

Appellate Court Procedural Rules Committee

The Appellate Court Procedural Rules Committee proposes that a new rule, Rule of Appellate Procedure 1572, be enacted, and that Rules of Appellate Procedure 1512 and 1516 be amended. The proposed rule changes are being submitted to the bench and bar for comments and suggestions prior to its submission to the Supreme Court.

All communications in reference to the proposed amendment should be sent no later than Wednesday, June 23, 2010 to:

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An Explanatory Comment precedes the proposed amendment and has been inserted by this Committee for the convenience of the bench and bar. It will neither constitute part of the rule nor be officially adopted or promulgated.

By the Appellate Court Procedural Rules Committee

Honorable Maureen Lally-Green,
Chair

EXPLANATORY COMMENT

The Appellate Court Procedural Rules Committee, in conjunction with the Criminal Procedural Rules Committee, proposes that the Supreme Court enact Pa.R.A.P. 1572 and amend Pa.Rs.A.P. 1512(b) and 1516 to provide for review of a trial court's determination as to whether a person under a warrant of execution is competent to be executed. These rules will provide the exclusive means of review of proposed new Rules of Criminal Procedure 850 - 862 and are necessary only if those rules are enacted.

In *Ford v. Wainwright*, 477 U.S. 399, 409-410 (1986), the United States Supreme Court held that “the Eighth Amendment of the U.S. Constitution prohibits a State from carrying out a sentence of death upon a prisoner who is insane.” In *Panetti v. Quarterman*, 551 U.S. 930 (2007), the United States Supreme Court elaborated upon what the Eighth Amendment requires, namely that once a movant makes a preliminary and substantial showing that “his current mental state would bar his execution,” a court must assess whether a person is incompetent to be executed by providing the movant a fair hearing that includes “among other things, an adequate means by which to submit expert psychiatric evidence in response to the evidence that had been solicited by the state court. *Id.* at 934, 948. That a movant was previously found competent – to stand trial, for example – does not resolve whether a person is incompetent when the execution is scheduled to take place. *Id.* at 934. The United States Supreme Court has left it to the state courts to develop the procedure by which that constitutional mandate is to be implemented.

In *Commonwealth v. Banks*, 596 Pa. 297, 943 A.2d 230 (2007), the Pennsylvania Supreme Court confronted the question of *Ford's* requirements. In n.7 of that opinion, and subsequently in direct correspondence from Chief Justice Castille, the Supreme Court requested that the Appellate Court Procedural Rules Committee and the Criminal Procedural Rules Committee work together “to consider a framework for: (1) the timely filing and disposition of motions for stay of execution premised upon a claim that the defendant is incompetent to be executed; and (2) the timely litigation of the issue of whether such a defendant is indeed incompetent to be executed.” The Chief Justice noted that the current Post Conviction Relief Act, 42 Pa.C.S. §§ 9541-9546 and the Criminal Rules do not provide an adequate process for instituting and disposing of cases in which the defendant's competency to be executed must be determined, and suggested that the Committees look at other jurisdictions' case law, rules, and statutes.

To accomplish this directive, a Joint Subcommittee of the Appellate Court Procedural Rules Committee and Criminal Procedural Rules Committee was formed to assist the two Committees in addressing the issue of competency to be executed. In a Recommendation published concurrently, the Committees propose new Rules of Criminal Procedure 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, and 862 to establish the procedures for determining a defendant's competency to be executed. In keeping with the procedures utilized in *Banks*, the Committees also recommend enacting a new Rule of Appellate Procedure 1572 and amending Rules of Appellate Procedure 1512 and 1516. New Rule 1572 and amended Rules 1512 and 1516 provide for a Petition for Review to be filed directly

with the Pennsylvania Supreme Court if a motion to determine incompetency is (a) dismissed without a hearing; or (b) granted or denied after a hearing.

The Joint Subcommittee's recommendations have been fully reviewed and approved for publication by both Committees. This Recommendation is being submitted to the bench and bar for comments and suggestions prior to its submission to the Supreme Court for adoption. Proposed new material is in bold and underlined, while bracketed material is deleted.

RULE 1512. TIME FOR PETITIONING FOR REVIEW

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(b) Special appellate provisions. A petition for review of:

...

(5) A determination of a Court of Common Pleas under Rules of Criminal Procedure 850 - 862 shall be filed within 10 days of the date of entry of the order upon the docket.

RULE 1516. OTHER PLEADINGS ALLOWED.

(a) Appellate jurisdiction petitions for review. No answer or other pleading to an appellate jurisdiction petition for review is authorized, unless the petition for review is filed pursuant to the Notes to Rules 341 or 1311 (seeking review of a trial court or other government unit's refusal to certify an interlocutory order for immediate appeal), **Rule 1572 (review of determinations of competency to be executed)**,

**RULE 1572. REVIEW OF DETERMINATIONS OF COMPETENCY
TO BE EXECUTED**

Any party seeking review of a determination by a Court of Common Pleas under Rules of Criminal Procedure 850 - 862 shall file a Petition for Review in the Pennsylvania Supreme Court. Review of a determination under Rules of Criminal Procedure 850 - 862 shall be governed by this chapter and ancillary provisions of these rules, except as otherwise prescribed by this rule.

(a) The general provisions of Rule 1516(a) will not apply. The Answer to the Petition for Review shall be filed within 14 (fourteen) days.

(b) Scope of review. Rule 1551(a) (appellate jurisdiction petitions for review) shall be applicable to the review of a determination under Rules of Criminal Procedure 850 - 862, except that the Court may request supplementation of the procedures or review the quantity or quality of evidence received by the Trial Court.

(c) Disposition of petition for review. Rule 1561(a) (appellate jurisdiction petitions for review) shall be applicable to the review of a determination under Rules of Criminal Procedure 850 - 862. If the Supreme Court requires further proceedings as provided for in Rule 1561(a), it may specify a timeframe for such proceedings and may issue such further orders while retaining jurisdiction.

(d) No exceptions or motion to reconsider may be filed.

(e) Upon final disposition of the petition for review, the Prothonotary of the Supreme Court shall:

(1) Remand the record to the court of common pleas from which it was certified at the expiration of seven (7) days from the later of (i) the date of the expiration of the time for filing a petition of writ of certiorari to the United States Supreme Court or extension thereof where neither has been filed, (ii) the denial of a petition for a writ of certiorari; or (iii) upon remand from the United States Supreme Court, if that Court grants the petition for a writ of certiorari.

(2) Transmit a copy of the final order to the Governor within thirty (30) days from the later of (i) the date of the expiration of the time for filing a petition of writ of certiorari to the United States Supreme Court or extension thereof where neither has been filed, (ii) the denial of a petition for a writ of certiorari; or (iii) upon remand from the United States Supreme Court, if that Court grants the petition for a writ of certiorari.

(3) Provide contemporaneous notice of the remand and transmittal to the Secretary of Corrections.