

1996 Membership

Francis Barry McCarthy, Jr., Esq., *Chairman*
Emmanuel H. Dimitriou, Esq., *Vice Chairman**
Honorable Tama Myers Clark
Joseph P. Conti, Esq.**
John L. Doherty, Esq.**
Arthur T. Donato, Esq.
Honorable J. Michael Eakin
Ronald Eisenberg, Esq.
Susan R. Friedman, Esq.
Robert A. Graci, Esq.
Honorable Jane Cutler Greenspan*
Maureen Lally-Green, Esq.
Thomas King Kistler, Esq.
Paul S. Kuntz, Esq., *ex-officio*
Anthony Mark Mariani, Esq.*
Kemal A. Mericli, Esq.
John P. Moses, Esq.
John W. Packel, Esq.**
Francis Recchuiti, Esq.
William H. Ryan, Jr., Esq.
Lenora M. Smith, Esq.
Stuart Brian Suss, Esq.**
Joel P. Trigiani, Esq.

* Term expired 6-1-96

** Appointed 10-4-96

Staff:

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

Legal Authorization:

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

Criminal

Procedural

Rules

Committee

5035 Ritter Road
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.

The committee periodically publishes reports explaining the committee's proposals for new rules and rule amendments. These reports, called simply *Reports*, can be found in the *Pennsylvania Bulletin* and in the *Atlantic Reporter 2d (Pennsylvania Reporter Series)*. In them the committee encourages the bench, bar and public to submit comments and recommendations concerning the proposals. All comments are considered and, when appropriate, a proposal is modified before final submission to the Court.

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.

Committee membership is appointed by the Supreme Court. During the first half of 1996, it included a Superior Court judge, two Common Pleas Court judges, four prosecutors, nine attorneys in private practice, two law professors and a district court administrator. During the second half, following the expiration of some members' terms and the appointment of new members, membership was composed of a Superior Court judge, one Common Pleas Court judge, the Chief Disciplinary Counsel for the Supreme Court's Disciplinary Board, five prosecutors, one public defender, seven attorneys in private practice, two law professors, and a district court administrator. Each member's term is three years in length and members may serve a maximum of two full terms.

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

1996 Activities

The committee met bi-monthly in 1995. Its work addressed a number of areas of criminal practice and procedure, including

- issues affecting the minor judiciary
- discovery and other pretrial procedures
- sentencing proceedings
- issues related to post-sentence practice
- post-conviction collateral proceedings.

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

At various venues statewide, committee staff were able to provide the bench, the bar and others involved in the criminal justice system with information about recent changes in Pennsylvania's criminal procedures. At these functions, the committee also receives valuable input concerning Pennsylvania's criminal practice.

1996 Committee Action

The Supreme Court acted on a number of committee recommendations for rule changes in 1996. A number of other recommendations changes remained pending with the Supreme Court. These are described below. A chart indicating the status of the proposals and recommendations pending in 1996 can be found beginning on page 66.

Proposals Adopted by the Supreme Court

Recommendation No. 5, Criminal Rules 1994: Amendments to Rule 1114 addressing *Commonwealth v. Foster* concerning **written or otherwise recorded confessions** being permitted in the possession of the jury during deliberations. See *Final Report* at 26 Pa.B. 439 (2-3-96) and 668 A.2d (*Pennsylvania Reporter Series*).

Recommendation No. 6, Criminal Rules 1995: Amendments to Rules 106, 108 and 6003 clarifying the procedures concerning district attorney approval of **private criminal complaints** and court review of denials. See *Final Report* at 26 Pa.B. 1690 (4-13-96) and 672 A.2d (*Pennsylvania Reporter Series*).

Recommendation No. 10, Criminal Rules 1995: Amendments to Rules 6006, 6008, 6009 and 6011 expressly recognizing **petitions for writs of certiorari** from the Philadelphia Court of Common Pleas. See *Final Report* at 26 Pa.B. 991 (3-9-96) and 670 A.2d (*Pennsylvania Reporter Series*).

Recommendation No. 11, Criminal Rules 1995: Comment revisions to rules 51, 55 and 101 address the use of **field acknowledgments of guilt** in summary cases and jurisdiction over summary offenses in **juvenile cases**. See *Final Report* at 26 Pa.B. 437 (2-3-96) and 668 A.2d (*Pennsylvania Reporter Series*).

Recommendation No. 1, Criminal Rules 1996: Amendments to Rules 1405, 1409, and 1410 add **intermediate punishments** within the scope of Rule 1409, establish new procedures governing **sentencing** and motions to modify sentence in probation and parole violation cases, add Rule 1409 cross-references in the Rules 1405 and 1410 Comments, and require that notice of **Gagnon II hearing** be given to the clerk of courts. See *Final Report* at 26 Pa.B. 4900 (10-12-96) and 682 A.2d (*Pennsylvania Reporter Series*).

Recommendation No. 2, Criminal Rules 1996: Rule 305 amendments providing the procedures for the preparation and disclosure of **expert witnesses' reports**. See *Final Report* at 26 Pa.B. 2488 (6-1-96) and 674-675 A.2d (*Pennsylvania Reporter Series*).

Recommendation No. 3, Criminal Rules 1996: Amendments to Rules 61 and 95 permitting the electronic filing of **parking citations**. See *Final Report* at 26 Pa.B. 3629 (8-3-96) and 678 A.2d (*Pennsylvania Reporter Series*).

Recommendation No. 4, Criminal Rules 1996: Changes to Rules 27, 109, 180, 181, 304, 1503(a), and 6001 to reflect the **abolition of the indicting grand jury**. See *Final Report* at 26 Pa.B. 3128 (7-6-96) and 676 A.2d (*Pennsylvania Reporter Series*).

Recommendation No. 5, Criminal Rules 1996: Amendments to Rule 9022 requiring the clerk of courts to forward to counsel of record any **documents filed by defendant**. See *Final Report* at 26 *Pa.B.* 3532 (7-27-96) and 677 A.2d (*Pennsylvania Reporter Series*).

Recommendation No. 6, Criminal Rules 1996: Revisions to Rules 102 and 182 Comments. Rule 102 revision adds a cross-reference to 18 Pa.C.S., § 2711 and to 23 Pa.C.S., § 6113(c) concerning **domestic violence**. Rule 182 revision adds a cross-reference to 42 Pa.C.S., § 9782 concerning **collection of restitution** in an ARD program. See *Final Report* at 26 *Pa.B.* 4895 (10-12-96) and 682 A.2d (*Pennsylvania Reporter Series*).

Recommendation No. 9, Criminal Rules 1996 Amendments to Rule 1406 require that judges state in the **sentencing** order whether the sentences imposed are to run concurrently or consecutively, and eliminate the sentence presumptions created by the rule before these amendments. See *Final Report* at 26 *Pa.B.* 5694 (11-23-96) and 683 A.2d (*Pennsylvania Reporter Series*).

Proposals Pending with the Supreme Court

Recommendation No. 7, Criminal Rules 1995: New rule 85 and amendments to rules 75, 76, 83, 84 and 86. Would clarify the procedures in **summary cases** for the imposition of fines, costs and restitution; require the issuing authority to send a notice of default before issuance of an arrest warrant; and clarify the procedures for stays of sentence relating to appeals in summary cases. See *Report* at 25 *Pa.B.* 942 (3-18-95).

Recommendation No. 8, Criminal Rules 1995: New Rules 30, 31, 32 and 39. Would establish procedures for handling **summary criminal contempt** by the minor judiciary when authorized by statute. See *Report* at 25 *Pa.B.* 12 (1-7-95) and *Supplemental Report* at 25 *Pa.B.* 1841 (5-13-95).

Recommendation No. 7, Criminal Rules 1996:

Chapter 1500 amendments would align the chapter with the recent amendments to the **Post Conviction Relief Act**, 42 Pa.C.S. §§ 9541-9546, and the new **Unitary Review Act**, 42 Pa.C.S. §§ 9570-9579. See *Report* at 26 *Pa.B.* 2302 (5-18-96).

Recommendation No. 8, Criminal Rules 1996: Revision to Rule 86 Comment would clarify the procedures concerning a **police officer's presence** at summary trial and trial *de novo* to address the holding in *Commonwealth v. High-tower*. See *Report* at 26 *Pa.B.* 2167 (5-11-96).

Recommendation No. 10, Criminal Rules 1996: New Rule 1411 and amendments to Rule 1410 would provide the procedures for Commonwealth motions to modify **sentence**. The Appellate Rules Committee submitted a correlative recommendation concerning the Comment to Appellate Rule 1701(b)(3). See *Report* at 26 *Pa.B.* 1346 (3-30-96).

Recommendation No. 11, Criminal Rules 1996: Amendments to Rules 75 and 84 would clarify the procedures for **summary trials in absentia** and the issuance of warrants of arrest in these cases. See *Report* at 25 *Pa.B.* 5920 (12-23-95).

Recommendation No. 12, Criminal Rules 1996: Revisions to Rules 1403 and 1405 Comments would cross-reference the recent legislation concerning "**Megan's Law**" and repeat offenders, 42 Pa.C.S., §§ 9714(c) and 9791-9799.5. This recommendation was submitted to the Court without publication pursuant to Pa.R.J.A. 103(a)(3).

Recommendation No. 13, Criminal Rules 1996: Rule 51 Comment revision would update the citation to *Commonwealth v. Beatty* (**summary violations** under the Vehicle Code) for purposes of 18 Pa.C.S. § 110 by adding citations to *Commonwealth v. Taylor* (summary violations of Crimes Code) and *Commonwealth v. Kresge* (summary violations of Game and Wildlife Code). This recommendation was

submitted to the Court without publication pursuant to Pa.R.J.A. 103(a)(3).

Recommendation No. 14, Criminal Rules 1996: New Rules 87 and 88 and amendment to Rule 145 would provide **summary case procedures** comparable to the procedures in Rule 151 for withdrawals and in Rule 145 for dismissals in court cases. See *Report* at 26 *Pa.B.* 3632 (8-3-96).

Recommendation No. 15, Criminal Rules 1996: Rule 1405 amendments would make it clear that a violation of the Rule 1405 time limits, by itself, is not sufficient grounds to **vacate a conviction**. This recommendation was submitted to the Court without publication pursuant to Pa.R.J.A. 103(a)(3).

Recommendation No. 16, Criminal Rules 1996: Amendments to Rules 71 and 81 would clarify the procedures related to **collateral in summary cases**, and expressly address the exceptions to the immediate trial requirement in Rule 71. See *Report* at 26 *Pa.B.* 4893 (10-12-96).

Proposals Published in 1996 and Pending with the Committee

Rules 110, 112, 113, 140, 141, 142, 143, 146, 224, 225, 231, 9024, 6000, 6001, and 6003: The proposed changes would address the procedures for handling cases in which a defendant fails to appear for a **preliminary**

hearing, and make related changes to other rules in Chapter 100. See 25 *Pa.B.* 828 (3-11-95) and 26 *Pa.B.* 2307 (5-18-96).

59, 64 and 69: Proposed Comment revisions would bring rules in line with other summary case rules which require the **recording of guilty pleas** when a defendant mails in the fine and costs but fails to sign the citation.

Rule 149: The proposed amendments would make it clear that in a court case following a **guilty plea** and imposition of sentence by a district justice, the case is to be forwarded to the Court of Common Pleas for all further proceedings, including the collection of fines, costs, and restitution. See 26 *Pa.B.* 4895 (10-12-96).

Other Recommendations

The Court declined to adopt **Recommendation No. 8, Criminal Rules 1994**, amendments to Rules 83, 316, 317, and 318 addressing the **appointment of counsel** in summary cases.

Contact Person

Should you wish to speak to someone at the Criminal Procedural Rules Committee, you may contact Anne Panfil at (717) 795-2100 or write in care of the committee to P.O. Box 1325; Doylestown, PA 18901.



Status of Recommendations		
Recommendation	Subject	Status
5, 1994	Amendments to Rule 1114 addressing Commonwealth v. Foster concerning written or otherwise recorded confessions in possession of jury during deliberations	Adopted by Court 1-16-96, effective 7-1-96
8, 1994	Amendments to Rules 83, 316, 317, 318 regarding appointment of counsel in summary cases	Court declined to adopt
6, 1995	Amendments to Rules 106, 108, 6003 clarifying the scope of judicial review following a district attorney's disapproval of a private criminal complaint	Adopted by Court 3-22-96, effective 7-1-96
7, 1995	New Rule 85; amendments to Rules 75, 76, 83, 84, 86 clarifying procedures in summary cases for imposition of fines, costs, and restitution; requiring issuing authority to send a notice of default before issuance of arrest warrant; and clarifying procedures for stays of sentence relating to appeals in summary cases	Submitted to Court 7-11-95; pending with Court
8, 1995	New Rules 30, 31, 32, 39 establishing procedures for handling summary criminal contempt by the minor judiciary when authorized by statute	Submitted to Court 7-11-95; pending with Court
10, 1995	Amendments to Rules 6006, 6008, 6009, 6011 to expressly recognize petitions for writs of certiorari in Philadelphia Municipal Court cases	Adopted by Court 2-21-96, effective 7-1-96
11, 1995	Revisions to Rules 51, 55, 101 Comments clarifying use of citations and field acknowledgments of guilt, recognizing recent statutory changes in district justices' jurisdiction over summary offenses in juvenile cases, deleting the outdated citation to Grady v. Corbin	Adopted by Court 1-16-96, effective immediately

continued...

Table 3.6.1

Status of Recommendations, continued		
Recommendation	Subject	Status
1, 1996	Amendments to Rule 1409 regarding intermediate punishments	Adopted by Court 9-26-96, effective 1-1-96
2, 1996	Amendments to Rule 305 providing procedures for the preparation and disclosure of expert witnesses' reports	Adopted by Court 5-13-96, effective 7-1-96
3, 1996	Amendments to Rules 61 and 95, permitting electronic filing of parking citations	Adopted by Court 7-17-96, effective 1-1-97
4, 1996	Amendments to Rules 27, 109, 180, 181, 304, 1503(a), and 6001 to reflect the abolition of the indicting grand jury	Adopted by Court 6-19-96, effective 7-1-96
5, 1996	Amendments to Rule 9022 requiring clerk of courts to forward to counsel of record any documents filed by defendant	Adopted by Court on 7-9-96, effective 9-1-96
6, 1996	Revisions to Rules 102 and 182 Comments adding cross-references concerning domestic violence and collection of restitution in an ARD program, respectively	Approved by Court 9-26-96, effective immediately
7, 1996	Amendments to Chapter 1500 aligning chapter with recent amendments to the Post Conviction Relief Act and the new Unitary Review Act	Submitted to Court 7-19-96; pending with Court
8, 1996	Revision to Rule 86 Comment clarifying procedures concerning a police officer's presence at summary trial and trial de novo to address the holding in Commonwealth v. Hightower	Submitted to Court 8-1-96, pending with Court
9, 1996	Amendments to Rule 1406 requiring that judges state in sentencing order whether sentences imposed are to run concurrently or consecutively	Adopted by Court 11-7-96, effective immediately

continued...

Table 3.6.1, cont'd.

Status of Recommendations, continued		
Recommendation	Subject	Status
10, 1996	Amendments to Rule 1410 and new Rule 1411 providing procedures for Commonwealth motions to modify sentence	Submitted to Court 10-1-96; pending with Court
11, 1996	Amendments to Rules 75 and 84 clarifying procedures for summary trials in absentia and issuance of arrest warrants in these cases	Submitted to Court 10-10-96; pending with Court
12, 1996	Revisions to Rules 1403 and 1405 Comments cross-referencing recent legislation concerning "Megan's Law" and repeat offenders	Submitted to Court 10-10-96; pending with Court
13, 1996	Revision to Rule 51 Comment updating citation to Commonwealth v. Beatty, summary violations under the Vehicle Code	Submitted to Court 10-9-96; pending with Court
14, 1996	Addition of new Rules 87 and 88, amendment to Rule 145 providing summary case procedures comparable to the procedures in Rule 151 for withdrawals and in Rule 145 for dismissals in court cases	Submitted to Court 11-12-96; pending with Court
15, 1996	Amendments to Rule 1405 making it clear that a violation of Rule 1405 time limits, by itself, is not sufficient grounds to vacate a conviction	Submitted to Court 11-19-96; pending with Court
16, 1996	Amendments to Rules 71 and 81 clarifying the procedures related to collateral in summary cases	Submitted to Court 12-10-96; pending with Court

Table 3.6.1, cont'd.