THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

[204 PA. CODE CHS. 85, 89 AND 93]

Amendments to Rules of Organization and Procedure of the Disciplinary Board of the Supreme Court of Pennsylvania; Order No. 56; Doc. Nos. R-130 and R-131

In this Order, the Disciplinary Board of the Supreme Court of Pennsylvania is amending its Rules of Organization and Procedure to: (i) change the time limitation on complaints against respondent-attorneys alleging ineffective assistance of counsel, and (ii) make conforming amendments as a result of recent orders of the Supreme Court of Pennsylvania amending the Rules of Disciplinary Enforcement.

The Rules of the Board provide that complaints against respondent-attorneys involving alleged misconduct occurring more than four years before the date of the complaint will generally not be considered. See 204 Pa. Code § 85.10. The Board has found that it may take more than four years for some cases of ineffective assistance of counsel or prosecutorial misconduct to come to the attention of the Board. By this Order, the Board is accordingly amending 204 Pa. Code § 85.10 to provide that the generally applicable four year period within which complaints must be submitted will be tolled while there is litigation pending that results in a finding of ineffective assistance of counsel or prosecutorial misconduct. Notice of this proposed change was published in the *Pennsylvania Bulletin* on November 3, 2001 and no comments were received in response.

The Rules of the Board have been drafted to restate in full the substance of the Rules of Disciplinary Enforcement. By Orders dated April 5, 2001, May 18, 2001 and June 28, 2001, the Supreme Court amended Pa.R.D.E. 218 and 219. The Board is taking this opportunity to make conforming changes to its Rules to reflect the changes in the Rules of Disciplinary Enforcement made by those Orders of the Supreme Court.

The Disciplinary Board of the Supreme Court of Pennsylvania finds that:

(1) To the extent that 42 Pa.C.S. § 1702 (relating to rule making procedures) and Article II of the act of July 31, 1968 (P. L. 69, No. 40), known as the Commonwealth Documents Law, would otherwise require notice of proposed rulemaking with respect to some of the amendments adopted hereby, such proposed rulemaking procedures are inapplicable because those amendments relate to agency procedure and are perfunctory in nature.

(2) The amendments to the Rules of Organization and Procedure of the Board adopted hereby are not inconsistent with the Pennsylvania Rules of Disciplinary Enforcement and are necessary and appropriate for the administration of the affairs of the Board.

The Board, acting pursuant to Pa.R.D.E. 205(c)(10), orders:

(1) Title 204 of the *Pennsylvania Code* is hereby amended as set forth in Annex A hereto.

(2) The Secretary of the Board shall duly certify this Order, and deposit the same with the Administrative Office of Pennsylvania Courts as required by Pa.R.J.A. 103(c).

(3) The amendments adopted hereby shall take effect upon publication in the *Pennsylvania Bulletin*.

(4) This Order shall take effect immediately.

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

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

Subpart C. DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA

CHAPTER 85. GENERAL PROVISIONS

§ 85.10. Stale matters.

* * * * *

(b) *Exceptions.* The four year limitation in subsection (a) shall:

* * * * *

(2) Be tolled during any period when there has been litigation pending that has resulted in a finding that the subject acts or omissions involved civil fraud**, ineffective assistance of counsel or prosecutorial misconduct** by the respondent-attorney.

CHAPTER 89. FORMAL PROCEEDINGS

Subchapter F. REINSTATEMENT AND RESUMPTION OF PRACTICE

REINSTATEMENT OF FORMERLY ADMITTED ATTORNEYS

§ 89.271. Reinstatement only by Court order.

Enforcement Rule 218(a) provides that no attorney suspended for a period exceeding one year, transferred to inactive status more than three years prior to resumption of practice **or transferred to inactive status as a result of the sale of his or her practice pursuant to Rule 1.17 of the Pennsylvania Rules of Professional Conduct**, or disbarred may resume practice until reinstatement by order of the Supreme Court after petition therefor pursuant to the Enforcement Rules.

§ 89.273. Procedures for reinstatement.

* * * * *

(b) *Attorneys suspended for less than one year.* Enforcement Rule 218(f) provides that:

(1) Upon the expiration of any term of suspension not exceeding one year and upon the filing thereafter by the **[suspended] formerly admitted** attorney with the Board of a verified statement showing compliance with all the terms and conditions of the order of suspension and of Chapter 91 of Subchapter E (relating to formerly admitted attorneys), the Board shall certify such fact to the Supreme Court, which shall immediately enter an order

reinstating the formerly admitted attorney to active status, unless such person is subject to another outstanding order of suspension or disbarment.

(2) **[If] Paragraph (1) of this subsection shall not be applicable and a formerly admitted attorney shall be subject instead to the other provisions of this rule requiring the filing of a petition for reinstatement, if:**

(i) other formal disciplinary proceedings are then pending or have been authorized against the formerly admitted attorney**[, paragraph (1) shall not be applicable and such person shall file a petition for reinstatement.];**

(ii) the formerly admitted attorney has been on inactive status for more than three years; or

(iii) the order of suspension has been in effect for more than three years.

* * * * *

(c) *Attorneys on inactive status for less than three years.* Enforcement Rule 218(g) provides that attorneys who have been on inactive status for three years or less may be reinstated pursuant to § 93.145 (relating to reinstatement) or § 93.146(b) (relating to **[voluntarily retired or inactive attorneys] reactivation**) as appropriate. **This subsection (c) does not apply to any attorney who has sold his or her practice pursuant to Rule 1.17 of the Pennsylvania Rules of Professional Conduct.**

CHAPTER 93. ORGANIZATION AND ADMINISTRATION

Subchapter G. FINANCIAL MATTERS

ANNUAL ASSESSMENT OF ATTORNEYS

§ 93.141. Annual assessment.

(a) *General rule.* Enforcement Rule 219(a) provides that every attorney admitted to practice in any court of this Commonwealth shall pay an annual fee under such rule of **[$105.00] $130.00**; that the annual fee shall be collected under the supervision of the Administrative Office, which shall send and receive, or cause to be sent and received, the notices and statements provided for in this subchapter, and that the fee shall be used to defray the costs of disciplinary administration and enforcement under the Enforcement Rules, and for such other purposes as the Board shall, with the approval of the Supreme Court, from time to time determine.

* * * * *

§ 93.146. Voluntarily retired or inactive attorneys.

(a) *General rule.* Enforcement Rule 219(i) provides that an attorney who has retired **[or],** is not engaged in practice **or who has sold his or her practice pursuant to Rule 1.17 of the Pennsylvania Rules of Professional Conduct** shall file with the Administrative Office a notice in writing (Form DB-28) (Notice of Voluntary Assumption of Inactive Status) that the attorney desires voluntarily to assume inactive status and discontinue the practice of law; that upon the transmission of such notice from the Administrative Office to the Supreme Court, the Court shall enter an order transferring the attorney to inactive status, and the attorney shall no longer be eligible to practice law but shall continue to file the statement specified in § 93.142(b) (relating to filing of annual statement by attorneys) for six years thereafter in order that the formerly admitted attorney can be located in the event complaints are made about the conduct of such person while such person was engaged in practice; that the formerly admitted attorney will be relieved from the payment of the fee specified in § 93.141 (relating to annual assessment); and that Chapter 91 Subchapter E (relating to formerly admitted attorneys) shall not be applicable to the formerly admitted attorney unless ordered by the Supreme Court in connection with the entry of an order of suspension or disbarment under another provision of the Enforcement Rules.

* * * * *

[Pa.B. Doc. No. 02-561. Filed for public inspection April 12, 2002, 9:00 a.m.]

Title 210—APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

[210 PA. CODE CH. 25]

Order Amending Rule 2521; No. 137 Appellate Court Rules; Doc. No. 1

Order

Per Curiam:

Now, this 26th day of March, 2002, upon recommendation of the Appellate Court Procedural Rules Committee, this proposal having been submitted without publication pursuant to Pa.R.J.A. 103(a)(3) in the interest of justice:

It is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule of Appellate Procedure 2521 is amended in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective July 1, 2002.

Chief Justice Zappala files a dissenting statement in which Mr. Justice Nigro joins.

Annex A

TITLE 210. APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

CHAPTER 25. POST-SUBMISSION PROCEEDINGS IN GENERAL

Rule 2521. Entry of Judgment or Other Orders.

(a) *General Rule.* Subject to the provisions of Rule 108 (date of entry of orders), the notation of a judgment or other order of an appellate court in the docket constitutes entry of the judgment or other order. The prothonotary of the appellate court shall prepare, sign and enter the judgment following receipt of the opinion of the court unless the opinion is accompanied by an order signed by the court, or unless the opinion directs settlement of the form of the judgment, in which event the prothonotary shall prepare, sign and enter the judgment following settlement by the court. If a judgment is rendered without an opinion or an order signed by the court, the prothonotary shall prepare, sign and enter the judgment following instruction from the court. The prothonotary shall, on the date a judgment or other order is entered, send by first class mail to all parties a copy of the opinion, if any, or of the judgment or other order if no

opinion was written, and notice of the date of entry of the judgment or other order.

(b) ***Notice in Death Penalty Cases.*** **Pursuant to Pa.R.Crim.P. 900(B), in all death penalty cases upon the Supreme Court's affirmance of the judgment of a death sentence, the prothonotary shall include in the mailing required by subdivision (a) of this Rule the following information concerning the Post Conviction Relief Act and the procedures under Chapter 9 of the Rules of Criminal Procedure. For the purposes of this notice, the term "parties" in subdivision (a) shall include the defendant, the defendant's counsel, and the attorney for the Commonwealth.**

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

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

(3) (A) If the defendant fails to file a petition within the one-year limit, the action may be barred. See 42 Pa.C.S. § 9545(b).

(B) Any issues that could have been raised in the post-conviction proceeding, but were not, may be waived. See 42 Pa.C.S. § 9544(b).

(4) Pursuant to Rule 904 (Appointment of Counsel; In Forma Pauperis), the trial judge will appoint new counsel for the purpose of post-conviction collateral review, unless:

(A) the defendant has elected to proceed pro se or waive post-conviction collateral proceedings, and the judge finds, after a colloquy on the record, that the defendant is competent and the defendant's election is knowing, intelligent and voluntary;

(B) the defendant requests continued representation by original trial counsel or direct appeal counsel, and the judge finds, after a colloquy on the record, that the petitioner's election constitutes a knowing, intelligent and voluntary waiver of a claim that counsel was ineffective; or

(C) the judge finds, after a colloquy on the record, that the defendant has engaged counsel who has entered, or will promptly enter, an appearance for the collateral review proceedings.

Official Note: **See Pa.R.Crim.P. 900(B), which also includes the identical requirement in death penalty cases that notice of the information concerning the statutory time limitations for filing petitions for post-conviction collateral relief and the right to counsel enumerated in subdivision (b) of this rule be sent by the prothonotary with the order or opinion sent pursuant to subdivision (a) of this rule. Because of the importance of this notice requirement to judges, attorneys and defendants, the requirement that the Supreme Court Prothonotary mail the aforesaid notice has been included in both the Rules of Criminal Procedure and the Rules of Appellate Procedure.**

Amended Dec. 11, 1978, effective Dec. 30, 1978; **amended March 26, 2002, effective July 1, 2002.**

Dissenting Statement

Mr. Justice Zappala Decided: March 26, 2002

I dissent from that portion of the amendment that requires the Supreme Court Prothonotary to provide notice of relevant Post Conviction Relief Act provisions to the capital defendant himself, rather than solely to defense counsel, because I believe it creates an unnecessary administrative burden.

The amendment directs the Prothonotary to include such a notice in its mailing of the copy of our Court's opinion affirming the judgment of a death sentence. Currently, however, the Prothonotary only sends a copy of our opinion to the defendant's counsel. Amending the rule to require personal notice raises legitimate concerns over locating the defendant and effectuating service. Also, because copies of the opinion are sent by first class mail, there will be no way of ensuring that the death row inmate in fact received the notice.

I believe a better approach would be to require the Prothonotary to send the notice of PCRA rights to the defendant's counsel and charge counsel with the duty of furnishing such information to the defendant. Personal notice to the defendant, himself, would only be necessary in cases where the defendant is proceeding pro se. This approach would alleviate the administrative burden placed on the Prothonotary's Office while still ensuring that the defendant receives notice of his PCRA rights.

Mr. Justice Nigro joins in this dissenting statement.

[Pa.B. Doc. No. 02-562. Filed for public inspection April 12, 2002, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CH. 9]

Order Amending Rule 900; No. 280 Criminal Procedural Rules; Doc. No. 2

The Criminal Procedural Rules Committee has prepared a Final Report explaining the amendments to Rule of Criminal Procedure 900 (Scope; Notice in Death Penalty Cases). The rule changes require the Supreme Court's Prothonotary in capital cases to provide in the mailing required by Appellate Rule 2521(a) notice of the information concerning the Post Conviction Relief Act (PCRA) and the procedures under Chapter 9 of the Criminal Rules with regard to the time for filing a PCRA petition and counsel. These changes will ensure defendants in death penalty cases receive timely notice of the PCRA information. The Final Report follows the Court's Order.

Order

Per Curiam

Now, this 26th day of March, 2002, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been submitted without publication pursuant to Pa.R.J.A. 103(a)(3) in the interests of justice, 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 Rule of Criminal Procedure 900 is amended in the following form.

This Order shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective July 1, 2002.

Chief Justice Zappala files a dissenting statement in which Mr. Justice Nigro joins.

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

CHAPTER 9. POST-CONVICTION COLLATERAL PROCEEDINGS

Rule 900. Scope**; Notice In Death Penalty Cases**.

(A) The rules in Chapter 9 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).

(B) Notice in Death Penalty Cases

In all death penalty cases upon the Supreme Court's affirmance of the judgment of a death sentence, the Prothonotary shall include in the mailing required by Pa.R.A.P. 2521 (Entry of Judgment or Other Order) the following information concerning the Post Conviction Relief Act and the procedures under Chapter 9 of the Rules of Criminal Procedure. "Parties" as used in Pa.R.A.P. 2521 shall include the defendant, the defendant's counsel, and the attorney for the Commonwealth for the purposes of this rule.

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

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

(3) (a) If the defendant fails to file a petition within the one-year time limit, the action may be barred. See 42 Pa.C.S. § 9545(b).

(b) Any issues that could have been raised in the post-conviction proceeding, but were not, may be waived. See 42 Pa.C.S. § 9544(b).

(4) Pursuant to Rule 904 (Appointment of Counsel; in Forma Pauperis), the trial judge will appoint new counsel for the purpose of post-conviction collateral review, unless:

(a) the defendant has elected to proceed pro se or waive post-conviction collateral proceedings, and the judge finds, after a colloquy on the record, that the defendant is competent and the defendant's election is knowing, intelligent, and voluntary;

(b) the defendant requests continued representation by original trial counsel or direct appeal counsel, and the judge finds, after a colloquy on the record, that the petitioner's election constitutes a knowing, intelligent, and voluntary waiver of a claim that counsel was ineffective; or

(c) the judge finds, after a colloquy on the record, that the defendant has engaged counsel who has entered, or will promptly enter, an appearance for the collateral review proceedings.

Comment

* * * * *

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

See Rule 904 for the procedures for the appointment of counsel.

Pursuant to paragraph (B), the Supreme Court's Prothonotary must include with the mailing required by Rule of Appellate Procedure 2521 (Entry of Judgment or Other Order) the information set forth in paragraph (B)(1)—(4). Rule 2521 requires, inter alia, on the date a judgment or order is entered, that the prothonotary is to send to all parties by first class mail a copy of any opinion, or judgment, or order.

Official Note: Rule 1500 adopted August 11, 1997, effective immediately; Comment revised July 23, 1999, effective September 1, 1999; renumbered Rule 900 and amended March 1, 2000, effective April 1, 2001; **amended March 26, 2002, effective July 1, 2002**.

Committee Explanatory Reports:

* * * * *

Final Report explaining the March 26, 2002 amendments providing for notice in death penalty cases published with the Court's Order at 32 Pa.B. 1841 (April 13, 2002).

***FINAL REPORT*[1]**

Amendments to Pa.R.Crim.P. 900

POST CONVICTION COLLATERAL PROCEEDINGS: NOTICE IN DEATH PENALTY CASES

Introduction

On March 26, 2002, effective July 1, 2002, upon the recommendation of the Criminal Procedural Rules Committee, the Court amended Rule of Criminal Procedure 900 (Scope; Notice in Death Penalty Cases). The rule changes require the Supreme Court's Prothonotary in capital cases to provide in the mailing required by Appellate Rule 2521(a) notice of the information concerning the time for filing a PCRA petition under the Post Conviction Relief Act (PCRA) and the procedures concerning counsel under Chapter 9 of the Criminal Rules.[2] The notice is to be given to the defendant, defense counsel, and the attorney for the Commonwealth.[3] These changes will ensure defendants in death penalty cases receive timely notice of the PCRA information.

[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.

[2] Appellate Rule 2521 (Entry of Judgment or Other Order) also has been amended to include the same notice requirements.

[3] Chief Justice Zappala and Justice Nigro dissented from that portion of the amendments that requires the Prothonotary to provide notice to the defendant, rather than solely to defense counsel.

Discussion

1. *Placement*

The first consideration concerning the new PCRA notice provision was placement. The Committee agreed that the provision should be in Chapter 9, because this is the first section of rules that concerns post-conviction procedures. In addition, because we had been advised that the Court thought the notice should be given upon the affirmance by the Court of the judgment of a death sentence, we noted that the time for the notice precedes all the procedures in Chapter 9, and therefore should be placed at the beginning of the Chapter. The new procedures have been incorporated into Rule 900: the title has been amended to "Scope; Notice in Death Penalty Cases;" and a new subsection (B) has been added.

2. *Service of the Notice*

The next consideration was who should be required to provide the PCRA notice. The Committee identified four choices: the Supreme Court's Prothonotary, the trial judge, the clerk of courts for the judicial district in which the trial had been held, or the defendant's counsel.

As the Committee evaluated the choices, we noted that Pa.R.A.P. 2521 (Entry of Judgment or Other Order) requires, inter alia, that

> The prothonotary shall, on the date a judgment or other court order is entered, send by first class mail to all parties a copy of the opinion, if any, or of the judgment or other order if no opinion was written.

Therefore, there already is in place a mechanism for providing the PCRA notice, since the Supreme Court's Prothonotary is required to mail information upon the affirmance of the judgment of a death sentence. The Committee did not think that adding the PCRA notice to the information required by Appellate Rule 2521 would be a significant change from the present practice, and this seemed the most efficient means of getting the notice to the defendant.

In addition to the existing Appellate Rule 2521 mailing requirement, several other considerations persuaded the Committee that the Supreme Court's Prothonotary should serve this PCRA notice. These considerations are:

(1) because the number of death penalty cases is relatively few, the additional requirement of service on the defendant will not place an undue burden on the Prothonotary;[4]

(2) the requirement would reduce the likelihood of confusion, delays, and mistakes that otherwise might arise if the Criminal Rules required the clerk of courts or trial judge to give the PCRA notice, while the Appellate Rules required the Supreme Court's Prothonotary to give notice of the judgment;

(3) the Supreme Court is the last body in which there has been an entry of appearance for defense counsel, so the Prothonotary knows who counsel is, and where to locate him or her for purposes of providing notice;

(4) not all defendants are represented at this stage of the proceedings, which would necessitate an alternative procedure for unrepresented defendants, and having two procedures would lead to confusion;

(5) it has been the experience of some members that the Department of Corrections (DOC) does not forward mail from counsel, and the Committee anticipated that mail from the Supreme Court's Prothonotary would receive more respect;[5] and

(6) the reality that service on the attorney unfortunately is no assurance that the defendant will get the notice.[6]

A final consideration examined by the Committee was the impact of Rule 904(F) concerning the appointment of counsel in death penalty cases that was adopted by the Court in 2000. Although in one respect, the immediate appointment of counsel may appear to diminish the need for the notice, because of the timing of the appointment of counsel under Rule 904(F), in fact there is a great need for prompt notice to the defendant.[7] Accordingly, the Committee concluded Rule 904(F) further supports its view that the Prothonotary should serve the defendant because (1) new counsel is likely to be appointed at some point in death penalty cases, which diminishes present counsel's sense of responsibility to ensure the defendant receives the notice, and (2) ensuring the defendant receives prompt notice will encourage the defendant at the earliest time to request counsel, and will promote discussion between the defendant and counsel.

3. *Coordination with Appellate Rules*

Having agreed upon the Supreme Court's Prothonotary as the individual to provide the PCRA notice as part of the Appellate Rule 2521 mailing, the Committee discussed whether this matter should be addressed by the Appellate Rules Committee instead of the Criminal Rules Committee. We considered that this is an area that is an intersection of the scope of the Criminal and Appellate Rules, because the PCRA notice would go out at the completion of direct review, but before collateral review begins. The Committee ultimately agreed that, since the PCRA notice concerned a defendant's rights and requirements under the PCRA and Chapter 9 of the Criminal Rules, and, therefore, was inextricably tied to the PCRA procedures, it was appropriate for the PCRA notice provision to appear in the Criminal Rules.

At the same time, we recognized that because of the close interrelationship with the Appellate Rules, it made sense to coordinate the Rule 900 changes with the Appellate Court Procedural Rules Committee. Given the gravity of death penalty cases, the respective Committees agreed the identical notice requirements should be spelled out in both rules, with correlative cross-references in the Rule 900 Comment and the Rule 2521 Note.

4. *Description of Rule 900(B) Provisions*

New paragraph (B) is titled "Notice in Death Penalty Cases." The introductory paragraph includes an explanation that "[f]or purposes of this rule, 'parties' as used in Pa.R.A.P. 2521 shall include the defendant, defendant's counsel, and the attorney for the Commonwealth." The Committee agreed that this provision was necessary because we had learned during our development of these changes that, although Appellate Rule 2521 provides for

[4] The Committee confirmed that annually there are relatively few death penalty cases for which the Rule 900 notice would be sent. In 1999, there were 42 affirmances of the judgment of the sentence of death, in 2000, there were 19, and, as of the end of July 2001, there had been five.

[5] From communications with the DOC, it is the Committee's understanding that the PCRA notices in death penalty cases would be treated in the same manner as the death warrants; they would be delivered by the institutions' personnel directly to the defendants, and a log of the delivery would be kept for purposes of proof of service.

[6] Point (6) is more difficult to quantify, yet is the most troubling and most difficult to correct. The members noted their experience has been that some attorneys are not as conscientious about communicating with their clients, particularly after the client has been sentenced, even in death penalty cases. The members are concerned both about the delay attorneys might create if required to provide the notice, and also about the potential for lack of any transfer of the notice by the attorneys, thereby resulting in a defendant losing the opportunity to pursue collateral review of the death sentence.

[7] It has been the members' experience since Rule 904(F) became effective, that it is not being followed in every case. We believe by promptly serving the defendant with the PCRA notice, the defendant then will request counsel, thus alerting the trial court to the need to proceed pursuant to Rule 904(F).

the mailing to go to the "parties," the Prothonotary ordinarily does not send the Appellate Rule 2521 information to the defendant, and we wanted to ensure the defendant would receive a copy even if represented.

The required contents of the PCRA notice are set forth in new paragraphs (B)(1)-(4), and include the PCRA's time requirements and the Rule 904 notice of the right to counsel for the first petition. Paragraph (B)(1) gives notice of the one-year filing requirements of the PCRA. For purposes of uniformity, the Committee has used the Rule 901(A) wording to explain this one-year time limit for filing, and has added a Comment explanation with a citation to the relevant statutory provisions, comparable to the Rule 901 Comment. The statutory definition of "final judgment" is set forth in paragraph (B)(2).

Paragraph (B)(3) provides the information about the consequences of failing to file a timely petition, and of failing to raise an issue in the petition. Because the statute is silent concerning the consequences of failing to file a PCRA petition within the one-year time limit, subparagraph (B)(3)(a) explains that the PCRA action may be barred if the defendant fails to file a timely petition, with a citation to 42 Pa.C.S. § 9545(b), which provides the time limitations and the exceptions. Similarly, subparagraph (B)(3)(b) explains that issues that were not raised may be waived, with a citation to 42 Pa.C.S. § 9544(b), which addresses waiver of issues.

The Committee also agreed that the PCRA notice should advise the defendant of the Rule 904 counsel provisions for first petitions. The Committee believes, especially in death penalty cases, that the importance of counsel in the preparation of the first PCRA petition cannot be minimized, and the addition of the Rule 904(F) counsel information to the PCRA notice is vital. Furthermore, the counsel notice is consistent with the reason for providing PCRA notice upon the affirmance of the judgment of a sentence of death—the defendant should receive notice of the information concerning time limits on filing and counsel at the earliest time to ensure that first petitions are timely filed and properly prepared. This we believe, in turn, will minimize, if not eliminate, second and subsequent petitions.

[Pa.B. Doc. No. 02-563. Filed for public inspection April 12, 2002, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Disbarment

Notice is hereby given that Leon Martelli, having been disbarred from the practice of law in the State of New Jersey, the Supreme Court of Pennsylvania issued an Order dated March 26, 2002, disbarring Leon Martelli from the Bar of this Commonwealth. In accordance with 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 and Secretary
The Disciplinary Board of the
Supreme Court of Pennsylvania

[Pa.B. Doc. No. 02-564. Filed for public inspection April 12, 2002, 9:00 a.m.]

Notice of Disbarment

Notice is hereby given that Harry W. Scott, Jr., having been disbarred from the practice of law in the State of New York, the Supreme Court of Pennsylvania issued an Order dated March 26, 2002, disbarring Harry W. Scott, Jr. from the Bar of this Commonwealth. In accordance with 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 and Secretary
The Disciplinary Board of the
Supreme Court of Pennsylvania

[Pa.B. Doc. No. 02-565. Filed for public inspection April 12, 2002, 9:00 a.m.]