

1999 Membership

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* Term expired 6-30-99

** Effective 7-1-99

Staff:

Anne T. Panfil, Esq., *Chief Staff Counsel*
Jennifer Degenfelder, Esq., *Staff Counsel*
Patricia R. Kephart, *Office Manager+*
Suzanne Creavey, *Office Manager++*

+ Retired 12-99

++ Effective 12-99

Legal Authorization:

Pa. Constitution, Article V, § 10(c)
42 Pa. C.S., § 1722

Criminal

Procedural

Rules

Committee

5035 Ritter Road,
Suite 800
Mechanicsburg, PA 17055
(717) 795-2100

History/Background

The Criminal Procedural Rules Committee is an advisory arm to the Supreme Court, serving to assist the Court in achieving its constitutional mandate to prescribe general rules governing criminal practice and procedure throughout Pennsylvania.

The committee monitors recent developments in criminal procedure in Pennsylvania and in other jurisdictions to identify areas in which the criminal rules need to be amended, revised, streamlined or simplified. The committee also reviews and responds to the numerous questions raised by judges, lawyers, and court personnel; the public; and agencies within the criminal justice system.

In addition, the committee reviews Pennsylvania appellate court cases and Pennsylvania legislation, earmarking those decisional or statutory law changes which affect the criminal process and necessitate amendments to the rules or other action by the Court.

The committee also monitors all local criminal rules as required by Pennsylvania Rules of Criminal Procedure 6.

Prior to completing a rule proposal for submission to the Supreme Court, the committee publishes an explanatory *Report*, which describes the committee's proposal, and gives members of the bench, bar, and public an opportunity to comment on the proposal. The reports are published in the *Pennsylvania Bulletin*, the Atlantic Reporter 2d (*Pennsylvania Reporter Series*), and various local bar publications. All comments are considered and, when appropriate, a proposal is modified before final submission to the Court. (Note: Some reports are submitted to the Court without publication, pursuant to Pa.R.J.A. 103(a)(3) in the interests of justice, because exigent circumstances existed that warranted prompt action, or because the proposed changes are technical or perfunctory in nature.)

If a recommendation is adopted, the committee prepares a final explanatory report for publication with the Court's order. These *Final Reports* are useful sources of information about the rule changes and the committee's considerations in developing the proposal for the rule changes.

In addition to reports, the committee prepares, as a public service, a "Calendar of the Effective Dates," which lists recently adopted criminal procedural rule changes and their effective dates. These calendars are published in various legal journals and newsletters to provide easy access to the effective dates of criminal rule changes.

Web Site

The Criminal Procedural Rules Committee publishes its rule proposals and explanatory *Reports*, as well as the Supreme Court's orders promulgating criminal rule changes, the text of the rule changes, and the committee's *Final Reports* explaining the rule changes on the Unified Judicial System home page. These publications may be found under Supreme Court Committees at www.courts.state.pa.us.

Membership and Staff

Committee membership is appointed by the Supreme Court. Each member's term is three years in length and members may serve a maximum of two full terms. In 1999 it included a Superior Court judge, four Common Pleas Court judges, the chief disciplinary counsel for the Disciplinary Board of the Supreme Court, five prosecutors, one assistant public defender, two attorneys in private practice, one law professor and a district court administrator.

The committee has a staff of three: two attorneys and an office manager. It maintains its office in Mechanicsburg at the Administrative Office's Central Site.

1999 Activities

The committee held six two-day full-committee meetings and several subcommittee meetings in 1999. The meetings were held in Pittsburgh, Philadelphia, Hershey, Ephrata and Gettysburg.

A good deal of the committee's work in 1999 involved the development of procedures for the use of advanced communication technology in criminal cases, in particular for arrest and search warrants, preliminary arraignments and arraignments. The committee also spent a good deal of time working on the reorganization and renumbering of the criminal rules with the goal of presenting the rules in a more orderly fashion that more accurately reflects the movement of a criminal case through the criminal justice system, thereby making the rules more "user friendly" and easier to follow.

In addition, the committee continued with its ongoing review of the rules affecting proceedings before the minor judiciary, both in summary cases, Chapter 50, and in court cases, Chapter 100, and responding to specific inquiries from the Supreme Court or issues that arose in case law. The committee addressed several other areas of criminal practice and procedure, including pleas, jurisdiction and venue, jury procedures, and sentence and post-sentence procedures.

The committee communicated regularly with the Administrative Office and with the Supreme Court's other committees concerning various procedural matters in an ongoing effort to achieve uniformity and consistency among interrelated procedural and administrative matters.

The committee continued in 1999 to make presentations to the bench, the bar and others involved in the criminal justice system regarding recent changes in Pennsylvania's criminal procedures. At these presentations the committee receives valuable input concerning Pennsylvania's criminal practice.

1999 Committee Action

The Supreme Court adopted 13 committee recommendations for rule changes in 1999. A number of other recommendations remained pending with the Court. These are described below. A chart indicating the status of the proposals and recommendations pending in 1999 can be found beginning on page 69.

Proposals Adopted by the Supreme Court

Recommendation No. 8, Criminal Rules 1996: Rule 86 amendment regarding **police officer's presence at summary trial and trial de novo** to address the holding in *Commonwealth v. Hightower*. Adopted 5-14-99, effective 7-1-99. See Order and *Final Report* at 29 *Pa.B.* 2776 (5-29-99) and 728 A.2d Advance Sheets (*Pennsylvania Reporter Series*).

Recommendation No. 16, Criminal Rules 1996: Amendments to Rules 71 and 81 to clarify the procedures related to collateral in **summary cases** and to clarify when an immediate trial must be conducted in a summary case following an arrest without warrant. Adopted by the Court 5-14-99, effective 7-1-99. See Order and *Final Report* at 29 *Pa.B.* 2775 (5-29-99) and 728 A.2d Advance Sheets (*Pennsylvania Reporter Series*).

Recommendation No. 5, Criminal Rules 1998: Amendments to Rules 75, 76, and 85 clarifying that the October 1997 amendments require an **ability to pay hearing** following an arrest for failure to respond to the ten-day notice required under the rules. Adopted by the Court 7-2-99, effective 8-1-99. See Order and *Final Report* at 29 *Pa.B.* 3718 (7-17-99) and 730-731 A.2d Advance Sheets (*Pennsylvania Reporter Series*).

Recommendation No. 6, Criminal Rules 1998: New Rule 143, amendments to Rule 23, revision of the Rule 107 Comment, combining Rules 141 and 142 as Rule 141, and renumbering of current Rule 143. The rule changes provide the procedures for **reinstating criminal cases**

after withdrawal or dismissal at or before the preliminary hearing. Adopted by the Court 10-8-99, effective 1-1-00. See Order and *Final Report* at 29 *Pa.B.* 5509 (10-23-99) and 737-738 A.2d Advance Sheets (*Pennsylvania Reporter Series*).

Recommendation No. 9, Criminal Rules 1998: Amendments to Rule 1114 incorporating the *Commonwealth v. Karaffa* prohibition against **written jury instructions** being sent out with the jury during deliberations. The Court declined the committee's offer to reexamine this issue, as well as jury trial procedures in general. Adopted by the Court 11-18-99, effective 1-1-00. See Order and *Final Report* at 29 *Pa.B.* 6102 (12-4-99) and 739-740 A.2d Advance Sheets (*Pennsylvania Reporter Series*).

Recommendation No. 10, Criminal Rules 1998: Amendments to Rules 1101 (Waiver of Jury Trial), 1102 (Procedure When Jury Trial Is Waived), and 1103 (Consent to Be Tried by Less Than Twelve Jurors) to implement the constitutional amendment concerning **Commonwealth's right to a jury trial**. Adopted by the Court 4-16-99, effective 7-1-99. See Order and *Final Report* at 29 *Pa.B.* 2290 (5-1-99) and 726 A.2d Advance Sheets (*Pennsylvania Reporter Series*).

Recommendation No. 2, Criminal Rules 1999: Amendments to Rules 319 and 320 to require that the defendant give notice of an **intention to withdraw a guilty plea** and to give the attorney for the Commonwealth ten days within which to respond. Adopted by the Court 7-15-99, effective 1-1-00. See Order and *Final Report* at 29 *Pa.B.* 4057 (July 31, 1999) and 732-733 A.2d Advance Sheets (*Pennsylvania Reporter Series*).

Recommendation No. 6, Criminal Rules 1999: **Technical amendments to Rule 1104** adding titles to the subsections in the rule. Adopted by the Court 5-14-99, effective 7-1-99. See Order and *Final Report* at 29 *Pa.B.* 2778 (5-29-99) and 728 A.2d Advance Sheets (*Pennsylvania Reporter Series*).

Recommendation No. 7, Criminal Rules 1999: Amendments to Rule 1410 providing procedures following **withdrawal of post-sentence motion**, and addressing *Commonwealth v. Lord* and Pa.R.A.P. 1925(b). Adopted by the Court 7-9-99, effective 1-1-00. See Order and *Final Report* at 29 *Pa.B.* 3836 (7-24-99) and 731 A.2d Advance Sheets (*Pennsylvania Reporter Series*).

Recommendation No. 8, Criminal Rules 1999: Rule 1405 amendment modifying the **time for sentence** from 60 to 90 days with a correlative Comment revision that (1) adjusts the time limit on extensions from 60 to 30 days, and (2) adds a citation to *Commonwealth v. Anders*. Adopted by the Court 7-15-99, effective 1-1-00. See Order and *Final Report* at 29 *Pa.B.* 4059 (1-31-99) and 732-733 A.2d Advance Sheets (*Pennsylvania Reporter Series*).

Recommendation No. 10, Criminal Rules 1999: Clarifying changes to Rules 4001 and 4002 concerning the 1998 amendment to Article 1, Section 6 of the Pennsylvania Constitution, dealing with **bail**. Adopted by the Court 9-3-99, effective immediately. See Order and *Final Report* at 29 *Pa.B.* 4862 (9-18-99) and 735-736 A.2d Advance Sheets (*Pennsylvania Reporter Series*).

Recommendation No. 12, Criminal Rules 1999: Rule 60 Comment revision that clarifies that pursuant to the 1998 amendments to the Game and Wildlife Code concerning **deputy wildlife conservation officers** using citations, it is not feasible for the deputies to issue citations because of the change in the statute, so they have to file pursuant to Rule 60. Approved by the Court 8-13-99, effective immediately. See Order and *Final Report* at 29 *Pa.B.* 4543 (8-28-99) and 734 A.2d Advance Sheets (*Pennsylvania Reporter Series*).

Recommendation No. 13, Criminal Rules 1999: Amendments to Rules 1500, 1501, 1502 and 1509 providing for **stays of execution** and time limitations on the length of stays of execution in death penalty cases. Adopted by the

Court 7-23-99, effective 9-1-99. See Order and *Final Report* at 29 Pa.B. 4167 (8-7-99) and 732-733 A.2d Advance Sheets (*Pennsylvania Reporter Series*).

Proposals Pending with the Supreme Court

A number of committee recommendations for criminal rule changes remained pending with the Supreme Court at the close of 1999. These are described below and are also summarized in the Status of Recommendations chart following this report.

Recommendation No. 6, Criminal Rules 1997: Proposed amendments to Rules 1500, 1507, 1508, and 1509 would provide for notice to a defendant of the PCRA **time limits** and **right to counsel**, impose a time limit on the disposition of petitions in noncapital cases, and provide for extensions of time. (The proposal was withdrawn in 1999 so the committee could reconsider the sanction aspects of the proposal. The committee resubmitted the portion of the proposal that would amend Rule 1500 to provide the defendant with notice of the time limits and right to counsel, and this proposal is still pending with the Court. See Recommendation 14, Criminal Rules 1999 on page 68.)

Recommendation No. 7, Criminal Rules 1997: Proposed amendments to Chapter 100 establishing a uniform procedure for handling cases in which the **defendant fails to appear for the preliminary hearing**. See *Supplemental Report* at 26 Pa.B. 2307 (5-18-96). (This proposal was withdrawn so the committee could consider questions from the Court. See *Second Supplemental Report* at 29 Pa.B. 6454 (12-25-99).)

Recommendation No. 3, Criminal Rules 1998: Proposed new Rule 300 and amendments to Rules 21 and 1100 to address *Commonwealth v. McPhail*, providing procedures for the **transfer of cases** when multiple charges arise from a single criminal episode, and the charges are filed in different judicial districts or different

magisterial districts. See *Report* at 28 Pa.B. 475 (1-31-98).

Recommendation No. 7, Criminal Rules 1998: Proposed amendments to Rules 53, 59, 64, and 69 concerning **guilty pleas** in mandatory fines and imprisonment cases. (This proposal was withdrawn 11-18-99 so the committee could consider questions from the Court.)

Recommendation No. 8, Criminal Rules 1998: Proposed amendments to Rules 53 and 86 that would clarify that a defendant may appeal for a trial *de novo* following a guilty plea in a **summary case**.

Recommendation No. 1, Criminal Rules 1999: Amendments to Rule 1504 and correlative revisions of the Comments to Rules 1502, 1503, and 1506 providing for the immediate appointment of counsel in **death penalty cases** following the conclusion of direct appeal.

Recommendation No. 3, Criminal Rules 1999: Revision of the Rule 1117 Comment adding (1) a reference to *Commonwealth v. Vega* concerning **waiver of presence** and (2) a provision concerning the issuance of a bench warrant following a defendant's **failure to appear** for a trial *de novo* when there is a sentence of imprisonment. (This proposal was withdrawn in 1999 so the committee could review sentencing *in absentia* issues and replaced by Recommendation No. 9, Criminal Rules 1999.)

Recommendation No. 4, Criminal Rules 1999: Amendments of Rules 303 and 1117 deleting the local option from Rule 303 concerning permitting the defendant to waive his or her presence at the **arraignment** and making it the defendant's option. (This proposal was remanded by the Court in 1999 so the committee could consider notice provisions.)

Recommendation No. 5, Criminal Rules 1999: Amendments to Rules 3, 140, 140A, 303, 352, 1127 and 6003 that would provide procedures for the **use of advanced communication technology**, including facsimiles, audio-video

transmissions, video-teleconferencing and other similar technology, for conducting preliminary arraignments and arraignments. (This proposal was withdrawn in 1999 so the committee could join it with other proposals related to the use of advanced communication technology.)

Recommendation No. 9, Criminal Rules 1999: Revision of the Rule 1117 Comment clarifying the **waiver of presence** provisions and adding a cross-reference to *Commonwealth v. Vega* and *Commonwealth v. Wilson*. (Placed on hold by the committee pending a decision in *Commonwealth v. Sullivan*.)

Recommendation No. 11, Criminal Rules 1999: Reorganization and renumbering of the rules in a more orderly, “user friendly” manner.

Recommendation No. 14, Criminal Rules 1999: Proposed amendments to Rule 1500 providing in **capital cases** for notice of the information concerning the PCRA and the procedures under Chapter 1500 of the rules.

Recommendation No. 15, Criminal Rules 1999: Clarification of the Rule 1104 procedures concerning access to **juror qualification forms**.

Looking Ahead to 2000

The committee plans to continue its study of the use of advanced communication technology in criminal proceedings. It also plans to continue examining local rule procedures and working on the rules affecting the minor judiciary, both relating to summary cases and court cases, as well as monitoring criminal practice and procedure and the criminal rules in general.

Contact Person

Anyone wanting additional information about the Criminal Procedural Rules Committee or having questions about the criminal procedural rules may contact the committee through its chief staff counsel, Anne T. Panfil, Esq., at (717) 795-2100 or writing in care of the committee to P.O. Box 1325; Doylestown, PA 18901.



Status of Recommendations		
Recommendation	Subject	Status
8, 1996	Revision to Rule 86 Comment regarding a police officer's presence at summary trial and trial <i>de novo</i>	Adopted 5-14-99; effective 7-1-99
16, 1996	Amendments to Rules 71 and 81 clarifying procedures related to collateral in summary cases	Adopted 5-14-99; effective 7-1-99
6, 1997	Amendments to Rules 1500, 1507, 1508 and 1509 to provide for notice to a defendant of PCRA time limits and right to counsel, to impose a time limit on disposition of petitions in noncapital cases, and to provide for extensions of time	Withdrawn 10-13-99
7, 1997	Amendments to Chapter 100 establishing a uniform procedure for handling cases in which defendant fails to appear for preliminary hearing	Withdrawn 11-4-99
3, 1998	New Rule 300 and amendments to Rules 21 and 1100, providing procedures for transfer of cases	Submitted to Court 4-1-98; pending before Court
5, 1998	Amendments to Rules 75, 76 and 85 regarding ability to pay hearings following an arrest for failure to respond to ten-day notice required under the rules	Adopted 7-2-99, effective 8-1-99
6, 1998	New Rule 143, amendments to Rule 23, revision of the Comment to Rule 107, combination of Rules 141 and 142 and renumbering of current Rule 143, providing procedures for reinstatement of criminal charges	Adopted 10-8-99; effective 1-1-00
7, 1998	Amendments to Rules 53, 59, 64 and 69 clarifying summary case guilty plea procedures	Withdrawn 11-18-99

continued...

Table 3.7.1

Status of Recommendations, continued		
Recommendation	Subject	Status
8, 1998	Amendments to Rules 53 and 86 to clarify that a defendant may appeal for a trial <i>de novo</i> following a guilty plea in a summary case	Submitted to Court 7-28-98; pending before Court
9, 1998	Amendments to Rule 1114 regarding written jury instructions	Adopted 11-18-99; effective 1-1-00
10, 1998	Amendments to Rules 1101 (Waiver of Jury Trial), 1102 (Procedure When Jury Trial Is Waived) and 1103 (Consent to Be Tried by Less Than Twelve Jurors) to implement constitutional amendment concerning Commonwealth's right to a jury trial	Adopted 4-16-99; effective 7-1-99
1, 1999	Amendments to Rule 1504 and correlative revisions to the Comments to Rules 1502, 1503 and 1506 regarding appointment of counsel in death penalty cases	Submitted to Court 1-29-99; pending before Court
2, 1999	Amendments to Rules 319 and 320 regarding a defendant's intention to withdraw a guilty plea	Adopted 7-15-99; effective 1-1-00
3, 1999	Revision of the Rule 1117 Comment regarding waiver of presence and failure to appear	Withdrawn 3-16-99; replaced by Rec. 9 of 1999
4, 1999	Amendments to Rules 303 and 1117 regarding defendant's presence at arraignment	Submitted 2-4-99; remanded by Court for further consideration
5, 1999	Amendments to Rules 3, 140, 140A, 303, 352, 1127 and 6003 to provide procedures for use of advanced communication technology	Withdrawn 11-18-99
6, 1999	Technical amendments to Rules 1104	Adopted 5-14-99; effective 7-1-99
7, 1999	Amendments to Rule 1410 providing procedures following withdrawal of post-sentence motion	Adopted 7-9-99; effective 1-1-00

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Table 3.7.1, cont'd.

Status of Recommendations, continued		
Recommendation	Subject	Status
8, 1999	Amendments to Rule 1405 modifying sentencing time	Adopted 7-15-99; effective 1-1-00
9, 1999	Revision to the Rule 1117 Comment regarding waiver of presence	Submitted 5-24-99; on hold with committee
10, 1999	Amendments to Rules 4001 and 4002 dealing with bail	Adopted 9-3-99; effective immediately
11, 1999	Reorganization and renumbering of criminal rules	Submitted 6-21-99; pending before Court
12, 1999	Revision to Rule 60 Comment concerning use of citations by deputy wildlife conservation officers	Adopted 8-13-99; effective immediately
13, 1999	Amendments to Rules 1500, 1501, 1502 and 1509 regarding stays of execution	Adopted 7-23-99; effective 9-1-99
14, 1999	Amendments to Rule 1500 regarding capital cases	Submitted 10-13-99; pending before Court
15, 1999	Amendments to Rule 1104 concerning access to juror qualification forms	Submitted 12-13-99; pending before Court

Table 3.7.1, cont'd.