation of 18 Pa.C.S. § 3930;

(xi) Theft of Leased Property (over \$25,000) in violation of 18 Pa.C.S. § 3932;

(j) The following offenses set forth in Chapter 41 of the Pennsylvania Crimes Code entitled "Forgery and Fraudulent Practices:"

(i) Fraudulent Destruction, Removal or Concealment of Recordable Instruments in violation of 18 Pa.C.S. § 4103;

(ii) Tampering with Records or Identification in violation of 18 Pa.C.S. § 4104;

(iii) Deceptive or Fraudulent Business Practices in violation of 18 Pa.C.S. § 4107;

(iv) Commercial Bribery and Breach of Duty to Act Disinterestedly in violation of 18 Pa.C.S. § 4108;

(v) Rigging Publicly Exhibited Contest in violation of 18 Pa.C.S. § 4109;

(vi) Defrauding Secured Creditors in violation of 18 Pa.C.S. § 4110;

(vii) Fraud in Insolvency in violation of 18 Pa.C.S. § 4111;

(viii) Receiving Deposits in a Failing Financial Institution in violation of 18 Pa.C.S. § 4112;

(ix) Misapplication of Entrusted Property and Property of Government or Financial Institution in violation of 18 Pa.C.S. § 4113;

(x) Securing Execution of Documents by Deception in violation of 18 Pa.C.S. § 4114;

(xi) Copying; Recording Devices in violation of 18 Pa.C.S. § 4116;

(xii) Insurance Fraud in violation of 18 Pa.C.S. § 4117;

(xiii) Washing Vehicle Titles in violation of 18 Pa.C.S. § 4118;

(xiv) Trademark Counterfeiting in violation of 18 Pa.C.S. § 4119;

(k) The following offenses set forth in Chapter 43 of the Pennsylvania Crimes Code entitled "Offenses Against the Family:"

(i) Bigamy in violation of 18 Pa.C.S. § 4301;

(ii) Incest in violation of 18 Pa.C.S. § 4302;

(iii) Concealing Death of Child Born Out of Wedlock in violation of 18 Pa.C.S. § 4303;

(iv) Dealing in Infant Children in violation of 18 Pa.C.S. § 4305;

(l) All offenses set forth in Chapter 47 of the Pennsylvania Crimes Code entitled "Bribery and Corrupt Influence;"

(m) The following offenses set forth in Chapter 49 of the Pennsylvania Crimes Code entitled "Falsification and Intimidation:"

(i) Perjury in violation of 18 Pa.C.S. § 4902;

(ii) Witness or Informant Taking Bribe in violation of 18 Pa.C.S. § 4909;

(iii) Tampering With or Fabricating Physical Evidence in violation of 18 Pa.C.S. § 4910;

(iv) Tampering With Public Records or Information in violation of 18 Pa.C.S. § 4911;

(v) Impersonating a Public Servant in violation of 18 Pa.C.S. § 4912;

(vi) Impersonating a Notary Public in violation of 18 Pa.C.S. § 4913;

(vii) Intimidation of Witnesses or Victims (if graded a felony) in violation of 18 Pa.C.S. § 4952;

(viii) Retaliation Against Witness or Victim in violation of 18 Pa.C.S. § 4953;

(n) All offenses set forth in Chapter 51 of the Pennsylvania Crimes Code entitled "Obstructing Governmental Operations;"

(o) All offenses set forth in Chapter 53 of the Pennsylvania Crimes Code entitled "Abuse of Office;"

(p) The following offenses set forth in Chapter 55 of the Pennsylvania Crimes Code entitled "Riot, Disorderly Conduct and Related Offenses:"

(i) Riot in violation 18 Pa.C.S. § 5501;

(ii) Abuse of Corpse in violation of 18 Pa.C.S. § 5510;

(iii) Lotteries, Etc. in violation of 18 Pa.C.S. § 5512;

(iv) Gambling Devices, Gambling, Etc. in violation of 18 Pa.C.S. § 5513;

(v) Pool Selling and Bookmaking in violation of 18 Pa.C.S. § 5514;

(vi) Prohibiting of Paramilitary Training in violation of 18 Pa.C.S. § 5515;

(q) All offenses set forth in Chapter 57 of the Pennsylvania Crimes Code entitled "Wiretapping and Electronic Surveillance;"

(r) The following offenses set forth in Chapter 59 of the Pennsylvania Crimes Code entitled "Public Indecency:"

(i) Prostitution and Related Offenses (if graded a felony) in violation of 18 Pa.C.S. § 5902;

(ii) Obscene and Other Sexual Material and Performances in violation of 18 Pa.C.S. § 5903;

(s) Certain Bullets Prohibited in violation of 18 Pa.C.S. § 6121;

(t) The following offenses set forth in Chapter 63 of the Pennsylvania Crimes Code entitled "Minors:"

(i) Corruption of Minors in violation of 18 Pa.C.S. § 6301;

(ii) Sexual Abuse of Children in violation of 18 Pa.C.S. § 6312;

(u) The following prohibited acts set forth in "The Controlled Substance, Drug Device and Cosmetic Act:"

(i) Acquisition of Controlled Substance by Fraud (Narcotics of Schedule I and II, Cocaine, PCP, or Methamphetamine/Phencyclidine and/or Amphetamine, if the police officer has reason to believe that the weight of the substance involved is greater than 2.5 grams and/or Marijuana, if the police officer has reason to believe that the weight of the Marijuana involved is greater than 10 pounds or involved more than 21 live plants and/or Methaqualone, if the police officer has reason to believe that the offense involves more than 50 tablets or 25 grams) in violation of 35 P. S. § 780-113(a)(12);

(ii) Delivery by Practitioner (Narcotics of Schedule I and II, Cocaine, PCP, Methamphetamine/Phencyclidine, and/or Amphetamine, if the police officer has reason to believe that the weight of the substance involved is greater than 2.5 grams and/or Marijuana, if the police officer has reason to believe that the weight of the Marijuana involved is greater than 10 pounds or involved more than 21 live plants and/or Methaqualone, if the police officer has reason to believe that the offense involves more than 50 tablets or 25 grams and/or the offense involved the administration, dispensing, delivery, gift or prescription to a minor under the age of 18 and/or the police officer has reason to believe the offense occurred within 1,000 feet of a public or private elementary or secondary school) in violation of 35 P. S. § 780-113(a)(14);

(iii) Manufacture, Delivery, or Possession with Intent to Deliver (Narcotics of Schedule I and II, Cocaine, PCP, Methamphetamine/Phencyclidine, and/or Amphetamine, if the police officer has reason to believe that the weight of the substance involved is greater than 2.5 grams and/or Marijuana, if the police officer has reason to believe that the weight of the Marijuana involved is greater than 10 pounds or involved more than 21 live plants and/or Methaqualone, if the police officer has reason to believe that the offense involves more than 50 tablets or 25 grams and/or the offense involved manufacture, delivery or possession with intent to deliver to a minor under the age of 18 and/or the police officer has reason to believe the offense occurred within 1,000 feet of a public or private elementary or secondary school) in violation of 35 P. S. § 780-113(a)(30);

(iv) Possession of Anabolic Steroids or Substance Labeled as a Dispensed Prescription (Narcotics of Schedule I and II, Cocaine, PCP, Methamphetamine/Phencyclidine, and/or Amphetamine, if the police officer has reason to believe that the weight of the substance involved is greater than 2.5 grams and/or Marijuana, if the police officer has reason to believe that the weight of the Marijuana involved is greater than 10 pounds or involved more than 21 live plants and/or Methaqualone, if the police officer has reason to believe that the offense involves more than 50 tablets or 25 grams) in violation of 35 P. S. § 780-113(a)(37);

(v) Manufacture of Amphetamines in violation of 35 P. S. § 780-113(k);

(v) Transports, etc. Hazardous Waste Without Permit in violation of "Solid Waste Management Act," 35 P. S. § 6018.101—6018.1002;

(w) Knowingly Releases Hazardous Air Pollutant in violation of "Air Pollution Control Act," 35 P. S. § 691.1—691.1001;

(x) Homicide by Vehicle in violation of 75 Pa.C.S. § 3732;

(y) Homicide by Vehicle While Driving Under the Influence in violation of 75 Pa.C.S. § 3735;

(z) Aggravated Assault by Vehicle While Driving Under the Influence in violation of 75 Pa.C.S. § 3735.1;

(aa) Accidents Involving Death or Personal Injury (if the officer has reason to believe that the victim has suffered or may suffer serious bodily injury as defined in the statute) in violation of 75 Pa.C.S. § 3742;

(bb) Corrupt Organizations in violation of 18 Pa.C.S. § 911;

(cc) Possession of Weapon on School Property in violation of 18 Pa.C.S. § 912;

(dd) Possession of Firearm or Other Dangerous Weapon in Court Facility in violation of 18 Pa.C.S. § 913;

(ee) Attempt, Solicitation, or Conspiracy to Commit any offense which itself requires the approval of the Attorney for the Commonwealth prior to filing, 18 Pa.C.S. § 901, 902 and 903

shall not hereafter be accepted by any judicial officer unless the complaint and affidavit has the approval of an Attorney for the Commonwealth prior to filing.

It is *Further Ordered and Directed* that the Cumberland County Prothonotary file seven (7) certified copies of the rule with the Administrative Office of the Pennsylvania Courts, distribute two (2) certified copies to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*, and file one (1) certified copy with the Criminal Procedural Rules Committee of the Pennsylvania Supreme Court.

It is *Further Ordered and Directed* that a copy of this rule shall be kept continuously available for public inspection and copying in the office of the Cumberland County Prothonotary and the Cumberland County Clerk of Court.

By the Court

HAROLD E. SHEELY,
President Judge

[Pa.B. Doc. No. 97-1343. Filed for public inspection August 22, 1997, 9:00 a.m.]

CUMBERLAND COUNTY

Enactment of Rule Governing Approval of Search Warrant Applications; 97-240 Miscellaneous

Order of Court

And Now, this 30th day of July, 1997, *whereas*, the District Attorney has filed a Certification with the Court pursuant to and in compliance with, Pa.R.Crim.P. 2002A, it is hereby *Ordered and Directed* that Rule 2002A.1 of the Cumberland County Local Rules of Court be enacted, said rule shall be effective thirty (30) days after the date of publication in the *Pennsylvania Bulletin* in accordance

with Pa.R.Crim.R. 6, shall apply to all search warrant applications filed on or after said date and shall read as follows:

Rule 2002A.1. Approval of Search Warrant Applications by Attorney for the Commonwealth.

The District Attorney of Cumberland County having filed a certification pursuant to Pa.R.Crim.P. 2002A, all search warrants, as defined in the Rules of Criminal Procedure, shall not hereafter be issued by any judicial officer unless the search warrant application has the approval of an Attorney for the Commonwealth prior to filing.

It is *Further Ordered and Directed* that the Cumberland County Prothonotary file seven (7) certified copies of the rule with the Administrative Office of the Pennsylvania Courts, distribute two (2) certified copies to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*, and file one (1) certified copy with the Criminal Procedural Rules Committee of the Pennsylvania Supreme Court.

It is *Further Ordered and Directed* that a copy of this rule shall be kept continuously available for public inspection and copying in the office of the Cumberland County Prothonotary and the Cumberland County Clerk of Court.

By the Court

HAROLD E. SHEELY,
President Judge

[Pa.B. Doc. No. 97-1344. Filed for public inspection August 22, 1997, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Transfer of Attorneys to Inactive Status

Notice is hereby given that the following attorneys have been transferred to inactive status by Order of the Supreme Court of Pennsylvania dated July 10, 1997, pursuant to Rule 111(b), Pa.R.C.L.E., which requires that every active lawyer shall annually complete, during the compliance period for which he or she is assigned, the continuing legal education required by the Continuing Legal Education Board. The Order became effective August 9, 1997 for Compliance Group 3 due *December 31, 1996*.

Notice with respect to attorneys having Pennsylvania registration addresses, who have been transferred to inactive status by said Order, was published in the appropriate county legal journal.

EVAN A. BAKER
Morristown, NJ

MYRALINN BEAVER
Del Mar, CA

KRISTINE M. BERGMAN
Howell, NJ

ANDREW BOYAR
Eldred, NY

JAMES RUDOLPH BOYKINS
Washington, DC

PATRICK J. BRADSHAW
New Brunswick, NJ

MICHAEL J. BROWN
Haddon Heights, NJ

THOMAS EDWARD BUCK
Wheeling, WV

PETER S. BURCAT
San Jose, CA

DAVID LOWELL CHAMPI
Houston, TX

SUSAN DIANE CHENOWITH
Lady Lake, FL

BARRY EDWARD COHEN
Beverly Hills, CA

JAMES J. COOK
Monterey, CA

PAUL N. DALY
Lawrenceville, NJ

PETER J. DAWSON
Magnolia, NJ

JAMES STEPHEN DeLSORDO
Manassas, VA

CARLO VALERIANO DiFLORIO
Washington, DC

JOAN CAMPION FITZPATRICK
Chicago, IL

SAMUEL FOLEY, JR.
Cherry Hill, NJ

ERYK A. GAZDZINSKI
Voorhees, NJ

ANDREW JOSEPH GENNA
Cornwall, NY

LEONARD L. GRASSO, JR.
Sicklerville, NJ

FRANCOISE MARIE HAAN
Washington, DC

BRIDGETTE HARRIS
Washington, DC

LISA YVETTE HENDERSON
Atlanta, GA

JAMES W. HUNTER
Fairfax, VA

CAROLE D. IANNELLI
Atlantic City, NJ

JOHN A. MURPHY JONES
Honolulu, HI

DAVID E. KAPUR
Endicott, NY

STEPHEN RUSSELL KASMAR
Cherry Hill, NJ

PATRICK GERARD KAVANAGH
Washington, DC

AUGUST EVERETT KNESTAUT
Turnersville, NJ

PAMELA K. LACOVICZ
Wheeling, WV

ROBERT LANDEL
Franklin Lakes, NJ

ANTHONY LANDOLFI
Mantua, NJ

SYLVIA J. LANG
Washington, DC

LINDA S. LEPARULO
Warren, NJ

JOHN PAUL LEWIS, JR.
Dallas, TX

ALFRED M. LOW-BEER
Kendall Park, NJ

PAUL LOWENSTEIN
Morristown, NJ

JOHN E. LUBY, JR.
Williamstown, NJ

JOHN L. McDERMOTT
Millburn, NJ

KEVIN JOHN McGEE
Union, NJ

ANTOINETTE McLAUGHLIN
Pitman, NJ

KENNETH L. MOIR, JR.
Ann Arbor, MI

WILLIAM F. MONGAN
Wilmington, DE

WILLIAM R. MUENCH
Jackson, NJ

RICHARD MICHAEL MULVIHILL
Hackensack, NJ

SHARI B. NEIFELD
St. Petersburg, FL

JONATHAN P. NEIPRIS
Wilmington, DE

JEFFREY S. NEWMAN
Concord, NH

WILLIAM B. NOLL
Hockessin, DE

DEMETRIOS PAVLOU
West Orange, NJ

MICHAEL E. PETRELLA
Moorestown, NJ

NEAL A. PHILLIPS
Wilmington, DE

KARA M. RAMOS
Miami, FL

CHRISTOPHER L. ROACH
Palatine, IL

PAUL JOSEPH RUSSONIELLO
Cherry Hill, NJ 08002

ANN TYBURSKI SCUCCI
Denville, NJ

HAL JONATHAN SHAFFER
Cherry Hill, NJ

MICHAEL BARRY SHAPANKA
Neshanic Station, NJ

KENNETH H. SHEPHERD
Washington, DC

STUART L. SOBERMAN
Washington, DC

ERIC JOSEPH SZOKE
Bedminster, NJ

JEFFREY JAY WALDMAN
Linwood, NJ

RENE LEA TODD
San Francisco, CA

JAMES G. WALSH III
Boston, MA

MICHAEL WAYNE WARREN
Brooklyn, NY

DANIEL B. WELCH
Washington, DC

BRETT THOMAS WHITESIDE
Burlington, NJ

MARC KEVIN WILKERSON
Emeryville, CA

ROBERT LEE WITEK
Long Branch, NJ

MARK KENNETH YOUNG
Holmdel, NJ

KENT JAY YOUNGBERG
New York, NY

ELAINE M. BIXLER,
Secretary

*The Disciplinary Board of the
Supreme Court of Pennsylvania*

[Pa.B. Doc. No. 97-1345. Filed for public inspection August 22, 1997, 9:00 a.m.]