

**CHAPTER 9. POST-CONVICTION COLLATERAL PROCEEDINGS**

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

(A) The rules in Chapter 9 apply to capital and noncapital cases under the Post Conviction Relief Act, 42 Pa.C.S. §§ 9541—9546, as amended by Act 1995-32 (SS1).

(B) *Notice in Death Penalty Cases*

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

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

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

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

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

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

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

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

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

#### Comment

The 1995 amendments to the Post Conviction Relief Act specifically provide that, "except as specifically provided otherwise, all provisions of this subchapter shall apply to capital and noncapital cases." See 42 Pa.C.S. § 9542.

See Rule 909 (Procedures for Petitions in Death Penalty Cases: Stays of Execution of Sentence; Hearing; Disposition) concerning requests for, and length of, stays of execution in death penalty cases.

For time limits for filing a petition for post-conviction relief and any exceptions, see 42 Pa.C.S. § 9545(b).

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

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

**Official Note:** Rule 1500 adopted August 11, 1997, effective immediately; Comment revised July 23, 1999, effective September 1, 1999; renumbered Rule 900 and amended March 1, 2000, effective April 1, 2001; amended March 26, 2002, effective July 1, 2002; Comment revised October 1, 2019, effective immediately.

#### *Committee Explanatory Reports:*

Final Report explaining the August 11, 1997 adoption of Rule 1500 published with the Court's Order at 27 Pa.B. 4305 (August 23, 1997).

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

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1477 (March 18, 2000).

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

Final Report explaining the October 1, 2019 Comment revision concerning time limitation for raising exceptions to filing restrictions published with the Court's Order at 49 Pa.B. 6066 (October 19, 2019).

#### Source

The provisions of this Rule 900 amended March 26, 2002, effective July 1, 2002, 32 Pa.B. 1840; amended October 1, 2019, effective immediately, 49 Pa.B. 6064. Immediately preceding text appears at serial pages (315233) to (315234).

**Rule 901. Initiation of Post-Conviction Collateral Proceedings.**

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

(B) A proceeding for post-conviction collateral relief shall be initiated by filing a petition and 3 copies with the clerk of the court in which the defendant was convicted and sentenced. The petition shall be verified by the defendant.

**Comment**

The rules in Chapter 9 govern proceedings to obtain relief authorized by the Post Conviction Relief Act, 42 Pa.C.S. §§ 9541 *et seq.* (hereinafter PCRA).

By statute, a court may not entertain a request for any form of relief in anticipation of the filing of a petition for post-conviction collateral relief. *See* 42 Pa.C.S. § 9545(a). For stays of execution, *see* 42 Pa.C.S. § 9545(c) and Rule 909(A).

The petition for post-conviction relief under these rules is not intended to be a substitute for or a limitation on the availability of appeal or a post-sentence motion. *See* Pa.Rs.Crim.P. 720 and 811. Rather, the Chapter 9 Rules are intended to require that, in a single proceeding, the defendant must raise and the judge must dispose of all grounds for relief available after conviction and exhaustion of the appellate process, either by affirmance or by the failure to take a timely appeal.

Except as provided in Rule 902(E)(2) for death penalty cases, no discovery is permitted at any stage of the proceedings, except upon leave of the court with a showing of exceptional circumstances. *See* Rule 902(E)(1), which implements 42 Pa.C.S. § 9545(d)(2).

As used in the Chapter 9 Rules, “petition for post-conviction collateral relief” and “petition” are intended to include an amended petition filed pursuant to Rule 905, except where the context indicates otherwise.

For time limits for filing a petition for post-conviction relief and any exceptions, *see* 42 Pa.C.S. § 9545(b).

The 1995 amendments to the PCRA apply to petitions filed on or after January 16, 1996. A petitioner whose judgment has become final on or before the effective date of the Act is deemed to have filed a timely petition under the Act if the first petition is filed within one year of the effective date of the Act. *See* Section 3 of Act 1995-32 (SS1).

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

**Official Note:** Previous Rule 1501 adopted January 24, 1968, effective August 1, 1968; amended November 25, 1968, effective February 3, 1969; amended February 15, 1974, effective immediately; rescinded December 11, 1981, effective June 27, 1982; rescission vacated June 4, 1982; rescinded November 9, 1984, effective January 2, 1985. Former Rule 1501 adopted November 9, 1984, effective January 2, 1985; rescinded February 1, 1989, effective July 1, 1989, and replaced by present Rule 902. Present Rule 1501 adopted February 1, 1989, effective July 1, 1989; amended March 22, 1993, effective January 1, 1994; amended August 11, 1997, effective immediately; Comment revised July 23, 1999, effective September 1, 1999; renumbered Rule 901 and amended March 1, 2000, effective April 1, 2001; Comment revised June 4, 2004, effective November 1, 2004; Comment revised October 1, 2019, effective immediately.

*Committee Explanatory Reports:*

Final Report explaining the March 22, 1993 amendments published with the Court's Order at 23 Pa.B. 1699 (April 10, 1993).

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

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

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1477 (March 18, 2000).

Final Report explaining the October 1, 2019 Comment revision concerning time limitation for raising exceptions to filing restrictions published with the Court's Order at 49 Pa.B. 6066 (October 19, 2019).

**Source**

The provisions of this Rule 901 amended June 4, 2004, effective November 1, 2004, 34 Pa.B. 3105; amended October 1, 2019, effective immediately, 49 Pa.B. 6064. Immediately preceding text appears at serial pages (311417) to (311418).

**Rule 902. Content of Petition for Post-Conviction Collateral Relief;  
Request for Discovery.**

(A) A petition for post-conviction collateral relief shall bear the caption, number, and court term of the case or cases in which relief is requested and shall contain substantially the following information:

- (1) the name of the defendant;
- (2) the place where the defendant is confined, or if not confined, the defendant's current address;
- (3) the offenses for which the defendant was convicted and sentenced;
- (4) the date on which the defendant was sentenced;
- (5) whether the defendant was convicted by a jury, by a judge without jury, on a plea of guilty, or on a plea of nolo contendere;
- (6) the sentence imposed and whether the defendant is now serving or waiting to serve that sentence;
- (7) the name of the judge who presided at trial or plea and imposed sentence;
- (8) the court, caption, term, and number of any proceeding (including appeals, prior post-conviction collateral proceedings, and federal court proceedings) instituted by the defendant to obtain relief from conviction or sentence, specifying whether a proceeding is pending or has been completed;
- (9) the name of each lawyer who represented the defendant at any time after arrest, and the stage of the case at which each represented the defendant;
- (10) the relief requested;
- (11) the grounds for the relief requested;
- (12) the facts supporting each such ground that:
  - (a) appear in the record, and the place in the record where they appear;
 and

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

(13) whether any of the grounds for the relief requested were raised before, and if so, at what stage of the case;

(14) a verification by the defendant that:

(a) the facts set forth in the petition are true and correct to the best of the defendant's personal knowledge or information and belief and that any false statements therein are made subject to the penalties of the Crimes Code, 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities; and

(b) the attorney filing the petition is authorized by the defendant to file the petition on the defendant's behalf;

(15) if applicable, any request for an evidentiary hearing. The request for an evidentiary hearing shall include a signed certification as to each intended witness, stating the witness's name, address, and date of birth, and the substance of the witness's testimony. Any documents material to the witness's testimony shall also be included in the petition; and

(16) if applicable, any request for discovery.

The petition may, but need not, include concise argument or citation and discussion of authorities.

(B) Each ground relied upon in support of the relief requested shall be stated in the petition. Failure to state such a ground in the petition shall preclude the defendant from raising that ground in any proceeding for post-conviction collateral relief.

(C) The defendant shall state in the petition the name and address of the attorney who will represent the defendant in the post-conviction collateral proceeding. If the defendant is unable to afford or otherwise procure counsel, and wants counsel appointed, the defendant shall so state in the petition and shall request the appointment of counsel.

(D) The defendant shall attach to the petition any affidavits, records, documents, or other evidence which show the facts stated in support of the grounds for relief, or the petition shall state why they are not attached.

(E) Requests for Discovery

(1) Except as provided in paragraph (E)(2), no discovery shall be permitted at any stage of the proceedings, except upon leave of court after a showing of exceptional circumstances.

(2) On the first counseled petition in a death penalty case, no discovery shall be permitted at any stage of the proceedings, except upon leave of court after a showing of good cause.

#### Comment

All privately retained counsel must enter an appearance as provided in Rule 904.

Paragraph (A)(14) was amended in 2002 to require the defendant to include verification that the attorney is authorized to file the petition.

Pursuant to paragraph (A)(6), the petition should include specific information about the sentence imposed, including whether the defendant is currently serving a sentence of imprisonment or probation for the crime; awaiting execution of a sentence of death for the crime; or serving a sentence which must expire before the defendant may commence serving the disputed sentence; the minimum and maximum terms of the sentence; the amount of fine or restitution, if any; and whether the defendant is released on parole. See 42 Pa.C.S. § 9543(a).

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

- “(2) That the conviction or sentence resulted from one or more of the following:
- (i) A violation of the Constitution of this Commonwealth or the Constitution or laws of the United States which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.
  - (ii) Ineffective assistance of counsel which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.
  - (iii) A plea of guilty unlawfully induced where the circumstances make it likely that the inducement caused the petitioner to plead guilty and the petitioner is innocent.
  - (iv) The improper obstruction by government officials of the petitioner’s right of appeal where a meritorious appealable issue existed and was properly preserved in the trial court.”

Deleted by statute.

- “(vi) The unavailability at the time of trial of exculpatory evidence that has subsequently become available and would have changed the outcome of the trial if it had been introduced.
- (vii) The imposition of a sentence greater than the lawful maximum.
- (viii) A proceeding in a tribunal without jurisdiction.”

“(3) That the allegation of error has not been previously litigated or waived.”

“(4) That the failure to litigate the issue prior to or during trial . . . , or on direct appeal could not have been the result of any rational, strategic or tactical decision by counsel.” See 42 Pa.C.S. § 9543(a)(2), (3), and (4). (Note: the statutory reference to unitary review in this paragraph is not shown in view of the Court’s 1997 suspension of the Capital Unitary Review Act.)

By statute, a court may not entertain a request for any form of relief in anticipation of the filing of a petition for post-conviction relief. See 42 Pa.C.S. § 9545(a). For stays of execution, see 42 Pa.C.S. § 9545(c) and Rule 909(A).

Paragraphs (A)(16) and (E) were added in 1997 to address requests for discovery. Paragraph (A)(16) requires that a request for discovery be included in the petition, if applicable. Paragraph (E) sets forth the standards for permitting discovery. Under paragraph (E)(1), which applies in all cases except on the first counseled petition in a death penalty case, no discovery is permitted at any stage of the proceedings, except upon leave of the court with a showing of exceptional circumstances. See 42 Pa.C.S. § 9545(d)(2). Under paragraph (E)(2), which applies to first counseled petitions in death penalty cases, discovery is permitted only upon leave of court for good cause shown. For purposes of paragraph (E)(2), “first counseled petition” includes petitions on which defendants have elected to proceed pro se pursuant to Rule 904(F)(1)(a).

Second or subsequent petitions will not be entertained unless a strong prima facie showing is offered to demonstrate that a miscarriage of justice may have occurred. See *Commonwealth v. Szuchon*, 633 A.2d 1098, 1099 (Pa. 1993) (citing *Commonwealth v. Lawson*, 549 A.2d 107 (Pa. 1988)). This standard is met if the petitioner can demonstrate either: (1) that the proceedings resulting in the petitioner's conviction were so unfair that a miscarriage of justice occurred which no civilized society can tolerate; or (2) that the petitioner is innocent of the crimes charged. See *Commonwealth v. Szuchon*, 633 A.2d 1098, 1100 (Pa. 1993).

It is expected that a form petition will be prepared incorporating the required contents set forth herein which will be available for distribution to uncounseled defendants. This rule is not intended to require an attorney to use a printed form or any other particular format in preparing a petition or an amended petition for post-conviction collateral relief, provided, of course, that the attorney must include in a petition or amended petition substantially all of the information set forth in this rule.

The petition should be typewritten or legibly handwritten.

**Official Note:** Previous Rule 1502 adopted January 24, 1968, effective August 1, 1968; rescinded December 11, 1981, effective June 27, 1982; rescission vacated June 4, 1982; rescinded February 1, 1989, effective July 1, 1989, and replaced by present Rules 1503 and 1505. Present Rule 1502 adopted February 1, 1989, effective July 1, 1989; amended August 11, 1997, effective immediately; amended July 23, 1999, effective September 1, 1999; Comment revised January 21, 2000, effective July 1, 2000; renumbered Rule 902 and Comment revised March 1, 2000, effective April 1, 2001; amended February 26, 2002, effective July 1, 2002; Comment revised April 28, 2005, effective August 1, 2005, 35 Pa.B. 2855.

*Committee Explanatory Reports:*

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

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

Final Report explaining the January 21, 2000 Comment revision cross-referencing Rule 1504(F)(1)(a) published with the Court's Order at 30 Pa.B. 624 (February 5, 2000).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

Final Report explaining the February 26, 2002 amendments concerning entry of appearance by counsel published with the Court's Order at 32 Pa.B. 1393 (March 16, 2002).

Final Report explaining the April 28, 2005 Comment revision published with the Court's Order at 35 Pa.B. 2859 (May 14, 2005).

**Source**

The provisions of this Rule 902 amended February 26, 2002, effective July 1, 2002, 32 Pa.B. 1391; amended April 28, 2005, effective August 1, 2005, 35 Pa.B. 2855. Immediately preceding text appears at serial pages (304143) to (304144) and (303709) to (303710).

**Rule 903. Docketing and Assignment.**

(A) Upon receipt of a petition for post-conviction collateral relief, the clerk of courts promptly shall time stamp the petition with the date of receipt and make a docket entry, at the same term and number as the underlying conviction and sentence, reflecting the date of receipt, and promptly shall place the petition in the criminal case file. The clerk shall transmit the petition and the criminal case

file to the trial judge, if available, or to the administrative judge, if the trial judge is not available. If the defendant's confinement is by virtue of multiple indictments or informations and sentences, the case shall be docketed to the same term and number as the indictment or information upon which the first unexpired term was imposed, but the court may take judicial notice of all proceedings related to the multiple indictments or informations.

(B) When the petition is filed and the docket entry is made, the clerk shall transmit a copy of the petition to the attorney for the Commonwealth.

(C) The trial judge, if available, shall proceed with and dispose of the petition in accordance with these rules, unless the judge determines, in the interests of justice, that he or she should be disqualified.

(D) When the trial judge is unavailable or disqualified, the administrative judge promptly shall assign and transmit the petition and the record to another judge, who shall proceed with and dispose of the petition in accordance with these rules.

#### Comment

As used in this rule, "trial judge" is intended to include the judge who accepted a plea of guilty or nolo contendere.

The transmittal of the petition to the attorney for the Commonwealth does not require a response unless one is ordered by the judge as provided in these rules, or required by Rule 906(E).

Although most references to indictments and indicting grand juries were deleted from these rules in 1993 since the indicting grand jury has been abolished in all counties, see PA. CONST. art. I, § 10 and 42 Pa.C.S. § 8931(b), the reference was retained in paragraph (A) of this rule because there may be some cases still pending that were instituted under the former indicting grand jury rules prior to the abolition of the indicting grand jury in 1993. These references to "indictment" do not apply in the context of an indicting grand jury convened pursuant to the new indicting grand jury procedures adopted in 2012 in which an information would be filed after a grand jury indicts a defendant. See Rules 103 and 556.11.

If a defendant in a death penalty case files a petition before the trial judge has made a determination concerning the appointment of counsel as required by Rule 904(G), after making the docket entry and placing the petition in the criminal case file, the clerk promptly must forward a copy of the petition to the trial judge for that determination.

**Official Note:** Previous Rule 1503 adopted January 24, 1968, effective August 1, 1968; rescinded December 11, 1981, effective June 27, 1982; rescission vacated June 4, 1982; rescinded February 1, 1989, effective July 1, 1989, and replaced by present Rule 1504. Present Rule 1503 adopted February 1, 1989, effective July 1, 1989; amended June 19, 1996, effective July 1, 1996; amended August 11, 1997, effective immediately; Comment revised January 21, 2000, effective July 1, 2000; renumbered Rule 903 and Comment revised March 1, 2000, effective April 1, 2001; amended March 3, 2004, effective July 1, 2004; Comment revised June 21, 2012, effective in 180 days.

#### *Committee Explanatory Reports:*

Final Report explaining the June 19, 1996 amendments published with the Court's Order at 26 Pa.B. 3128 (July 6, 1996).

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

Final Report explaining the January 21, 2000 Comment revision cross-referencing Rule 1504(F)(1)(a) published with the Court's Order at 30 Pa.B. 624 (February 5, 2000).



Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

Final Report explaining the March 3, 2004 changes concerning making docket entries published with the Court's Order at 34 Pa.B. 1561 (March 20, 2004).

Final Report explaining the June 21, 2012 revision of the Comment concerning the former abolition of the indicting grand jury published with the Court's Order at 42 Pa.B. 4153 (July 7, 2012).

#### Source

The provisions of this Rule 903 amended March 3, 2004, effective July 1, 2004, 34 Pa.B. 1547; amended June 21, 2012, effective in 180 days, 42 Pa.B. 4140. Immediately preceding text appears at serial pages (311421) to (311422) and (356647).

### **Rule 904. Entry of Appearance and Appointment of Counsel; In Forma Pauperis.**

(A) Counsel for defendant shall file a written entry of appearance with the clerk of courts promptly after being retained, and serve a copy on the attorney for the Commonwealth.

(1) If a firm name is entered, the name of an individual lawyer shall be designated as being responsible for the conduct of the case.

(2) The entry of appearance shall include the attorney's address, phone number, and attorney ID number.

(B) When counsel is appointed, the filing of the appointment order shall enter the appearance of appointed counsel.

(C) Except as provided in paragraph (H), when an unrepresented defendant satisfies the judge that the defendant is unable to afford or otherwise procure counsel, the judge shall appoint counsel to represent the defendant on the defendant's first petition for post-conviction collateral relief.

(D) On a second or subsequent petition, when an unrepresented defendant satisfies the judge that the defendant is unable to afford or otherwise procure counsel, and an evidentiary hearing is required as provided in Rule 908, the judge shall appoint counsel to represent the defendant.

(E) The judge shall appoint counsel to represent a defendant whenever the interests of justice require it.

(F) When counsel is appointed,

(1) the judge shall enter an order indicating the name, address, and phone number of the appointed counsel, and the order shall be served on the defendant, the appointed counsel, the previous attorney of record, if any, and the attorney for the Commonwealth pursuant to Rule 114 (Orders and Court Notices: Filing; Service; and Docket Entries); and

(2) the appointment of counsel shall be effective throughout the post-conviction collateral proceedings, including any appeal from disposition of the petition for post-conviction collateral relief.

(G) When a defendant satisfies the judge that the defendant is unable to pay the costs of the post-conviction collateral proceedings, the judge shall order that the defendant be permitted to proceed in forma pauperis.

(H) Appointment of Counsel in Death Penalty Cases.

(1) At the conclusion of direct review in a death penalty case, which includes discretionary review in the Supreme Court of the United States, or at the expiration of time for seeking the review, upon remand of the record, the trial judge shall appoint new counsel for the purpose of post-conviction collateral review, unless:

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

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

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

(2) When counsel is appointed,

(a) the judge shall enter an order indicating the name, address, and phone number of the appointed counsel, and the order shall be served on the defendant, the appointed counsel, the previous attorney of record, if any, and the attorney for the Commonwealth pursuant to Rule 114 (Orders and Court Notices: Filing; Service; and Docket Entries); and

(b) the appointment of counsel shall be effective throughout the post-conviction collateral proceedings, including any appeal from disposition of the petition for post-conviction collateral relief.

(3) When the defendant satisfies the judge that the defendant is unable to pay the costs of the post-conviction collateral proceedings, the judge shall order that the defendant be permitted to proceed in forma pauperis.

#### Comment

If a defendant seeks to proceed without an attorney, the court may appoint standby counsel. See Rule 121.

Consistent with Pennsylvania post-conviction practice, it is intended that counsel be appointed in every case in which a defendant has filed a petition for post-conviction collateral relief for the first time and is unable to afford counsel or otherwise procure counsel. However, the rule now limits appointment of counsel on second or subsequent petitions so that counsel should be appointed only if the judge determines that an evidentiary hearing is required. Of course, the judge has the discretion to appoint counsel in any case when the interests of justice require it.

Paragraph (B) was added in 2005 to make it clear that the filing of an order appointing counsel to represent a defendant enters the appearance of appointed counsel. Appointed counsel does not have to file a separate entry of appearance.

Paragraphs (F)(1) and (H)(2)(a) require that (1) the judge include in the appointment order the name, address, and phone number of appointed counsel, and (2) the order be served on the defendant,

appointed counsel, the previous attorney of record, if any, and the attorney for the Commonwealth pursuant to Rule 114 (Orders and Court Notices: Filing; Service; and Docket Entries).

Pursuant to paragraphs (F)(2) and (H)(2)(b), appointed counsel retains his or her assignment until final judgment, which includes all avenues of appeal through the Supreme Court of Pennsylvania. In making the decision whether to file a petition for allowance of appeal, counsel must (1) consult with his or her client, and (2) review the standards set forth in Pa.R.A.P. 1114 (Considerations Governing Allowance of Appeal) and the note following that rule. If the decision is made to file a petition, counsel must carry through with that decision. See *Commonwealth v. Liebel*, 573 Pa. 375, 825 A.2d 630 (2003). Concerning counsel's obligations as appointed counsel, see *Jones v. Barnes*, 463 U.S. 745 (1983). See also *Commonwealth v. Padden*, 783 A.2d 299 (Pa. Super. 2001).

Paragraph (H) was added in 2000 to provide for the appointment of counsel for the first petition for post-conviction collateral relief in a death penalty case at the conclusion of direct review.

Paragraph (H)(1)(a) recognizes that a defendant may proceed *pro se* if the judge finds the defendant competent, and that the defendant's election is knowing, intelligent, and voluntary. In *Indiana v. Edwards*, 128 S.Ct. 2379, 2388 (2008), the Supreme Court recognized that, when a defendant is not mentally competent to conduct his or her own defense, the U.S. Constitution permits the judge to require the defendant to be represented by counsel.

An attorney may not represent a defendant in a capital case unless the attorney meets the educational and experiential requirements set forth in Rule 801 (Qualifications for Defense Counsel in Capital Cases).

**Official Note:** Previous Rule 1504 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 Rule 1507. Present Rule 1504 adopted February 1, 1989, effective July 1, 1989; amended August 11, 1997, effective immediately; amended January 21, 2000, effective July 1, 2000; renumbered Rule 904 and amended March 1, 2000, effective April 1, 2001; amended February 26, 2002, effective July 1, 2002; Comment revised March 12, 2004, effective July 1, 2004; Comment revised June 4, 2004, effective November 1, 2004; amended April 28, 2005, effective August 1, 2005; Comment revised March 29, 2011, effective May 1, 2011.

*Committee Explanatory Reports:*

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

Final Report explaining the January 21, 2000 amendments adding paragraph (F) concerning appointment of counsel published with the Court's Order at 30 Pa.B. 624 (February 5, 2000).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

Final Report explaining the February 26, 2002 amendments concerning entry of appearance by counsel published with the Court's Order at 32 Pa.B. 1393 (March 16, 2002).

Final Report explaining the Comment revision concerning duration of counsel's obligation published with the Court's Order at 34 Pa.B. 1672 (March 27, 2004).

Final Report explaining the April 28, 2005 amendments concerning entry of appearance and content of appointment order published with the Court's Order at 35 Pa.B. 2859 (May 14, 2005).

Final Report explaining the March 29, 2011 revision of the Comment concerning right to counsel published with the Court's Order at 41 Pa.B. 2000 (April 16, 2011).

**Source**

The provisions of this Rule 904 amended February 26, 2002, effective July 1, 2002, 32 Pa.B. 1391; amended March 12, 2004, effective July 1, 2004, 34 Pa.B. 1671; amended June 4, 2004, effective November 1, 2004, 34 Pa.B. 3105; amended April 28, 2005, effective August 1, 2005, 35 Pa.B. 2855; amended March 29, 2011, effective May 1, 2011, 41 Pa.B. 1999. Immediately preceding text appears at serial pages (311423) to (311425).

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

(A) The judge may grant leave to amend or 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**

"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.

*Committee Explanatory Reports:*

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

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

Final Report explaining the September 21, 2012 revision of the Comment correcting a typographical error in the first paragraph published with the Court's Order at 42 Pa.B. 6251 (October 6, 2012).

**Source**

The provisions of this Rule 905 amended September 21, 2012, effective November 1, 2012, 42 Pa.B. 6247. Immediately preceding text appears at serial page (356650).

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

(A) Except as provided in paragraph (E), an answer to a petition for post-conviction collateral relief is not required unless ordered by the judge. When the judge has not ordered an answer, the attorney for the Commonwealth may elect to answer, but the failure to file one shall not constitute an admission of the well-pleaded facts alleged in the petition.

(B) Upon the entry of an order directing an answer, the clerk of courts shall serve a copy of the order on the attorney for the Commonwealth, the defendant's attorney, or the defendant if unrepresented.

(C) If the judge orders an answer, the answer shall be in writing and shall be filed and served within the time fixed by the judge in ordering the answer. The time for filing the answer may be extended by the judge for cause shown.

(D) The judge may grant leave to amend or 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

(1) First Counseled Petitions

(a) The Commonwealth shall file an answer to the first counseled petition for collateral review in a death penalty case.

(b) The answer shall be filed within 120 days of the filing and service of the petition. For good cause shown, the court may order extensions, of up to 90 days each, of the time for filing the answer.

(2) Second and Subsequent Petitions

(a) An answer to a second or subsequent petition for post-conviction collateral relief is not required unless ordered by the judge. When the judge has not ordered an answer, the attorney for the Commonwealth may elect to file an answer.

(b) The answer shall be filed within 120 days of the filing and service of the petition. For good cause shown, the court may order extensions, of up to 90 days each, of the time for filing the answer.

(3) Amendments to Answer

The judge may grant the Commonwealth leave 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.

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. 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.

*Committee Explanatory Report:*

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1477 (March 18, 2000).

Final Report explaining the March 3, 2004 changes to paragraph (B) published with the Court's Order at 34 Pa.B. 1561 (March 20, 2004).

**Source**

The provisions of this Rule 906 amended March 3, 2004, effective July 1, 2004, 34 Pa.B. 1547. Immediately preceding text appears at serial pages (287578) to (287579).

**Rule 907. Disposition Without Hearing.**

Except as provided in Rule 909 for death penalty cases,

(1) the judge shall promptly review the petition, any answer by the attorney for the Commonwealth, and other matters of record relating to the defendant's claim(s). If the judge is satisfied from this review that there are no genuine issues concerning any material fact and that the defendant is not entitled to post-conviction collateral relief, and no purpose would be served by any further proceedings, the judge shall give notice to the parties of the intention to dismiss the petition and shall state in the notice the reasons for the dismissal. The defendant may respond to the proposed dismissal within 20 days of the date of the notice. The judge thereafter shall order the petition dismissed, grant leave to file an amended petition, or direct that the proceedings continue.

(2) A petition for post-conviction collateral relief may be granted without a hearing when the petition and answer show that there is no genuine issue concerning any material fact and that the defendant is entitled to relief as a matter of law.

(3) The judge may dispose of only part of a petition without a hearing by ordering dismissal of or granting relief on only some of the issues raised, while ordering a hearing on other issues.

(4) When the petition is dismissed without a hearing, the judge promptly shall issue an order to that effect and shall advise the defendant by certified mail, return receipt requested, of the right to appeal from the final order disposing of the petition and of the time limits within which the appeal must be filed. The order shall be filed and served as provided in Rule 114.

(5) When the petition is granted without a hearing, the judge promptly shall issue an order granting a specific form of relief, and issue any supplement-

tary orders appropriate to the proper disposition of the case. The order shall be filed and served as provided in Rule 114.

#### 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.

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.

Second or subsequent petitions will not be entertained unless a strong prima facie showing is offered to demonstrate that a miscarriage of justice may have occurred. See *Commonwealth v. Szuchon*, 534 Pa. 483, 486, 633 A.2d 1098, 1099 (1993) (citing *Commonwealth v. Lawson*, 519 Pa. 504, 549 A.2d 107 (1988)). This standard is met if the petitioner can demonstrate either: (1) that the proceedings resulting in the petitioner's conviction were so unfair that a miscarriage of justice occurred which no civilized society can tolerate; or (2) that the petitioner is innocent of the crimes charged. See *Commonwealth v. Szuchon*, 534 Pa. 483, 487, 633 A.2d 1098, 1100 (1993).

When the disposition granting a petition reinstates a defendant's direct appeal rights *nunc pro tunc*, the judge must advise the defendant by certified mail, return receipt requested that a new notice of appeal must be filed within 30 days of the order.

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

For the requirements for appointment of counsel on second and subsequent petitions, see Rule 904(B).

Relief may be granted without a hearing under paragraph (2) only after an answer has been filed either voluntarily or pursuant to court order.

A PCRA petition may not be dismissed due to delay in filing except after a hearing on a motion to dismiss. See 42 Pa.C.S. § 9543(b) and Rule 908.

Nothing in this rule is intended to preclude a judicial district from utilizing the United States Postal Service's return receipt electronic option, or any similar service that electronically provides a return receipt, when using certified mail, return receipt requested.

**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.

#### *Committee Explanatory Reports:*

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

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

Final Report explaining the September 18, 2008 revision of the Comment concerning the United States Postal Service's return receipt electronic option published with the Court's Order at 38 Pa.B. 5428 (October 4, 2008).

Final Report explaining the July 27, 2012 amendments to paragraph (4) and the addition of paragraph (5) concerning orders and the proposed revision of the Comment concerning appeals *nunc pro tunc* published with the Court's Order at 42 Pa.B. 5349 (August 18, 2012).

#### Source

The provisions of this Rule 907 amended September 18, 2008, effective February 1, 2009, 38 Pa.B. 5425; amended July 27, 2012, effective September 1, 2012, 42 Pa.B. 5347. Immediately preceding text appears at serial pages (311428) and (338923).

### Rule 908. Hearing.

(A) Except as provided in Rule 907, the judge shall order a hearing:

(1) whenever the Commonwealth files a motion to dismiss due to the defendant's delay in filing the petition; or

(2) when the petition for post-conviction relief or the Commonwealth's answer, if any, raises material issues of fact. However, the judge may deny a hearing on a specific issue of fact when a full and fair evidentiary hearing upon that issue was held at trial or at any proceeding before or after trial.

The judge shall schedule the hearing for a time that will afford the parties a reasonable opportunity for investigation and preparation, and shall enter such interim orders as may be necessary in the interests of justice.

(B) The judge, on petition or request, shall postpone or continue a hearing to provide either party a reasonable opportunity, if one did not exist previously, for investigation and preparation regarding any new issue of fact raised in an amended petition or amended answer.

(C) The judge shall permit the defendant to appear in person at the hearing and shall provide the defendant an opportunity to have counsel.

(D) Upon the conclusion of the hearing the judge shall determine all material issues raised by the defendant's petition and the Commonwealth's answer, or by the Commonwealth's motion to dismiss, if any.

(1) If the judge dismisses the petition, the judge promptly shall issue an order denying relief. The order shall be filed and served as provided in Rule 114.

(2) If the judge grants the petition, the judge promptly shall issue an order granting a specific form of relief, and issue any supplementary orders appropriate to the proper disposition of the case. The order shall be filed and served as provided in Rule 114.

(E) If the judge disposes of the case in open court in the presence of the defendant at the conclusion of the hearing, the judge shall advise the defendant on the record of the right to appeal from the final order disposing of the petition



and of the time within which the appeal must be taken. If the case is taken under advisement, or when the defendant is not present in open court, the judge, by certified mail, return receipt requested, shall advise the defendant of the right to appeal from the final order disposing of the petition and of the time limits within which the appeal must be filed.

#### Comment

The judge's power, under paragraph (A), to deny a hearing on a specific factual issue is intended to apply when an issue of fact already has been heard fully, but has never been determined. The judge need not rehear such an issue, but would be required to determine it under paragraph (D).

The 1997 amendment to paragraph (A)(1) requires a hearing on every Commonwealth motion to dismiss due to delay in the filing of a PCRA petition. *See* 42 Pa.C.S. § 9543(b).

When the disposition reinstates a defendant's direct appeal rights *nunc pro tunc*, the judge, pursuant to paragraph (E), also must advise the defendant that a new notice of appeal must be filed within 30 days of the order reinstating the direct appeal rights.

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

*See also* Rule 909 for procedures in death penalty cases.

Except as provided in Rule 902(E)(2) for first counseled petitions in death penalty cases, no discovery is permitted at any stage of the proceedings, except upon leave of the court with a showing of exceptional circumstances. *See* 42 Pa.C.S. § 9545(d)(2).

Nothing in this rule is intended to preclude a judicial district from utilizing the United States Postal Service's return receipt electronic option, or any similar service that electronically provides a return receipt, when using certified mail, return receipt requested.

**Official Note:** Rule 1508 adopted February 1, 1989, effective July 1, 1989; amended August 11, 1997, effective immediately; renumbered Rule 908 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.

#### *Committee Explanatory Reports:*

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

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

Final Report explaining the September 18, 2008 revision of the Comment concerning the United States Postal Service's return receipt electronic option published with the Court's Order at 38 Pa.B. 5428 (October 4, 2008).

Final Report explaining the July 27, 2012 amendments to paragraphs (D) and (E) concerning orders and notice to the defendant, and the proposed revision of the Comment concerning appeals *nunc pro tunc* published with the Court's Order at 42 Pa.B. 5349 (August 18, 2012).

#### Source

The provisions of this Rule 908 amended September 18, 2008, effective February 1, 2009, 38 Pa.B. 5425; amended July 7, 2012, effective September 1, 2012, 42 Pa.B. 5347. Immediately preceding text appears at serial pages (338924) to (338925).

**Rule 909. Procedures for Petitions in Death Penalty Cases: Stays of Execution of Sentence; Hearing; Disposition.***(A) Stays of Execution*

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

(2) In all cases in which a stay of execution has been properly granted, the stay shall remain in effect through the conclusion of all PCRA proceedings, including review in the Supreme Court of Pennsylvania, or the expiration of time for seeking such review.

*(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.

(2) 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,

(a) the judge shall give notice to the parties of the intention to dismiss the petition and shall state in the notice the reasons for the dismissal.

(b) The defendant may respond to the proposed dismissal within 20 days of the date of the notice.

(c) No later than 90 days from the date of the notice, or from the date of the defendant's response, the judge shall issue an order:

(i) dismissing the petition;

(ii) granting the defendant leave to file an amended petition; or

(iii) ordering that an evidentiary hearing be held on a date certain.

The order shall be filed and served as provided in Rule 114.

(3) If the judge determines that an evidentiary hearing is required, the judge shall enter an order setting a date certain for the hearing, which shall not be scheduled for fewer than 10 days or more than 45 days from the date of the order. The judge may, for good cause shown, grant leave to continue the hearing. No more than 90 days after the conclusion of the evidentiary hearing, the judge shall dispose of the petition.

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

(5) If the judge does not act within the 90 days mandated by paragraphs (B)(2)(c) and (B)(3), or within the 30 day-extension permitted by paragraph

(B)(4), the clerk of courts shall send a notice to the judge that the time period for disposing of the petition has expired. The clerk shall enter the date and time of the notice on the docket, and shall send a copy of the notice to the attorney for the Commonwealth, the defendant, and defense counsel, if any.

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

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

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

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

#### 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 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).

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

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

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.

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

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

When the disposition reinstates a defendant's direct appeal rights *nunc pro tunc*, the judge must advise the defendant either in person or by certified mail, return receipt requested that a new notice of appeal must be filed within 30 days of the order.

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

**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.

*Committee Explanatory Reports:*

Final Report explaining the August 11, 1997 adoption of new Rule 1509 published with the Court's Order at 27 Pa.B. 4305 (August 23, 1997).

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

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

Final Report explaining the February 12, 2002 amendments concerning extensions of time and sanctions published with the Court's Order at 32 Pa.B. 1174 (March 2, 2002).

Final Report explaining the October 7, 2005 amendments to paragraph (A)(2) and revision of the Comment concerning *Commonwealth v. Morris* published with the Court's Order at 35 Pa.B. 5772 (October 22, 2005).

Final Report explaining the July 27, 2012 amendments to paragraph (2)(c) concerning orders and the revision of the Comment concerning appeals *nunc pro tunc* published with the Court's Order at 42 Pa.B. 5349 (August 18, 2012).

**Source**

The provisions of this Rule 909 amended October 7, 2005, effective February 1, 2006, 35 Pa.B. 5771; amended July 27, 2012, effective September 1, 2012, 42 Pa.B. 5347. Immediately preceding text appears at serial pages (338925) to (338926) and (315237) to (315238).

**Rule 910. Appeal.**

An order granting, denying, dismissing, or otherwise finally disposing of a petition for post-conviction collateral relief shall constitute a final order for purposes of appeal.

**Comment**

Disposition without a hearing under Rule 907(A) and (B), or under Rule 909(C)(3)(a), constitutes a final order under this rule. A partial disposition under Rule 907(C) is not a final order until the judge has fully disposed of all claims.

When the disposition reinstates a defendant's direct appeal rights *nunc pro tunc*, a new notice of appeal must be filed within 30 days of the order.

**Official Note:** Previously Rule 1509, adopted February 1, 1989, effective July 1, 1989; renumbered Rule 1510 and amended August 11, 1997, effective immediately; renumbered Rule 910 and Comment revised March 1, 2000, effective April 1, 2001; Comment revised July 27, 2012, effective September 1, 2012.

*Committee Explanatory Reports:*

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

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

Final Report explaining the July 27, 2012 Comment revision concerning appeal *nunc pro tunc* published with the Court's Order at 42 Pa.B. 5349 (August 18, 2012).

**Source**

The provisions of this Rule 910 amended July 27, 2012, effective September 1, 2012, 42 Pa.B. 5347. Immediately preceding text appears at serial page (315238).

[Next page is 10-1.]

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