THE COURTS

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CH. 1]

Proposed Amendment to Rule 6 Local Rules

Introduction

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Pa.R.Crim.P. 6. The proposed amendments clarify the definition of local rules, procedures concerning the implementation of local rules, and their enforcement. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's considerations in formulating this proposal. Please note the Committee's Reports should not be confused with the official Committee Comments to the rules. Also note the Supreme Court does not adopt the Committee's Comments or the contents of the explanatory Reports.

The text of the proposed amendments to Rule 6 precedes the Report. Additions are shown in bold and are underlined; deletions are in bold and brackets.

We request that interested persons submit suggestions, comments, or objections concerning this proposal to the Committee through counsel Anne T. Panfil, Chief Staff Counsel, Supreme Court of Pennsylvania, Criminal Procedural Rules Committee, P. O. Box 1325, Doylestown, PA 18901 no later than Monday, June 5, 2000.

By the Criminal Procedural Rules Committee

J. MICHAEL EAKIN,
Chair

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

CHAPTER 1. SCOPE OF RULES, CONSTRUCTION AND DEFINITIONS, LOCAL RULES

Rule 6. Local Rules.[1]

(a) For the purpose of this rule, the term "local rule" shall include every rule, regulation, directive, policy, custom, usage, form or order of general application, however labeled or promulgated, **[which is]** adopted or enforced by a court of common pleas to govern criminal practice and procedure**, which requires a party or party's attorney to do or refrain from doing something.**

* * * * *

(c) **[To be effective and enforceable] A local rule shall not become effective and enforceable until the adopting court has fully complied with all the following requirements:**

* * * * *

(e) No case shall be dismissed nor request for relief granted or denied because of failure to comply with a local rule. In any case of noncompliance with a local rule, the court shall alert the party to the specific provision at issue and provide a reasonable time for the attorney to comply with the local rule.

[(e)] (f) * * *

Official Note: Rule 6 adopted January 28, 1983, effective July 1, 1983; amended May 19, 1987, effective July 1, 1987; renumbered Rule 105 and amended March 1, 2000, effective April 1, 2001; **amended _____, 2000, effective _____, 2000.**

Comment

* * * * *

The caption or other words used as a label or designation shall not determine whether something is or establishes a local rule; if the definition in paragraph (a) of this rule is satisfied the matter is a local rule regardless of what it may be called. The provisions of this rule are also intended to apply to any amendments to a "local rule." **Nothing in this rule is intended to apply to case-specific orders.**

* * * * *

Paragraph (c) was amended in 2000 to emphasize that the adopting authority must comply with all the provisions of paragraph (c) before any local rule, or any amendments to local rules, will be effective and enforceable.

[It is contemplated under subparagraph] Paragraph (c)(5) **requires** that a separate consolidated set of local rules **[shall]** be maintained in the prothonotary's or clerk's office.

* * * * *

The purpose of paragraph (e) is to prevent the dismissal of cases, or the grant or denial of requested relief, because a party has failed to comply with a local rule. In addition, paragraph (e) requires that the party be alerted to the local rule, and be given a reasonable amount of time to comply with the local rule.

After the court has alerted the party to the local rule pursuant to paragraph (e), the court may impose a sanction for subsequent noncompliance either on counsel or the defendant if proceeding pro se, but may not dismiss the case, or grant or deny relief because of non-compliance.

Committee Explanatory Reports:

* * * * *

Report explaining the proposed amendments published at 30 Pa.B. 2574 (May 27, 2000).

(*Editor's Note*: The following shows the amendments to new Rule 105. See 30 Pa.B. 1477 (March 18, 2000).)

Rule 105. Local Rules.

(A) For the purpose of this rule, the term "local rule" shall include every rule, regulation, directive, policy, custom, usage, form or order of general application, however labeled or promulgated, **[which is]** adopted or enforced by a court of common pleas to govern criminal practice and procedure**, which requires a party or party's attorney to do or refrain from doing something.**

* * * * *

[1] Rule 6 will become Rule 105 as part of the reorganization and renumbering of the rules adopted March 1, 2000, effective April 1, 2001.

(C) **[To be effective and enforceable.] A local rule shall not become effective and enforceable until the adopting court has fully complied with all the following requirements:**

* * * * *

(E) No case shall be dismissed nor request for relief granted or denied because of failure to comply with a local rule. In any case of noncompliance with a local rule, the court shall alert the party to the specific provision at issue and provide a reasonable time for the attorney to comply with the local rule.

[(E)] (F) * * *

Comment

* * * * *

The caption of other words used as a label or designation shall not determine whether something is or establishes a local rule; if the definition in paragraph (A) of this rule is satisfied the matter is a local rule regardless of what it may be called. The provisions of this rule are also intended to apply to any amendments to a "local rule." **Nothing in this rule is intended to apply to case-specific orders.**

* * * * *

Paragraph (C) was amended in 2000 to emphasize that the adopting authority must comply with all the provisions of paragraph (C) before any local rule, or any amendments to local rules, will be effective and enforceable.

[It is contemplated under subparagraph] Paragraph (C)(5) **requires** that a separate consolidated set of local rules **[shall]** be maintained in the prothonotary's or clerk's office.

* * * * *

The purpose of paragraph (E) is to prevent the dismissal of cases, or the grant or denial of requested relief, because a party has failed to comply with a local rule. In addition, paragraph (E) requires that the party be alerted to the local rule, and be given a reasonable amount of time to comply with the local rule.

After the court has alerted the party to the local rule pursuant to paragraph (E), the court may impose a sanction for subsequent noncompliance either on counsel or the defendant if proceeding pro se, but may not dismiss the case, or grant or deny relief because of non-compliance.

Official Note: Rule 6 adopted January 28, 1983, effective July 1, 1983; amended May 19, 1987, effective July 1, 1987; renumbered Rule 105 and amended March 1, 2000, effective April 1, 2001**; amended _____, 2000, effective _____, 2000.**

Committee Explanatory Reports:

* * * * *

Report explaining the proposed amendments published at 30 Pa.B. 2574 (May 27, 2000).

REPORT

Proposed Amendments to Pa.R.Crim.P. 6

LOCAL RULE PROCEDURES

I. *Background*

In 1983, the Court adopted Pa.R.Crim.P. 6 and Pa.R.Civ.P. 239 "to facilitate the statewide practice of law under this Court's general rules, and to promote the further policy that a general rule of criminal [and civil] procedure normally preempts the subject covered." Court's adopting Order, 13 Pa.B. 760 (February 19, 1983). The new rules provided a uniform definition of local rules, prerequisites to effectiveness and effective dates, procedures for accessibility and distribution, and for the suspension of inconsistent local rules.

Since the 1983 adoption of Rule 6, the Committee has been monitoring local criminal rules and local practices. Experience has shown Rule 6 is being honored in the breach, which hampers rather than promotes the statewide practice of law. Some judges continue to implement local practices and procedures that do not comply with Rule 6 by calling them something other than a local rule, even though they are local rules within the definition of Rule 6. Often "local rules" are not published or made available to the members of the bar, and as sanctions for non-compliance, some local rules provide for the dismissal of the case. In many cases, these local practices and procedures conflict with the statewide rules.

Over the years, the Committee has attempted to work with the judicial districts on problem local rules, and has been successful in resolving many of the conflicts. However, there continues to be frustration for the Committee, as well as counsel, because we are not aware of many local rules since the rules are not published or publically available as required in Rule 6. In addition, the Supreme Court's Judicial Council has undertaken a statewide study of local rules and the problems encountered by practitioners.

In view of the Judicial Council's study, and recognizing the Committee has not been completely successful in resolving the problems with local rules, we agreed that as a first step, Rule 6 should be amended to make the definition of "local rule" clearer and the requirements for the effectiveness and enforceability of local rules more emphatic, and to address limitations on the sanctions for non-compliance with local rules. The proposed amendments are discussed below.

II. *Discussion*

A. *Definition of "Local Rule"*

One of the major problems uncovered as we researched the issue of local rules is that some president judges issue orders that are intended to govern local practice and procedure, but do not call them local rules and do not comply with Rule 6. Bypassing the Rule 6 requirements impedes the statewide practice of law and violates the spirit, if not the letter, of Rule 6. With this in mind, the Committee is proposing an amendment of the definition of "local rule" that will emphasize that the label or designation is not determinative, but rather it is the content, purpose, and effect that control. Paragraph (A) would be amended by the addition of the phrase "which requires a party or party's attorney to do or refrain from doing something." This strengthens the definition by making it clear that any locally mandated practice or procedure requiring some action or inaction is indeed a local rule.

B. *Prerequisites to Effectiveness*

The Committee agreed another step in clarifying the rule would be to underscore the requirements that must be followed before a local rule will be effective and enforceable. To accomplish this, the introductory phrase for paragraph (C) would be reworded to place emphasis on the fact that, unless the requirements of Rule 6 are followed, the local rule is not effective nor enforceable. Accordingly, we are proposing the introductory phrase be changed to state:

A local rule shall not become effective and enforceable until the adopting court has fully complied with all the following requirements:

C. *Sanctions*

When Rule 6 was recommended to the Court in 1982, the Committee had not included a provision similar to the one included in Civil Rule 239 prohibiting the dismissal of an action for violation of a local rule. The Committee reasoned that "in practice such dismissals rarely occur, if at all in criminal cases," and therefore such a provision was unnecessary. See Committee explanatory Report, 13 Pa.B. 761 (February 19, 1983). Experience with local rules has demonstrated the opposite to be true: cases are dismissed, or requests for relief are granted or denied, when a party fails to comply with a local rule; and this is a major concern among practitioners.

Recognizing one of the major problems contributing to non-compliance is that many local rules are not published, and are not easily accessible, the Committee concluded that it was inappropriate to dismiss cases in these circumstances. Considering how best to resolve the problem of lack of notice and address sanctions, the Committee agreed to propose (1) the prohibition of the dismissal of a case and the grant or denial of a request for relief because of failure to comply with a local rule, and (2) placing with the court the responsibility for alerting a non-complying party to the specific provision of the local rule. The court also would be required to provide the party with a reasonable amount of time to comply. These provisions would be new paragraph (E).

Although agreeing with the proposal, some members expressed concern that the "sanction" limitation in new paragraph (E) might be construed as limiting a judge's options when a party in a particular case refuses to comply with procedural orders that apply only to that case. For clarification purposes, the Committee agreed to add a provision to the Comment pointing out the distinction between local rules of general application and orders or directives regulating the procedures in a particular case, i.e., "case-specific" orders.

Finally, the Committee agreed to add as the last paragraph of the Comment a provision explaining how to proceed when an attorney fails to comply even after being alerted to the local rule and given time to comply—the attorney should be sanctioned rather than the case being dismissed or the relief granted or denied. The Comment explains that when the party continues to ignore the local rule, the only appropriate sanctions would be against the attorney who is not complying, or the non-complying defendant if proceeding pro se.

[Pa.B. Doc. No. 00-874. Filed for public inspection May 26, 2000, 9:00 a.m.]

[234 PA. CODE CHS. 9 AND 1500]

Proposed Amendment to Rule 1509; Procedures for Petitions in Death Penalty Cases; Stays of Execution of Sentence; Hearing; Disposition

Introduction

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Pa.R.Crim.P. 1509. The proposed amendments permit the judge to grant a 30-day extension of the dispositional time limits. When a judge fails to dispose of the petition within the time limits, the amendments provide a mechanism for notifying the judge that the time limits have expired and, absent action by the judge, for notifying the Supreme Court of the judge's failure to act. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Supplemental Report highlights the Committee's considerations in formulating this proposal. Please note that the Committee's Reports and Supplemental 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 explanatory Reports or Supplemental Reports.

The text of the proposed amendments to Rule 1509 precedes the Supplemental Report. Additions are shown in bold and are underlined, and deletions are in bold and brackets.

We request that interested persons submit suggestions, comments, or objections concerning this proposal to the Committee through counsel Anne T. Panfil, Chief Staff Counsel, Supreme Court of Pennsylvania, Criminal Procedural Rules Committee, P. O. Box 1325, Doylestown, PA 18901 no later than Monday, June 5, 2000.

By the Criminal Procedural Rules Committee

J. MICHAEL EAKIN,
Chair

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

CHAPTER 1500. POST-CONVICTION COLLATERAL PROCEEDINGS

Rule 1509. Procedures for Petitions in Death Penalty Cases: Stays of Execution of Sentence; Hearing; Disposition.[1]

* * * * *

(B) **Hearing; Disposition**

(1) No more than 20 days after the Commonwealth files an answer pursuant to Rule 1506(E)(1) or (E)(2),[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.

[(C)] (2) 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-

[1] Rule 1509 will become Rule 909 as part of the reorganization and renumbering of the rules adopted March 1, 2000, effective April 1, 2001.

[2] Rule 1506 will become Rule 906 as part of the reorganization and renumbering of the rules adopted March 1, 2000, effective April 1,2001.

conviction collateral relief, and **[that]** no **legitimate** purpose would be served by any further proceedings,

**[(1)] (a) * * *

[(2)] (b)** 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)] (c) No later than 90 days from the date of the notice, or from the date of the **[oral argument, if granted], defendant's response,** the judge shall:

[(a)] (i) dismiss the petition **[,] and** 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];**

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

[(c)] (iii) * * *

[(D)] (3) 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 conclusion of** the evidentiary hearing, the judge shall dispose of the petition.

(4) When the 90-day time periods in paragraphs (B)(2)(c) and (B)(3) must be delayed, the judge, for good cause shown, may enter an order extending the period for not longer than 30 days.

(5) If the judge does not act within the 90 days mandated by paragraphs (B)(2)(c) and (B)(3), or within the 30 day-extension permitted by paragraph (B)(4), the clerk of courts shall send a notice to the judge that the time period for disposing of the petition has expired. The clerk shall enter the date and time of the notice on the docket, and shall send a copy of the notice to the attorney for the Commonwealth, the defendant, and defense counsel, if any.

(6) If the judge does not dispose of the defendant's petition within 30 days of the clerk of courts' notice, the clerk immediately shall send a notice of the judge's non-compliance to the Supreme Court. The clerk shall enter the date and time of the notice on the docket, and shall send a copy of the notice to the attorney for the Commonwealth, the defendant, and defense counsel, if any.

(7) When the petition for post-conviction collateral relief is dismissed by order of the court,

(a) the clerk immediately shall furnish a copy of the order by mail or personal delivery to the Prothonotary of the Supreme Court, the attorney for the Commonwealth, the defendant, and defense counsel, if any.

(b) The order shall advise the defendant of the right to appeal from the final order disposing of the petition, and of the time within which the appeal must be taken.

[(E) Failure of the judge to dispose of the petition within 90 days as required by paragraphs (C)(3) and (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; renumbered Rule 909 and amended March 1, 2000, effective April 1, 2001; **amended _____, 2000, effective _____, 2000.**

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.]

Paragraph (B)(3) permits the judge to continue the hearing when there is good cause, such as when the judge determines that briefing and argument are necessary on any of the issues, or when there is a problem with securing the defendant's appearance.

It is intended that once a determination is made under paragraph (B)(3) of this rule that an evidentiary hearing is required, the provisions of Rule 1508(C), (D), and (E) apply.[3]

Paragraph (B)(4) was added in 2000 to permit the judge to enter an order for one 30-day extension of the 90-day time limit within which the judge must act pursuant to paragraphs (B)(2)(c) and (B)(3) of this rule. When the judge extends the time, the judge promptly must notify the clerk of courts of the extension order.

Paragraph (B)(5) addresses the situation in which the judge does not comply with the rule's time limits. The clerk of courts is required to give the judge notice that the 90-day time period has expired. Further non-compliance requires the clerk to bring the case to the attention of the Supreme Court, which is responsible for the administration of the unified judicial system.

It is expected, if there are extenuating circumstances why the judge cannot act within the time limits of the rule, the judge will provide a written explanation to the Supreme Court.

Paragraph (B)(7) requires the clerk to immediately notify the Prothonotary of the Supreme Court, the attorney for the Commonwealth, the defendant, and defense counsel, if any, that the petition has been denied. This notice is intended to protect the defendant's right to appeal.

The clerk of courts must comply with the notice and docketing requirements of Rule 9025[4] with regard to any orders entered pursuant to this rule.

Committee Explanatory Reports:

* * * * *

Report explaining the proposed amendments concerning extensions of time and sanctions published

[3] Rule 1508 will become Rule 908 as part of the reorganization and renumbering of the rules adopted March 1, 2000, effective April 1, 2001.

[4] Rule 9025 will become Rule 114 as part of the reorganization and renumbering of the rules adopted March 1, 2000, effective April 1, 2001.

at 29 Pa.B. 6462 (December 25, 1999). Supplemental Report published at 30 Pa.B. 2578 (May 26, 2000).

(*Editor's Note*: The following shows amendments to new Rule 909. See 30 PaB. 1477 (March 18, 2000).)

Rule 909. Procedures for Petitions in Death Penalty Cases; Stays of Execution of Sentences; Hearing Disposition.

* * * * *

(B) **Hearing; Disposition**

(1) No more than 20 days after the Commonwealth files an answer pursuant to Rule 906(E)(1) or (E)(2), or if no answer is filed as permitted in Rule 906(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.

[(C)] (2) 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 **legitimate** purpose would be served by any further proceedings,

[(1)] (a) * * *

[(2)] (b) 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)] (c) No later than 90 days from the date of the notice, or from the date of the **[oral argument, if granted] defendant's response**, the judge shall:

[(a)] (i) dismiss the petition **[,] and** 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]**;

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

[(c)] (iii) * * *

[(D)] (3) 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 conclusion of** the evidentiary hearing, the judge shall dispose of the petition.

(4) When the 90-day time periods in paragraphs (B)(2)(c) and (B)(3) must be delayed, the judge, for good cause shown, may enter an order extending the period for not longer than 30 days.

(5) If the judge does not act within the 90 days mandated by paragraphs (B)(2)(c) and (B)(3), or within the 30 day-extension permitted by paragraph (B)(4), the clerk of courts shall send a notice to the judge that the time period for disposing of the petition has expired. The clerk shall enter the date and time of the notice on the docket, and shall send a copy of the notice to the attorney for the Commonwealth, the defendant, and defense counsel, if any.

(6) If the judge does not dispose of the defendant's petition within 30 days of the clerk of courts' notice, the clerk immediately shall send a notice of the judge's non-compliance to the Supreme Court. The clerk shall enter the date and time of the notice on the docket, and shall send a copy of the notice to the attorney for the Commonwealth, the defendant, and defense counsel, if any.

(7) When the petition for post-conviction collateral relief is dismissed by order of the court,

(a) the clerk immediately shall furnish a copy of the order by mail or personal delivery to the Prothonotary of the Supreme Court, the attorney for the Commonwealth, the defendant, and defense counsel, if any.

(b) The order shall advise the defendant of the right to appeal from the final order disposing of the petition, and of the time within which the appeal must be taken.

[(E) Failure of the judge to dispose of the petition within 90 days as required by paragraphs (C)(3) and (D) may result in the imposition of sanctions.]

Official Note: Previous Rule 1509 adopted February 1, 1989, effective July 1, 1989; renumbered Rule 910 August 11, 1997, effective immediately. Present Rule 1509 adopted August 11, 1997, effective immediately; amended July 23, 1999, effective September 1, 1999; renumbered Rule 909 and amended March 1, 2000, effective April 1, 2001; **amended _____, 2000, effective _____, 2000**.

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.]

Paragraph (B)(3) permits the judge to continue the hearing when there is good cause, such as when the judge determines that briefing and argument are necessary on any of the issues, or when there is a problem with securing the defendant's appearance.

It is intended that once a determination is made under paragraph (B)(3) of this rule that an evidentiary hearing required, the provisions of Rule 908(C), (D), and (E) apply.

Paragraph (B)(4) was added in 2000 to permit the judge to enter an order for one 30-day extension of the 90-day time limit within which the judge must act pursuant to paragraphs (B)(2)(c) and (B)(3) of this rule. When the judge extends the time, the judge promptly must notify the clerk of courts of the extension order.

Paragraph (B)(5) addresses the situation in which the judge does not comply with the rule's time limits. The clerk of courts is required to give the judge notice that the 90-day time period has expired. Further non-compliance requires the clerk to bring the case to the attention of the Supreme Court, which is responsible for the administration of the unified judicial system.

It is expected, if there are extenuating circumstances why the judge cannot act within the time limits of the rule, the judge will provide a written explanation to the Supreme Court.

Paragraph (B)(7) requires the clerk to immediately notify the Prothonotary of the Supreme Court, the attorney for the Commonwealth, the defendant, and defense counsel, if any, that the petition has been denied. This notice is intended to protect the defendant's right to appeal.

The clerk of courts must comply with the notice and docketing requirements of Rule 114 with regard to any orders entered pursuant to this rule.

Committee Explanatory Reports:

* * * * *

Report explaining the proposed amendments concerning extensions of time and sanctions published at 29 Pa.B. 6462 (December 25, 1999). Supplemental Report published at 30 Pa.B. 2578 (May 26, 2000).

SUPPLEMENTAL REPORT

Proposed Amendments to Pa.R.Crim.P. 1509

POST-CONVICTION COLLATERAL RELIEF PETITION—DEATH PENALTY CASES DISPOSITION: TIME LIMITS; EXTENSIONS; SANCTIONS

I. *Background*

On December 25, 1999, the Committee published for comment a proposal for changes that (1) would have added to Rules 1507 and 1508 a 90-day time limit for disposition of petitions for post-conviction collateral relief in noncapital cases comparable to the time limits in Rule 1509 in capital cases, and (2) in both capital and noncapital cases, would have permitted the judge to grant a 30-day extension of the time limits and, when a judge fails to dispose of the petition within the time limits, provided the petition be deemed denied. The proposed deemed denied procedures were similar to the Rule 1410 (Post-Sentence Procedures; Appeal) deemed denied procedure, and were intended to insure the judge acted within the time limits set by the rules.

The Committee received a number of publication responses expressing concerns about the deemed denied portion of the proposal as it applied in death penalty cases. In view of these comments, the Committee agreed to take another look at the issue in the death penalty context. As a result of this reexamination, the Committee is proposing another approach to the problem of delays in the disposition of petitions for post-conviction collateral relief in death penalty cases, as explained in this Supplemental Report.[5]

II. *Discussion*

The Committee is proposing as an alternative to the deemed denied provision a procedure whereby the clerk of courts will notify the judge when the 90-day time limit for disposition of the petition, or the 30-day extension, if any, has expired. This notice will start another 30-day clock running. If the judge does not dispose of the petition within this 30-day grace period, the clerk will be required to notify the Supreme Court.[6] This procedure provides the judge with a "friendly" reminder in case the time just slipped by, and an opportunity to dispose of the petition before more severe consequences occur. In those few cases in which a judge fails to comply within the time limits after notice, the procedure gets the case squarely before the governing authority charged with supervising judges and the unified judicial system—the Supreme Court. The Committee thinks this proposed procedure will work well to move cases along without the dire consequences of an automatic deemed denied provision.[7]

The Committee agreed the clerk of courts should be responsible for the notification since this is an issue of tracking cases, and it is reasonable for the clerk to remind the judge of the dead lines imposed by the Supreme Court. Furthermore, the clerk of courts is a judicial officer and already has similar responsibilities in the context of Rule 1410 with regard to tracking the time limits for post-sentence motions and issuing the orders. The members also noted that there are not that many death penalty cases, so adding this responsibility to the duties of the clerk of courts would not create an onerous burden, particularly outside Philadelphia.

The changes to implement the notice procedure would appear as new paragraphs (B)(5) and (6). Paragraph (5) would require the clerk of courts to send a notice to the judge, enter the date and time of the notice on the docket, and send a copy of the notice to the attorney for the Commonwealth, the defendant, and defense counsel, if any. Paragraph (6) would require the clerk to send a notice to the Supreme Court if the judge does not dispose of the petition within a 30-day grace period after the clerks' notice, and similarly requires entry of the date and time of the notice on the docket, and copies of the notice to the parties. The Comment suggests in those cases in which the judge has a justification for the noncompliance, it would be prudent for the judge to provide the Court with a written explanation for the delay.

During the Committee's discussions of the time limits and the notice procedures, we noted that the addition of the time limits has generated questions about whether a PCRA hearing may be continued to allow, for example, for briefing and argument on certain points or for time to have a defendant returned from a state prison facility, and what effect these "delays" would have on the time limits. The Committee agreed that the hearing could be continued without impacting on the time limits. Accordingly, as part of this proposal, we are adding a Comment provision explaining the judge may continue a hearing and the 90-day time limit would not start to run until after the hearing is concluded.

[Pa.B. Doc. No. 00-875. Filed for public inspection May 26, 2000, 9:00 a.m.]

[5] All the other proposed changes to Rule 1509 explained at 29 Pa.B. 6466 (December 25, 1999) remain the same, and are not re-discussed in this Supplemental Report.

[6] The Committee considered, but rejected, placing the notice requirements with the Commonwealth. We agreed that this notice procedure was one of judicial administration, a function that should not be place on the attorney for the Commonwealth. In addition, there was some concern that the mere filing of a "failure to act" petition could result in some judges reacting negatively and taking action adverse to the Commonwealth.

[7] The Committee has limited this proposal to death penalty cases, and has tabled the deemed denied proposal as to all other PCRA cases until we see how the notice provisions in death penalty cases work in practice. If the proposed procedure accomplishes the goal of moving these cases along and reduces judicial delay in disposition of the petitions, the Committee may consider proposing this procedure for all PCRA cases. In the interim, as an aid to the Committee in monitoring the delays in disposition of PCRA petitions, arrangements are being made through the acting State Court Administrator and Chief Justice for the Administrative Office of Pennsylvania Courts to conduct a statewide survey concerning the amount of time that lapses between the filing of the PCRA petition and the hearing on the petition. (The post-hearing delay already is reported by judges on the judges R.J.A. 703 reports.)

Title 252—ALLEGHENY COUNTY RULES

ALLEGHENY COUNTY

Rules of Court of Common Pleas; No. RD-1 of 2000 Rules Docket

Order of Court

And Now, to-wit, this 18th day of April, 2000, pursuant to action of the Board of Judges, the within local Rule 440 affecting the Civil Division of the Court of Common Pleas is adopted, effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

By the Court

ROBERT A. KELLY,
President Judge

Local Rule 440

Certificate of Service

(1) Copies of all legal papers other than original process that are required to be served on each party to the action pursuant to Pa.R.C.P. No. 440, shall include a Certificate of Service, which sets forth the date and manner of service.

(2) The Certificate of Service shall set forth the name of an attorney of record for each of the parties that is represented by counsel and the address at which service was made.

Note

The mere statement "Service upon all counsel of record" is not acceptable.

(3) If any parties are not represented by counsel, the Certificate of Service shall identify the party as being unrepresented by using a "pro se" designation and shall set forth the address at which service was made.

(4) The address listed in the Certificate of Service may be an e-mail address or telephone number used for a facsimile transmission where service was made in this fashion provided that such service is authorized under the Pennsylvania Rules of Civil Procedure.

[Pa.B. Doc. No. 00-876. Filed for public inspection May 26, 2000, 9:00 a.m.]

ALLEGHENY COUNTY

Rules of Court of Common Pleas; No. RD-2 of 2000 Rules Docket

Order of Court

And Now, to-wit, this 18th day of April, 2000, pursuant to action of the Board of Judges, the within local Rule 205.4 affecting the Civil Division of the Court of Common Pleas is adopted, effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

By the Court

ROBERT A. KELLY,
President Judge

Local Rule 205.4

(a) Except as otherwise provided by subsection (b) of this rule, parties may file legal papers, including original process, with the Prothonotary by means of electronic filing in any civil action or proceeding at law or in equity brought in or appealed to the court, including any action pursuant to the Eminent Domain Code of 1964 or the Municipal Claims Act of 1923. Parties may also file with the Prothonotary by means of electronic filing the following matters:

Reports

Annual Audit
Bond of Tax Collector
Cemetery Report
Oath of Office
Tax Collector Report

Liens/Scire Facias

Commercial Broker Lien
Commonwealth Tax Lien
Condominium Lien
Declaration of Covenant Lien
Environmental Resources Lien
Federal Judgment Lien
Foreign State Tax Lien
Mechanic's Lien
Municipal Lien
No Lien Agreement
Pension Benefit Lien
Planned Community Lien
Scire Facias sur Municipal Lien
Scire Facias sur Tax Lien
Unemployment Compensation Lien

Foreign Judgment/Execution

Foreign Execution
Foreign Judgment
Assurance of Voluntary Compliance

Note

A "legal paper" within the meaning of the first sentence of subsection (a) means a pleading or other paper filed in any civil action or proceeding at law or in equity.

(b) The following legal papers may not be filed with the Prothonotary by means of electronic filing:

(1) Legal papers relating to any action governed by Pa.R.C.P. Nos. 1901—1920.92 and any legal papers filed pursuant to Pa.R.C.P. Nos. 1930.1—1940.8.

Note

Subsection (b)(1) excludes Domestic Relations Matters. Local Rules governing the filing of legal papers by means of electronic filing in Domestic Relations Matters will be included in separate Allegheny County Local Rules relating to Domestic Relations Matters.

(2) A notice of appeal from an award of a board of arbitrators or a notice of appeal or other legal paper, the filing of which is prescribed by the Rules of Civil Procedure Governing Actions and Proceedings before District Justices.

Note

The legal papers described in this subsection (b)(2) cannot be filed through electronic filing. See Pa.R.C.P. No. 205.4(a)(2).

(3) Any legal papers relating to the revival and the enforcement of judgments other than legal papers filed

pursuant to Pa.R.C.P. Nos. 3031, 3117, 3118, 3119, 3142, 3143(d), (f), (g) and (h), 3144, 3145, 3146, and 3149.

Note

The legal papers described in subsection (b)(3) are excluded from electronic filing because of the Sheriff's involvement with these matters.

(4) Any original process other than (i) original process filed to commence an action or (ii) original process that will not be served by a Sheriff.

Note

It is feasible for the Prothonotary to collect the fees and costs for service by the Sheriff only for original process filed to commence the lawsuit. Subsection (b)(4) excludes from electronic filing original process that will be served by the Sheriff and which does not commence the action, including a reissued writ of summons, a reinstated complaint, a writ to join an additional defendant, and a complaint joining an additional defendant.

There are instances in which original process is not required to be served by a Sheriff, including original process filed in actions described in Pa.R.C.P. No. 400(b), original process that will be served outside the Commonwealth, and original process that will be served pursuant to an Acceptance of Service. Any original process may be filed electronically if the party filing the original process instructs the Prothonotary that the original process shall not be delivered electronically to the Sheriff by the Prothonotary. Under local practice, the Prothonotary does not deliver to the Sheriff original process commenced with a paper filing.

(5) In General Docket cases, (i) preliminary objections, (ii) motions for judgment on the pleadings, or (iii) motions for summary judgment.

Note

The matters described in subsection (b)(5) are excluded from electronic filing because at this time it is not feasible to alter the existing procedure under which these matters are presented to a motions clerk or an argument clerk before being filed in the Office of the Prothonotary.

(6) In compulsory arbitration cases, (i) preliminary objections, (ii) petitions, or (iii) motions.

Note

The matters described in subsection (b)(6) are excluded from electronic filing because of the practice of furnishing an argument date to the party filing the matter at the time of the filing.

(7) The following matters:

Health Department Judgments
Housing Court Judgments
Confession of Judgments
ACBA Fee Dispute Judgments
Judgment Rolls
Orphan's Court Judgments
PHEAA Judgments
Pennsylvania Agency Judgments
Workers' Compensation Judgments
District Justice Transcripts
Exemplification of Records
Amicable Ejectments
Petition for Name Change

Note

At this time, it is not feasible for the Prothonotary to receive through electronic filing the matters described in subsection (b)(7).

(c) The filing party shall maintain the original hard copy of any legal paper that is electronically filed.

(d) The Prothonotary shall provide electronic access at all times. The time and date of the filing and receipt shall be that registered by the Prothonotary's computer system.

(e) The website address of the Prothonotary is as follows: www.PROTHONOTARY.COUNTY.ALLEGHENY.PA.US.

(f) Access to the website shall be available to an attorney by use of the attorney's Supreme Court identification number issued by the Court Administrator of Pennsylvania. Access is also available to any other user by the user selecting any numbers or letters that the user wishes to use as an identification number.

(g) The Prothonotary shall maintain an electronic and a hard copy file for the legal papers described in the first sentence of section (a). The Prothonotary is not required to maintain a hard copy file for the legal papers described in the second sentence of section (a).

Note

In the future, it may be feasible to eliminate the requirement that the Prothonotary maintain a hard copy file for every civil action or proceeding at law or in equity.

(h) The procedures for payment of the fees and costs of the Prothonotary and the fees and costs for service by the Sheriff shall be set forth on the Prothonotary's website.

(i) The Prothonotary shall provide a filing status message to the filing party setting forth the date of and time of acceptance of the filing or the fact that the filing has not been accepted. A legal paper is not considered filed if the Prothonotary responds to the filing by notifying the filing party that the filing party has not (i) maintained sufficient funds to pay the fees and costs described in subsection (h) or (ii) authorized payment by credit or debit card of these fees and costs.

Note

A filing party accepts the risk that a document filed by means of electronic filing may not be properly or timely filed with the Prothonotary. See Pa.R.C.P. No. 205.4(e)(2). One of the risks is that the Prothonotary—either, correctly or incorrectly—determines that the filing party has not met its obligation for payment of the necessary fees and costs.

(j) Electronic filing, as authorized by this Local Rule, also may be effected through the website of THE EXTENDED COURTHOUSE, INC. (a not-for-profit corporation), the address of which is www.techi.org. Electronic service of legal papers other than original process may be made through this website.

(k) This rule shall be rescinded on December 31, 2001 unless Pa.R.C.P. No. 205.4(h) is modified or rescinded.

Note

Pa.R.C.P. No. 205.4(h) provides that this rule shall be rescinded on December 31, 2001.

[Pa.B. Doc. No. 00-877. Filed for public inspection May 26, 2000, 9:00 a.m.]

Title 255—LOCAL COURT RULES

DAUPHIN COUNTY

Promulgation of Local Rules; No. 1689 S 1989

Order

And Now, this 2nd day of May, 2000, Dauphin County Local Rule of Civil Procedure 205.1 is amended as follows:

Rule 205.1. Filing Legal Papers; Removing Papers.

(a) All papers filed in the Office of the Prothonotary shall bear the name of the attorney or party filing them, and the address at which service can be made. **In all cases where a judge has been assigned to the matter in dispute, a courtesy copy of all pleadings, briefs or memoranda filed with the Prothonotary shall also be filed with the chambers of the assigned judge.** The size and other physical characteristics of all papers or other documents filed shall conform to standards set and established by the Pennsylvania Rules of Appellate Procedure for papers or other documents filed in an appellate court.

* * * * *

It is also ordered that Dauphin County Rule of Criminal Procedure 9022 be promulgated as follows:

Rule 9022. Filing.

All papers filed with the Clerk of Courts shall bear the name of the attorney or party filing them, and the address at which service can be made. In all cases where a judge has been assigned to the matter in dispute, a courtesy copy of all pleadings, briefs or memoranda filed with the Clerk of Courts shall also be filed with the chambers of the assigned judge. The size and other physical characteristics of all papers or other documents filed shall conform to standards set and established by the Pennsylvania Rules of Appellate Procedure for papers or other documents filed in an appellate court.

These amendments shall be effective 30 days after publication in the *Pennsylvania Bulletin*.

By the Court

JOSEPH H. KLEINFELTER,
President Judge

[Pa.B. Doc. No. 00-878. Filed for public inspection May 26, 2000, 9:00 a.m.]

DAUPHIN COUNTY

Promulgation of Local Rules; No. 1689 S 1989

Order

And Now, this 4th day of May, 2000, Dauphin County Local Rule of Civil Procedure 211 is amended as follows:

Rule 211. Argument Court.

C. LISTING AND BRIEFING CASES

(1) Moving party

(a) Within **[20] 30** days of the filing of any matter, the moving party shall file one original and three copies of a supporting brief together with affidavits, depositions, transcripts, or other supporting documents.

(b) The moving party shall serve copies of its brief on all opposing parties together with a notice to file a responsive brief within **[20] 30** days of service.

(c) Upon the failure of the moving party to timely file and serve its brief, the court may sua sponte, or upon petition of the opposing party, order the matter withdrawn with prejudice.

(2) Opposition party

(a) Any party in opposition to the matter shall file one original and three copies of its responsive brief within **[20] 30** days of service of the moving party.

(b) If an opposition party fails to file and serve its brief within the time period required, the court may consider such failure to be a waiver of opposition and shall sua sponte, or upon petition of the moving party, either 1) grant the relief requested, so long as such action does not result in dismissal of the case; or 2) exclude the opposition party from oral argument.

Comment to Amendment

This amendment reflects the Court's decision to amend its argument court briefing schedule to parallel the summary judgment motion response schedule set forth in Pa.R.C.P. 1035.3. While this Court does not view the prior deadlines as inconsistent under Pa.R.C.P. 239(b), it acknowledges that ease of function will occur with such amendment. The attendant delay of up to 10 days per side amounts to less than three weeks, a short period in the timespan of the average suit.

These amendments shall govern all matters submitted as of and including the August 17, 2000, argument court.

By the Court

JOSEPH H. KLEINFELTER,
President Judge

[Pa.B. Doc. No. 00-879. Filed for public inspection May 26, 2000, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Suspension

Notice is hereby given that Mark D. Caswell, having been suspended from the practice of law in the State of New Jersey for a period of six months by Order of the Supreme Court of New Jersey dated March 23, 1999, the Supreme Court of Pennsylvania issued an Order dated May 9, 2000, that Mark D. Caswell is suspended from the practice of law in this Commonwealth for a period of six months. In accordance with the Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside the

Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

ELAINE M. BIXLER,
Executive Director & Secretary
The Disciplinary Board of the
Supreme Court of Pennsylvania

[Pa.B. Doc. No. 00-880. Filed for public inspection May 26, 2000, 9:00 a.m.]

SUPREME COURT

Exhaustion of State Remedies in Criminal and Post-Conviction Relief Cases; No. 218; Judicial Administration Docket No. 1

Order

Per Curiam:

And Now, this 9th day of May, 2000, we hereby recognize that the Superior Court of Pennsylvania reviews criminal as well as civil appeals. Further, review of a final order of the Superior Court is not a matter of right, but of sound judicial discretion, and an appeal to this Court will only be allowed when there are special and important reasons therefor. Pa.R.A.P. 1114. Further, we hereby recognize that criminal and post-conviction relief litigants have petitioned and do routinely petition this Court for allowance of appeal upon the Superior Court's denial of relief in order to exhaust all available state remedies for purposes of federal habeas corpus relief.

In recognition of the above, we hereby declare that in all appeals from criminal convictions or post-conviction relief matters, a litigant shall not be required to petition for rehearing or allowance of appeal following an adverse decision by the Superior Court in order to be deemed to have exhausted all available state remedies respecting a claim of error. When a claim has been presented to the Superior Court, or to the Supreme Court of Pennsylvania, and relief has been denied in a final order, the litigant shall be deemed to have exhausted all available state remedies for purposes of federal habeas corpus relief. This Order shall be effective immediately.

[Pa.B. Doc. No. 00-881. Filed for public inspection May 26, 2000, 9:00 a.m.]