

THE COURTS

Title 234—RULES OF CRIMINAL PROCEDURE

PART I. GENERAL

[234 PA. CODE CH. 1500]

Order Adopting Amendments to Rules 1502 and 1509, and Approving the Revision of the Comments to Rules 1500 and 1501; No. 251; Criminal Procedural Rules Doc. No. 2

The Criminal Procedural Rules Committee has prepared a Final Report explaining the July 23, 1999 amendments to Rules 1502 (Content of Petition for Post-Conviction Collateral Relief; Request for Discovery) and 1509 (Procedures for Petitions in Death Penalty Cases: Hearing; Disposition), and the revision of the Comments to Rules 1500 (Scope) and 1501 (Initiation of Post-Conviction Collateral Proceedings). These changes add a new paragraph (A) (Stays of Execution) to Rule 1509 to provide (1) the procedures for requesting a stay of execution in a death penalty case, and (2) the length of the stay. The Final Report follows the Court's Order.

Order

Per Curiam:

Now, this 23rd day of July, 1999, upon the recommendation of the Criminal Procedural Rules Committee; this proposal having been submitted without publication pursuant to Pa.R.J.A. 103(a)(3), and a Final Report to be published with this Order:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that:

(1) Pa.Rs.Crim.P. 1502 and 1509 are hereby amended; and

(2) the revisions of the Comments to Pa.Rs.Crim.P. 1500 and 1501 are approved, all in the following form.

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

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

PART I. GENERAL

CHAPTER 1500. POST-CONVICTION COLLATERAL PROCEEDINGS

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 revised July 23, 1999, effective September 1, 1999.**

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.

See Rule 1509 (Procedures for Petitions in Death Penalty Cases: Stays of Execution of Sentence;

Hearing; Disposition) concerning requests for, and length of, stays of execution in death penalty cases.

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).

Final Report explaining the July 23, 1999 Comment revision concerning stays published with the Court's Order at 29 Pa.B. 4167 (August 7, 1999).

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 petition and 3 copies with the clerk of the court in which the defendant was convicted and sentenced. The 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 revised July 23, 1999, effective September 1, 1999.**

Comment

* * * * *

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) **and Rule 1509(A).**

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Committee Explanatory Reports:

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

Final Report explaining the July 23, 1999 Comment revision concerning stays published with the Court's Order at 29 Pa.B. 4167 (August 7, 1999).

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

[(a)] (A) A 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:

* * * * *

(12) the facts supporting each such ground that:

[(i)] (a) appear in the record, and the place in the record where they appear; and

[(ii)] (b) do not appear in the record, and an identification of any affidavits, documents, and other evidence showing such facts;

* * * * *

[(b)] (B) * * *

[(c)] (C) * * *

[(d)] (D) * * *

[(e)] (E) Requests for Discovery

(1) Except as provided in paragraph [(e)] (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; **amended July 23, 1999, effective September 1, 1999.**

Comment

Pursuant to paragraph [(a)] (A)(6), the 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 parole. See 42 Pa.C.S. § 9543(a).

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

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

* * * * *

“(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.” See 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. See 42 Pa.C.S. § 9545(a). For stays of execution, see 42 Pa.C.S. § 9545(c) and Rule 1509(A).

Paragraphs [(a)] (A)(16) and [(e)] (E) were added in 1997 to address requests for discovery. Paragraph [(a)] (A)(16) requires that a request for discovery be included in the petition, if applicable. Paragraph [(e)] (E) sets

forth the standards for permitting discovery. Under paragraph [(e)] (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)] (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)] (E)(2), “first counseled petition” includes petitions on which defendants have elected to proceed pro se.

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Committee Explanatory Reports:

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

Final Report explaining the July 23, 1999 amendments concerning stays published with the Court’s Order at 29 Pa.B. 4167 (August 7, 1999).

Rule 1509. Procedures for Petitions in Death Penalty Cases: **Stays of Execution of Sentence; Hearing; Disposition.**

(A) Stays of Execution

(1) In a case in which the defendant has received a sentence of death, any request for a stay of execution of sentence should be made in the petition for post-conviction collateral relief.

(2) In all cases in which a stay of execution has been granted pursuant to 42 Pa.C.S. § 9545(c), the stay shall remain in effect through the conclusion of all PCRA proceedings, including review in the Supreme Court of Pennsylvania, or the expiration of time for seeking such review.

[(a)] (B) * * *

[(b)] (C) * * *

(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)] (a) * * *

[(ii)] (b) * * *

[(iii)] (c) * * *

[(c)] (D) 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)] (E) Failure of the judge to dispose of the petition within 90 days as required by paragraphs [(b)] (C) (3) and [(c)] (D) 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; **amended July 23, 1999, effective September 1, 1999.**

Comment

Paragraph (A)(1) was added in 1999 to provide the avenue by which a defendant in a death penalty case may request a stay of execution. Failure to include a request for a stay in the petition for post-conviction collateral relief may not be construed as a waiver, and the defendant may file a separate request for the stay.

Paragraph (A)(2) provides that, if a stay of execution is granted, the stay will remain in effect throughout the PCRA proceedings in the trial court and during the appeal to the Pennsylvania Supreme Court.

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).

Final Report explaining the July 23, 1999 amendments concerning stays published with the Court's Order at 29 Pa.B. 4167 (August 7, 1999).

FINAL REPORT¹

Amendments to Pa.R.Crim.P. 1509, and Correlative Changes to Pa.Rs.Crim.P. 1500, 1501, and 1502

Length of Stays of Execution in Death Penalty Cases

On July 23, 1999, effective September 1, 1999, upon the recommendation of the Criminal Procedural Rules Committee, the Court amended Rules of Criminal Procedure 1502 (Content of Petition for Post-Conviction Collateral Relief; Request for Discovery) and 1509 (Procedures for Petitions in Death Penalty Cases: Hearing; Disposition), and approved the revision of the Comments to Rules 1500 (Scope) and 1501 (Initiation of Post-Conviction Collateral Proceedings). These changes add a new paragraph (A) (Stays of Execution) to Rule 1509 to provide (1) the procedures for requesting a stay of execution in a death penalty case, and (2) the length of the stay, and make correlative changes to the Comments to Rules 1500, 1501, and 1502.

Background

The Committee, at the Court's request following communications from the Third Circuit Court's Task Force on Management of Death Penalty Litigation, considered whether the Criminal Rules should be amended to provide procedures governing the length of stays of execution. The Task Force's recommendation was that, when a stay of execution has been granted, the stay should remain in effect for the duration of the Post Conviction Relief Act, 42 Pa.C.S. §§ 4541 et seq. (hereinafter PCRA), proceedings at the trial level and any appeal to the Pennsylvania Supreme Court. After reviewing the Criminal Rules, the PCRA, and the Task Force's recommendation, the Committee agreed that procedures concerning the length of stays of execution in post-conviction collateral relief cases should be included in the Criminal Rules within Chapter 1500, and that the changes should incorporate the substance of the Task Force's recommendation.

¹ The 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.

Discussion

Determining the placement of the stay provision presented a challenge for the Committee, particularly trying to work within the context of the present Chapter 1500 numbering scheme and 42 Pa.C.S. § 9545(c). Section 9545(c) provides:

(C) Stay of executive.—

(1) No court shall have the authority to issue a stay of execution in any case except as allowed under this subchapter.

(2) Except for first petitions filed under this subchapter by defendants whose sentences have been affirmed on direct appeal of the Supreme Court of Pennsylvania between January 1, 1994, and January 1, 1996, no stay may be issued unless a petition for postconviction relief which meets all the requirements of this subchapter has been filed and is pending and the petitioner makes a strong showing of likelihood of success on the merits.

(3) If a stay of execution is granted, all limitations periods set forth under sections 9574 (relating to answer to petition), 9575 (relating to disposition without evidentiary hearing) and 9576 (relating to evidentiary hearing) shall apply to the litigation of the petition,

and appears to be the only statutory or rule provision to address stays of execution in death penalty cases. Because this statutory provision limits the granting of stays of execution to cases in which a PCRA petition has been "filed and is pending," the Committee agreed that the new stay provision should be added somewhere after Rule 1502 (Contents of Petition for Post-Conviction Collateral Relief; Request for Discovery). The Committee concluded that the most suitable placement for the new provision is Rule 1509 (Procedures for Petitions in Death Penalty Cases: Hearing; Disposition), reasoning that, because Rule 1509 addresses procedures specific to death penalty cases, it makes sense to include the death penalty stay provisions too. Accordingly, a new paragraph (A) (Stays of Execution) has been added to Rule 1509.

Rule 1509 (A) is divided into two subparagraphs. Paragraph (A)(1) provides that a request for a stay should be included in the PCRA petition. This provision has been added to the rule to provide guidance about requesting stays because the PCRA is silent in this regard. Providing that the request for a stay is to be made as part of the petition insures that the court has the request at the earliest time, thus reducing the likelihood of delay in the disposition of these requests. Furthermore, the additional provision for the request for a stay to be included in the petition does not place an undue burden on the defendant. Although agreeing with the foregoing reasoning, several members expressed concern about making the petition provision mandatory—with a mandatory provision, a failure to include the request for the stay in the petition might be construed as a waiver. Agreeing that we did not want waiver to play a role at this stage in the proceedings concerning stays, and, in an exercise in caution, the Committee has used "should" instead of "shall" in paragraph (A)(1). In addition, the Rule 1509 Comment cautions that a failure to include a request for a stay in the PCRA petition does not preclude the defendant from filing a separate request for a stay.

Paragraph (A)(2) establishes the length of the stay, and is taken from the Task Force's recommendation. If a stay is granted pursuant to 42 Pa.C.S. § 9545(c), the stay is to remain in effect through the conclusion of all PCRA

proceedings, including Supreme Court review, or the expiration of the time for seeking such review.

Finally, to insure that members of the bench and bar are aware of the provisions of Rule 1509(A), the Comments to Rules 1500, 1501, and 1502 have been revised by the addition of cross-references to Rule 1509(A).

[Pa.B. Doc. No. 99-1273. Filed for public inspection August 6, 1999, 9:00 a.m.]

Title 25—LOCAL COURT RULES

CUMBERLAND COUNTY

Rules of the Court of Common Pleas; No. 96-1335
Civil Term

Order of Court

And Now, this 15th day of July, 1999, the following Rules of the Court of Common Pleas of Cumberland County, Pennsylvania, are hereby promulgated and adopted for use, effective September 15, 1999, or thirty (30) days after publication in the *Pennsylvania Bulletin*.

Pursuant to Pa.R.C.P. 239, the Court Administrator is directed to forward seven (7) certified copies of this order to the Administrative Office of Pennsylvania Courts, two (2) certified copies to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin* together with a diskette, formatted in Microsoft Word for Windows reflecting the text in the hard copy version, one (1) copy to the Supreme Court Civil Procedural Rules Committee and/or the Supreme Court Domestic Relations Committee, and one (1) copy to the *Cumberland Law Journal*.

By the Court

GEORGE E. HOFFER,
President Judge

Inactive Cases Not At Issue

Rule 228. The Prothonotary shall list, for general call on the last Tuesday of October of each year, all civil matters which are not at issue, and in which no proceedings of record have occurred during the two years or more immediately prior thereto. The Prothonotary shall, in the manner provided by Pa.R.J.A. 1901(c), notify counsel of record and any parties for whom no appearance has been entered, that the matter has been so listed. If no action is taken, and no written objection is filed in a listed matter prior to the time set for the general call, the Prothonotary shall strike the matter from the list, and enter an order as of course dismissing the matter for failure to pros-

ecute. If, at the call of the list, no good cause is shown why a matter should be continued, the court shall enter an order dismissing the matter with prejudice.

Adopted and effective January 26, 1976; amended April 1, 1995, effective April 30, 1995; amended, July 20, 1998, effective, August 20, 1998; amended July 15, 1999, effective September 15, 1999.

[Pa.B. Doc. No. 99-1274. Filed for public inspection August 6, 1999, 9:00 a.m.]

WESTMORELAND COUNTY

Adoption of Rule of Judicial Administration
WJ507A; No. 3 of 1999

Order

And Now This 12th day of July, 1999, It Is Hereby Ordered that Westmoreland County Rule of Judicial Administration WJ507A is adopted effective 30 days after publication in the *Pennsylvania Bulletin*.

By the Court

CHARLES H. LOUGHRAN,
President Judge

Rule WJ507A. Retention of Court Exhibits Civil Cases.

A. Subject to the provisions of subsection B, the Prothonotary shall have the authority to purge, dispose or destroy all civil court exhibits after a case has been finalized. In determining whether a case has been finalized, the Prothonotary shall consider:

1. whether the appeal period has run without an appeal being perfected,
2. whether the appellate court has ruled on the appeal and no further appeal has been perfected, and
3. whether the case is settled, discontinued, satisfied, and ended on the record.

B. Prior to disposing of a civil court exhibit, the Prothonotary shall notify by first class mail any self represented party and all counsel of record of the following:

1. the exhibit will be disposed of if no claim is made within 30 days and
2. the exhibit will be returned to the party claiming the exhibit at the expiration of the 30 days unless another party files an objection.

[Pa.B. Doc. No. 99-1275. Filed for public inspection August 6, 1999, 9:00 a.m.]