

## 2003 Membership

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### 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.

## 2003 Activities

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

2003. The full-committee meetings were held in Gettysburg, Philadelphia, Pittsburgh and State College.

In 2003 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 development of the Common Pleas Case Management System (CPCMS), the statewide automation of the criminal division of the Common Pleas Courts.
- review of the rules affecting proceedings before the minor judiciary, specifically
  - summary cases, Chapter 4, in particular the issues concerning the electronic preparation and filing of citations, motions in summary cases, and the requirements for the continuous availability of issuing authorities
  - court cases, Chapter 5
  - monitoring local rules.

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

## 2003 Committee Action

The Supreme Court adopted eight committee recommendations for rule changes in 2003. A number of others remained pending with the Court. They are all described below and are listed in the Status of Recommendations chart beginning on page 55.

### *Proposals Adopted by the Supreme Court*

**Recommendation No. 1, Criminal Rules 2002:** Changes to Rule 461 permitting a defendant to waive the stay of the **sentence in a summary**

**case**; to Rule 462 clarifying that the case stays in Court of Common Pleas following a trial *de novo* for the execution of sentence, including collection of fine, restitution and costs; and to Rules 430, 453 and 461 making it clear that a warrant may be issued to bring in a defendant to begin serving a summary sentence of imprisonment. Adopted 2-28-03, effective 7-1-03. See Final Report at 33 *Pa.B.* 1326 (March 15, 2003); 816 *A.2d* No. 2 and 817 *A.2d* No. 1 Advance Sheets (*Pennsylvania Reporter Series*).

**Recommendation No. 5, Criminal Rules 2002:** Changes to the Rules 702 and 704 Comments adding cross-references to 18 Pa.C.S., § 1106 and 42 Pa.C.S., § 9728 to alert members of the bench and bar to the requirements of the statutes concerning consideration of preexisting orders when determining the amount of **restitution**. Adopted 3-27-03, effective 7-1-03. See Final Report at 33 *Pa.B.* 1928 (April 19, 2003), and 823 *A.2d* Advance Sheets (*Pennsylvania Reporter Series*).

**Recommendation No. 10, Criminal Rules 2002:** New Rule 118 establishing the procedures for the use of and limitations on the **use of two-way simultaneous audiovisual communications** in court cases. Adopted 8-7-03, effective 9-1-03. See Final Report at 33 *Pa.B.* 4287 (August 30, 2003), and 830 *A.2d* Advance Sheets (*Pennsylvania Reporter Series*).

**Recommendation No. 11, Criminal Rules 2002:** Changes to Rules 401, 403, 405, 406, 411 and 460 providing for the **electronic preparation and transmission of citation information**. Adopted 2-6-03, effective 7-1-03. See Final Report at 33 *Pa.B.* 973 (February 22, 2003); 816 *A.2d* No. 2 and 817 *A.2d* No. 1 Advance Sheets (*Pennsylvania Reporter Series*).

**Recommendation No. 12, Criminal Rules 2002:** Changes to Rule 141 clarifying the procedures when a **summary contempt determination** is appealed for a *de novo* hearing in the Court of Common Pleas. Adopted 2-28-03, effective 7-1-03. See Final Report at 33 *Pa.B.* 1326 (March 15, 2003); 816 *A.2d* No. 2 and 817 *A.2d* No. 1

Advance Sheets (*Pennsylvania Reporter Series*).

**Recommendation No. 13, Criminal Rules 2002:** Amendments to Rule 1013 expanding the time for the **trial de novo** in the Court of Common Pleas in Philadelphia Municipal Court cases. Adopted 6-26-04, effective 7-1-03. See Final Report at 33 *Pa.B.* 3364 (July 12, 2003), and 828 *A.2d* No. 2 Advance Sheets (*Pennsylvania Reporter Series*).

**Recommendation No. 2, Criminal Rules 2003:** Amendments to Rules 403, 430, 431, 454 and 455 to clarify the **summary arrest procedures** when a defendant is a juvenile. Adopted 8-11-03, effective 7-1-04. See Final Report at 33 *Pa.B.* 4289 (August 30, 2003), and 830 *A.2d* Advance Sheets (*Pennsylvania Reporter Series*).

**Recommendation No. 3, Criminal Rules 2003:** Changes to Rule 720 clarifying the procedures concerning (1) untimely **post-sentence motions** and disposition of post-sentence motions, and (2) contents of order denying the post-sentence motion. Adopted 8-21-03, effective 1-1-04. See Final Report at 33 *Pa.B.* 4438 (September 6, 2003), and 831 *A.2d* Advance Sheets (*Pennsylvania Reporter Series*).

#### *Proposals Pending with the Supreme Court*

**Recommendation No. 4, Criminal Rules 2000:** Proposed amendments to Rules 122 and 904 clarifying that **appointed counsel** remains in the case through all avenues of direct appeal including 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 to the committee in view of its decision in *Morris II*. Resubmitted July 18, 2003.)

**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.

**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. 7, Criminal Rules 2002:** Changes to Rules 403, 453 and 505 concerning **multiple summary offenses** on one citation. (The Court in 2003 remanded this recommendation to the committee and placed a hold on any action pending the planned upgrading of the district justice computer system.)

**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 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.”

**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*.

**Recommendation No. 5, Criminal Rules 2003:** Rule 573 Comment revision clarifying the procedures concerning the assessment of charges for **discovery materials**.

**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**.

**Recommendation No. 7, Criminal Rules 2003:** Numerous rule changes that would establish the procedures for handling cases in which the **defendant** has failed to appear at the preliminary hearing.

**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.

**Recommendation No. 9, Criminal Rules 2003:** Changes to Rule 560 Comment clarifying that **informations** may be electronically prepared, signed and transmitted for filing.

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

**Recommendation No. 11, Criminal Rules 2003:** Amendments to Rule 103 adding the **definition of “signature”** to accommodate ACT and automation.

## Looking Ahead to 2004

The committee plans to continue its efforts on the following:

- studying the use of advanced communication technology in criminal proceedings
- 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

<b>Status of Recommendations</b>		
<b>Recommendation</b>	<b>Subject</b>	<b>Status</b>
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; pending
1, 2002	Amendments to Rules 430, 453, 461 and 462 relating to summary cases	Adopted 2-28-03, effective 7-1-03
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; pending with Court
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
5, 2002	Revision of the Comments to Rules 702 and 704, adding cross-references regarding preexisting orders when determining restitution	Adopted 3-27-03, effective 7-1-03
7, 2002	Amendments to Rules 403, 453 and 505 regarding multiple summary offenses on one citation	Submitted 6-2-02; remanded and on hold pending upgrade of DJS
10, 2002	New Rule 118 establishing procedures for use of two-way simultaneous audiovisual communications	Adopted 8-7-03, effective 9-1-03
11, 2002	Amendments to Rules 401, 403, 405, 406, 411 and 460 providing for the electronic preparation and transmission of citation information	Adopted 2-6-03, effective 7-1-03
12, 2002	Amendment to Rule 141 regarding summary contempt determinations	Adopted 2-28-03, effective 7-1-03
13, 2002	Amendments to Rule 1013 regarding trials de novo in Municipal Court cases	Adopted 6-26-03, effective 7-1-03
1, 2003	Amendments to the Rules of Criminal Procedure governing motion practice	Submitted 1-9-03; pending with Court

continued...

**Table 3.7.1**

Status of Recommendations, continued

Recommendation	Subject	Status
2, 2003	Amendments to Rules 403, 430, 431, 454 and 455 to clarify the summary arrest procedures when a defendant is a juvenile	Adopted 8-11-03, effective 7-1-04
3, 2003	Amendments to Rule 720 concerning post-sentence motions	Adopted 8-21-03, effective 1-1-04
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> .	Submitted 3-17-03; pending with Court
5, 2003	Rule 573 Comment Revision clarifying the procedures concerning the assessment of charges for discovery materials	Submitted 3-17-03; pending with Court
6, 2003	Amendments to Rules 130 and 555 to accommodate Act 82 of 2002 and <i>Commonwealth v. McPhail</i> concerning transfer of cases	Submitted 7-7-03; pending with Court
7, 2003	Amendments to Rules of Criminal Procedure governing failure to appear at preliminary hearings	Submitted 7-21-03; pending with Court
8, 2003	Amendments to Rule 647 regarding judges' charge to jury	Submitted 10-10-02; pending with Court
9, 2003	Rule 560 Comment revision clarifying that informations may be electronically prepared, signed and transmitted for filing	Submitted 8-21-03; pending with Court
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	Submitted 10-29-03; pending with Court

Chart 3.7.1, cont'd.