

# THE COURTS

## Title 207—JUDICIAL CONDUCT

### PART IV. COURT OF JUDICIAL DISCIPLINE

[207 PA. CODE CHS. 1 AND 4]

Amendment to the Rules of Procedure of the  
Court of Judicial Discipline; Doc. No. 1 JD 94

#### Order

*Per Curiam:*

*And Now*, this 16th day of October, 2002, the Court, pursuant to Article 5, Section 18(b)(4) of the Constitution of Pennsylvania, having adopted amendments to Rules of Procedure 126, 127 and 413, as more specifically hereinafter set forth, *It Is Hereby Ordered*:

That Rules of Procedure 126, 127 and 413 shall become effective immediately.

#### Annex A

### TITLE 207. JUDICIAL CONDUCT

#### PART IV. COURT OF JUDICIAL DISCIPLINE

#### ARTICLE I. PRELIMINARY PROVISIONS

#### CHAPTER 1. GENERAL PROVISIONS

#### DOCUMENTS GENERALLY

#### Rule 126. Continuances.

A request for a continuance shall be made by filing an original motion and one copy with the Clerk, and serving a copy of the motion on the opposing party. The opposing party shall file its answer to the motion within 10 days of service of the motion. The motion shall be decided by the Conference Judge, who may grant the motion, but only for exceptional cause shown.

#### Rule 127. Other Motions.

Other motions not specifically governed by a Rule of this Court shall be served in accordance with Rule 122(E) and (F). The opposing party shall file its answer to the motion within 10 days of service of the motion.

#### ARTICLE II. PROCEEDINGS BASED ON THE FILING OF FORMAL CHARGES

#### CHAPTER 4. PRE-TRIAL PROCEEDINGS

#### OMNIBUS MOTION FOR RELIEF; REPLY; ANSWER

#### Rule 413. Answer.

Within 30 days after the service of a Board Complaint, if no omnibus motion is filed, or within 20 days after the dismissal of all or part of the omnibus motion, the Judicial Officer may file an answer admitting or denying the allegations contained in the Board Complaint. Failure to file an answer shall be deemed a denial of all factual allegations contained in the Board Complaint. Unless otherwise ordered by the Court, no additional pleading will be accepted.

[Pa.B. Doc. No. 02-1939. Filed for public inspection November 1, 2002, 9:00 a.m.]

[207 PA. CODE CH. 7]

Amendment to the Rules of Procedure of the  
Court of Judicial Discipline; Doc. No. 1 JD 94

#### Order

*Per Curiam:*

*And Now*, this 16th day of October, 2002, the Court, pursuant to Article 5, Section 18(b)(4) of the Constitution of Pennsylvania, having adopted an amendment to Rule of Procedure 704, as more specifically hereinafter set forth, *It Is Hereby Ordered* that Rule of Procedure 704 shall become effective immediately.

#### Annex A

### TITLE 207. JUDICIAL CONDUCT

#### PART IV. COURT OF JUDICIAL DISCIPLINE

#### ARTICLE III. OTHER PROCEEDINGS

#### CHAPTER 7. OTHER RELIEF

#### Rule 704. Conference Judge.

The President Judge may appoint a member of the Court to serve as Conference Judge on the case as provided by the rules of [ **this** ] Chapter [ **7** ] **3**.

[Pa.B. Doc. No. 02-1940. Filed for public inspection November 1, 2002, 9:00 a.m.]

## Title 210—APPELLATE PROCEDURE

### PART I. RULES OF APPELLATE PROCEDURE

[210 PA. CODE CHS. 5, 9, 11, 15 and 21]

Order Adopting Amendments to Pa.R.A.P. 511, 903,  
904, 1113, 1512, 2113, 2136 and 2185 and Notes;  
No. 142; Appellate Procedural Rules Doc. No. 1

#### Order

*Per Curiam:*

*Now*, this 18th day of October, 2002, upon the recommendation of the Appellate Court Procedural Rules Committee, the proposal having been published before adoption at 29 Pa.B. 2441—2443 (May 8, 1999) and 29 Pa.B. 2767 (May 29, 1999);

*It Is Ordered* pursuant to Article V, Section 10 of the Constitution of Pennsylvania that the amendments to the Pennsylvania Rules of Appellate Procedure 511, 903, 904, 1113, 1512, 2113, 2136 and 2185 and Notes thereto are adopted in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective December 2, 2002.

Annex A

TITLE 210. APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

ARTICLE I. PRELIMINARY PROVISIONS

CHAPTER 5. PERSONS WHO MAY TAKE OR PARTICIPATE IN APPEALS

MULTIPLE APPEALS

Rule 511. Cross Appeals.

[The discontinuance or, except as prescribed by Rule 903(b) (cross appeals) or by Rule 1113(b) (cross petitions), the taking of an appeal by a party shall not affect the right of appeal of any adverse party.

*Official Note:* Based on former Supreme Court Rule 20B, former Superior Court Rule 10B, and the last sentence of former Commonwealth Court Rule 28. ]

The timely filing of an appeal shall extend the time for any other party to cross appeal as set forth in Rules 903(b) (cross appeals), 1113(b) (cross petitions for allowance of appeal) and 1512(a)(2) (cross petitions for review). The discontinuance of an appeal by a party shall not affect the right of appeal of any other party regardless of whether the parties are adverse.

*Official Note:* The 2002 amendment clarifies the intent of the former rule that the filing of an appeal extends the time within which any party may cross appeal as set forth in Rules 903(b), 1113(b) and 1512(a)(2) and that a discontinuance of an appeal by a party will not affect the right of any other party to file a timely cross appeal under Rules 903(b), 1113(b) or 1512(a)(2) or to otherwise pursue an appeal or cross appeal already filed at the time of the discontinuance. The discontinuance of the appeal at any time before or after a cross appeal is filed will not affect the right of any party to file or discontinue a cross appeal.

The 2002 amendment eliminates the requirement that a party be adverse in order to file a cross appeal and supersedes *In Re Petition of the Board of School Directors of the Hampton Township School District*, 688 A.2d 279 (Pa. Cmwlth. 1997), to the extent that decision requires that a party be adverse to the initial appellant in order to file a cross appeal. See Rule 903(b).

See also Rules 2113, 2136 and 2185 regarding briefs in cross appeals and Rule 2322 regarding oral argument in multiple appeals.

An appellee should not be required to file a cross appeal because the Court below ruled against it on an issue, as long as the judgment granted appellee the relief it sought. See *Ratti v. Wheeling Pittsburgh Steel Corp.*, 758 A.2d 695 (Pa. Super. 2000) and *Hashagen v. Worker's Compensation Appeal Board*, 758 A.2d 276 (Pa. Cmwlth. 2000). To the extent that *Saint Thomas Township Board of Supervisors v. Yckko*, 758 A.2d 755 (Pa. Cmwlth. 2000) is in conflict, it is disapproved.

ARTICLE II. APPELLATE PROCEDURE

CHAPTER 9. APPEALS FROM LOWER COURTS

Rule 903. Time for Appeal.

\* \* \* \* \*

*Official Note:*

\* \* \* \* \*

[Prior to the enactment of the Judicial Code it had been established that the time within which a matter may move from one stage to another within the Unified Judicial System is a procedural matter similar to the deadline for responsive pleadings, etc., and is not a "statute of limitation or repose" as that phrase is used in Section 10(c) of the Judiciary Article. E.g., the Supreme Court had fixed the time for Supreme Court review on certiorari, had prescribed the time for seeking review of sheriffs' and district justices' determinations in execution matters, and of changes of venue in criminal matters, had fixed the time for appeal in certain PCHA matters and had fixed the time for appeal in certain arbitration matters. See former Supreme Court Rule 68 1/2 (416 Pa. XXV); Pa.R.Civ.P. 3206(b) and 3207; Pa.R.C.P.J.P. 1016; former Pa.R.Crim.P. 313(a) (471 Pa. XLIV); Pa.R.Crim.P. 325; former Pa.R.J.A. 2101 (451 Pa. LXXIII). ]

Thus, on both a statutory and constitutional basis, this rule supersedes all inconsistent statutory provisions prescribing times for appeal.

As to Subdivision (b), compare 42 Pa.C.S. § 5571(f) (cross appeals).

A party filing a cross appeal pursuant to Subdivision (b) should identify it as a cross appeal in the notice of appeal to assure that the prothonotary will process the cross appeal with the initial appeal. See also Rule 511 (cross appeals), Rule 2113 (Reply Brief), Rule 2136 (Briefs in Cases of Cross Appeals), Rule 2185 (Time for Serving and Filing of Briefs) and Rule 2322 Cross and Separate Appeals).

*In Re Petition of the Board of School Directors of the Hampton Township School District*, 688 A.2d 279 (Pa. Cmwlth. 1997), the Commonwealth Court panel held that Rule 903(b) does not extend the appeal period for any other party to file an appeal unless the party is "adverse." Under the 2002 amendment to Rule 511, the requirement that a party be adverse in order to file a cross appeal is eliminated. Once a notice of appeal is filed by one party, any other party may file a cross appeal within fourteen days.

\* \* \* \* \*

Rule 904. Content of the Notice of Appeal.

\* \* \* \* \*

*Official Note:*

\* \* \* \* \*

A party filing a cross appeal should identify it as a cross appeal in the notice of appeal to assure that the prothonotary will process the cross appeal with the initial appeal. See also Rules 2113, 2136 and 2185 regarding briefs in cross appeals and Rule 2322 regarding oral argument in multiple appeals.

CHAPTER 11. APPEALS FROM COMMONWEALTH COURT AND SUPERIOR COURT

PETITION FOR ALLOWANCE OF APPEAL

Rule 1113. Time for Petitioning for Allowance of Appeal.

\* \* \* \* \*

*Official Note:* See Note to Rule 903 (time for appeal).

A party filing a cross petition for allowance of appeal pursuant to Subdivision (b) should identify it as a cross petition to assure that the prothonotary will process the cross petition with the initial petition. See also Rule 511 (cross appeals), Rule 2136 (Briefs in Cases Involving Cross Appeals) and Rule 2322 Cross and Separate Appeals).

[ Explanatory Note—1979 ]

[ In order to afford the Superior Court and the Commonwealth Court sufficient time to act upon an application for reargument which shows sufficient merit to call for an answer, the time for filing a petition for allowance of appeal in such cases is extended by 30 days. ]

CHAPTER 15. JUDICIAL REVIEW OF GOVERNMENTAL DETERMINATIONS

PETITION FOR REVIEW

Rule 1512. Time for Petitioning for Review.

\* \* \* \* \*

(b) *Special provisions*—A petition for review of:

(1) A determination of the Department of Community Affairs in any matter arising under the Local Government Unit Debt Act [ (53 P. S. § 6780-1 et seq.) ] shall be filed within 15 days after entry of the order or the date the determination is deemed to have been made, when no order has been entered.

\* \* \* \* \*

*Official Note:* [ See note to Rule 903 (time for appeal). ] Rule 102 defines a “quasijudicial order” as “an order of a government unit, made after notice and opportunity for hearing, which is by law reviewable solely upon the record made before the government unit, and not upon a record made in whole or in part before the reviewing court.”

See Note to Rule 903 (Time for Appeal). A party filing a cross petition for review pursuant to Subdivision (a)(2) should identify it as a cross petition for review to assure that the prothonotary will process the cross petition for review with the initial petition for review. See also Rule 511 (Cross Appeals), Rule 2136 (Briefs in Cases of Cross Appeals) and Rule 2322 (Cross and Separate Appeals).

\* \* \* \* \*

CHAPTER 21. BRIEFS AND REPRODUCED RECORD

CONTENT OF BRIEFS

Rule 2113. Reply Brief.

(a) *General rule.*—In accordance with Rule 2185(a) [ , ] (Time for Serving and Filing Briefs; General Rule), the appellant may file a brief in reply to matters raised by appellee’s brief and not previously [ raised ] addressed in appellant’s brief [ , and if ]. If the appellee

has cross [ - ] appealed, the appellee may file a similarly limited reply brief. [ in reply to the response of the appellant to the issues presented by the cross-appeal. ]

\* \* \* \* \*

[ (c) *Cross appeals.*—A reply brief may be filed by the appellant as prescribed in Rule 2136 (briefs in cases involving cross appeals). ]

[ (d) ] (c) *Other Briefs.*—No further briefs may be filed except with leave of court.

*Official Note:* [ The 1987 amendment grants a general right to file a reply brief in every case to matters not previously raised in appellant’s brief. Appellees may file a similarly limited reply brief to the response of the appellant to the issues presented by the cross-appeal. The length of a reply brief is provided in Rule 2135(b). ] An appellant now has a general right to file a reply brief. The scope of the reply brief is limited, however, in that such brief may only address matters raised by appellee and not previously addressed in appellant’s brief. No subsequent brief may be filed unless authorized by the court.

The length of a reply brief is set by Rule 2135 (length of briefs). The due date for a reply brief is found in Rule 2185(a) (time for serving and filing briefs).

Where there are cross appeals, the deemed or designated appellee may file a similarly limited reply brief addressing issues in the cross appeal. See also Rule 2136 (briefs in cases involving cross appeals).

Rule 2136. Briefs in Cases Involving Cross Appeals.

(a) *Designation of parties in cross appeals.* If a cross appeal is filed, the plaintiff or moving party in the court or other government unit below shall be deemed the appellant for the purposes of this chapter and Chapter 23 (sessions and argument), unless the parties otherwise agree or the appellate court otherwise orders. Where [ the nature of the matter is such that ] the identity of the appellant for the purposes of this chapter and Chapter 23 is not readily apparent, the prothonotary of the appellate court shall designate the appellant for the purposes of [ this chapter and Chapter 23 ] those two chapters when giving notice under Rule 1934 (filing of the record). [ The brief of the appellee shall contain the issue and argument involved in the cross appeal, as well as the answer to the brief of the appellant, and the appellant may file a brief in answer to the brief of the appellee on the cross appeal. ]

(b) *Order of briefs.* The deemed or designated appellant shall file its principal brief on the merits of its appeal in accordance with the briefing schedule. The deemed or designated appellee shall then file a brief that addresses (i) the arguments advanced in the appellant’s brief and (ii) the merits of the cross appeal. Thereafter, the appellant shall file its second brief, which shall (i) reply to issues raised in the appellee’s brief and not previously addressed in appellant’s principal brief and (ii) respond to the issues raised by appellee regarding the cross appeal. The appellee may then file a reply brief limited to issues raised by the appellant that

were not previously addressed by the appellee in its principal brief on the merits of the cross appeal.

*Official Note:* [ Ordinarily there will be three briefs in a case involving a cross appeal: appellant's main brief, appellee's main brief, and appellant's reply brief directed to the issues on the cross appeal. However, Rule 2113 permits a fourth brief; appellee's reply to appellant's answer on the cross appeal. ]

[ Explanatory Note—1979 ]

[ The appellate prothonotary is directed to designate the party who shall file the first brief in cases involving cross appeals where the identity of the "moving party" below is not readily apparent. ]

For cross appeals, Rule 2136 provides both a method for determining which party shall file the first brief and a description of the subsequent briefs. Either party may initiate the process described in Subdivision (a) by notifying the prothonotary by letter that the prothonotary must designate the appellant, that is the party to file the first brief, or that the parties have agreed which party shall be the appellant.

With regard to the briefing process, when there are cross appeals, there may be up to four briefs: (1) the deemed or designated appellant's principal brief on the merits of the appeal; (2) the deemed or designated appellee's brief responding to appellant's arguments and presenting the merits of the cross appeal; (3) the appellant's second brief replying in support of the appeal and responding to the issues raised in the cross appeal; and (4) appellee's second brief in support of the cross appeal.

Thus, the deemed or designated appellee's first brief (Brief No. 2 as described above) functions as both a response to the arguments advanced by the appellant in the first appeal and the primary brief on the merits of the cross appeal. Similarly, the deemed or designated appellant's second brief (Brief No. 3 as described above) serves the dual purposes of responding to the merits of the arguments in the cross appeal and replying to arguments raised in opposition to the first appeal. See generally Rule 2111 (brief of the appellant), Rule 2112 (brief of the appellee), and Rule 2113(a) (regarding reply briefs).

Rule 2135 (length of briefs) establishes the length of the various briefs. Only appellee's second brief is considered a reply brief subject to the lesser page limits. There is no provision for a longer principal brief on the merits in cross appeal situations.

Rule 2185(a) (time for serving and filing briefs) provides that appellant's second brief shall be served within 30 days after service of the preceding brief. Appellee's second brief is due 14 days later.

Rule 2322 (cross and separate appeals) addresses oral argument in cross appeals.

**FILING AND SERVICE**

**Rule 2185. Time for Serving and Filing Briefs**

(a) *General Rule.*—The appellant shall serve appellant's brief not later than the date fixed pursuant to Subdivision (b) of this rule, or within 40 days after the date on which the record is filed, if no other date is so fixed. The appellee shall serve appellee's brief within 30

days after service of appellant's brief and reproduced record if proceeding under Rule 2154(a). A party may serve a reply brief permitted by these rules within 14 days after service of the preceding brief but, except for good cause shown, a reply brief must be served and filed so as to be received at least three days before argument. **In cross appeals, the second brief of the deemed or designated appellant shall be served within 30 days of service of the deemed or designated appellee's first brief.** Except as prescribed by Rule 2187(b) (advance text of briefs), each brief shall be filed not later than the last day fixed by or pursuant to this rule for its service.

\* \* \* \* \*

*Official Note:*

\* \* \* \* \*

The 2002 amendment recognizes that in cross appeals the deemed or designated appellant's second brief is more extensive than a reply brief and, therefore may require more than 14 days to prepare. See Rule 2136 (briefs in cases involving cross appeals).

**Explanatory Comment to Recommendation No. 4 of 2002 Amendments to Pa.R.A.P. 511, 903, 904, 1113, 1512, 2113, 2136 and 2185 and Notes**

*Introduction:* The Appellate Rules contemplate three "multiple appeal" situations in which more than one party may wish to challenge individually an order of a court. These are: cross appeals; cross petitions for review; and cross petitions for allowance of appeal. The proposed amendments are intended to simplify and clarify the terminology and procedures in such cases. The 2002 amendments do not create a right to file new briefs or affect the right to file briefs heretofore permitted by the Appellate Rules.

*Rule 511 (Cross Appeals).*

The 2002 amendment clarifies the intent of the former rule that the filing of an appeal extends the time within which any party may cross appeal as set forth in Rules 903(b), 1113(b) and 1512(a)(2) and that a discontinuance of an appeal by a party will not affect the right of any other party to file a timely cross appeal under Rules 903(b), 1113(b) or 1512(a)(2) or to otherwise pursue an appeal or cross appeal already filed at the time of the discontinuance. The discontinuance of the appeal at any time before or after a cross appeal is filed will not affect the right of any party to file or discontinue a cross appeal. The 2002 amendment supersedes *In Re: Petition of the Board of School Directors of the Hampton Township School*, 688 A.2d 279 (Pa. Cmwlth. 1997) to the extent that decision requires that a party be adverse to the initial appellant in order to file a cross appeal.

The Note to Rule 511 is also amended to advise that an appellee should not be required to file a cross appeal because the court below ruled against it on an issue, as long as the judgment granted appellee the relief it sought.

*Rule 903 (Time for Appeal).*

The 2002 amendment to the Note to Rule 903 includes a suggestion, for the aid of the appellate court filing office, that a party identify a cross appeal in its notice of appeal. This will assure that the appeals are linked for processing purposes. The proposed amendment to the note also cross references Rule 511 (Cross Appeals), Rule 2136 (briefs in cases of cross appeals) and Rule 2322

(Cross and Separate Appeals). This is for the convenience of counsel and the parties to alert them to the unique aspects of cross appeal or petition practice. See also conforming amendments to the Notes to Rules 1113 and 1512.

The Explanatory Comment—1979, which is simply historical reference, is deleted as unnecessary.

*Rule 1113 (Time for Petitioning for Allowance of Appeal).*

See explanatory comment to Rule 903 (Time for Appeal).

*Rule 1512 (Time for Petitioning for Review).*

See explanatory comment to Rule 903 (Time for Appeal).

*Rule 2113 (Reply Brief).*

The 2002 amendment deletes subdivision (c), an obsolete cross reference to a reply brief in cross appeals. The briefs permitted and proper sequence in cases involving cross appeals are explained in the Note to Rule 2136.

*Rule 2136 (Briefs in Cases Involving Cross Appeals).*

In a single party appeal or petition situation, there are three briefs: appellant's principal brief on the merits, appellee's principal brief on the merits and appellant's reply brief. In a cross appeal or petition situation, there are four briefs, because the designated appellant's second brief must serve two purposes, that is, it is the appellant's reply brief (a brief limited in scope by Rule 2113) and, simultaneously, the appellant's principal brief on the merits of the cross appeal or petition. The appellee may then file a "reply" brief on the merits of the cross appeal, that is, a reply brief in the appeal filed by the appellee. This procedure is explained in the proposed amendment to the Note as follows:

When there are cross appeals, there may be up to four briefs: (1) the deemed or designated appellant's principal brief on the merits of the appeal; (2) the deemed or designated appellee's brief responding to appellant's arguments and presenting the merits of the cross appeal; (3) the appellant's second brief replying in support of the appeal and responding to the merits of the cross appeal; and (4) appellee's reply brief in the cross appeal.

*Rule 2185 (Time for Serving and Filing Briefs).*

The existing rule is unclear as to the due date for the filing of the designated appellant's second brief (Brief No. 3 as described above). The 2002 amendment provides that brief is due thirty days after the deemed appellee's brief (Brief No. 2) as described above.

[Pa.B. Doc. No. 02-1941. Filed for public inspection November 1, 2002, 9:00 a.m.]

## Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CH. 2]

Order Amending Rules 221 and 222; No. 287  
Criminal Procedural Rules; Doc. No. 2

The Criminal Procedural Rules Committee has prepared a Final Report explaining the amendments to Rules of Criminal Procedure 221 (Summoning Investigating

Grand Jurors) and 222 (Composition and Organization of the Investigating Grand Jury) and highlighting the Committee's considerations in formulating the changes. The amendments align these rules with the recent changes to 42 Pa.C.S. § 4545(a) concerning the number of alternate grand jurors. The Final Report follows the Court's Order.

### Order

*Per Curiam:*

Now, this 17th day of October, 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 Rules of Criminal Procedure 221 and 222 are amended in the following form.

This Order shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective January 1, 2003.

### Annex A

#### TITLE 234. RULES OF CRIMINAL PROCEDURE

##### CHAPTER 2. INVESTIGATIONS

##### PART B(1). Investigating Grand Juries

##### Rule 221. Summoning Investigating Grand Jurors.

(A) After issuing an order summoning an investigating grand jury, the court shall order the officials designated by law to summon prospective jurors to summon not less than [ 30 ] 38 persons eligible by law to serve as grand jurors.

\* \* \* \* \*

### Comment

See 42 Pa.C.S. §§ 4521—4524 for the Judicial Code provisions on the selection of prospective jurors.

The number of persons initially summoned for an investigating grand jury has been fixed at no less than [ 30 ] 38 to accommodate the requirements for a maximum of [ 7 ] 15 alternates as specified in Rule 222. See also 42 Pa.C.S. § 4545(a) (investigating grand jury shall have a minimum of 7 and not more than 15 alternates).

[ See 42 Pa.C.S. §§ 4521—4524 for the Judicial Code provisions on the selection of prospective jurors. ]

**Official Note:** Rule 252 adopted June 26, 1978, effective January 9, 1979; amended January 28, 1983, effective July 1, 1983; amended August 12, 1993, effective September 1, 1993; renumbered Rule 221 and amended March 1, 2000, effective April 1, 2001; amended October 17, 2002, effective January 1, 2003.

*Committee Explanatory Reports:*

\* \* \* \* \*

**Final Report explaining the October 17, 2002 amendments concerning the number of alternate grand juror published with the Court's Order at 32 Pa.B. 5407 (November 2, 2002).**

**Rule 222. Composition and Organization of the Investigating Grand Jury.**

(A) There shall be impaneled initially to serve on an investigating grand jury 23 legally qualified jurors [ plus

7 ] and a minimum of 7 and not more than 15 legally qualified alternates. During its term, the investigating grand jury shall consist, as provided hereinafter, of not less than 15 nor more than 23 legally qualified jurors, and the remaining alternates.

(B) When an investigating grand jury is to be impaneled and more than 30 persons attend for service and qualify, the judge in charge of the grand jury shall excuse a sufficient number of persons to reduce the panel to not more than 23 persons plus **the minimum of 7 but not more than 15** alternates. After prospective grand jurors have been excused for cause, the reduction to **the minimum of 30 or maximum of 38** shall take place by random drawing in the following manner: 30 to 38 jurors shall be selected by random drawing, of which the first 23 jurors so selected shall be designated permanent grand jurors and the next 7 to 15 jurors shall be designated alternate jurors 1, 2, 3, and so on to a maximum of 15 [ through 7 ].

\* \* \* \* \*

**Comment**

The initial number of jurors impaneled should be at least 30, but no more than 38, to accommodate the minimum of 7 and maximum of 15 alternate jurors. See 42 Pa.C.S. § 4545(a) (investigating grand jury shall have a minimum of 7 and not more than 15 alternates).

The alternate jurors are impaneled with the permanent grand jurors and hear all testimony, but are excluded from taking part in or from being present at deliberations, votes, or preparation of presentments or reports.

If, prior to the impaneling of the investigating grand jury, the number of prospective grand jurors initially summoned falls below [ 30 ] the minimum needed to seat permanent and alternate grand jurors by reason of excuses for cause, additional prospective grand jurors are to be summoned in the manner provided in these rules. See Rule 221. Any grand jurors already selected to serve on the investigating grand jury must remain.

\* \* \* \* \*

**Official Note:** Rule 253 adopted June 26, 1978, effective January 9, 1979; amended October 22, 1981, effective January 1, 1982; amended August 12, 1993, effective September 1, 1993; renumbered Rule 222 and amended March 1, 2000, effective April 1, 2001; amended October 17, 2002, effective January 1, 2003.

*Committee Explanatory Reports:*

\* \* \* \* \*

**Final Report explaining the October 17, 2002 amendments concerning the number of alternate grand jurors published with the Court's Order at 32 Pa.B. 5407 (November 2, 2002).**

**FINAL REPORT <sup>1</sup>  
Amendments to Pa.Rs.Crim.P. 221 and 222**

**Number of Alternate Grand Jurors**

On October 17, 2002, effective January 1, 2003, upon the recommendation of the Criminal Procedural Rules Committee, the Court amended Rules of Criminal Procedure 221 (Summoning Investigating Grand Jurors) and 222 (Composition and Organization of the Investigating

<sup>1</sup> 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.

Grand Jury), aligning these rules with the recent changes to 42 Pa.C.S. § 4545(a) concerning the number of alternate jurors.

**I. BACKGROUND**

In 2000, 42 Pa.C.S. § 4545(a) was amended changing the number of alternate jurors from "seven" to "a minimum of seven and not more than 15." This change created an inconsistency between the statute and Rule 222. To avoid possible confusion that the inconsistency could generate, and because there has been an interplay between the investigating grand jury rules and the statutory provisions for the investigating grand jury since the rules' inception in 1978,<sup>2</sup> the Committee agreed changes comparable to those made to 42 Pa.C.S. § 4545(a) were necessary for Rule 222.

In view of this statutory and rule interplay, and agreeing there did not appear to be any reason to deviate from the number of alternate grand jurors established in 42 Pa.C.S. § 4545(a), the Committee proposed that Rules 221 and 222 be amended to bring these rules in line with the recent changes to 42 Pa.C.S. § 4545(a) concerning the number of alternate jurors.

**II. DISCUSSION OF PROPOSED RULE CHANGES**

*A. Rule 221*

In the text of Rule 221(A) and the Comment, the number "30" has been changed to "38," and in the Comment, the reference to "7" has been changed to "a maximum of 15." These changes acknowledge the practicalities of the investigating grand jury selection process. It is more efficient and promotes judicial economy if the provisions of Rule 221 accommodate the statutory requirements of 23 regular jurors and "not more than 15 alternates," than merely providing for the minimum number of alternates permitted by statute. A cross-reference to 42 Pa.C.S. § 4545(a) has been added to this paragraph of the Rule 221 Comment.

Finally, in a "housekeeping" measure, the current last paragraph of the Rule 221 Comment has been move to be the first paragraph, so the general cross-reference concerning the Judicial Code's provisions on the selection of prospective jurors precedes the paragraph discussing specifics about Rule 221.

*B. Rule 222*

Rule 222(A) and (B) has been amended by the addition of the statutory language "minimum of 7 but not more than 15." In addition, to alert the supervising judge to the discretion afforded him or her by the statute concerning the number of alternate jurors, paragraph (B) has been amended to conform the numbers with the statute's "minimum" and "maximum" provisions. Similarly, the first paragraph of the Rule 222 Comment has been revised to conform with the statutory changes, and a cross-reference to the statute has been added.

Finally, the third paragraph of the Comment has been revised by the deletion of "of 30" and the addition of "needed to seat permanent and alternate grand jurors,"

<sup>2</sup> The Committee's Report explaining the first set of Investigating Grand Jury Rules was published at 8 Pa.B. 1517 (6/3/78), and the Court's Order adopting these new rules was published at 8 Pa.B. 2048 (7/22/78). Subsequently, because the Legislature was working on the Investigating Grand Jury Act, the Court vacated the Order's effective date. In November 1978, the Investigating Grand Jury Act became effective, and the Committee reviewed the Act and the rules and proposed some changes to the rules to conform them with the Act. On January 9, 1979, the Court vacated and superseded the November 1978 Order and promulgated the rules as recommended by the Committee. Subsequently, when there have been statutory changes that implicate provisions of the rules, the Committee has recommended rule changes to the Court, explaining the rule changes as being necessary to "maintain[ing] consistency between the Act and the Rules" and "conform the language of the rules to that of the Investigating Grand Jury Act." See, e.g., 11 Pa.B. 1573 (5/9/81).

because under the new statutory scheme, the supervising judge will establish whether the minimum number of prospective grand jurors initially summoned is a minimum of 30 or some other number up to 38.

[Pa.B. Doc. No. 02-1942. Filed for public inspection November 1, 2002, 9:00 a.m.]

---

## DISCIPLINARY BOARD OF THE SUPREME COURT

### Notice of Suspension

Notice is hereby given that William B. Sparks having been suspended from the practice of law in the State of

New Jersey for a period of three months, the Supreme Court of Pennsylvania issued an Order dated October 16, 2002 suspending William B. Sparks from the practice of law in this Commonwealth for a period of three months, effective November 15, 2002. 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. 02-1943. Filed for public inspection November 1, 2002, 9:00 a.m.]

---