

THE COURTS

Title 234—RULES OF CRIMINAL PROCEDURE

PART I. GENERAL

[234 PA. CODE CH. 1100]

Order Adopting Rule 1107 and Amending Rules 1104 and 1106; No. 238; Criminal Procedural Rules Doc. No. 2

The Criminal Procedural Rules Committee has prepared a Final Report explaining the September 18, 1998 adoption of new Rule of Criminal Procedure 1107 (Juror Information Questionnaire) and correlative amendments to Rules 1104 (Juror Qualification Form, Lists of Trial Jurors, and Challenge to the Array) and 1106 (Examination and Challenges of Trial Jurors) that mandate the use of a standardized juror information questionnaire in all criminal cases. The Final Report follows the Court's Order.

Order

Per Curiam:

Now, this 18th day of September, 1998, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before adoption at 27 Pa.B. 5744 (November 1, 1997), and in the *Atlantic Reporter* (Second Series Advance Sheets, Vol. 700-701), with a Final Report to be published with this Order:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that new Rule of Criminal Procedure 1107 is adopted, and Rules 1104 and 1106 are amended, all in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective July 1, 1999.

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

PART I. GENERAL

CHAPTER 1100. TRIAL

Rule 1104. Juror Qualification Form, Lists of Trial Jurors, and Challenge to the Array.

[(a)] (A) The officials designated by law to select persons for jury service shall **[prepare, publish and post such lists of the names of persons to serve as jurors as provided by law.]**

(1) devise, distribute, and maintain juror qualification forms as provided by law;

(2) prepare, publish, and post lists of the names of persons to serve as jurors as provided by law; and

(3) upon the request of the attorney for the Commonwealth or the defendant's attorney, furnish a list containing the names of prospective jurors summoned to try the case together with copies of the juror qualification forms returned by such prospective jurors.

[(b)] (B) Unless opportunity did not exist prior thereto, a challenge to the array shall be made not later than **[five] 5** days before the first day of the week the case is listed for trial of criminal cases for which the jurors have been summoned and not thereafter, and shall be in writing, specifying the facts constituting the ground for the challenge.

[(c)] (C) A challenge to the array may be made only on the ground that the jurors were not selected, drawn, or summoned substantially in accordance with law.

Official Note: Adopted January 24, 1968, effective August 1, 1968[,]; Comment revised January 28, 1983, effective July 1, 1983[.]; **amended September 15, 1993, effective January 1, 1994; the September 15, 1993 amendments suspended December 17, 1993 until further Order of the Court; the September 15, 1993 Order amending Rule 1104 is superseded by the September 18, 1998 Order, and Rule 1104 is amended September 18, 1998, effective July 1, 1999.**

Comment

The qualification, selection, and summoning of prospective jurors, as well as related matters, are generally dealt with in Chapter 45, Subchapters A—C, of the Judicial Code[.], 42 Pa.C.S. §§ 4501—4503, 4521—4526, 4531—4532[(1981)]. “Law” as used in paragraph **[(c)] (C)** of this rule is intended to include these Judicial Code provisions. However, paragraphs **[(b)] (B)** and **[(c)] (C)** of this rule are intended to supersede the procedures set forth in Section 4526(a) of the Judicial Code and that provision is suspended as being inconsistent with this rule. See PA. CONST. **[Art.] art. V, § 10[:]**; 42 Pa.C.S. § 4526(c). Sections 4526(b) and (d)—(f) of the Judicial Code are not affected by this rule.

Paragraph (A) was amended in 1998 to require that the counties use the juror qualification forms provided for in Section 4521 of the Judicial Code, 42 Pa.C.S. § 4521. It is intended that the attorneys in a case may request and receive copies of the jury lists and the qualification forms for the prospective jurors summoned for their case. The information on the qualification forms is not to be disclosed except as provided by this rule or by statute. See also Rule 1107, which requires that jurors complete the standard, confidential information questionnaire for use during voir dire.

Committee Explanatory Reports:

Report explaining the September 15, 1993 amendments published at 21 Pa.B. 150 (January 12, 1991). **Order suspending, until further Order of the Court, the September 15, 1993 amendments concerning juror information questionnaires published at 24 Pa.B. 333 (January 15, 1994).**

Final Report explaining the September 18, 1998 amendments concerning juror information questionnaires published with the Court's Order at 28 Pa.B. 4887 (October 3, 1998).

Rule 1106. Examination and Challenges of Trial Jurors.

(A) Voir dire of prospective trial jurors and prospective alternate jurors shall be conducted, and the jurors shall

be selected, in the presence of a judge, unless the judge's presence is waived by the attorney for the Commonwealth, the defense attorney, and the defendant, with the judge's consent.

(B) This oath shall be administered individually or collectively to the prospective jurors:

"You do solemnly swear by Almighty God (or do declare and affirm) that you will answer truthfully all questions that may be put to you concerning your qualifications for service as a juror."

(C) Voir dire, including the judge's ruling on all proposed questions, shall be recorded in full unless the recording is waived. The record will be transcribed only upon written request of either party or order of the judge.

(D) **Prior to voir dire, each prospective juror shall complete the standard, confidential juror information questionnaire as provided in Rule 1107.** The judge may require the parties to submit in writing a list of proposed questions to be asked of the jurors regarding their qualifications. The judge may permit the defense and the prosecution to conduct the examination of prospective jurors or the judge may conduct the examination. In the latter event, the judge shall permit the defense and the prosecution to supplement the examination by such further inquiry as the judge deems proper.

(E) In capital cases, the individual voir dire method must be used, unless the defendant waives that alternative. In non-capital cases, the trial judge shall select one of the following alternative methods of voir dire, which shall apply to the selection of both jurors and alternates:

(1) *Individual Voir Dire and Challenge System.*

(a) Voir dire of prospective jurors shall be conducted individually and may be conducted beyond the hearing and presence of other jurors.

(b) Challenges, both peremptory and for cause, shall be exercised alternately, beginning with the attorney for the Commonwealth, until all jurors are chosen. Challenges shall be exercised immediately after the prospective juror is examined. Once accepted by all parties, a prospective juror shall not be removed by peremptory challenge. Without declaring a mistrial, a judge may allow a challenge for cause at any time before the jury begins to deliberate, provided sufficient alternates have been selected, or the defendant consents to be tried by a jury of fewer than 12, pursuant to Rule 1103.

(2) *List System of Challenges.*

(a) A list of prospective jurors shall be prepared. The list shall contain a sufficient number of prospective jurors to total at least 12, plus the number of alternates to be selected, plus the total number of peremptory challenges (including alternates).

(b) Prospective jurors may be examined collectively or individually regarding their qualifications. If the jurors are examined individually, the examination may be conducted beyond the hearing and presence of other jurors.

(c) Challenges for cause shall be exercised orally as soon as the cause is determined.

(d) When a challenge for cause has been sustained, which brings the total number on the list below the number of 12 plus alternates, plus peremptory challenges (including alternates), additional prospective jurors shall be added to the list.

(e) Each prospective juror subsequently added to the list may be examined as set forth in paragraph (E)(2)(b).

(f) When the examination has been completed and all challenges for cause have been exercised, peremptory challenges shall then be exercised by passing the list between prosecution and defense, with the prosecution first striking the name of a prospective juror, followed by the defense, and alternating thereafter until all peremptory challenges have been exhausted. If either party fails to exhaust all peremptory challenges, the jurors last listed shall be stricken. The remaining jurors and alternates shall be seated. No one shall disclose which party peremptorily struck any juror.

Official Note: Adopted January 24, 1968, effective August 1, 1968; amended May 1, 1970, effective May 4, 1970; amended June 30, 1975, effective September 28, 1975. The 1975 amendment combined former Rules 1106 and 1107. Comment revised January 28, 1983, effective July 1, 1983; amended September 15, 1993, effective January 1, 1994. The September 15, 1993 amendments suspended December 17, 1993 until further order of the Court; amended February 27, 1995, effective July 1, 1995; **the September 15, 1993 Order amending Rule 1106 is superseded by the September 18, 1998 Order, and Rule 1106 is amended September 18, 1998, effective July 1, 1999.**

Comment

This rule applies to all cases, regardless of potential sentence. Formerly there were separate rules for capital and non-capital cases.

If Alternative (E)(1) is used, examination continues until all peremptory challenges are exhausted or until 12 jurors and 2 alternates are accepted. Challenges must be exercised immediately after the prospective juror is questioned. In capital cases, only Alternative (E)(1) may be used unless affirmatively waived by all defendants and the Commonwealth, with the approval of the trial judge.

If Alternative (E)(2) is used, sufficient jurors are assembled to total 12, plus the number of alternates, plus at least the permitted number of peremptory challenges (including alternates). It may be advisable to assemble additional jurors [,] to encompass challenges for cause. Prospective jurors may be questioned individually, out of the presence of other prospective jurors, as in Alternative (E)(1); or prospective jurors may be questioned in the presence of each other. Jurors may be challenged only for cause, as the cause arises. If the challenges for cause reduce the number of prospective jurors below 12, plus alternates, plus peremptory challenges (including alternates), new prospective jurors are called and they are similarly examined. When the examination is completed, the list is reduced, leaving only 12 jurors to be selected, plus the number of peremptories to be exercised; and sufficient additional names to total the number of alternates, plus the peremptories to be exercised in selecting alternates. The parties then exercise the peremptory challenges by passing the list back and forth and by striking names from the list alternately, beginning with counsel for the prosecution. Under this system, all peremptory challenges must be utilized. Alternates are selected from the remaining names in the same manner. Jurors are not advised by whom each peremptory challenge was exercised. Also, under Alternative (E)(2), prospective jurors will not know whether they have been chosen until the challenging process is complete and the roll is called.

This rule requires that prospective jurors be sworn before questioning, under either Alternative.

The words in parentheses in the oath shall be inserted when any of the prospective jurors chooses to affirm rather than swear to the oath.

Unless the judge's presence during voir dire and the jury selection process is waived pursuant to paragraph [(a)] (A), the judge must be present in the jury selection room during voir dire and the jury selection process.

Pursuant to paragraph (D), which was amended in 1998, and Rule 1107, prospective jurors are required to complete the standard, confidential juror information questionnaire prior to voir dire. This questionnaire, which facilitates and expedites voir dire, provides the judge and attorneys with basic background information about the jurors, and is intended to be used as an aid in the oral examination of the jurors.

The point in time prior to voir dire that the questionnaires are to be completed is left to the discretion of the local officials. Nothing in this rule is intended to require that the information questionnaires be mailed to jurors before they appear in court pursuant to a jury summons.

See Rule 3 for definitions of "capital case" and "voir dire."

Committee Explanatory Reports:

Report explaining the September 15, 1993 amendments published at 21 Pa.B. 150 (January 12, 1991). Order suspending, until further Order of the Court, the September 15, 1993 amendments concerning juror **information** questionnaires published at 24 Pa.B. 333 (January 15, 1994).

Final Report explaining the February 27, 1995 amendments published with the Court's Order at 25 Pa.B. 948 (March 18, 1995).

Final Report explaining the September 18, 1998 amendments concerning juror information questionnaires published with the Court's Order at 28 Pa.B. 4887 (October 3, 1998).

Rule 1107. Juror Information Questionnaire.

(A) Prior to voir dire:

(1) Each prospective juror shall complete and verify the standard, confidential juror information questionnaire required by paragraph (H) of this rule, and any supplemental questionnaire provided by the court.

(2) The president judge shall designate the method for distributing and maintaining the juror information questionnaires.

(3) The trial judge and the attorneys shall receive copies of the completed questionnaires for use during voir dire, and the attorneys shall be given a reasonable opportunity to examine the questionnaires.

(B) The information provided by the jurors on the questionnaires shall be confidential and limited to use for the purpose of jury selection only. Except for disclosures made during voir dire, or unless the trial judge otherwise orders pursuant to paragraph (F), this information shall only be made available to the trial judge, the defendant(s) and the attorney(s) for the defendant(s), and the attorney for the Commonwealth.

(C) The original and any copies of the juror information questionnaires shall not constitute a public record.

(D) Juror information questionnaires shall be used in conjunction with the examination of the prospective jurors conducted by the judge or counsel pursuant to Rule 1106(D).

(E) If the court adjourns before voir dire is completed, the trial judge may order that the attorneys be permitted to retain their copies of the questionnaires during the adjournment. When copies of the questionnaires are permitted to be taken from the courtroom, the copies:

(1) shall continue to be subject to the confidentiality requirements of this rule, and to the disclosure requirements of paragraph (B), and

(2) shall not be duplicated, distributed, or published.

The trial judge may make such other order to protect the copies as is appropriate.

(F) The original questionnaires of all impaneled jurors shall be retained in a sealed file and shall be destroyed upon completion of the jurors' service, unless otherwise ordered by the trial judge. Upon completion of voir dire, all copies of the questionnaires shall be returned to the trial judge and destroyed, unless otherwise ordered by the trial judge at the request of the defendant(s), the attorney(s) for the defendant(s), or the attorney for the Commonwealth.

(G) The original and any copies of questionnaires of all prospective jurors not impaneled or not selected for any trial shall be destroyed upon completion of the jurors' service.

(H) The form of the juror information questionnaire shall be as follows:

**JUROR INFORMATION QUESTIONNAIRE
CONFIDENTIAL; NOT PUBLIC RECORD**

| | | | | | |
|---|--|---------------------------------|---|-----------------------------------|----------------------------------|
| NAME: LAST | | FIRST | | MIDDLE INITIAL | |
| CITY/TOWNSHIP | | | COMMUNITIES IN WHICH YOU RESIDED OVER THE PAST 10 YEARS: | | |
| MARITAL STATUS: MARRIED <input type="checkbox"/> | | SINGLE <input type="checkbox"/> | SEPARATED <input type="checkbox"/> | DIVORCED <input type="checkbox"/> | WIDOWED <input type="checkbox"/> |
| OCCUPATION | | | OCCUPATION(S) PAST 10 YEARS | | |
| OCCUPATION OF SPOUSE/OTHER | | | PAST 10 YEARS OCCUPATION OF SPOUSE/OTHER | | |
| NUMBER OF CHILDREN | | | RACE: <input type="checkbox"/> WHITE <input type="checkbox"/> BLACK <input type="checkbox"/> HISPANIC <input type="checkbox"/> OTHER | | |
| LEVEL OF EDUCATION YOURS | | SPOUSE/OTHER | | CHILDREN | |

YES NO

1. Do you have any physical or psychological disability or are you presently taking any medication? YES NO
2. Have you ever served as a juror before?
If so, were you ever on a hung jury? YES NO
3. Do you have any religious, moral, or ethical beliefs that would prevent you from sitting in judgment in a criminal case and rendering a fair verdict? YES NO
4. Have you or anyone close to you ever been the victim of a crime? YES NO
5. Have you or anyone close to you ever been charged with or arrested for a crime, other than a traffic violation? YES NO
6. Have you or anyone close to you ever been an eyewitness to a crime, whether or not it ever came to court? YES NO
7. Have you or anyone close to you ever worked in law enforcement or the justice system? This includes police, prosecutors, attorneys, detectives, security or prison guards, and court related agencies. YES NO
8. Would you be more likely to believe the testimony of a police officer or any other law enforcement officer because of his or her job? YES NO
9. Would you be less likely to believe the testimony of a police officer or other law enforcement officer because of his or her job? YES NO
10. Would you have any problem following the court's instruction that the defendant in a criminal case is presumed to be innocent unless and until proven guilty beyond a reasonable doubt? YES NO
11. Would you have any problem following the court's instruction that the defendant in a criminal case does not have to take the stand or present evidence, and it cannot be held against the defendant if he or she elects to remain silent or present no evidence? YES NO
12. Would you have any problem following the court's instruction in a criminal case that just because someone is arrested, it does not mean that the person is guilty of anything? YES NO
13. In general, would you have any problem following and applying the judge's instruction on the law? YES NO
14. Would you have any problem during jury deliberations in a criminal case discussing the case fully but still making up your own mind? YES NO
15. Is there any reason you could not be a fair juror in a criminal case? YES NO

I hereby certify that the answers on this form are true and correct. I understand that false answers provided herein subject me to penalties under 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

SIGNATURE _____ DATE _____

Official Note: Former Rule 1107 rescinded September 28, 1975. Present Rule 1107 adopted September 15, 1993, effective January 1, 1994; suspended December 17, 1993 until further Order of the Court; the September 15, 1993 Order is superseded by the September 18, 1998 Order, and present Rule 1107 adopted September 18, 1998, effective July 1, 1999.

Comment

This rule requires that, prior to voir dire in any criminal case, the prospective jurors, including prospective alternate jurors, must complete the standard, confidential juror information questionnaire required in paragraph (H), and that the trial judge and attorneys must automatically be given copies of the completed questionnaires in time to examine them before voir dire begins. Compare Rule 1104, which provides that attorneys must request copies of juror qualification forms for the jurors summoned in their case.

Under paragraph (A)(2), it is intended that the president judge of each judicial district may designate procedures for submitting the questionnaire to the jurors and maintaining them upon completion. For example, some districts may choose to mail them along with their jury qualification form, while others may desire to have the questionnaire completed by the panel of prospective jurors when they report for jury service. This rule, however, mandates that the questionnaires be completed by each prospective juror to a criminal case.

Each judicial district must provide the jurors with instructions for completing the form, and inform them of the procedures for maintaining confidentiality of the questionnaires. It is expected that each judicial district will inform the jurors that the questionnaires will only be used for jury selection.

Pursuant to paragraph (C), the juror information questionnaire is not a public record and therefore may not be combined in one form with the qualification questionnaire required by Rule 1104. However, nothing in this rule would prohibit the distribution of both questionnaires in the same mailing.

Under paragraph (B), the information provided by the jurors is confidential and may be used only for the purpose of jury selection. Except for disclosures made during voir dire, the information in the completed questionnaires may not be disclosed to anyone except the trial judge, the attorneys and any persons assisting the attorneys in jury selection, such as a member of the trial team or a consultant hired to assist in jury selection, the defendant, and any court personnel designated by the judge. Even once disclosed to such persons, however, the information in the questionnaires remains confidential.

Although the defendant may participate in voir dire and have access to information from the questionnaire, nothing in this rule is intended to allow a defendant to have a copy of the questionnaire.

Paragraph (D) makes it clear that juror information questionnaires are to be used in conjunction with the oral examination of the prospective jurors, and are not to be used as a substitute for the oral examination. Juror information questionnaires facilitate and expedite the voir dire examination by providing the trial judge and attorneys with basic background information about the jurors, thereby eliminating the need for many commonly asked questions. Although nothing in this rule is intended to preclude oral questioning during voir dire, the scope of

voir dire is within the discretion of the trial judge. See, e.g., *Commonwealth v. McGrew*, 100 A.2d 467 (Pa. 1953) and Rule 1106(D).

Paragraph (E) provides, upon order of the trial judge, that only attorneys in the case, subject to strict limitations imposed by the court, may retain their copies of the juror information questionnaires during adjournment.

Paragraph (F) provides the procedures for the collection and disposition of the original completed questionnaires and copies for impaneled jurors. Once voir dire is concluded, all copies of the completed questionnaires are returned to the official designated by the president judge pursuant to paragraph (A)(2), and destroyed promptly. The original completed questionnaires of the impaneled jury must be retained in a sealed file in the manner prescribed pursuant to paragraph (A)(2), and destroyed upon the conclusion of the juror's service, unless the trial judge orders otherwise. Because the information in the questionnaires is confidential, the trial judge should only order retention of the original questionnaires under unusual circumstances. Such a circumstance would arise, for example, if the questionnaires were placed at issue for post-verdict review. In that event, the judge would order the preservation of the questionnaires in order to make them part of the appellate record.

Under paragraph (G), the original and any copies of the questionnaires of those jurors not impaneled and not selected for any jury must be destroyed without exception upon completion of their service.

There may be situations in which the attorneys and judge would want to prepare an individualized questionnaire for a particular case. In this situation, a supplemental questionnaire would be used together with the standard juror information questionnaire, and the disclosure and retention provisions in paragraphs (B) and (F) would apply. See (A)(1).

Committee Explanatory Reports: Report explaining the September 18, 1998 adoption of new Rule 1107 concerning juror information questionnaires published at 28 Pa.B. 4887 (October 3, 1998).

Final Report

Juror Information Questionnaires

Introduction

On October 2, 1998, upon the recommendation of the Criminal Procedural Rules Committee, the Supreme Court of Pennsylvania adopted new Rule 1107 (Juror Information Questionnaire), and amended Rules 1104 (Juror Qualification Form) and 1106 (Examination and Challenges of Trial Jurors). These changes, which will become effective on July 1, 1999,¹ mandate the use of a standardized juror information questionnaire in all criminal cases. New Rule 1107 is intended to promote uniform statewide practice, reduce otherwise lengthy voir dire practices, and insure that basic information about the jurors is made known to the parties. The standardized form, which is set forth in new Rule 1107(H), is one page with yes/no questions designed to elicit the most routinely requested information from the prospective jurors in criminal cases. In order to facilitate the implementation of the juror information questionnaire, new Rule 1107(A)(2) provides for the President Judge of each judicial district to establish a method for the distribution and maintenance of the juror information questionnaires.

¹ The effective date of July 1, 1999 is intended to provide an extended period to afford all judicial districts adequate time to establish the methods for distributing and maintaining the juror information questionnaires.

This Final Report has two parts. The "Background" section explains how the Committee came to consider the various issues addressed in the proposal, and the manner in which the Committee developed the proposal through research, discussion, and correspondence. The "Explanation of the Rules" section contains an overview of new rule 1107 and the correlative amendments with a rule-by-rule discussion.

Background

The Committee renewed its consideration of the use of juror information questionnaires in criminal trials because of the Court's 1993 directive to reconsider the previous Recommendation for the mandatory use of juror information questionnaires in criminal cases.² Initially, the Committee reaffirmed that the use of juror information questionnaires be mandatory. However, in view of the Court's August 14, 1997 adoption of Pa.R.Civ.P. 220.1 (Voir Dire), which provides for the use of juror information questionnaires at the discretion of the trial judge in civil cases,³ we reexamined and updated our research and findings that triggered our 1993 Recommendation.

In considering the utility of juror information questionnaires in criminal trials, the Committee noted that, despite the mandates in Rule 1106, voir dire practices continue to vary within and among judicial districts. This divergence creates problems for:

- 1) the jurors, who are directly affected by the procedures employed by different judges and judicial districts;
- 2) the attorneys, who practice before more than one judge, and in several judicial districts; and
- 3) the parties, who should be assured of similar results for similar cases across the Commonwealth.

Furthermore, these variations in the voir dire practices statewide impact on the fairness of trials and on the rights of the parties, and are contrary to the Court's recently renewed efforts toward creating a unified judicial system in Pennsylvania.⁴ Our review of the statewide voir dire practices also revealed that voir dire continues to be cumbersome and time consuming in some cases, because some trial judges relinquish all control and permit the attorneys to ask unlimited questions.⁵ Conversely, the Committee found that other judges have virtually nullified voir dire by severely restricting the procedure, and preventing the attorneys from eliciting any information beyond the limited information provided on the juror qualification forms.

Based on our review,⁶ and the additional research, we again concluded that the mandatory use of juror information questionnaires:

- 1) facilitates the process of voir dire by providing the attorneys for the Commonwealth and the attorneys for the defendants with specific information, routinely asked of each juror during the jury selection process, before the commencement of voir dire;

² In 1993, the Court adopted identical changes to both the Criminal and Civil Rules which provided for the mandatory use of juror information questionnaires in all civil and criminal cases. On December 17, 1993, the Court suspended the Order adopting those changes, and instructed both Committees to reexamine the issue of mandatory juror information questionnaires.

³ The rule became effective on January 1, 1998.

⁴ See, e.g., "Interim Report of the Master on the Transition to State Funding of the Unified Judicial System." The Honorable Frank J. Montemuro, Jr., Master.

⁵ This creates an ordeal for the jurors, and absorbs an inordinate amount of the court's time and resources.

⁶ In addition to considering a discretionary system similar to new Civil Rule 220.1 and a mandatory system similar to the 1993 Recommendation, the Committee also explored other alternatives including: 1) a partially mandatory rule requiring the use of juror information questionnaires for all capital cases or all cases involving felonies, and 2) a rule incorporating a "discretionary-mandatory" local option, which would give the president judge of each judicial district the discretion to mandate the use of juror information questionnaires in all criminal trials in that judicial district.

- 2) provides the attorneys with the ability to pinpoint the major areas of concern, if any, that they would like to address, and to identify areas which need further exploration or clarification before the jury selection begins, thereby eliminating time spent in the courtroom determining what aspects of the jurors' responses need to be developed; and

- 3) standardizes practice, ensuring that:

- a) there are similar results across the state;
- b) common practice and procedure does not vary greatly from one geographical location to another; and
- c) the court's time and resources are not wasted unnecessarily, but are used effectively and efficiently.

In addition, after considerable discussion, the Committee agreed that the juror information questionnaire should be a standardized form.

Because of the four year lapse in time from the 1993 suspension of the juror information questionnaire rules, the changes in the proposal, and to afford members of the bench and bar an opportunity to comment on the proposal, the Committee published the proposal for new Rule 1107 and the amendments to Rules 1104 and 1106 at 27 Pa.B. 5744 (November 8, 1997). In addition, the Committee forwarded a copy of the proposal to each president judge, and to the Pennsylvania Association of Court Management.

Fourteen individuals submitted comments to the Committee. Eleven respondents were trial court judges, two were court administrators, and one was an assistant district attorney. Two correspondents indicated their opposition to the proposal in its entirety, seven opposed the mandatory use of the questionnaires in every criminal trial (several of these indicated that providing for the discretionary use of the questionnaire would be acceptable), and five were against the questionnaire in its published form, but not the idea of using a questionnaire.

The Pennsylvania Association of Court Management responded that the organization had sent a survey to its members, and the members' perspectives "generally ran the spectrum from no problem to vehemently opposed." The Association also reported that responding members expressed concern that mandating the questionnaires would be time consuming, both for the jurors who are required to complete the questionnaires, and for the administration responsible for copying them, thereby lengthening the jury selection process. In addition, they were concerned about the costs for copying the five-page questionnaire, and for hiring the personnel to complete the task.

We also received correspondence from a court administrator from a southeastern county reporting on a survey he conducted of the jurors who appeared for jury duty over a four week period in that county. Each juror was given a copy of the juror information questionnaire in its published form, and were requested to indicate whether they approved of its use. There were 696 individuals who responded to the survey. Out of these, 459 jurors approved the use of the questionnaire (50 strongly approved, 350 approved, and 59 approved with reservation).

In view of the limited number of responses to the proposal, most of which raised the same concerns about costs and time,⁷ the Committee conducted a survey of all

⁷ The same concerns had been raised in 1993 by a comparably limited number of individuals.

of the President Judges to determine if the concerns were as widespread as the correspondents indicated. Two questions were asked:

1. Are juror information questionnaires used in your judicial district?
2. Would you be opposed to the use of juror information questionnaires?

The responses to the survey made it clear that the majority of the publication responses the Committee received were from those who oppose the mandatory use of juror information questionnaires in all criminal cases, and those who oppose the questionnaire as published at 27 Pa.B. 5747-8. Forty out of the fifty-seven President Judges who responded reported that they already use juror information questionnaires, with eight of these indicating that they use a questionnaire only on a limited basis. Forty-one President Judges indicated that they do not oppose the use of juror information questionnaires if it is not mandatory, and four reported that they do not oppose the use of juror information questionnaires, but do oppose the published version of the questionnaire. Geographically, those opposing the use of juror information questionnaires are located throughout the extreme northeast, southwest, and northwest areas of the Commonwealth, as well as a few counties surrounding the capital.

Following our review of the publication responses and survey responses, the Committee reassessed the entire proposal. We weighed the pros and cons of recommending a discretionary scheme versus a mandatory scheme for the use of juror information questionnaires. The Committee agreed that the conclusions raised by the correspondents who opposed the mandatory use of juror information questionnaires were not persuasive. In view of these considerations, the Committee again declined to merely provide for the discretionary use of the juror information questionnaire. We reasoned that 1) a rule providing for the discretionary use of the questionnaires will hamper the goal of the unified statewide judicial system, and 2) discretionary rules encourage trial judges and judicial districts to employ different procedures, enabling them to circumvent the particular requirements of statewide rules. Additionally, the Committee agreed that under a discretionary system, the benefits of the juror information questionnaire would not be realized in all cases, the problems encountered by litigants in a jury trial would not be remedied, and the parties may be adversely affected by a judge who has procedures which are unlike other judges within the county and other judicial districts.

On the other hand, the Committee concluded that requiring juror information questionnaires in all criminal cases actually will reduce the time required for voir dire in the usual case, elicit the information most frequently asked during oral voir dire, and assist in achieving the goal of a uniform statewide practice. This conclusion was supported by information we received from the judicial districts, that have employed juror information questionnaires since 1993—once their procedures were established, the delays, costs, or other burdens feared by the correspondents, both in 1993 and now, were actually minimal. Furthermore, the mandatory use of the questionnaires will aid in reversing what appears to be a trend among some members of the common pleas court judiciary: to rigidly control voir dire to the point of vitiating its purpose, putting time management ahead of the rights and interests of the parties. In view of these considerations, the Committee also rejected the other

alternatives considered, and reaffirmed that a juror information questionnaire should be mandated for use in all criminal trials.

In addition to the foregoing considerations, the Committee considered and was sensitive to the concerns raised by members of the judiciary and district court administrators, both in 1993 and now, that the mandatory information questionnaire will create numerous problems with implementation and administration. In view of this, new Rule 1107 allows individual counties to develop their own administratively feasible method of implementation in order to preserve the flexibility inherent in their different but equally valid administrative approaches for handling voir dire and juror questionnaires. See Rule 1107(A)(2).

Furthermore, the Committee understood and appreciated the correspondents' concerns about the time required to complete the five-page version of the questionnaire and have it reproduced, as well as their objections to the questions which were unnecessary, inappropriate, intrusive, superfluous, and ambiguous. Consequently, the Committee reevaluated the juror information questionnaire, and, agreeing it was too long and unmanageable as published, significantly changed it, paring down the length of the questionnaire by omitting the questions most frequently identified as objectionable by the correspondents, and altering its format. As noted in the Introduction, the questionnaire adopted by the Court and mandated by Rule 1107 is one page in length, and contains questions which, for the most part, can be answered yes or no. See Rule 1107(H). This revised format will be easier for the jurors to understand, and will not take a long time to complete. It will also be administratively easier to reproduce and distribute, and facilitates mailing the questionnaire prior to summoning the jurors.⁸ Although the remaining questions on the form are less intrusive, the Committee has maintained the general content of the questions that were on the published version of the questionnaire.

Explanation of Rules

1. New Rule 1107 (Juror Information Questionnaire)

New Rule 1107 sets forth the procedures governing the distribution of the juror information questionnaires to, and completion of them by, all prospective jurors. The rule also mandates that a standardized form of the juror information questionnaire be used in every criminal trial. Finally, it provides that the maintenance of the questionnaire is to be according to the procedures established by each judicial district.

Paragraph (A) is divided into three subparagraphs setting forth the procedures concerning the juror information questionnaires which must be completed prior to voir dire.

Paragraph (A)(1) requires that the standard juror information questionnaire, which is set forth in paragraph (H), is to be completed by every prospective juror in a criminal trial. Recognizing that some cases may require more information than what is provided by the standard form, paragraph (A)(1) includes a provision for the use of supplementary questionnaires. In addition, a provision in the Comment explains that, if the circumstances of a case require that an additional questionnaire would benefit the voir dire process, then a supplemental questionnaire would be permitted under the rule. The Comment also emphasizes that if an additional questionnaire is to be

⁸ The Committee is working with the Supreme Court to offer the questionnaire on the Court's Homepage on the Internet.

used, it is to supplement, not replace, the mandated standardized juror information questionnaire.

Paragraph (A)(2) requires that the president judge of each judicial district designate the procedures for distributing and maintaining the questionnaires, thus leaving the decisions of the time and manner in which the questionnaires are initially distributed to jurors to the individual judicial districts. This provision recognizes that each district may have different needs, and therefore, the new rule is not intended to place an onerous burden on the courts by imposing a single method for the distribution and maintenance of questionnaires on all judicial districts. Rather, the new rule anticipates that the judicial districts will establish distribution and maintenance procedures in the most cost-effective and efficient manner for them. In this same vein, the Comment indicates that the juror information questionnaires may be, but do not have to be, mailed to the prospective jurors before they are required to appear at the courthouse for their service. However, because of the confidentiality requirements of the rule, the Comment cautions that the juror information questionnaire and the Rule 1104 juror qualification form are not to be confused nor combined into one form.

Finally, paragraph (A)(3) provides that the trial judge and the attorneys are to receive copies of the completed forms prior to voir dire, and the attorneys are to be given a reasonable opportunity to examine them.

Paragraphs (B) and (C) address the concerns, voiced by some Committee members and in the publication responses, about maintaining the confidentiality of the information on the questionnaire. The Committee reasoned that, if the rule did not specifically address and mandate confidentiality, then the jurors themselves would not supply information willingly or honestly, thereby thwarting the judicial process, and nullifying the purpose of the rule. Accordingly, paragraphs (B) and (C) emphasize that the questionnaires are confidential, are to be used only for voir dire, and that the completed questionnaires do not constitute a public record for any purpose. In addition, paragraph (B) limits access to the information so that, except for oral disclosures during voir dire, or unless the judge orders that the questionnaires be preserved as provided in paragraph (F), the information provided may only be made available to the trial judge, the defendant(s), and the attorneys in the case. The Comment explains that disclosure of information contained on the questionnaire is appropriate to persons legitimately working with the attorneys during the jury selection process, e.g., the prosecuting police officer, a trial team associate, or a jury expert, and emphasizes that the confidentiality proscriptions of the rule apply to those persons.

Paragraph (D) addresses the concerns expressed by Committee members that the required questionnaire may be used by some judges to limit voir dire to the four corners of the questionnaire, thereby preventing additional oral examination during voir dire. In order to emphasize that the purpose of the questionnaire is to supplement and expedite voir dire, the language "shall be used in conjunction with" was added before "the examination of prospective jurors by the judge or attorneys," along with a cross-reference to Rule 1106(D). The Comment further elaborates on paragraph (D) by emphasizing that, although the scope of voir dire is within the discretion of the trial judge, the use of the juror information questionnaire is not intended to supplant the oral question and answer period provided in Rule 1106, nor is it to be the sole means to obtain information about the jury pool. The

intent of this rule is to aid in the process of voir dire by reducing its length inside the courtroom, and this is accomplished because the trial judge and the attorneys will not have to use courtroom time to ask these basic questions and obtain responses to them. The trial judge and the attorneys, however, should ask follow-up questions to those provided on the questionnaire, as well as additional questions more closely related to their specific case.

Another area of concern expressed by several Committee members was that there would be times when court would adjourn before the completion of voir dire, and the attorneys would want to be able to review the questionnaire during adjournment. Given the confidential nature of the questionnaires, and the provisions for retaining the questionnaires by the court, these members pointed out that the rule could be construed as prohibiting the retention of the questionnaire during the adjournment. On the other hand, without some controls, problems could arise if the attorneys retained the questionnaires. In view of these concerns, the Committee agreed that the rule should permit the attorneys to retain the questionnaires, but only during adjournment. The Committee also agreed that the rule should spell out strict requirements against duplicating, distributing, and publishing the questionnaires. See paragraph (E).

Paragraphs (F) and (G) require that:

(1) if a prospective juror is selected as a panel member or alternate, then the copies of that juror's information questionnaire are to be destroyed upon completion of voir dire for the case to which the juror was selected. The original questionnaire must be retained in a sealed file and destroyed upon completion of the juror's service, unless otherwise directed by the trial judge; and

(2) all originals and copies remaining at the end of the service of all jurors who are not selected nor impaneled for trial are to be destroyed.

These two paragraphs distinguish between those jurors who are impaneled for a trial, and those jurors who have completed the forms, but are not selected or impaneled. It is intended that, at the end of the individual juror's service, no original and no copies of the juror's completed questionnaire will remain. The Committee added these provisions to further address their concerns that if the rule was silent on the issues of confidentiality, destruction of the originals, and copies of the completed questionnaires, then the individuals required to complete the form might be reluctant to provide truthful and honest answers.

The Committee also acknowledged that there might be situations in which the original questionnaires should be retained in a sealed file beyond the completion of the jurors' service, such as when an appeal challenges the jury selection process. Accordingly, paragraph (F) provides that the defendant(s), the attorney(s) for the defendant(s), or the attorney for the Commonwealth may request that the originals not be destroyed, and leaves the decision to retain the questionnaires to the discretion of the trial judge.

2. Standardized Juror Questionnaire

As explained earlier, Rule 1107 mandates the form for the juror information questionnaire. Paragraph (H) sets forth the form. This standardization of the form will further promote the uniform statewide practice, and will reduce the time required to complete voir dire by eliminating from oral examination the most routinely asked

questions common to most cases, thereby utilizing less of the court's already limited time to dispose of other matters.

The Committee discussed at length the format and information which would most likely facilitate voir dire. During these discussions, the Committee agreed that the form must not be unwieldy or unduly time consuming, and must promote honesty from those completing the form. To accomplish these goals, the Committee concluded that the published questionnaire should be reduced to a one-page document, and that, although it should incorporate the general content of the published form, the form of the questions should elicit yes/no answers. In developing this one-page form, the Committee considered the publication responses opposing some of the questions and compromised significantly on the number and type of questions, settling on the format in paragraph (H), which would be supplemented during oral questioning. For those questions which could not be modified into a yes/no format, the questionnaire contains a table at the top of the questionnaire with spaces for the answers to be written. At the bottom of the form is the verification which each juror is required to sign. The Comment explains that each judicial district is responsible for providing to the jurors instructions for completing the questionnaire, as well as information concerning the judicial district's procedures for maintaining the confidentiality of the questionnaires completed by the jurors.

3. Correlative Changes

a. Rule 1104 (Juror Qualification Form, Lists of Trial Jurors, and Challenges to the Array)

The changes to Rule 1104(A) require that the jury service official:

1. devise, distribute, and maintain juror qualification forms;
2. prepare, publish, and post lists of the names of persons to serve as jurors; and
3. upon request of an attorney in a case, furnish a list containing the names of prospective jurors summoned to try the cases, along with copies of the completed juror qualification forms.

These changes accomplish the objectives of 42 Pa.C.S. § 4501, and implement the requirements of 42 Pa.C.S. § 4521(d), by requiring that a juror qualification form, not to be confused with the juror information questionnaire, be completed, and providing that attorneys be given a list of prospective jurors for their case, along with copies of the jurors' qualification forms. The Comment expressly differentiates the juror information questionnaire from the juror qualification form, and provides a cross-reference to Rule 1107.

b. Rule 1106 (Examination and Challenges of Trial Jurors)

Rule 1106 is the general voir dire rule. The proposed changes to paragraph (D) and the Comment tie the Rule 1106 procedures with the new juror information questionnaire procedures in Rule 1107 by reiterating that:

(1) all prospective jurors, prior to voir dire, are required to complete the juror information questionnaire provided to them and the information provided by the jurors is intended to supply the trial judge and attorneys with basic information about the jurors before voir dire begins. The cross-reference to Rule 1107 emphasizes that the questionnaire is intended to be used as an aid in the oral examination of the jurors;

(2) the use of the questionnaire is to expedite voir dire;

(3) the questionnaire is to supplement, not replace, oral examination of the jurors; and

(4) although the questionnaire must be completed prior to the commencement of voir dire, it need not be mailed to the jurors before they appear to begin their service, but may be completed when the jurors appear for service.

[Pa.B. Doc. No. 98-1593. Filed for public inspection October 2, 1998, 9:00 a.m.]

Title 25—LOCAL COURT RULES

SOMERSET COUNTY

Consolidated Rules of Court; No. 77 Miscellaneous 1998

Adopting Order

Now, this 17th day of September, 1998, it is hereby Ordered:

1. Somerset Rule of Judicial Administration 1901.3, subparagraph A.1., relating to notice of inactive case disposition, is amended to read as shown in following Som. R.J.A. 1301, effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

2. The Somerset County Court Administrator shall:

A. File ten (10) certified copies of this Order and the following Rules with the Administrative Office of Pennsylvania Courts;

B. Distribute two (2) certified copies of this Order and the following Rules to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*;

C. File one (1) certified copy of this Order and the following Somerset County Rule of Judicial Administration with the Pennsylvania Civil Procedural Rules Committee; and

D. File proof of compliance with this Order in the docket for these Rules, which shall include a copy of each transmittal letter.

By the Court:

EUGENE E. FIKE, II,
President Judge

RULES OF COURT

Inactive Cases

Som. R.J.A. 1901.3. Inactive Cases. Notice.

A. Upon receipt of the case lists, the Court Administrator shall, with the approval of the President Judge, fix a date or dates and time for hearing and disposition of inactive cases, and shall:

1. Give notice by publication once a week for two (2) successive weeks in the *Somerset Legal Journal* and *Somerset Daily American* that at the date and time specified, all inactive cases in which no final decision or order has been made, and in which no step or proceeding has been docketed for two (2) full years, will be finally dismissed with prejudice, unless the parties appear and show good cause why such dismissal should not be ordered; and

2. In each inactive open case, issue an order stating the hearing date and time as aforesaid when the court may dismiss the case, unless the parties appear and show good cause why such dismissal should not be ordered.

[Pa.B. Doc. No. 98-1594. Filed for public inspection October 2, 1998, 9:00 a.m.]

COURT OF JUDICIAL DISCIPLINE

Court Sessions; Doc. No. 1 JD 94

Per Curiam:

Order

And Now, this 15th day of September, 1998, it is hereby *Ordered* that the sessions of the Court of Judicial Disci-

pline shall be held in the year 1999 commencing as follows:

January 19—22

March 16—19

May 18—21

September 21—24

November 16—19

[Pa.B. Doc. No. 98-1595. Filed for public inspection October 2, 1998, 9:00 a.m.]
