

2004 Membership

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* Term expired 6-30-04

** Effective 6-30-04

Legal Authorization:

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

About the Committee

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.

Criminal

Procedural

Rules

Committee

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Reports

Prior to completing a rule proposal for submission to the Supreme Court, the committee publishes an explanatory report, called simply "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. In some cases the committee also distributes the report directly to organizations within the criminal justice system upon which the proposal may impact.

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), this in the interest 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.

2004 Activities

The committee held five full-committee meetings and several subcommittee meetings in

2004. The full-committee meetings were held in Philadelphia, Pittsburgh, Harrisburg, Mendenhall and Hershey.

In 2004 the committee continued its work on the following:

- development and refinement of procedures for the use of advanced communication technology (ACT) in criminal cases
- work necessitated by the Common Pleas Case Management System (CPCMS), the statewide automation of the criminal division of the Common Pleas Courts.
- study of jury trial innovations that would benefit Pennsylvania's criminal justice system
- review of the rules affecting proceedings before the minor judiciary, specifically
 - the electronic preparation and filing of citations
 - motions in summary cases
 - requirements for the continuous availability of issuing authorities
 - special procedures necessary for the operation of the Philadelphia Traffic Court.
- monitoring local rules.

The committee also addressed several other areas of criminal practice and procedure, including right to counsel, bail, bench warrants, discovery, sentencing and procedures in the Philadelphia Municipal Court.

2004 Committee Action

The Supreme Court adopted nine committee recommendations for rule changes in 2004 and one new rule that was developed by an ad hoc committee appointed by the Court. A number of other recommendations remained pending with the Court. They are all described below and are listed in the Status of Recommendations chart beginning on page 57.

Proposals Adopted by the Supreme Court

Note: The Final Reports for any of these proposals can also be found on the committee's Web page at www.courts.state.pa.us/Index/SupCtCmtes/CrimRulesCmte/dockcrm.asp.

Recommendation No. 4, Criminal Rules 2000: Amendments to Rules 122 and 904 clarifying that **appointed counsel** remains in the case through all avenues of direct appeal, including the Supreme Court. Adopted 3-12-04, effective 7-1-04. See Final Report at 34 *Pa.B.* 1672 (March 27, 2004), and 843 *A.2d* Advance Sheets (*Pennsylvania Reporter Series*).

Recommendation No. 1, Criminal Rules 2003: Changes to the rules related to the **filing and service** of motions and court orders and notices and correlative rule changes, including amendments that would modify the procedures clerks of courts must follow when the filing is made by a represented defendant, require the clerk to accept all filings rather than make a determination of timeliness, and recognize the case law providing the "prisoner mailbox rule." Adopted 3-3-04, effective 7-1-04. See Final Report at 34 *Pa.B.* 1561 (March 20, 2004), and 842 *A.2d* Advance Sheets (*Pennsylvania Reporter Series*).

Recommendation No. 4, Criminal Rules 2003: Changes to Rules 122, 140, 141 and 454 clarifying the procedures concerning **appointment of counsel** in summary cases in view of *Alabama v. Shelton*. Adopted 3-26-04, effective 7-1-04. See Final Report at 34 *Pa.B.* 1931 (April 10, 2004), and 844 *A.2d* Advance Sheets (*Pennsylvania Reporter Series*).

Recommendation No. 5, Criminal Rules 2003: Rule 573 Comment revision clarifying the procedures concerning the assessment of charges for **discovery materials**. Approved 3-26-04, effective 7-1-04. See Final Report at 34 *Pa.B.* 1933 (April 10, 2004), and 844 *A.2d* Advance Sheets (*Pennsylvania Reporter Series*).

Recommendation No. 6, Criminal Rules 2003: Rules 130 and 555 changes to accommodate

Act 82 of 2002 and *Commonwealth v. McPhail* concerning **transfer of cases**. Adopted 5-21-04, effective 7-1-04. See Final Report at 34 *Pa.B.* 2911 (June 5, 2004), and 848 *A.2d* Advance Sheets (*Pennsylvania Reporter Series*).

Recommendation No. 7, Criminal Rules 2003: Numerous rule changes to establish the procedures for handling cases in which the **defendant** has failed to appear at the preliminary hearing. Adopted 8-24-04, effective 8-1-05. See Final Report at 34 *Pa.B.* 5025 (September 11, 2004), and 854 *A.2d* Advance Sheets (*Pennsylvania Reporter Series*).

Recommendation No. 9, Criminal Rules 2003: Changes to Rule 560 Comment clarifying that **informations** may be electronically prepared, signed and transmitted for filing. Adopted 4-23-04, effective immediately. See Final Report at 34 *Pa.B.* 2543 (May 15, 2004), and 846 *A.2d* Advance Sheets (*Pennsylvania Reporter Series*).

Recommendation No. 11, Criminal Rules 2003: Amendments to Rule 103 adding the **definition of "signature"** to accommodate ACT and automation. Adopted 4-30-04, effective 7-1-04. See (Final Report at 34 *Pa.B.* 2542 (May 15, 2004), and 846 *A.2d* Advance Sheets (*Pennsylvania Reporter Series*).

Recommendation No. 6, Criminal Rules 2004: Amendment to Rule 105 updating *Pa.B.* requirements for **submissions for publication** and clarifying the application of the rule. Adopted 10-15-04, effective 1-1-05. See Final Report at 34 *Pa.B.* 5893 (October 30, 2004), and 858 *A.2d* Advance Sheets (*Pennsylvania Reporter Series*).

New Rule of Criminal Procedure 801 establishing experiential and educational requirements for defense attorneys representing defendants in **death penalty cases**. Adopted 6-4-04, effective 11-1-04. See the committee's Web site for the order and rule as well as the correlative rule changes. This rule was developed by a special ad hoc committee appointed by the Court for this purpose.

Proposals Pending with the Supreme Court

Recommendation No. 6, Criminal Rules 2001: Revision of the Comment to Rule 909 adding cross-references to *Commonwealth v. Morris* concerning temporary **stays** and the contents of a request for a stay filed separately from the PCRA petition. (The Court remanded this proposal to the committee to consider some concerns of the justices. Resubmitted 4-5-04.)

Recommendation No. 3, Criminal Rules 2002: New Rule 567 and correlative changes to Rules 573 and 1101 establishing procedures for the **examination of a defendant by a mental health expert** when the court determines the defendant intends to introduce evidence concerning his or her mental condition. (The Court remanded this proposal to the committee to consider some concerns of the justices. It was still under consideration by the committee at the end of 2004.)

Recommendation No. 4, Criminal Rules 2002: New Rules 568 and 569 creating separate rules from Rule 573 for the **notice of alibi and insanity provisions** and making correlative and clarifying changes.

Recommendation No. 8, Criminal Rules 2003: Changes to Rule 647 permitting the **judges' charge to jury** to be before or after the closing arguments or at both times. (The Court declined to adopt this proposal 3-4-04.)

Recommendation No. 10, Criminal Rules 2003: Changes to the rules of criminal procedure necessitated by the **proposed new rules of juvenile procedure**.

Recommendation No. 1, Criminal Rules 2004: Proposed new Rule 644 **permitting jurors in criminal trials to take notes**.

Recommendation No. 2, Criminal Rules 2004: Proposed amendments to Rule 720 (Post-sentence Procedures; Appeal) that address *Commonwealth v. Grant* concerning claims of **counsel's ineffectiveness** in a post-sentence

motion and clarify in the Comment the procedures for raising **after-discovered evidence**.

Recommendation No. 3, Criminal Rules 2004: Proposed amendments to Rule 632 (**Juror Information Questionnaires**) that separate question one into two questions to eliminate potential confusion.

Recommendation No. 4, Criminal Rules 2004: Proposed revisions of the Comments to Rules 502, 503 and 504 clarifying that the **complaint may be electronically prepared, verified and transmitted**. (The Court put this proposal on hold 8-16-04 at the request of the District Justice System and CPCMS staff until the technology is in place to accommodate this change.)

Recommendation No. 5, Criminal Rules 2004: Proposed revision of the Rule 500 Comment to include a cross-reference to the Pennsylvania Rules of Evidence concerning the **unavailability of witnesses**. (The Court declined to adopt this proposal 11-8-04.)

Recommendation No. 7, Criminal Rules 2004: Proposed amendments to Rule 705 to clarify the procedures concerning **concurrent sentences and credit for time served**.

Recommendation No. 8, Criminal Rules 2004: Proposed amendments to Rules 120 and 122 providing that the filing of the order **appointing counsel** enters appointed counsel's appearance and clarifying the procedures concerning the entry of **appearance**, withdrawal of appearance and duration of counsel in Rule 120.

Looking Ahead to 2005

The committee plans to continue its efforts on the following:

- working with the Common Pleas Court automation project, coordinating rule proposals with the automation of the criminal divisions of the Common Pleas Courts

- examining jury trial procedures and local rules procedures, working on the rules affecting the minor judiciary
- monitoring criminal practice and procedure and the criminal rules in general. AOPC

Status of Recommendations		
Recommendation	Subject	Status
4, 2000	Amendments to Rules 122 and 904 clarifying that appointed counsel remains in the case through all avenues of direct appeal	Adopted 3-12-04, effective 7-1-04
6, 2001	Amendments to Rule 909 adding cross-references to <i>Commonwealth v. Morris</i>	Submitted 7-26-01; remanded 6-26-02; resubmitted 7-18-03; remanded 12-17-03; resubmitted 4-5-04; pending with Court
3, 2002	New rule 567 and correlative changes to Rules 573 and 1101 establishing procedures for examination of a defendant by a mental health expert	Submitted 2-11-02; remanded 4-27-04; pending with committee
4, 2002	New Rules 568 and 569 creating separate rules for the notice of alibi and insanity provisions from Rule 573	Submitted 2-11-02; pending with Court
1, 2003	Amendments to the Rules of Criminal Procedure governing motion practice	Adopted 3-3-04, effective 7-1-04
4, 2003	Amendments to Rules 122, 140, 141 and 454 clarifying the procedures concerning appointment of counsel in summary cases in view of <i>Alabama v. Shelton</i>	Adopted 3-26-04, effective 7-1-04
5, 2003	Rule 573 Comment Revision clarifying the procedures concerning the assessment of charges for discovery materials	Adopted 3-26-04, effective 7-1-04
6, 2003	Amendments to Rules 130 and 555 to accommodate Act 82 of 2002 and <i>Commonwealth v. McPhail</i> concerning transfer of cases	Adopted 5-21-04, effective 7-1-04
7, 2003	Amendments to Rules of Criminal Procedure governing failure to appear at preliminary hearings	Adopted 8-24-04, effective 8-1-05

continued...

Table 3.7.1

Status of Recommendations, continued

Recommendation	Subject	Status
8, 2003	Amendments to Rule 647 regarding judges' charge to jury	Court declined to adopt 3-4-04
9, 2003	Rule 560 Comment revision clarifying that information may be electronically prepared, signed and transmitted for filing	Adopted 8-23-04, effective immediately
10, 2003	Amendments to Rules of Criminal Procedure correlative to the new Rules of Juvenile Court Procedure	Submitted 10-10-03; pending with Court
11, 2003	Amendments to Rule 103 adding the definition of "signature" to accommodate ACT and automation	Adopted 4-30-04, effective 7-1-04
1, 2004	New Rule 644 permitting jurors in criminal trials to take notes	Submitted 2-23-04; pending with Court
2, 2004	Amendments to Rule 720 (Post-sentence Procedures; Appeal) that address <i>Commonwealth v. Grant</i>	Submitted 5-21-04; pending with Court
3, 2004	Amendment to Rule 632 (Juror Information Questionnaires) to separate question one into two questions to eliminate potential confusion	Submitted 6-1-04; pending with Court
4, 2004	Revisions of Comments to Rules 502, 503 and 504 clarifying that complaint may be electronically prepared, verified and transmitted	Put on hold by Court 8-16-04
5, 2004	Revision of Rule 500 Comment to include cross-reference to Pennsylvania Rules of Evidence concerning the unavailability of witnesses	Rejected by Court 11-8-04
6, 2004	Amendment to Rule 105 updating <i>Pa.B.</i> requirements for submissions for publication and clarifying the application of the rule	Adopted 10-15-04, effective 1-1-05
7, 2004	Amendments to Rule 705 to clarify the procedures concerning concurrent sentences and credit for time served	Submitted 7-9-04; pending with Court
8, 2004	Amendments to Rules 120 and 122 regarding appointing counsel and appearance	Submitted 9-8-04; pending with Court

Chart 3.7.1, cont'd.