

# THE COURTS

## Title 231—RULES OF CIVIL PROCEDURE

### PART I. GENERAL

[ 231 PA. CODE CH. 1920 ]

#### Amendments to the Rules of Civil Procedure Relating to Domestic Relations Matters; Recommendation 128 Republication

The Domestic Relations Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend the Rules of Civil Procedure relating to domestic relations matters as set forth herein. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

Notes and explanatory comments which appear with proposed amendments have been inserted by the committee for the convenience of those using the rules. Reports, notes and comments will not constitute part of the rules and will not be officially adopted or promulgated by the Supreme Court.

The committee solicits and welcomes comments and suggestions from all interested persons prior to submission of this proposal to the Supreme Court of Pennsylvania. Please submit written comments no later than Friday, October 3, 2014 directed to:

Patricia A. Miles, Esquire  
Counsel, Domestic Relations Procedural Rules Committee  
Pennsylvania Judicial Center  
601 Commonwealth Avenue, Suite 6200  
P. O. Box 62635  
Harrisburg, PA 17106-2635  
Fax: 717 231-9531  
E-mail: domesticrules@pacourts.us

Deleted material is bold and [bracketed]. New material is bold.

*By the Domestic Relations  
Procedural Rules Committee*

CAROL S. MILLS McCARTHY,  
*Chair*

#### Annex A

### TITLE 231. RULES OF CIVIL PROCEDURE

#### PART I. GENERAL

#### CHAPTER 1920. ACTIONS OF DIVORCE OR FOR ANNULMENT OF MARRIAGE

*(Editor's Note: The following rule is new and printed in regular type to enhance readability.)*

#### Rule 1920.17. Discontinuance. Withdrawal of Complaint.

(a) The plaintiff may withdraw the divorce complaint and discontinue the divorce action by praecipe that includes a certification that:

- (1) no ancillary claims have been asserted by either party; and
- (2) grounds for divorce have not been established.

(b) A party may withdraw a claim of equitable distribution only:

(1) by written consent of both parties filed with the court, or

(2) after filing and serving on the other party a written notice that the party intends to withdraw the claim of equitable distribution 20 days after service of the notice.

(c) The notice required in subdivision (b) above shall be substantially in the following form:

(Caption)

#### NOTICE OF INTENTION TO WITHDRAW CLAIM FOR EQUITABLE DISTRIBUTION

TO: \_\_\_\_\_

(PLAINTIFF) (DEFENDANT)

(Plaintiff) (Defendant) intends to withdraw (his) (her) pending claim for equitable distribution of property twenty days after the service of this notice. Unless you have already filed with the court a written claim for equitable distribution, you should do so within twenty days of the service of this notice, or you may lose the right to assert a claim for equitable distribution. If a decree in divorce is entered and you have not filed a claim for equitable distribution, you will forever lose the right to equitable distribution of property.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER. IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Telephone)

(d) In the event one party dies during the course of the divorce proceeding, no decree of divorce has been entered and grounds for divorce have been established, neither the complaint nor economic claims can be withdrawn except by the consent of the surviving spouse and the personal representative of the decedent. If there is no agreement, the economic claims shall be determined pursuant to the Divorce Code. If no personal representative has been appointed within one year of the decedent's death, then, upon motion of the surviving party, the court may allow the withdrawal or dismissal of the complaint and/or any pending economic claims.

**Official Note:** To the extent that *Tosi v. Kizis*, 85 A.3d 585 (Pa. Super. 2014) holds that 23 Pa.C.S. § 3323(d.1) does not prevent the plaintiff in a divorce action from discontinuing the divorce action following the death of the defendant after grounds for divorce have been established, it is superseded.

#### Rule 1920.31. Joinder of Related Claims. Child and Spousal Support. Alimony. Alimony Pendente Lite. Counsel Fees. Expenses.

(a)(1) [ Within thirty days after the service of the pleading or petition containing ] When either

**party has raised** a claim for alimony or counsel fees, costs and expenses, each party shall file a true copy of the most recent federal income tax return, pay stubs for the preceding six months, a completed Income Statement in the form required at Rule 1910.27(c)(1) and a completed Expense Statement in the form required by Rule 1910.27(c)(2)(B). **A party may not file a motion for the appointment of a master or a request for court action regarding alimony or counsel fees, cost and expenses until at least 30 days following the filing of that party's tax returns, Income Statement and Expense Statement. The other party shall file the tax returns, Income Statement and Expense Statement within 20 days of service of the moving party's documents.** If a claim for child support, spousal support or alimony pendente lite is raised in a divorce complaint, no expense form is needed in a support action that can be decided pursuant to the support guidelines unless a party claims unusual needs or unusual fixed expenses or seeks deviation pursuant to Rule 1910.16-5 or apportionment of expenses pursuant to Rule 1910.16-6.

\* \* \* \* \*

**Rule 1920.33. Joinder of Related Claims. Distribution of Property. Enforcement.**

(a) **[ Within ninety days after service of a pleading or petition containing a claim for determination and distribution of property under Section 3502 of the Divorce Code, each ]** Each party shall file an inventory specifically describing all property owned or possessed at the **[ time the action was commenced ]** date of separation. **A party may not file a motion for the appointment of a master or a request for court action regarding equitable distribution until at least 30 days following the filing of that party's inventory. The other party shall file the inventory within 20 days of service of the moving party's inventory.** The inventory shall set forth as of the date of **[ the filing of the complaint ]** separation:

(1) a specific description of all marital property in which either or both have a legal or equitable interest individually or with any other person and the name of such other person **and all marital liabilities; [ and ]**

(2) a specific description of all property **[ in which a spouse has a legal or equitable interest which is claimed to be excluded from marital property and the basis for such exclusion. ]** or liabilities that are claimed to be non-marital and the basis for such claim; and

(3) **the estimated value of each item of marital and non-marital property and the amount of each marital and non-marital liability.**

**Official Note:** Subdivision (c) of this rule provides sanctions for failure to file an inventory as required by this subdivision. An inventory **[ filed within the ninety day period ]** may be incomplete where the party filing it does not know of all of the property involved in the claim for equitable distribution. Consequently, the rule does not contemplate that a party be precluded from presenting testimony or offering evidence as to property omitted from the inventory. The omission may be supplied by the pre-trial statement required by subdivision (b).

\* \* \* \* \*

**Rule 1920.42. Affidavit and Decree under § 3301(c) or § 3301(d)(1) of the Divorce Code. Notice of Intention to Request Entry of Divorce Decree in § 3301(c) and § 3301(d)(1)(i) Divorces. Counteraffidavit.**

(a) If a complaint has been filed requesting a divorce on the ground of irretrievable breakdown and

(1) both parties have filed an affidavit under § 3301(c) of the Divorce Code substantially in the form prescribed by Rule 1920.72(b), or

(2) either party has filed a § 3301(d) affidavit under § 3301(d) of the Divorce Code substantially in the form prescribed by Rule 1920.72(d) **[ the averments of which ]** and has served it upon the other party along with a form counter-affidavit and the other party has admitted or failed to deny **the averments of the § 3301(d) affidavit,**

the prothonotary on praecipe in the form prescribed by Rule 1920.73(b) shall transmit the record to the court, which shall review the record and enter an appropriate decree. No master shall be appointed.

\* \* \* \* \*

(d)(1) Except as provided in (e), no decree shall be entered by the court under § 3301(c) or § 3301(d)(1)(i) of the Divorce Code unless a notice of intention to request entry of divorce decree, substantially in the form prescribed by Rule 1920.73(a), was mailed or delivered to the attorney of record of the party against whom the decree is to be entered or, if there is no attorney of record, to the party, **along with a form counter-affidavit if none has been filed,** at least twenty days prior to the date of the filing of the praecipe to transmit the record. **[ The ]** A copy of the praecipe, which shall state the date and manner of service of the notice, **[ a copy of which ]** shall be attached.

(2) **[ If the party against whom the decree is to be entered has no attorney of record, the notice required by subdivision (d)(1) shall be accompanied by a form counter-affidavit substantially in the form prescribed by Rule 1920.72(e). ]** The affidavit required under § 3301(d) of the Divorce Code shall be filed with the prothonotary and served upon the other party, along with another form counter-affidavit. The moving party must wait a minimum of 20 days after service of the § 3301(d) affidavit before serving the Notice of Intention to File Praecipe to Transmit the Record and counter-affidavit or filing the waiver of notice pursuant to Rule 1920.72(c).

\* \* \* \* \*

**Rule 1920.54. Hearing by Master. Report. Related Claims.**

(a) If claims for child support, alimony pendente lite, or counsel fees and expenses have been referred to a master pursuant to Rule 1920.51(a), the master's report shall contain separate sections captioned "Child Support," "Alimony Pendente Lite," or "Counsel Fees and Expenses" as appropriate. The report may be in narrative form stating the reasons for the recommendation and shall include a proposed order stating

- (1) the amount of support or alimony pendente lite;
- (2) by and for whom it shall be paid; and
- (3) the effective date of the order.

**[ The Income and Expense Statements shall be attached to the report. ]**

(b) If a claim for alimony has been referred to a master, the report shall contain a separate section captioned "Alimony." The report shall conform to the requirements of subdivision (a) and, in addition, shall set forth

\* \* \* \* \*

**Rule 1920.55-2. Master's Report. Notice. Exceptions. Final Decree.**

(a) After conclusion of the hearing, the master shall:

(1) file the record and the report within

(i) twenty days in uncontested actions or;

(ii) thirty days **[ after ] from the last to occur of the receipt of the transcript by the master or close of the record** in contested actions; and

\* \* \* \* \*

**Rule 1920.72. Form of Complaint. Affidavit under § 3301(c) or § 3301(d) of the Divorce Code. Counter-affidavit. Waiver of Notice of Intention to Request Decree under § 3301(c) and § 3301(d).**

\* \* \* \* \*

(e)(1) The **[ counteraffidavit ] counter-affidavit** prescribed by Rule 1920.42(c)(2) shall be substantially in the following form in a § 3301(c) divorce:

(Caption)

COUNTER-AFFIDAVIT UNDER § 3301(c) OF THE DIVORCE CODE

I wish to claim economic relief which may include alimony, division of property, lawyer's fees or expenses or other important rights.

I understand that I must file my economic claims with the prothonotary in writing and serve them on the other party. If I fail to do so before the date set forth on the Notice of Intention to Request Divorce Decree, the divorce decree may be entered without further notice to me, and I shall be unable thereafter to file any economic claims.

I verify that the statements made in this **[ counteraffidavit ] counter-affidavit** are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Date: \_\_\_\_\_ (PLAINTIFF) (DEFENDANT)

NOTICE: If you do not wish to claim economic relief, you should not file this **[ counteraffidavit ] counter-affidavit**.

(2) The counter-affidavit prescribed by Rule 1920.42(d)(2) shall be substantially in the following form in a § 3301(d) divorce:

(Caption)

COUNTER-AFFIDAVIT UNDER § 3301(d) OF THE DIVORCE CODE

1. Check either (a) or (b):

(a) I do not oppose the entry of a divorce decree.

(b) I oppose the entry of a divorce decree because (Check (i), (ii), (iii) or **[ both ] all**):

(i) The parties to this action have not lived separate and apart for a period of at least two years.

(ii) The marriage is not irretrievably broken.

(iii) **There are economic claims pending.**

(2) Check **[ either (a) or (b) ] (a), (b) or (c)**:

(a) I do not wish to make any claims for economic relief. I understand that I may lose rights concerning alimony, division of property, lawyer's fees or expenses if I do not claim them before a divorce is granted.

(b) I wish to claim economic relief which may include alimony, division of property, lawyer's fees or expenses or other important rights.

**[ I understand that in addition to checking (b) above, I must also file all of my economic claims with the prothonotary in writing and serve them on the other party. If I fail to do so before the date set forth on the Notice of Intention to Request Divorce Decree, the divorce decree may be entered without further notice to me, and I shall be unable thereafter to file any economic claims. ]**

**I UNDERSTAND THAT IN ADDITION TO CHECKING (b) ABOVE, I MUST ALSO FILE ALL OF MY ECONOMIC CLAIMS WITH THE PROTHONOTARY IN WRITING AND SERVE THEM ON THE OTHER PARTY. IF I FAIL TO DO SO BEFORE THE DATE SET FORTH ON THE NOTICE OF INTENTION TO REQUEST DIVORCE DECREE, THE DIVORCE DECREE MAY BE ENTERED WITHOUT FURTHER NOTICE TO ME, AND I SHALL BE UNABLE THEREAFTER TO FILE ANY ECONOMIC CLAIMS.**

(c) **Economic claims have been raised and are not resolved.**

I verify that the statements made in this counter-affidavit are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

\* \* \* \* \*

**Rule 1920.75. Form of Inventory.**

The inventory required by Rule 1920.33(a) shall be substantially in the following form:

(Caption)

INVENTORY OF

\_\_\_\_\_  
(Plaintiff) (Defendant) files the following inventory of all property owned or possessed by either party at the **[ time this action was commenced ] date of separation** and all property transferred within the preceding three years.

(Plaintiff) (Defendant) verifies that the statements made in this inventory are true and correct. (Plaintiff) (Defendant) understands that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

\_\_\_\_\_  
(Plaintiff) (Defendant)

ASSETS OF THE PARTIES

(Plaintiff) (Defendant) marks on the list below those items applicable to the case at bar and itemizes the assets on the following pages.

\* \* \* \* \*

( ) 24. [ **Debts due, including loans, mortgages held** ] **Accounts receivable, including loans and mortgages payable to a party**

( ) 25. Household furnishings and personalty (include

as a total category and attach itemized list if distribution of such assets is in dispute)

( ) 26. Other

MARITAL PROPERTY

(Plaintiff) (Defendant) lists all marital property in which either or both spouses have a legal or equitable interest individually or with any other person as of the date [ **this action was commenced** ] of separation:

<i>Item Number</i>	<i>Description of Property</i>	<i>Names of All Owners</i>	<i>Estimated Value at Date of Separation</i>
--------------------	--------------------------------	----------------------------	----------------------------------------------

[ **NON MARITAL** ] NON-MARITAL PROPERTY

(Plaintiff) (Defendant) lists all property in which a spouse has a legal or equitable interest which is claimed to be excluded from marital property:

<i>Item Number</i>	<i>Description of Property</i>	<i>Reason for Exclusion</i>	<i>Estimated Value at Date of Marriage</i>	<i>Estimated Value at Date of Separation</i>
--------------------	--------------------------------	-----------------------------	--------------------------------------------	----------------------------------------------

PROPERTY TRANSFERRED

<i>Item Number</i>	<i>Description of Property</i>	<i>Date of Transfer</i>	<i>Consideration</i>	<i>Person to Whom Transferred</i>	<i>Estimated Value at Date of Separation</i>
--------------------	--------------------------------	-------------------------	----------------------	-----------------------------------	----------------------------------------------

LIABILITIES

<i>Item Number</i>	<i>Description of Property</i>	<i>Names of All Creditors</i>	<i>Names of All Debtors</i>	<i>Estimated Amount at Date of Separation</i>
--------------------	--------------------------------	-------------------------------	-----------------------------	-----------------------------------------------

[Pa.B. Doc. No. 14-1382. Filed for public inspection July 3, 2014, 9:00 a.m.]

**PART I. GENERAL**

[ **231 PA. CODE CH. 1930** ]

**Order Adopting Rule 1930.9 of the Rules of Civil Procedure; No. 597 Civil Procedural Rules Doc.**

**Order**

*Per Curiam*

*And Now*, this 16th day of June, 2014, upon the recommendation of the Domestic Relations Procedural Rules Committee; the proposal having been submitted without publication pursuant to Pa.R.J.A. No. 103(a)(3):

*It Is Ordered* pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule 1930.9 of the Pennsylvania Rules of Civil Procedure is adopted in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective in 30 days on July 16, 2014.

**Annex A**

**TITLE 231. RULES OF CIVIL PROCEDURE**

**PART I. GENERAL**

**CHAPTER 1930. RULES RELATING TO DOMESTIC RELATIONS MATTERS GENERALLY**

**Rule 1930.9. Family Court Forms.**

Forms adopted by the Supreme Court of Pennsylvania and included in the Pennsylvania Rules of Civil Procedure relating to the practice and procedure of domestic relations matters shall be accepted for filing in all jurisdictions. Some of these forms may be maintained for public access at a website designated by the Supreme Court of Pennsylvania.

**Official Note:** Pa.R.C.P. No. 205.2 provides: “No pleading or other legal paper that complies with the Pennsyl-

vania Rules of Civil Procedure shall be refused for filing by the prothonotary based on a requirement of a local rule of civil procedure or judicial administration. . . .”

[Pa.B. Doc. No. 14-1383. Filed for public inspection July 3, 2014, 9:00 a.m.]

**Title 234—RULES OF CRIMINAL PROCEDURE**

[ **234 PA. CODE CHS. 4 AND 7** ]

**Order Adopting New Rule 771 and Approving the Revision of the Comment to Rule 471 of the Rules of Criminal Procedure; No. 451 Criminal Procedural Rules Doc.**

**Order**

*Per Curiam*

*And Now*, this 16th day of June, 2014, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before adoption at 44 Pa.B. 475 (January 25, 2014), and in the *Atlantic Reporter* (Third Series Advance Sheets, Vol. 68), 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 new Pennsylvania Rule of Criminal Procedure 771 is adopted and the revision to the Comment to Pennsylvania Rule of Criminal Procedure 471 is approved in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective July 16, 2014.

## Annex A

**TITLE 234. RULES OF CRIMINAL PROCEDURE  
CHAPTER 4. PROCEDURES IN SUMMARY CASES**

**PART G. Special Procedures in Summary Cases  
Under the Vehicle Code**

**Rule 471. Disposition Report.**

\* \* \* \* \*

**Comment**

\* \* \* \* \*

[ Electronic transmissions are to be made from the District Justice Central Site Computer or other computer facility utilized by issuing authorities. ]

**Official Note:** Rule 92 adopted June 3, 1993, effective July 1, 1993; renumbered Rule 471 and amended March 1, 2000, effective April 1, 2001; **Comment revised June 16, 2014, effective July 16, 2014.**

*Committee Explanatory Reports:*

\* \* \* \* \*

**Final Report explaining the June 16, 2014 Comment revision published with the Court's Order at 44 Pa.B. 4169 (July 5, 2014).**

**CHAPTER 7. POST-TRIAL PROCEDURES IN  
COURT CASES**

**PART B. Post-Sentence Procedures**

*(Editor's Note: The following rule is new and printed in regular type to enhance readability.)*

**Rule 771. Disposition Report to the Department of Transportation.**

(A) The clerk of courts shall report to the Pennsylvania Department of Transportation all dispositions of charges required by 75 Pa.C.S. § 6323 (relating to reports by courts). The report shall be sent by electronic transmission in the form prescribed by the Department.

(B) The clerk of courts shall sign the report on the form prescribed by the Department by means of an electronic signature as authorized by Rule 103.

(C) The clerk of courts shall print out and sign a copy of the report, which shall include the date and time of the transmission, and a certification as to the adjudication, the sentence, if any, and the final disposition. The copy shall be made part of the record.

(D) Upon the request of the defendant, the attorney for the Commonwealth, or any other government agency, the clerk of courts shall provide a certified copy of the report required by this rule.

**Comment**

This rule was adopted in 2014 to provide for the electronic transmission of the case information required under 75 Pa.C.S. § 6323 to the Pennsylvania Department of Transportation. The rule provides for procedures at the court of common pleas similar to those already provided under Rule 471 for the reports required to be submitted under 75 Pa.C.S. § 6322 by issuing authorities.

A clerk of courts may comply with the requirements of paragraph (C) by retaining an electronic copy of the printed and signed document together with the appropriate annotations to the docket entries that the document had been transmitted to the Pennsylvania Department of Transportation.

This rule does not address the admissibility of evidence. See the Pennsylvania Rules of Evidence and 42 Pa.C.S. § 6101 *et seq.* concerning the Rules of Evidence for documents.

**Official Note:** New Rule 771 adopted June 16, 2014, effective July 16, 2014.

*Committee Explanatory Reports:*

Final Report explaining the provisions of the new rule published with the Court's Order at 44 Pa.B. 4169 (July 5, 2014).

**FINAL REPORT<sup>1</sup>**

***New Rule 771; Revision to the Comment to  
Pa.Rs.Crim.P. 471***

**Electronic Transmission of Court Case Reports  
to PennDOT**

On June 16, 2014, effective July 16, 2014, upon the recommendation of the Criminal Procedural Rules Committee, the Court adopted new Rule 771 (Disposition Report to the Department of Transportation) to require, pursuant to 75 Pa.C.S. § 6323, that the specified court case dispositions be reported to the Pennsylvania Department of Transportation (PennDOT) electronically. The Court also approved the revision of the Comment to Rule 471 (Disposition Report) to remove an archaic provision.

New Rule 771 was developed as a result of a request from the Court Administrator of Pennsylvania to consider a rule mandating that the information regarding certain types of cases that courts are statutorily required to report to PennDOT be done electronically. Currently, 75 Pa.C.S. § 6323 requires that the clerks of courts report to PennDOT the disposition of any case arising under the Motor Vehicle Code (Title 75) or under Section 13 of the Controlled Substance, Drug, Device and Cosmetic Act, 35 P. S. § 780-113.<sup>2</sup>

This is similar to 75 Pa.C.S. § 6322 that requires issuing authorities to provide reports of the disposition of summary motor vehicle cases to PennDOT. Rule 471 was adopted in 1993 to require that the transmission of these reports be done electronically. The impetus for Rule 471 was the implementation of the Court's Magisterial District Judge System (MDJS) that gave issuing authorities the capability of transmitting these reports electronically. No procedural problems have arisen by the electronic transmission provisions of Rule 471 since its adoption in 1993.

New Rule 771 extends this type of transmission to the clerks of courts now that the Court's Common Pleas Case Management System (CPCMS) provides the statewide capabilities for electronic transmission from the common pleas courts. The new rule simply extends to the common pleas courts the procedures in place for the MDJ courts.

The new rule has been numbered "771" to place it after the post-sentence procedures rules and before the expungement rules since the reports to PennDOT are filed as essentially the last event in a case at the common pleas level. The particular number also links it to Rule 471. The text of the new rule mirrors Rule 471 and requires the transmittal of the disposition information to be done electronically.

<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.

<sup>2</sup> Section 6323 references a provision in the Controlled Substances Act requiring the suspension of a defendant's driver's license for conviction of a drug offense. This provision, 35 P. S. § 780-113(m) was repealed in 1993 and the suspension provisions are now found in 75 Pa.C.S. § 1532(c).

Rule 771 includes a provision that a hard copy of the report, signed by the clerk of courts, be added to the case file that is comparable to the requirement in Rule 471 with one modification. While the desire is ultimately to move towards paperless case files, the view of the Committee has been to maintain a traditional paper case file, particularly at the common pleas level. However, one of the publication responses, from a clerk of courts, requested modifying this provision to permit the retention of an electronic copy of the signed form to satisfy this requirement. The Committee concluded that this is a reasonable accommodation and the Comment to Rule 771 reflects this allowance.

Finally, a revision has been made to the Comment provision in Rule 471 regarding the locations from which the required transmission could be made. Specifically, the fourth paragraph in Rule 471 Comment makes a reference to the "District Justice Central Site Computer," which is an outdated term since all MDJ offices are equipped for transmitting the required information.

[Pa.B. Doc. No. 14-1384. Filed for public inspection July 3, 2014, 9:00 a.m.]

[ 234 PA. CODE CH. 9 ]

**Proposed Amendments to Pa.Rs.Crim.P. 905, 906, 907 and 909**

The Criminal Procedural Rules Committee is considering recommending that the Supreme Court of Pennsylvania amend Rules 905 (Amendment and Withdrawal of Petition for Post-Conviction Collateral Relief), 906 (Answer to Petition for Post-Conviction Collateral Relief), 907 (Disposition Without Hearing), and 909 (Procedures for Petitions in Death Penalty Cases: Stays of Execution of Sentence; Hearing; Disposition) to formalize the procedures for pre-dismissal amendment of petitions in PCRA cases. 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 that the Committee's 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.

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

We request that interested persons submit suggestions, comments, or objections concerning this proposal in writing to the Committee through counsel,

Jeffrey M. Wasileski, Counsel  
Supreme Court of Pennsylvania  
Criminal Procedural Rules Committee  
601 Commonwealth Avenue, Suite 6200  
Harrisburg, PA 17106-2635  
fax: (717) 231-9521  
e-mail: criminalrules@pacourts.us

no later than Friday, September 12, 2014.

*By the Criminal Procedural Rules Committee*

THOMAS P. ROGERS,  
*Chair*

**Annex A**

**TITLE 234. RULES OF CRIMINAL PROCEDURE  
CHAPTER 9. POST-CONVICTION COLLATERAL  
PROCEEDINGS**

**Rule 905. Amendment and Withdrawal of Petition  
for Post-Conviction Collateral Relief.**

(A) The judge, at any time:

(1) shall grant leave for one amended petition for post-conviction collateral relief as of right; and

(2) for any second or subsequent amended petition, may grant leave to amend a petition for post-conviction collateral relief upon a determination of cause shown; or

(3) may grant leave to withdraw a petition for post-conviction collateral relief [ at any time ]. [ Amendment shall be freely allowed to achieve substantial justice. ]

(B) When a petition for post-conviction collateral relief is defective as originally filed, the judge shall order amendment of the petition, indicate the nature of the defects, and specify the time within which an amended petition shall be filed. If the order directing amendment is not complied with, the petition may be dismissed without a hearing.

(C) Upon the entry of an order directing an amendment, the clerk of courts shall serve a copy of the order on the defendant, the defendant's attorney, and the attorney for the Commonwealth.

(D) All amended petitions shall be in writing, shall comply substantially with Rule 902, and shall be filed and served within the time specified by the judge in ordering the amendment.

**Comment**

**The purpose of the amendment procedure under this rule is to provide the defendant with the opportunity to correct any material defect in the petition in order to provide the fullest review of the case. The rule recognizes that often the initial petition is filed *pro se* or the case may involve complex issues needing further development. Therefore each petition may be amended once as of right as a further means of ensuring that the collateral review is as full as possible. However, the amendment process should not be used as a vehicle for raising new matter that should have been included in the original petition. Second or subsequent amendments will not be permitted absent a showing of cause as to why the matter was not raised initially or in the first amendment. Paragraph (A) originally contained the sentence, "Amendment shall be allowed to achieve substantial justice." This sentence was removed because it had come to be interpreted that amendments of the petition should be automatically granted.**

"Defective," as used in paragraph (B), is intended to include petitions that are inadequate, insufficient, or irregular for any reason; for example, petitions that lack particularity; petitions that do not comply substantially with Rule 902; petitions that appear to be patently frivolous; petitions that do not allege facts that would support relief; petitions that raise issues the defendant did not preserve properly or were finally determined at prior proceedings.

When an amended petition is filed pursuant to paragraph (D), it is intended that the clerk of courts transmit a copy of the amended petition to the attorney for the Commonwealth. This transmittal does not require a response unless one is ordered by the judge as provided in these rules. See Rules 903 and 906.

**Official Note:** Previous Rule 1505 adopted January 24, 1968, effective August 1, 1968; rescinded December 11, 1981, effective June 27, 1982; rescission vacated June 4, 1982; rescinded February 1, 1989, effective July 1, 1989, and replaced by Rules 1506(b), 1508(a), and present Rule 1505(c). Present Rule 1505 adopted February 1, 1989, effective July 1, 1989; amended August 11, 1997, effective immediately; renumbered Rule 905 and amended March 1, 2000, effective April 1, 2001; Comment revised September 21, 2012, effective November 1, 2012; amended , 2014, effective , 2014.

*Committee Explanatory Reports:*

\* \* \* \* \*

**Report explaining the proposed amendment clarifying the purpose of the amendment procedures published for comment at 44 Pa.B. 4173 (July 5, 2014).**

**Rule 906. Answer to Petition for Post-Conviction Collateral Relief.**

\* \* \* \* \*

(D) **Amendment and Withdrawal of the Answer**  
The judge, at any time:

- (1) if the petition has been amended, shall grant the Commonwealth leave to amend the answer; or
- (2) if the petition has not been amended, may grant leave, upon a determination of cause shown, to amend an answer; or
- (3) may grant leave to withdraw an answer [ at any time ].

[ Amendment shall be freely allowed to achieve substantial justice. ] Amended answers shall be in writing and shall be filed and served within the time specified by the judge in granting leave to amend.

(E) Answers in Death Penalty Cases

\* \* \* \* \*

(3) Amendments to Answer

The judge, at any time:

- (a) if the petition has been amended, shall grant the Commonwealth leave to amend the answer; or
- (b) if the petition has not been amended, may grant the Commonwealth leave, upon a determination of cause shown, to amend the answer [ at any time, and amendment shall be freely allowed to achieve substantial justice ].

Amended answers shall be in writing, and shall be filed and served within the time specified by the judge in granting leave to amend.

**Comment**

As used in the Chapter 9 rules, “answer” is intended to include an amended answer filed pursuant to paragraphs (D) and (E)(3) of this rule, except where the context indicates otherwise.

**The purpose of the amendment procedure under this rule is to provide the Commonwealth with the opportunity to correct any material defect in the answer to the petition in order to provide the fullest review of the case. If the Commonwealth seeks to amend the answer due to an amendment to the petition, the judge shall grant the petition. If the Commonwealth seeks to amend the petition independent of any change to the petition, the Commonwealth must show good cause in doing so.**

**Paragraphs (D) and (E)(3) originally contained the statement that amendment “shall be feely allowed to achieve substantial justice.” This sentence was removed because it had come to be interpreted that amendments of the answer should be automatically granted.**

Except as provided in paragraph (E), when determining whether to order that the attorney for the Commonwealth file an answer, the judge should consider whether an answer will promote the fair and prompt disposition of the issues raised by the defendant in the petition for post-conviction collateral relief.

Paragraph (E)(1) was added in 1997 to require that the Commonwealth file an answer to the first counseled petition in a death penalty case. For second and subsequent petitions, paragraph (E)(2) would apply.

“First counseled petition,” as used in paragraph (E)(1), includes petitions on which defendants have elected to proceed *pro se* pursuant to Rule 904(F)(1)(a). See also the Comment to Rule 903.

**Official Note:** Previous Rule 1506 adopted January 24, 1968, effective August 1, 1968; Comment revised April 26, 1979, effective July 1, 1979; rule rescinded December 11, 1981, effective June 27, 1982; rescission vacated June 4, 1982; Comment revised January 28, 1983, effective July 1, 1983; rule rescinded February 1, 1989, effective July 1, 1989, and replaced by Rule [ 908 ] 1508. Present Rule 1506 adopted February 1, 1989, effective July 1, 1989; amended August 11, 1997, effective immediately; Comment revised January 21, 2000, effective July 1, 2000; renumbered Rule 906 and Comment revised March 1, 2000, effective April 1, 2001; amended March 3, 2004, effective July 1, 2004; amended , 2014, effective , 2014.

*Committee Explanatory Reports:*

\* \* \* \* \*

**Report explaining the proposed amendment clarifying the purpose of the amendment procedures published for comment at 44 Pa.B. 4173 (July 5, 2014).**

**Rule 907. Disposition Without Hearing.**

\* \* \* \* \*

**Comment**

The judge is permitted, pursuant to paragraph (1), to summarily dismiss a petition for post-conviction collateral relief in certain limited cases. To determine whether a summary dismissal is appropriate, the judge should thoroughly review the petition, the answer, if any, and all other relevant information that is included in the record. If, after this review, the judge determines that the petition is patently frivolous and without support in the record, or that the facts alleged would not, even if proven, entitle the defendant to relief, or that there are no genuine issues of fact, the judge may dismiss the petition as provided herein.

When the judge has determined that dismissal without an evidentiary hearing is the appropriate course but discerns the potential for amendment of the petition, the judge has the obligation of providing the defendant with the opportunity to amend the petition. To that end, the judge must provide sufficiently specific reasons for the disposition such that the potential for amendment may be reasonably evaluated by counsel. See *Commonwealth v. Williams*, 566 Pa. 553, 569, 782 A.2d 517, 527 (2001); *Commonwealth v. Rush*, 576 Pa. 3, 14-15, 838 A.2d 651, 657-658 (2003).

A summary dismissal would also be authorized under this rule if the judge determines that a previous petition involving the same issue or issues was filed and was finally determined adversely to the defendant. See 42 Pa.C.S. § 9545(b) for the timing requirements for filing second and subsequent petitions.

\* \* \* \* \*

**Official Note:** Previous Rule 1507 adopted January 24, 1968, effective August 1, 1968; rescinded December 11, 1981, effective June 27, 1982; rescission vacated June 4, 1982; amended January 28, 1983, effective July 1, 1983; rescinded February 1, 1989, effective July 1, 1989, and not replaced. Present Rule 1507 adopted February 1, 1989, effective July 1, 1989; amended August 11, 1997, effective immediately; renumbered Rule 907 and amended March 1, 2000, effective April 1, 2001; Comment revised September 18, 2008, effective February 1, 2009; amended July 27, 2012, effective September 1, 2012; **Comment revised , 2014, effective , 2014.**

*Committee Explanatory Reports:*

\* \* \* \* \*

**Report explaining the proposed revision of the Comment concerning allowance for amendment of the petition published for comment at 44 Pa.B. 4173 (July 5, 2014).**

**Rule 909. Procedures for Petitions in Death Penalty Cases: Stays of Execution of Sentence; 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, **as provided in paragraphs (B)(2) and (B)(3).**

**(2) For all first petitions for collateral review in a death penalty case,**

**(a) the judge shall order an evidentiary hearing.**

**(b) The judge shall order the attorney for the Commonwealth and the defense attorney, or, if unrepresented, the defendant to appear before the judge within 90 days after the ordering of the evidentiary hearing for a conference before the judge in open court, unless agreed by the defendant to be in chambers, to consider:**

**(i) setting a date certain for the hearing, which shall not be held later than 180 days from the date of the conference;**

**(ii) deadlines for amendment of pleadings;**

**(iii) the simplification or stipulation of factual issues, including the admissibility of evidence; and**

**(iv) such other matters as may aid in the disposition of the petition.**

**[ (2) If ] (3) For second and subsequent petitions,** if the judge is satisfied from this review that there are no genuine issues concerning any material fact, the defendant is not entitled to post-conviction collateral relief, and no legitimate purpose would be served by any further proceedings,

\* \* \* \* \*

**[ (3) ] (d)** If the judge determines that an evidentiary hearing is required, the judge shall enter an order setting a date certain for the hearing, which shall not be scheduled for fewer than 10 days or more than 45 days from the date of the order. The judge may, for good cause shown, grant leave to continue the hearing.

**(4)** No more than **[ 90 ] 180** 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 ]** time periods mandated by paragraphs **[ (B)(2)(c) and (B)(3), or within the 30 day-extension permitted by paragraph ] (B)(3)(c) or (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.

\* \* \* \* \*

**Comment**

Paragraph (A)(1) was added in 1999 to provide the avenue by which a defendant in a death penalty case may request a stay of execution. Failure to include a request for a stay in the petition for post-conviction collateral relief may not be construed as a waiver, and the defendant may file a separate request for the stay. In cases involving second or subsequent petitions when an application for a stay is filed separately from the PCRA petition, *Commonwealth v. Morris*, 565 Pa. 1, 33-34, 771 A.2d 721, 740-741 (2001) provides that the separate stay application “must set forth: a statement of jurisdiction; if necessary, a statement that a petition is currently pending before the court; and a statement showing **[ a ]** the likelihood of prevailing on the merits.”

Paragraph (A)(2) provides, if a stay of execution is properly granted, that the stay will remain in effect throughout the PCRA proceedings in the trial court and during the appeal to the Pennsylvania Supreme Court. Nothing in this rule is intended to preclude a party from seeking review of an order granting or denying a stay of execution. See Pa.R.A.P. 1702(d) (Stay of Execution) and Pa.R.A.P. 3316 (Review of Stay of Execution Orders in Capital Cases).

**The rule was amended in 2014 to require that an evidentiary hearing be held in all first counseled petitions in capital cases. The reason for the re-**



quirement is to ensure that a complete and comprehensive collateral review of the case be accomplished by the first petition.

The conference required under paragraph (B)(2)(b) is designed to establish the judge’s supervision over the preparation for the evidentiary hearing, including any amendment to the pleadings, while allowing flexibility for setting the parameters of this process.

When the judge has determined that dismissal without an evidentiary hearing is the appropriate course but discerns the potential for amendment of the petition, the judge has the obligation of providing the defendant with the opportunity to amend the petition. To that end, the judge must provide sufficiently specific reasons for the disposition such that the potential for amendment may be reasonably evaluated by counsel. *See Commonwealth v. Williams*, 556 Pa. 553, 569, 782 A.2d 517, 527 (2001); *Commonwealth v. Rush*, 576 Pa. 3, 14-15, 838 A.2d 651, 657-65 (2003).

Paragraph [ (B)(3) ] (B)(3)(d) 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 in the evidentiary hearing held pursuant to paragraph (B)(2) and, once a determination is made under paragraph [ (B)(3) ] (B)(3)(d) of this rule that an evidentiary hearing is required, the provisions of Rule 908(C), (D), and (E) apply.

[ Paragraph (B)(4) was added in 2002 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. ]

The time limit in paragraph (B)(4) within which a judge must dispose of the petition following the evidentiary hearing was extended in 2014 from 90 days to 180 days in recognition of the often complex issues raised in petitions in capital cases. With the extended time, the former provision for a 30-day extension was deleted as no longer necessary.

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 [ , or the 30-day extension, ] 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.

\* \* \* \* \*

**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 February 12, 2002, effective July 1, 2002; amended October 7, 2005, effective February 1, 2006; amended July 27, 2012, effective September 1, 2012; amended , 2014, effective , 2014.

*Committee Explanatory Reports:*

\* \* \* \* \*

Report explaining the proposed amendments to require an evidentiary hearing and scheduling conference in first PCRA petitions published for comment at 44 Pa.B. 4173 (July 5, 2014).

**REPORT**

*Proposed Amendments to Pa.Rs.Crim.P. 905, 906, 907, and 909*

**Pre-Dismissal Procedures for Post-Conviction Review Act Petitions**

At the direction of the Court, the Committee undertook an examination of the issues related to pre-dismissal notice in matters arising under the Post-Conviction Relief Act (PCRA), 42 Pa.C.S. §§ 9541—9546. It had been suggested that problems have arisen due to the practice of frequent and repeated amendments to the petition.

The Committee established a subcommittee to examine in depth what procedural rule changes might be recommended to address these issues. The subcommittee examined the varied practice across Pennsylvania related to the amendment of PCRA petitions as well as suggestions to improve the process. These suggestions included methods of formalizing the pre-decisional amendment process, such as time limitations or limitations on the number of issues that may be raised, as well as more uniform definition of the PCRA court’s duty in providing notice of an intention to dismiss and in addressing the issues raised in the petition.

As described more fully below, the subcommittee recommended several proposed rule changes which the Committee subsequently modified. These modified proposals are being published for comment.

*Proposed Rule Changes*

The Committee, concurring with the recommendations of the subcommittee, concluded that there was a genuine problem, particularly in Philadelphia, with the practice of frequent and repeated amendment of PCRA petitions. There was considerable discussion of the best way to structure the process for amending petitions to make it more efficient. The Committee discussed setting a time limit after which amendment would be permitted only upon cause. However, the Committee concluded that no practical time limitation could be set given the wide divergence of practice across the state, including the often lengthy process for providing counsel in some jurisdictions. Ultimately, it was concluded that the best manner to address the excessive amendment problem was by having the PCRA court exercise more control over that process.

The subcommittee favored a change designed to impress on judges that amendment should not be automatic but rather the request to amend should be reviewed and permitted only if there was a good reason for not including the claim in the initial petition. This also would help to break the current practice by some counsel who do not review their initial filings, knowing that they will always be able to amend it. The subcommittee suggested that the phrase “upon cause shown” be added to Rule 905(A) to modify the allowance of amendments. The subcommittee also felt that part of the problem of the practice of automatically permitted amendments lay with the sentence in Rule 905(A), “Amendment shall be allowed to achieve substantial justice,” and so recommended that that language be deleted. Additionally, it was recom-

mended that language be added to the Comment to describe the reason for the change and to indicate that requests to amend the petition must show a reason why the information was not included in the original petition.

In reviewing the subcommittee's recommendations, the Committee supported placing limitations on excessive amendments. However, the Committee as a whole was reluctant to place an absolute requirement that good cause must be shown for any amendment to be made. It was noted that often the initial petition will be filed *pro se* or that some review is necessary before a full listing of the issues can be made. The Committee therefore agreed that a procedure should be added to Rule 905 to provide the defendant, either *pro se* or counseled, one "free" amendment of the petition as of right with any subsequent amendment permitted only upon a determination of cause shown. In the draft above, Rule 905(A) would contain this procedure. The Comment would also be changed to reflect this new procedure.

Since the language in Rule 906 regarding amendment of the answer to the petition paralleled that in Rule 905, the Committee considered whether similar amendments regarding the requirement to show cause should be added for any amendment to the answer. However, there was discussion whether it was necessary to amend Rule 906 since an answer serves a different role in the collateral review process. Additionally, the Committee concluded that, in most cases, the only time when an answer would be amended would be when the petition had been amended. In the draft above, therefore, language has been added to paragraphs (D) and (E)(3) of Rule 906 that would provide for an automatic allowance of amendment when the petition had been amended but a need for showing cause if the answer was sought to be amended independently.

The subcommittee recommended that Rule 907(1) be amended by adding a phrase "for cause shown" as a requirement for amendment and that the phrase in Rule 907(1), "shall state in the notice the reasons for the dismissal" should be changed to "shall identify any procedural defects that can be cured to avoid dismissal" to indicate the amendment process is meant to be a means of correcting errors rather than for introducing new issues that should have been raised initially. However, the Committee concluded that the standard for amendment should be broader than merely correcting procedural defects and those changes have not been included.

The Committee considered the suggestion that there should be restrictions placed on the number of issues that may be raised in the petitions. However, the Committee believed that any such limitation would be arbitrary and likely to be challenged. For these reasons, this suggestion was not included in the final proposal.

The Committee agreed that the PCRA court should be obliged to address every claim and sub-claim in its notice of intent to dismiss cases. The Committee concluded that the PCRA court is in the best position to transmit to the appellate courts what happened in the case and ultimately would provide for a more efficient review. Further, failure of the PCRA court to address some of the claims would only lead to increased litigation.

However, the Committee agreed that some guidance about how extensively each issue should be addressed would be helpful. The Committee believed that language from case law could be used to further define how the issues should be discussed. In particular, they examined *Commonwealth v. Williams*, 566 Pa. 553, 782 A.2d 517

(2001). This capital case describes the standard that the PCRA court should meet regarding pre-dismissal notice:

Pursuant to Rule of Criminal Procedure 1509(C)(1), a PCRA court is obliged to provide a capital defendant with pre-dismissal notice of its reasons for dismissal, *see* Pa.R.Crim.P. 1509(C)(1), and the opportunity is thus provided for a defendant to seek leave to amend to cure any material defect in the petition, *see* Pa.R.Crim.P. 1509(C)(3)(b). *See generally* Pa.R.Crim.P. 1505(b) (prescribing that, when a petition is defective as originally filed, a PCRA court "shall order amendment of the petition, indicate the nature of the defects, and specify the time within which an amended petition shall be filed"); Pa.R.Crim.P. 1505(a) (providing that amendment of post-conviction petitions may be granted by a PCRA court "at any time," and "shall be freely allowed to achieve substantial justice"). Particularly in light of the legislative scheme channeling all forms of claims through the PCRA and limiting the opportunity for seeking post-conviction review to the one-year period after the judgment of sentence becomes final, *see* 42 Pa.C.S. § 9545, both PCRA courts and counsel must pay careful attention to their respective obligations under the rules. Where PCRA courts discern the potential for amendment, it is their obligation under Rule 1505(b) to specifically allow the opportunity; where dismissal is deemed the appropriate course, the court must obviously provide sufficiently specific reasons for the disposition such that the potential for amendment may be reasonably evaluated by counsel. Upon receipt of either form of notice, counsel must undertake a careful review of the pleadings and other materials submitted to ensure that a sufficient offer has been made to warrant merits review. These procedures are afforded not only to protect the integrity of the process and the rights of a capital petitioner in the common pleas setting, but also to provide the essential predicate for appellate review of the post-conviction proceedings by this Court. 566 Pa. at 568-569, 782 A.2d at 526-527.

Language taken from the foregoing would be added to the Comments to Rules 907 and 909 to guide the PCRA courts to describe the reasons for their dismissal. A cross-reference to the *Williams* case and to the similar holding in *Commonwealth v. Rush*, 576 Pa. 3, 838 A.2d 651 (2003) would be added to the Comment as well.

The Committee also considered a proposed word limitation to the size of the petition to be added to Rule 902. This would have been based on Appellate Rule 2135 that limits the size of appellate briefs to 14,000 words. However, the Committee ultimately rejected this as unnecessary.

#### *Amendment of Capital Case PCRA Petitions*

The Committee concluded that issues associated with capital cases are the most complex and undergo the most extensive review. The Committee determined that the case in which an initial PCRA petition should be dismissed without a hearing would be rare. Therefore, the most effective way to address problems arising from the dismissal of PCRA petitions in a capital case without a hearing was to require that a hearing be held for the initial PCRA petition in every capital case. Second and subsequent petitions could still be dismissed without a hearing.

This led the Committee to consider the best method of ensuring that the initial PCRA review would be the most

effective and adequately address the issues presented while providing an appropriate structure to the amendment process that would be fair to all the parties. This would be accomplished by requiring the parties to participate in a "scheduling conference" to review the issues that have been raised by the petition and determine how much time and resources would be needed to develop these issues thus ensuring court oversight at an early stage in the process.

Therefore, a new paragraph (B)(2) has been added to Rule 909 to require a hearing in all initial PCRA petitions in capital cases. The language of this amendment is modeled on Rule 570 (Pretrial Conferences). It includes a list of some of the topics that should be considered at this conference.

The original procedure that permitted dismissal without a hearing would be retained for second or subsequent petitions as paragraph (B)(3). Language regarding the pre-dismissal advice similar to that proposed for the Rule 907 Comment would also be added to the Rule 909 Comment as well as the cross-references to *Williams* and *Rush*.

The Committee believed that, given the complexity of issues usually raised in capital case PCRAs, the period in which the court should make its determination should be increased to 180 days but that the provision permitting a 30-day extension should be removed.

[Pa.B. Doc. No. 14-1385. Filed for public inspection July 3, 2014, 9:00 a.m.]

## Title 255—LOCAL COURT RULES

### ERIE COUNTY

#### Addition to the Rules of Civil Procedure; No. 90030-14

##### Order

*And Now*, this 17th day of June, 2014, Rule 1930.4, as follows, is hereby added to the Local Rules of Civil Procedure for the Court of Common Pleas of Erie County, Pennsylvania so as to coordinate with Pennsylvania Rule of Civil Procedure 1930.4 and to implement this option in Erie County. This Rule shall be effective 30 days after publication in the *Pennsylvania Bulletin*.

*By the Court*

ERNEST J. DiSANTIS, Jr.,  
*President Judge*

#### Rule 1930.4. Service of Original Process in Domestic Relations Matters.

\* \* \* \* \*

(c) *Service by Mail*. Except in Protection from Abuse matters unless authorized by special order of court pursuant to subdivision (b) above, original process may also be served by mailing the complaint and order to appear, if required, to the defendant's last known address by both regular and certified mail. Delivery of the certified mail must be restricted to addressee only, and a return receipt must be requested.

(1) If the certified mail is refused by defendant, but the regular mail is not returned within fifteen days, service may be deemed complete.

(2) If the mail is returned with notation by the postal authorities that it was unclaimed, service shall be made by another means pursuant to these rules.

(3) When using certified mail, return receipt requested, pursuant to this Rule, it is permissible to utilize the United States Postal Service's return receipt electronic option, or any similar service that electronically provides a return receipt.

\* \* \* \* \*

[Pa.B. Doc. No. 14-1386. Filed for public inspection July 3, 2014, 9:00 a.m.]

### SCHUYLKILL COUNTY

#### Amend Rule of Judicial Administration 1901(a), (b) Prompt Disposition of Matters; Termination of Inactive Cases; S-1177-2014

##### Order of Court

*And Now*, this 17th day of June, 2014, at 3:30 p.m., Schuylkill County Rule of Judicial Administration No. 1901(a), (b) is amended for use in the Court of Common Pleas of Schuylkill County, Pennsylvania, Twenty-First Judicial District, Commonwealth of Pennsylvania, effective thirty days after publication in the *Pennsylvania Bulletin*.

The Prothonotary of Schuylkill County is Ordered and Directed to do the following:

1) File seven (7) certified copy of this Order and Rule with the Administrative Office of the Pennsylvania Courts.

2) Forward two (2) certified copies of this Order and Rule and a computer diskette containing the text of the local rules to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

3) Forward one (1) certified copy of this Order and Rule with the Civil Procedural Rules Committee of the Supreme Court of Pennsylvania.

4) Forward one (1) copy to the Law Library of Schuylkill County for publication in the *Schuylkill Legal Record*.

5) Copies shall be kept continuously available for public inspection in the Office of the Schuylkill County Prothonotary and the Schuylkill County Law Library.

It is further *Ordered* that said rule as it existed prior to the amendment is hereby repealed and annulled on the effective date of said rule as amended, but no right acquired thereunder shall be disturbed.

*By the Court*

WILLIAM E. BALDWIN,  
*President Judge*

#### Schuylkill County Rules of Judicial Administration Rule 1901. Prompt Disposition of Matters; Termination of Inactive Cases.

(a) The Prothonotary shall prepare and forward to the Court on or before the third Monday of September each year, or on such other date as the Court by special order may direct all civil matters in which no steps or proceedings have been taken for two years or more prior thereto and shall give notice thereof to counsel of record, and to the parties for whom no appearance has been entered, as provided by Pa.R.J.A. No. 1901(c). If no action is taken or

no written objection is docketed in such a matter prior to the commencement of the general call, the prothonotary shall strike the matter from the list and enter an order as of course dismissing the matter with prejudice for failure to prosecute, under the provisions of this rule. If no good cause for continuing a matter is shown at the general call, an order shall be entered forthwith by the court for dismissal.

(b) The Clerk of Courts shall prepare and forward to the Court on or before the third Monday of September each year, or on such other date as the Court by special order may direct criminal proceedings in which no steps or proceedings have been taken for two years or more

prior thereto and shall give notice thereof to the district attorney, any private prosecutor and the defendant, as provided by Pa.R.J.A. No. 1901(c). If no good cause for continuing a proceeding is shown at the general call, an order for dismissal shall be entered forthwith by the court.

The Court may initiate proceedings to terminate the cases contained on said list pursuant to Pa.R.J.A. No 1901(c)(1), (2).

[Pa.B. Doc. No. 14-1387. Filed for public inspection July 3, 2014, 9:00 a.m.]