RULE 120. ATTORNEYS -- APPEARANCES AND WITHDRAWALS.

(A) Counsel for defendant shall enter an appearance in writing with the clerk of courts promptly after being retained or appointed and serve a copy thereof on the attorney for the Commonwealth. If a firm name is entered, the name of an individual lawyer shall be designated as being responsible for the conduct of the case.

(B) Counsel shall not be permitted to represent a defendant following a preliminary hearing unless an appearance is entered.

(C) Counsel for a defendant may not withdraw his or her appearance except by leave of court. Such leave shall be granted only upon motion made and served on the attorney for the Commonwealth and the client, unless the interests of justice otherwise require.

COMMENT: Representation as used in this rule is intended to cover court appearances or the filing of formal motions. Investigation, interviews, or other similar pretrial matters are not prohibited by this rule.

An attorney may not represent a defendant in a capital case unless the attorney meets the educational and experiential requirements set forth in Rule 801 (Qualifications for Defense Counsel in Capital Cases).

Under paragraph (C), the court should make a determination of the status of a case before permitting counsel to withdraw.

If a post-sentence motion is filed, trial counsel would normally be expected to stay in the case until disposition of the motion under the post-sentence procedures adopted in 1993. *See* Rules 704 and 720. Traditionally, trial counsel stayed in a case through post-verdict motions and sentencing.

See Rule 904(A) that requires an attorney who has been retained or appointed to represent a defendant during post-conviction collateral proceedings to file a written entry of appearance.

NOTE: Adopted June 30, 1964, effective January 1, 1965; formerly Rule 303, renumbered Rule 302 and amended June 29, 1977 and November 22, 1977, effective as to cases in which the indictment or information is filed on or after January 1, 1978; amended March 22, 1993, effective January 1, 1994; renumbered Rule 120 and amended March 1, 2000, effective April 1, 2001; *Comment* revised February 26, 2002, effective July 1, 2002 **[.] ; *Comment* revised June 4, 2004, effective November 1, 2004.**

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COMMITTEE EXPLANATORY REPORTS:

Final Report explaining the March 22, 1993 amendments published with the Court's Order at 23 Pa.B. 1699 (April 10, 1993).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B.1478 (March 18, 2000).

Final Report explaining the February 26, 2002 Comment revision adding the cross-reference to Rule 904 published with the Court's Order at 32 Pa.B. 1393 (March 16, 2002).

RULE 122. ASSIGNMENT OF COUNSEL.

(A) IN SUMMARY CASES.

Counsel shall be assigned in all summary cases to all defendants who are without financial resources or who are otherwise unable to employ counsel when there is a likelihood that imprisonment will be imposed.

(B) IN COURT CASES.

In all court cases counsel shall be assigned prior to the preliminary hearing to all defendants who are without financial resources or who are otherwise unable to employ counsel.

(C) IN ALL CASES.

(1) The court, of its own motion, shall assign counsel to represent a defendant whenever the interests of justice require it.

(2) A motion for change of counsel by a defendant to whom counsel has been assigned shall not be granted except for substantial reasons.

(3) When counsel has been assigned, such assignment shall be effective until final judgment, including any proceedings upon direct appeal.

COMMENT: This rule is designed to implement the decisions of *Argersinger v. Hamlin,* 407 U.S. 25 (1972), and *Coleman v. Alabama,* 399 U.S. 1 (1970), that no defendant in a summary case be sentenced to imprisonment unless the defendant was represented at trial by counsel, and that every defendant in a court case has counsel starting no later than the preliminary hearing stage.

No defendant may be sentenced to imprisonment or probation if the right to counsel was not afforded at trial. *See Alabama v. Shelton*, 535 U.S. 654 (2002) and *Scott v. Illinois*, 440 U.S. 367 (1979). *See* Rule 454 (Trial in Summary Cases) concerning the right to counsel at a summary trial.

Assignment of counsel can be waived, if such waiver is knowing, intelligent, and voluntary. *See Faretta v. California*, 422 U.S. 806 (1975). Concerning the appointment of standby counsel for the defendant who elects to proceed *pro se*, see Rule 121.

In both summary and court cases, the assignment of counsel to indigent defendants remains in effect until all appeals on direct review have been completed.

Ideally, counsel should be assigned to indigent defendants immediately after they are brought before the issuing authority in all summary cases in which a jail sentence is possible, and immediately after preliminary arraignment in all court cases. This rule strives to accommodate the requirements of the Supreme Court of the United States to the practical problems of implementation. Thus, in summary cases, paragraph (A) requires a pretrial determination by the issuing authority as to whether a jail sentence would be likely in the event of a finding of guilt in order to determine whether trial counsel should be assigned to indigent defendants. It is expected that the issuing authorities will in most instances be guided by their experience with the particular offense with which defendants are charged. This is the procedure recommended by the ABA Standards Relating to Providing Defense Services § 4.1 (Approved Draft 1968) and cited in the United States Supreme Court's opinion in *Argersinger, supra*. If there is any doubt, the issuing authority can seek the advice of the attorney for the Commonwealth, if one is prosecuting the case, as to whether the Commonwealth intends to recommend a jail sentence in case of conviction.

In court cases, paragraph (B) requires counsel to be assigned at least in time to represent the defendant at preliminary hearing. Although difficulty may be experienced in some judicial districts in meeting the *Coleman* requirement, it is believed that this is somewhat offset by the prevention of many post-conviction proceedings which would otherwise be brought based on the denial of the right to counsel. However, there may be cases in which counsel has not been assigned prior to the preliminary hearing stage of the proceedings; *e.g.*, counsel for the preliminary hearing has been waived, or a then-ineligible defendant

subsequently becomes eligible for assigned counsel. In such cases it is expected that the defendant's right to assigned counsel will be effectuated at the earliest appropriate time.

An attorney may not be appointed to represent a defendant in a capital case unless the attorney meets the educational and experiential requirements set forth in Rule 801 (Qualifications for Defense Counsel in Capital Cases).

Paragraph (C)(1) retains in the issuing authority or judge the power to assign counsel regardless of indigency or other factors when, in the issuing authority's or judge's opinion, the interests of justice require it.

Pursuant to paragraph (C)(3), counsel retains his or her assignment until final judgment, which includes all avenues of appeal through the Supreme Court of Pennsylvania. In making the decision whether to file a petition for allowance of appeal, counsel must (1) consult with his or her client, and (2) review the standards set forth in Pa.R.A.P. 1114 (Considerations Governing Allowance of Appeal) and the note following that rule. If the decision is made to file a petition, counsel must carry through with that decision. *See Commonwealth v. Liebel*, 825 A.2d 630 (Pa. 2003). Concerning counsel's obligations as appointed counsel, see *Jones v. Barnes*, 463 U.S. 745 (1983). *See also Commonwealth v. Padden*, 783 A.2d 299 (Pa. Super. 2001).

For suspension of Acts of Assembly, see Rule 1101.

NOTE: Rule 318 adopted November 29, 1972, effective 10 days hence, replacing prior rule; amended September 18, 1973, effective immediately; renumbered Rule 316 and amended June 29, 1977, and October 21, 1977, effective January 1, 1978; renumbered Rule 122 and amended March 1, 2000, effective April 1, 2001; amended March 12, 2004, effective July 1, 2004; *Comment* revised March 26, 2004, effective July 1, 2004 **[.]** ***Comment*** **revised June 4, 2004, effective November 1, 2004.**

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COMMITTEE EXPLANATORY REPORTS:

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

Final Report explaining the March 12, 2004 editorial amendment to paragraph (C)(3), and the Comment revision concerning duration of counsel's obligation, published with the Court's Order at 34 Pa.B. 1672 (March 27, 2004).

Final Report explaining the March 26, 2004 Comment revision concerning Alabama v. Shelton published with the Court's Order at 34 Pa.B. 1931 (April 10, 2004).

RULE 521. BAIL AFTER FINDING OF GUILT.

(A) BEFORE SENTENCING

(1) *Capital and Life Imprisonment Cases*

When a defendant is found guilty of an offense which is punishable by death or life imprisonment, the defendant shall not be released on bail.

(2) *Other Cases*

(a) The defendant shall have the same right to bail after verdict and before the imposition of sentence as the defendant had before verdict when the aggregate of possible sentences to imprisonment on all outstanding verdicts against the defendant within the same judicial district cannot exceed 3 years.

(b) Except as provided in paragraph (A)(1), when the aggregate of possible sentences to imprisonment on all outstanding verdicts against the defendant within the same judicial district can exceed 3 years, the defendant shall have the same right to bail as before verdict unless the judge makes a finding:

(i) that no one or more conditions of bail will reasonably ensure that the defendant will appear and comply with the conditions of the bail bond; or

(ii) that the defendant poses a danger to any other person or to **t**he community or to himself or herself.

The judge may revoke or refuse to set bail based upon such a finding.

(B) AFTER SENTENCING

(1) When the sentence imposed includes imprisonment of less than 2 years, the defendant shall have the same right to bail as before verdict, unless the judge, pursuant to paragraph (D), modifies the bail order.

(2) Except as provided in paragraph (A)(1), when the sentence imposed includes imprisonment of 2 years or more, the defendant shall not have the same right to bail as before verdict, but bail may be allowed in the discretion of the judge.

(3) When the defendant is released on bail after sentencing, the judge shall require as a condition of release that the defendant either file a post-sentence motion and perfect an appeal or, when no post-sentence motion is filed, perfect an appeal within the time permitted by law.

(C) REASONS FOR REFUSING OR REVOKING BAIL

Whenever bail is refused or revoked under this rule, the judge shall state on the record the reasons for this decision.

(D) MODIFICATION OF BAIL ORDER AFTER VERDICT OR AFTER SENTENCING

(1) When a defendant is eligible for release on bail after verdict or after sentencing pursuant to this rule, the existing bail order may be modified by a judge of the court of common pleas, upon the judge's own motion or upon motion of counsel for either party with notice to opposing counsel, in open court on the record when all parties are present.

(2) The decision whether to change the type of release on bail or what conditions of release to impose shall be based on the judge's evaluation of the information about the defendant as it relates to the release criteria set forth in Rule 523. The judge shall also consider whether there is an increased likelihood of the defendant's fleeing the jurisdiction or whether the defendant is a danger to any other person or to the community or to himself or herself.

(3) The judge may change the type of release on bail, impose additional nonmonetary conditions as provided in Rule 527, or, if appropriate, impose or increase a monetary condition as provided in Rule 528.

(E) MUNICIPAL COURT

Bail after a finding of guilt in the Municipal Court of Philadelphia shall be governed by the rules set forth in Chapter 10.

COMMENT: For post-sentence procedures generally, see Rules 704 and 720. For additional procedures in cases in which a sentence of death or life imprisonment has been imposed, see Rules **[809]** **810** and **[810]** **811**.

For purposes of this rule, "verdict" includes a plea of guilty or *nolo contendere* which is accepted by the judge.

Whenever the trial judge sets bail after sentencing pending appeal, paragraph (B)(3) requires that a condition of release be that the defendant perfect a timely appeal. However, the trial judge cannot, as part of that condition, require that the defendant perfect the appeal in less time than that allowed by law.

Unless bail is revoked, the bail bond is valid until full and final disposition of the case. *See* Rule 534. The Rule 534 *Comment* points out that the bail bond is valid through all avenues of direct appeal in the Pennsylvania courts, but not through any collateral attack.

NOTE: Former Rule 4009, previously Rule 4011, adopted November 22, 1965, effective June 1, 1966; renumbered Rule 4009 and title amended July 23, 1973, effective 60 days hence; rescinded September 13, 1995, effective January 1, 1996, and replaced by Rule 532. Present Rule 4009 adopted September 13, 1995, effective January 1, 1996. The January 1, 1996 effective dates extended to April 1, 1996; the April 1, 1996 effective dates extended to July 1, 1996; renumbered Rule 521 and amended March 1, 2000, effective April 1, 2001 **[.] ; *Comment* revised June 4, 2004, effective November 1, 2004.**

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COMMITTEE EXPLANATORY REPORTS:

Final Report explaining the March 22, 1993 amendments to former Rule 4010B(3), included in new Rule [4009] 521(B)(3), published with the Court's Order at 23 Pa.B. 1699 (April 10, 1993).

Final Report explaining the provisions of the new rule published with Court's Order at 25 Pa.B. 4116 (September 30, 1995).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

RULE 576. FILING AND SERVICE BY PARTIES.

(A) FILING

(1) All written motions and any written answers, and any notices or documents for which filing is required, shall be filed with the clerk of courts.

(2) Filing shall be by:

(a) personal delivery to the clerk of courts; or

(b) mail addressed to the clerk of courts. Except as provided by law, filing by mail shall be timely only when actually received by the clerk of courts within the time fixed for filing.

(3) The clerk of courts shall accept all written motions, answers, notices, or documents presented for filing. When a document, which is filed pursuant to paragraph (A)(1), is received by the clerk of courts, the clerk shall time stamp it with the date of receipt and make a docket entry reflecting the date of receipt, and promptly shall place the document in the criminal case file.

(4) In any case in which a defendant is represented by an attorney, if the defendant submits for filing a written motion, notice, or document that has not been signed by the defendant's attorney, the clerk of courts shall accept it for filing, time stamp it with the date of receipt and make a docket entry reflecting the date of receipt, and place the document in the criminal case file. A copy of the time stamped document shall be forwarded to the defendant's attorney and the attorney for the Commonwealth within 10 days of receipt.

(5) If a defendant submits a document *pro se* to a judge without filing it with the clerk of courts, and the document requests some form of cognizable legal relief, the judge promptly shall forward the document to the clerk of courts for filing and processing in accordance with this rule.

(6) Unified Practice

Any local rule that is inconsistent with the provisions of this rule is prohibited, including any local rule requiring that a document has to be presented in person before filing or requiring review by a court or court administrator before a document may be filed.

(B) SERVICE

(1) All written motions and any written answers, and notices or documents for which filing is required, shall be served upon each party and the court administrator concurrently with filing.

(2) Service on the parties shall be by:

(a) personal delivery of a copy to a party's attorney, or the party if unrepresented; or

(b) personal delivery of a copy to the party's attorney's employee at the attorney's office; or

(c) mailing a copy to a party's attorney or leaving a copy for the attorney at the attorney's office; or

(d) in those judicial districts that maintain in the courthouse assigned boxes for counsel to receive service, when counsel has agreed to receive service by this method, leaving a copy for the attorney in the attorney's box; or

(e) sending a copy to an unrepresented party by certified, registered, or first class mail addressed to the party's place of residence, business, or confinement; or

(f) sending a copy by facsimile transmission or other electronic means if the party's attorney, or the party if unrepresented, has made a written request for this method of service for the document; or

(g) delivery to the party's attorney, or the party if unrepresented, by carrier service.

(3) Service on the court administrator shall be by:

(a) mailing a copy to the court administrator; or

(b) in those judicial districts that maintain in the courthouse assigned boxes for the court administrator to receive service, leaving a copy for the court administrator in the court administrator's box; or

(c) leaving a copy for the court administrator at the court administrator's office; or

(d) sending a copy to the court administrator by facsimile transmission or other electronic means if authorized by local rule; or

(e) delivery to the court administrator by carrier service.

(4) Certificate of Service

(a) All documents that are filed and served pursuant to this rule shall include a certificate of service.

(b) The certificate of service shall be in substantially the form set forth in the *Comment*, signed by the party's attorney, or the party if unrepresented, and shall include the date and manner of service, and the names, addresses, and phone numbers of the persons served.

(C) Any non-party requesting relief from the court in a case shall file the motion with the clerk of courts as provided in paragraph (A), and serve the defendant's attorney, or the defendant if unrepresented, the attorney for the Commonwealth, and the court administrator as provided in paragraph (B).

COMMENT: Paragraph (A)(1) requires the filing of all written motions and answers. The provision also applies to notices and other documents only if filing is required by some other rule or provision of law. *See, e.g.*, the notice of withdrawal of charges provisions in Rule 561 (Withdrawal of Charges by Attorney for the Commonwealth), the notice of alibi defense and notice of insanity defense or mental infirmity defense provisions in Rule 573 (Pretrial Discovery and Inspection), the notice that offenses or defendants will be tried together provisions in Rule 582 (Joinder -- Trial of Separate Indictments or Informations), the notice of aggravating circumstances provisions in Rule **[801]** **802** (Notice of Aggravating Circumstances), and the notice of challenge to a guilty plea provisions in Municipal Court cases in Rule 1007 (Challenge to Guilty Plea).

When a motion, notice, document, or answer is presented for filing pursuant to paragraph (A)(1), the clerk of courts must accept it for filing even if the motion, notice, document, or answer does not comply with a rule or statute or appears to be untimely filed. It is suggested that the judicial district

implement procedures to inform the filing party when a document is not in compliance with these rules or a local rule so the party may correct the problem.

See Commonwealth v. Jones, 700 A.2d 423 (Pa. 1997); and *Commonwealth v. Little*, 716 A.2d 1287 (Pa. Super. 1998) concerning the timeliness of filings by prisoners proceeding *pro se* (the "prisoner mailbox rule").

The 2004 amendments to paragraph (A)(4) modified the procedure by which the clerks of courts handle filings by represented defendants when the defendant's attorney has not signed the document being filed by the defendant. As amended, paragraph (A)(4) requires, in all cases in which a represented defendant files a document, that the clerk of courts make a docket entry of the defendant's filing and place the document in the criminal case file, and then forward a copy of the document to both the attorney of record and the attorney for the Commonwealth. *See Commonwealth v. Castro*, 766 A.2d 1283 (Pa. Super. 2001). *Compare* Pa.R.A.P. 3304 (Hybrid Representation). The requirement that the clerk time stamp and make docket entries of the filings in these cases only serves to provide a record of the filing, and does not trigger any deadline nor require any response. *See* Rules 120 (Attorneys -- Appearance and Withdrawals) and 122 (Assignment of Counsel) concerning the duration of counsel's obligation under the rules.

Paragraph (A)(4) only applies to cases in which the defendant is represented by counsel, not cases in which the defendant is proceeding *pro se.*

The purpose of paragraph (A)(5) is to ensure documents raising cognizable legal issues submitted to the judge are transmitted to the clerk of courts, and does not relieve the defendant from complying with the other requirements of the rules. When a document is forwarded to the clerk from a judge, if the defendant is unrepresented, the clerk is to proceed as provided in paragraph (A)(3) and the defendant is to be treated like any other party. If the defendant is represented, the clerk is to proceed pursuant to paragraph (A)(4).

Paragraph (A)(6), titled "Unified Practice," was added in 2004 to emphasize that local rules must not conflict with the statewide rules. Although this prohibition on local rules that are inconsistent with the statewide rules applies to all Criminal Rules through Rule 105 (Local Rules), the reference to the specific prohibitions is included because these types of local rules have been identified by practitioners as creating significant impediments to the statewide practice of law within the unified judicial system. *See* the first paragraph of the Rule 105 *Comment*. The term "local rule" includes every rule, regulation, directive, policy, custom, usage, form or order of general application. *See* Rule 105(A).

Any local rule that requires personal appearance in addition to filing with the clerk of courts is inconsistent with this rule.

See Rule 113 (Criminal Case File and Docket Entries) for the requirements concerning the contents of the criminal case file and the minimum information to be included in the docket entries.

Paragraph (B)(1) requires that, concurrently with filing, the party must serve a copy on the court administrator. This requirement provides flexibility to accommodate the various practices for scheduling. However, it is not intended to replace the requirement that the party must file with the clerk of courts.

When a judge is assigned to a case, in addition to the requirements of paragraph (B)(1), it is suggested counsel send the judge a courtesy copy of any filings.

Under any system of scheduling, once a hearing or argument is scheduled, the court or court administrator must give notice of the hearing or argument to the parties, and a copy of the notice must be filed in the criminal case file and a docket entry made. *See* Rule 114(C)(2).

Although paragraph (C)(1)(d) permits the use of assigned mailboxes for service under this rule, the Attorney General's office never may be served by this method.

A facsimile number or an electronic address set forth on letterhead is not sufficient to authorize service by facsimile transmission or other electronic means under paragraph (B)(2)(f). The authorization for service by facsimile transmission or other electronic means under this rule is document specific and only valid for an individual document. Counsel will have to renew the authorization for each document.

For the definition of "carrier service," see Rule 103.

Paragraph (B)(4) requires the filing party to include with the document filed a certificate of service. The certificate of service should be in substantially the following form:

> I hereby certify that I am this day serving upon the persons and in the manner indicated below. The manner of service satisfies the requirements of Pa.R.Crim.P. 575.
>
> Service by first class mail addressed as follows:
>
> (NAME) (717) 787-0000
> Deputy Attorney General
> Office of the Attorney General
> 16 Floor Strawberry Square
> Harrisburg PA 17120
> (Attorney for the Commonwealth)
>
> Service in person as follows:
>
> (NAME) (717) 240-0000
> Assistant District Attorney
> Cumberland County Courthouse
> Carlisle, PA
> (Attorney for the Commonwealth)
>
> Service by leaving a copy at the office of:
>
> (NAME) (717) 240-0000

Court Administrator
Cumberland County Courthouse
Carlisle, PA

Service by certified mail, return receipt requested, as follows:

(NAME) (no phone)
Drawer 00000000
Camp Hill, PA

Service by electronic means addressed as follows:

(NAME) (717) 545-0000
000 Magnolia Ave, Suite A
Harrisburg PA 17122
email address: johndoe@hotmail.com
(Attorney for the Defendant)

Dated:

(S)
(NAME), Esq. (Attorney Registration No. 00000)

Under 18 Pa.C.S. § 4904 (unsworn falsification to authorities), a knowingly false certificate of service constitutes a misdemeanor of the second degree.

See Rule 451 (Service) for the procedures for service in summary cases.

See Rule 114 (Orders and Court Notices: Filing, Service, and Docket Entries) for the requirements for docketing and service of court orders and notices.

See Rule 103 (Definitions) for the definitions of court administrator, clerk of courts, and motions.

NOTE: Former Rule 9022 adopted October 21, 1983, effective January 1, 1984; amended March 22, 1993, effective January 1, 1994; amended July 9, 1996, effective September 1, 1996; renumbered Rule 576 and amended March 1, 2000, effective April 1, 2001. Former Rule 9023 adopted October 21, 1983, effective January 1, 1984; amended June 2, 1994, effective September 1, 1994; renumbered Rule 577 and amended March 1, 2000, effective April 1, 2001; rescinded March 2, 2004, effective July 1, 2004. Rules 576 and 577 combined and amended March 2, 2004, effective July 1, 2004 **[.] ; *Comment* revised June 4, 2004, effective November 1, 2004.**

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COMMITTEE EXPLANATORY REPORTS:

Final Report explaining the March 22, 1993 amendments to former Rule 9022 published with the Court's Order at 23 Pa.B. 1699 (April 10, 1993).

Report explaining the June 2, 1994 amendments to former Rule 9023 published at 23 Pa.B. 5008 (October 23, 1993).

Final Report explaining the July 9, 1996 amendments to former Rule 9022 published with the Court's Order at 26 Pa.B. 3532 (July 27, 1996).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

Final Report explaining the March 2, 2004 changes amending and combining Rule 576 with former Rule 577 published with the Court's Order at 34 Pa.B. 1561 (March 20, 2004.)

RULE 604. OPENING STATEMENTS AND CLOSING ARGUMENTS.

(A) After the jury has been sworn, the attorney for the Commonwealth shall make an opening statement to the jury. The defendant or the defendant's attorney may then make an opening statement or reserve it until after the Commonwealth has presented its case.

(B) When the evidence is concluded, each party shall be entitled to present one closing argument to the jury. Regardless of the number of defendants, and whether or not a defendant has presented a defense, the attorney for the Commonwealth shall be entitled to make one argument which shall be made last.

COMMENT: This rule establishes a uniform procedure throughout the Commonwealth for the guilt determining phase of the trial. For the procedures after the presentation of evidence at the sentencing phase of a death penalty case, see Rule **[805]** **806**.

NOTE: Rule 1116 adopted January 24, 1968, effective August 1, 1968; *Comment* revised February 1, 1989, effective July 1, 1989; renumbered Rule 604 and amended March 1, 2000, effective April 1, 2001 **[.]** ***; Comment*** **revised June 4, 2004, effective November 1, 2004.**

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COMMITTEE EXPLANATORY REPORTS:

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000.

RULE 720. POST-SENTENCE PROCEDURES; APPEAL.

(A) TIMING.

(1) Except as provided in paragraph (D), a written post-sentence motion shall be filed no later than 10 days after imposition of sentence.

(2) If the defendant files a timely post-sentence motion, the notice of appeal shall be filed:

(a) within 30 days of the entry of the order deciding the motion;

(b) within 30 days of the entry of the order denying the motion by operation of law in cases in which the judge fails to decide the motion; or

(c) within 30 days of the entry of the order memorializing the withdrawal in cases in which the defendant withdraws the motion.

(3) If the defendant does not file a timely post-sentence motion, the defendant's notice of appeal shall be filed within 30 days of imposition of sentence, except as provided in paragraph (A)(4).

(4) If the Commonwealth files a timely motion to modify sentence pursuant to Rule 721, the defendant's notice of appeal shall be filed within 30 days of the entry of the order disposing of the Commonwealth's motion.

(B) OPTIONAL POST-SENTENCE MOTION.

(1) Generally.

(a) The defendant in a court case shall have the right to make a post-sentence motion. All requests for relief from the trial court shall be stated with specificity and particularity, and shall be consolidated in the post-sentence motion, which may include:

(i) a motion challenging the validity of a plea of guilty or *nolo contendere*, or the denial of a motion to withdraw a plea of guilty or *nolo contendere*;

(ii) a motion for judgment of acquittal;

(iii) a motion in arrest of judgment;

(iv) a motion for a new trial; and/or

(v) a motion to modify sentence.

(b) The defendant may file a supplemental post-sentence motion in the judge's discretion as long as the decision on the supplemental motion can be made in compliance with the time limits of paragraph (B)(3).

(c) Issues raised before or during trial shall be deemed preserved for appeal whether or not the defendant elects to file a post-sentence motion on those issues.

(2) Trial Court Action.

(a) Briefing Schedule

Within 10 days after a post-sentence motion is filed, if the judge determines that briefs or memoranda of law are required for a resolution of the motion, the judge shall schedule a date certain for the submission of briefs or memoranda of law by the defendant and the Commonwealth.

(b) Hearing; Argument

The judge shall also determine whether a hearing or argument on the motion is required, and if so, shall schedule a date or dates certain for one or both.

(c) Transcript

If the grounds asserted in the post-sentence motion do not require a transcript, neither the briefs nor hearing nor argument on the post-sentence motion shall be delayed for transcript preparation.

(3) Time Limits for Decision on Motion.

The judge shall not vacate sentence pending decision on the post-sentence motion, but shall decide the motion as provided in this paragraph.

(a) Except as provided in paragraph (B)(3)(b), the judge shall decide the post-sentence motion, including any supplemental motion, within 120 days of the filing of the motion. If the judge fails to decide the motion within 120 days, or to grant an extension as provided in paragraph (B)(3)(b), the motion shall be deemed denied by operation of law.

(b) Upon motion of the defendant within the 120-day disposition period, for good cause shown, the judge may grant one 30-day extension for decision on the motion. If the judge fails to decide the motion within the 30-day extension period, the motion shall be deemed denied by operation of law.

(c) When a post-sentence motion is denied by operation of law, the clerk of courts shall forthwith enter an order on behalf of the court, and, as provided in Rule 114, forthwith shall serve a copy of the order on the attorney for the Commonwealth, the defendant's attorney, or if unrepresented the defendant, that the post-sentence motion is deemed denied. This order is not subject to reconsideration.

(d) If the judge denies the post-sentence motion, the judge promptly shall issue an order and the order shall be filed and served as provided in Rule 114.

(e) If the defendant withdraws a post-sentence motion, the judge promptly shall issue an order memorializing the withdrawal, and the order shall be filed and served as provided in Rule 114.

(4) Contents of Order.

An order denying a post-sentence motion, whether issued by the judge pursuant to paragraph (B)(3)(d) or entered by the clerk of courts pursuant to paragraph (B)(3)(c), or an order issued following a defendant's withdrawal of the post-sentence motion, shall include notice to the defendant of the following:

(a) the right to appeal and the time limits within which the appeal must be filed;

(b) the right to assistance of counsel in the preparation of the appeal;

(c) the rights, if the defendant is indigent, to appeal *in forma pauperis* and to proceed with assigned counsel as provided in Rule 122; and

(d) the qualified right to bail under Rule 521(B).

(C) AFTER-DISCOVERED EVIDENCE.

A motion for a new trial on the ground of after-discovered evidence must be filed in writing promptly after such discovery. If an appeal is pending, the judge may grant the motion only upon remand of the case.

(D) SUMMARY CASE APPEALS.

There shall be no post-sentence motion in summary case appeals following a trial *de novo* in the court of common pleas. The imposition of sentence immediately following a determination of guilt at the conclusion of the trial *de novo* shall constitute a final order for purposes of appeal.

COMMENT: *See* Rules 606, 608, and 622.

For post-sentence procedures after a sentence of death has been imposed, see Rule **[810]** **811**.

The purpose of this rule is to promote the fair and prompt disposition of all issues relating to guilty pleas, trial, and sentence by consolidating all possible motions to be submitted for trial court review, and by setting reasonable but firm time limits within which the motion must be decided. Because the post-sentence motion is optional, the defendant may choose to raise any or all properly preserved issues in the trial court, in the appellate court, or both.

TIMING

Paragraph (A) contains the timing requirements for filing the optional post-sentence motion and taking an appeal. Under paragraph (A)(1), the post-sentence motion must be filed within 10 days of imposition of sentence.

When a defendant files a timely post-sentence motion, the 30-day period for the defendant's direct appeal on all matters in that case -- including all issues related to any informations and any charges consolidated against the defendant for trial -- is triggered by the trial judge's decision on the post-sentence motion, the denial of the motion by operation of law, or the withdrawal of the post-sentence motion. The appeal period runs from the entry of the order. As to the

date of entry of orders, see Pa.R.A.P. 108. *See also Commonwealth v. Miller,* 715 A.2d 1203 (Pa. Super. 1998), concerning the time for appeal following the withdrawal of a post-sentence motion. No direct appeal may be taken by a defendant while his or her post-sentence motion is pending. *See* paragraph (A)(2).

If no timely post-sentence motion is filed, the defendant's appeal period runs from the date sentence is imposed**.** *See* paragraph (A)(3). Under paragraph (A)(4), however, when the defendant has not filed a post-sentence motion but the Commonwealth files a timely motion to modify sentence under Rule 721, it is the entry of the order disposing of the Commonwealth's motion that commences the 30-day period during which the defendant's notice of appeal must be filed. *See* Rule 721(B)(2)(b).

All references to appeals in this rule relate to the defendant's right to appeal. The rule does not address or alter the Commonwealth's right to appeal. For Commonwealth challenges to sentences, see Rule 721.

OPTIONAL POST-SENTENCE MOTION

Paragraph (B) represents a departure from traditional Pennsylvania practice. It is intended to give the defendant the option of resubmitting for the trial judge's consideration issues that were raised before or during trial. Although the defendant may choose to raise only some issues in the post-sentence motion, the decision on the motion triggers the appeal period on all properly preserved issues. *See* paragraph (A)(2).

Under paragraph (B)(1)(c), any issue raised before or during trial is deemed preserved for appeal whether or not the defendant chooses to raise the issue in a post-sentence motion. It follows that the failure to brief or argue an issue in the post-sentence motion would not waive that issue on appeal as long as the issue was properly preserved, in the first instance, before or during trial. Nothing in this rule, however, is intended to address Pa.R.A.P. 1925(b) or the preservation of appellate issues once an appeal is filed. *See Commonwealth v. Lord,* 719 A.2d 306 (Pa. 1998) (any

issues not raised in a 1925(b) statement will be deemed waived).

Nothing in this rule precludes the judge from granting a motion for extraordinary relief before sentencing under the special provisions of Rule 704(B). *But see* Rule 704(B)(3).

Under paragraph (A)(1), if a defendant chooses to file a post-sentence motion, the motion must be filed within 10 days of imposition of sentence. The filing of the written post-sentence motion triggers the time limits for decision on the motion, including any supplement to it filed pursuant to paragraph (B)(1)(b). *See* paragraph (B)(3)(a).

For procedures governing post-sentence challenges to the sufficiency of the evidence, see Rule 606(A)(6) and (A)(7). For challenges to the weight of the evidence, see Rule 606(A).

In those cases in which a petitioner under the Post Conviction Relief Act has been granted leave to file a post-sentence motion or to appeal *nunc pro tunc*, the filing of the post-sentence motion or the notice of appeal must comply with the timing requirements contained in paragraph (A) of this rule. *See* the Post Conviction Relief Act, 42 Pa.C.S. §§ 9541 *et seq.*

BRIEFS; TRANSCRIPTS; ARGUMENT

Under paragraph (B)(2)(a), the judge should determine, on a case-by-case basis, whether briefs or memoranda of law are required for a fair resolution of the post-sentence motion. If they are not needed, or if a concise summary of the relevant law and facts is sufficient, the judge should so order. Any local rules requiring briefs or oral argument are inconsistent with this rule. *See* Rule 105(B)(1).

Under paragraph (B)(2)(c), the judge, in consultation with defense counsel and the attorney for the Commonwealth, should determine what, if any, portions of the notes of testimony must be transcribed so that the post-sentence motion can be resolved. The judge should then set clear deadlines for the court reporter to insure timely disposition of

the motion. Nothing in this rule precludes the judge from ordering the transcript or portions of it immediately after the conclusion of the trial or the entry of a plea.

Paragraph (B)(1)(b) permits the trial judge to entertain a supplemental post-sentence motion at his or her discretion, as long as the decision on the supplemental issue(s) is made within the time limits of paragraph (B)(3).

For the recording and transcribing of court proceedings generally, see Rule 115. The requirements for the record and the writing of an opinion on appeal are set forth in the Pennsylvania Rules of Appellate Procedure.

There is no requirement that oral argument be heard on every post-sentence motion. When argument is to be heard, however, the judge should determine whether the post-sentence motion argument must be argued before the judge alone, or before a panel sitting *en banc.* It is recommended that, except in extraordinary circumstances, the post-sentence motion be heard by the judge alone. The judge may make any rulings that could be made by a court *en banc. See Commonwealth v. Norris*, 389 A.2d 668 (Pa. Super. 1978). On the powers of courts *en banc*, see *Commonwealth v. Bonser*, 258 A.2d 675 (Pa. Super. 1969). For cases in which there has been a change of venue, see Rule 584.

When oral argument is heard on the post-sentence motion, the defendant need not be present.

DISPOSITION

Under paragraph (B)(3), once the defendant makes a timely written post-sentence motion, the judge retains jurisdiction for the duration of the disposition period. The judge may not vacate the order imposing sentence pending decision on the post-sentence motion. This is so whether or not the Commonwealth files a motion to modify sentence. *See* Rule 721.

Paragraph (B)(3)(b) permits one 30-day extension of the 120-day time limit, for good cause shown, upon motion of

the defendant. In most cases, an extension would be requested and granted when new counsel has entered the case. Only the defendant or counsel may request such an extension. The judge may not, *sua sponte*, extend the time for decision: a congested court calendar or other judicial delay does not constitute "good cause" under this rule.

The possibility of an extension is not intended to suggest that 120 days are required for decision in most cases. The time limits for disposition of the post-sentence motion are the outer limits. Easily resolvable issues, such as a modification of sentence or a guilty plea challenge, should ordinarily be decided in a much shorter period of time.

If the trial judge decides the motion within the time limits of this rule, the judge may grant reconsideration on the post-sentence motion pursuant to 42 Pa.C.S. § 5505 or Pa.R.A.P. 1701.1, but the judge may not vacate the sentence pending reconsideration. Rule 720(B)(3). The reconsideration period may not be used to extend the timing requirements set forth in paragraph (B)(3) for decision on the post-sentence motion: the time limits imposed by paragraphs (B)(3)(a) and (B)(3)(b) continue to run from the date the post-sentence motion was originally filed. The trial judge's reconsideration must therefore be resolved within the 120-day decision period of paragraph (B)(3)(a) or the 30-day extension period of paragraph (B)(3)(b), whichever applies. If a decision on the reconsideration is not reached within the appropriate period, the post-sentence motion, including any issues raised for reconsideration, will be denied pursuant to paragraph (B)(3)(c).

Under paragraph (B)(3)(a), on the date when the court disposes of the motion, or the date when the motion is denied by operation of law, the judgment becomes final for the purposes of appeal. *See* Judicial Code, 42 Pa.C.S. §§ 102, 722, 742, 5105(a) and *Commonwealth v. Bolden*, 373 A.2d 90 (Pa. 1977).

An order entered by the clerk of courts under paragraph (B)(3)(c) constitutes a ministerial order and, as such, is not subject to reconsideration or modification pursuant to 42 Pa.C.S. § 5505 or Pa.R.A.P. 1701.

If the motion is denied by operation of law, paragraph (B)(3)(c) requires that the clerk of courts enter an order denying the motion on behalf of the court and immediately notify the attorney for the Commonwealth, the defendant's attorney, or if unrepresented the defendant, that the motion has been denied. This notice is intended to protect the defendant's right to appeal. The clerk of courts must also comply with the notice and docketing requirements of Rule 113.

The disposition of a motion to modify a sentence imposed after a revocation hearing is governed by Rule 708 (Violation of Probation, Intermediate Punishment, or Parole: Hearing and Disposition).

CONTENTS OF ORDER

Paragraph (B)(4) protects the defendant's right to appeal by requiring that the judge's order denying the motion, the clerk of courts' order denying the motion by operation of law, or the order entered memorializing a defendant's withdrawal of a post-sentence motion, contain written notice of the defendant's appeal rights. This requirement **[insures] ensures** adequate notice to the defendant, which is important given the potential time lapse between the notice provided at sentencing and the resolution of the post-sentence motion. *See* Rule 704(C)(3). *See also Commonwealth v. Miller,* 715 A.2d 1203 (Pa. Super. 1998), concerning the contents of the order memorializing the withdrawal of a post-sentence motion.

When a defendant withdraws a post-sentence motion in open court and on the record, the judge should orally enter an order memorializing the withdrawal for the record, and give the defendant notice of the information required by paragraph (B)(4). *See Commonwealth v. Miller, supra.*

MISCELLANEOUS

When the defendant is represented by new counsel on the post-sentence motion, the defendant must raise any claim that prior counsel was ineffective, and the court must consider and decide the claim. Furthermore, unless the existing record is adequate for a determination of the claim, the judge must hold an evidentiary hearing. *See Commonwealth v. Hubbard*, 372 A.2d 687 (Pa. 1977); *Commonwealth v. Dancer*, 331 A.2d 435 (Pa. 1975). For procedures governing the appearance and withdrawal of counsel, see Rule 120.

Under paragraph (B)(1)(a), the grounds for the post-sentence motion should be stated with particularity. Motions alleging insufficient evidence, for example, must specify in what way the evidence was insufficient, and motions alleging that the verdict was against the weight of the evidence must specify why the verdict was against the weight of the evidence.

Because the post-sentence motion is optional, the failure to raise an issue with sufficient particularity in the post-sentence motion will not constitute a waiver of the issue on appeal as long as the issue was preserved before or during trial. *See* paragraph (B)(1)(c).

Under paragraph (B)(1)(a)(ii), a challenge to the sufficiency of the evidence would be made in a motion for judgment of acquittal. *See* Rule 606.

A post-sentence challenge to a guilty plea under this rule is distinct from a motion to withdraw a guilty plea prior to sentence. *See* Rule 591. *Cf.* Standards Relating to Pleas of Guilty § 2.1(a)(ii), ABA PROJECT ON MINIMUM STANDARDS FOR CRIMINAL JUSTICE (Approved Draft, 1968). Properly preserved issues related to guilty pleas need not be raised again in the post-sentence motion, but the defendant may choose to do so. A key consideration for the defendant is whether the record will be adequate for appellate review. If counsel is uncertain about the record, it is recommended that the guilty plea be challenged in the post-sentence motion.

Issues properly preserved at the sentencing proceeding need not, but may be raised again in a motion to modify sentence in order to preserve them for appeal. In deciding whether to move to modify sentence, counsel must carefully consider whether the record created at the sentencing proceeding is adequate for appellate review of the issues, or the issues may be waived. *See Commonwealth v. Jarvis*, 663 A.2d 790 (Pa. Super. 1995). *See also* Rule 704(C)(4). As a general rule, the motion to modify sentence under paragraph (B)(1)(a)(v) gives the sentencing judge the earliest opportunity to modify the sentence. This procedure does not affect the court's inherent powers to correct an illegal sentence or obvious and patent mistakes in its orders at any time before appeal or upon remand by the appellate court. *See, e.g., Commonwealth v. Jones*, 554 A.2d 50 (Pa. 1989) (sentencing court can, *sua sponte*, correct an illegal sentence even after the defendant has begun serving the original sentence) and *Commonwealth v. Cole*, 263 A.2d 339 (Pa. 1970) (inherent power of the court to correct obvious and patent mistakes).

Once a sentence has been modified or reimposed pursuant to a motion to modify sentence under paragraph (B)(1)(a)(v) or Rule 721, a party wishing to challenge the decision on the motion does not have to file an additional motion to modify sentence in order to preserve an issue for appeal, as long as the issue was properly preserved at the time sentence was modified or reimposed.

Commonwealth challenges to sentences are governed by Rule 721. If the defendant files a post-sentence motion, the time limits for decision on the defendant's motion govern the time limits for disposition of the Commonwealth motion to modify sentence, regardless of which motion is filed first. *See* Rule 721(C)(1). If the defendant elects to file an appeal and the Commonwealth files a motion to modify sentence, decision on the Commonwealth's motion triggers the defendant's 30-day appeal period. *See* Rule 720(A)(4).

Given that the Commonwealth has 10 days to file a motion to modify sentence under Rule 721(B)(1), it is possible that the defendant might elect to file a notice of appeal under

Rule 720(A)(3) *followed by* the Commonwealth's filing a timely motion to modify sentence. When this occurs, the defendant's notice of appeal is rendered premature, because the entry of the order disposing of the Commonwealth's motion to modify sentence then becomes the triggering device for the defendant's notice of appeal. In this situation, counsel for the defendant should be aware that Pa.R.A.P. 905(a) addresses this problem. In response to an extensive history of appeals that were quashed because of the premature filing of the notice of appeal, the last sentence of Pa.R.A.P. 905(a) was drafted to create a legal fiction that treats a premature notice of appeal as filed after the entry of the appealable order. For a discussion of this provision, see Darlington, McKeon, Schuckers, and Brown, *Pennsylvania Appellate Practice*, 2d., § 905.3.

For bail proceedings pending the outcome of the post-sentence motion, see Rules 521 and 523.

Although there are no post-sentence motions in summary appeals following the trial *de novo* pursuant to paragraph (D), nothing in this rule is intended to preclude the trial judge from acting on a defendant's petition for reconsideration. *See* the Judicial Code, 42 Pa.C.S. § 5505. *See also Commonwealth v. Dougherty*, 679 A.2d 779, 784 (Pa. Super. 1996).

NOTE: Previous Rule 1410, adopted May 22, 1978, effective as to cases in which sentence is imposed on or after July 1, 1978; rescinded March 22, 1993, effective as to cases in which the determination of guilt occurs on or after January 1, 1994, and replaced by present Rule 1410. Present Rule 1410 adopted March 22, 1993 and amended December 17, 1993, effective as to cases in which the determination of guilt occurs on or after January 1, 1994; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; the April 1, 1996 effective date extended to July 1, 1996. *Comment* revised September 26, 1996, effective January 1, 1997; amended August 22, 1997, effective January 1, 1998; *Comment* revised October 15, 1997, effective January 1, 1998; amended July 9, 1999, effective

January 1, 2000; renumbered Rule 720 and amended March 1, 2000, effective April 1, 2001; amended August 21, 2003, effective January 1, 2004 **[.] ; *Comment* revised June 4, 2004, effective November 1, 2004.**

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COMMITTEE EXPLANATORY REPORTS:

Final Report explaining the provisions of the new rule published with the Court's Order at 23 Pa.B. 1699 (April 10, 1993).

Report explaining the December 17, 1993 amendments published with the Court's Order at 24 Pa.B. 334 (January 15, 1994).

Final Report explaining the September 13, 1995 amendments concerning bail published with the Court's Order at 25 Pa.B. 4116 (September 30, 1995).

Final Report explaining the September 26, 1996 Comment revision on Rule 1409 procedures published at 26 Pa.B. 4900 (October 12, 1996).

Final Report explaining the August 22, 1997 amendments to paragraphs (A)(4) and (B)(3) published with the Court's Order at 27 Pa.B. 4553 (September 6, 1997).

Final Report explaining the Comment references to Rule 1124A (Challenges to the Weight of the Evidence) and to Commonwealth v. Dougherty published with the Court's Order at 27 Pa.B. 5594 (November 1, 1997).

Final Report explaining the July 9, 1999 amendments to paragraphs (A)(2) and (B)(4) concerning time for appeal and contents of the order entered following withdrawal of post-sentence motion, and revision of the Comment adding the citation to Commonwealth v. Lord, published with the Court's Order at 29 Pa.B. 3836 (July 24, 1999).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

Final Report explaining the August 21, 2003 changes to Rule 720 concerning the timeliness of filings and the order published at 33 Pa.B. 4438, 2003(September 6, 2003).

[This is an entirely new rule.]

RULE 801. QUALIFICATIONS FOR DEFENSE COUNSEL IN CAPITAL CASES.

In all cases in which the district attorney has filed a Notice of Aggravating Circumstances pursuant to Rule 802, before an attorney may participate in the case either as retained or appointed counsel, the attorney must meet the educational and experiential criteria set forth in this rule.

(1) EXPERIENCE: Counsel shall

(a) be a member in good standing of the Bar of this Commonwealth;

(b) be an active trial practitioner with a minimum of 5 years' criminal litigation experience; and

(c) have served as lead or co-counsel in a minimum of 8 significant cases which were tried to verdict before a jury. If representation is to be only in an appellate court, prior appellate or post-conviction representation in a minimum of 8 significant cases shall satisfy this requirement. A "significant case" for purposes of this rule shall be a murder, including manslaughter and vehicular homicide, or a felony of the first or second degree.

(2) EDUCATION:

(a) During the 3-year period immediately preceding the appointment or entry of appearance, counsel shall have completed a minimum of 18 hours of training relevant to representation in capital cases, as approved by the Pennsylvania Continuing Legal Education Board.

(b) Training in capital cases shall include, but not be limited to, training in the following areas:

(i) relevant state, federal, and international law;

(ii) pleading and motion practice;

(iii) pretrial investigation, preparation, strategy, and theory regarding guilt and penalty phases;

(iv) jury selection;

(v) trial preparation and presentation;

(vi) presentation and rebuttal of relevant scientific, forensic, biological, and mental health evidence and experts;

(vii) ethical considerations particular to capital defense representation;

(viii) preservation of the record and issues for post-conviction review;

(ix) post-conviction litigation in state and federal courts;

(x) unique issues relating to those charged with capital offenses when under the age of 18.

(xi) counsel's relationship with the client and family;

(c) The Pennsylvania Continuing Legal Education Board shall maintain and make available a list of attorneys who satisfy the educational requirements set forth in this rule.

COMMENT: The purpose of this rule is to provide minimum uniform statewide standards for the experience and education of appointed and retained counsel in capital cases, to thus ensure such counsel possess the ability, knowledge, and experience to provide representation in the most competent and professional manner possible. These requirements apply to counsel at all stages of a capital case, including pretrial, trial, post-conviction, and appellate.

The educational and experience requirements of the rule may not be waived by the trial or appellate court. A court may allow representation by an out-of-state attorney *pro hac vice,* if satisfied the attorney has equivalent experience and educational qualifications, and is a member in good standing of the Bar of the attorney's home jurisdiction.

An attorney may serve as "second chair" in a capital case without meeting the educational or experience requirements of this rule. "Second chair" attorneys may not have primary responsibility for the presentation of significant evidence or

argument, but may present minor or perfunctory evidence or argument, if deemed appropriate in the discretion of the court. Service as a "second chair" in a homicide case will count as a trial for purposes of evaluating that attorney's experience under paragraph (A)(1)(c) of this rule.

The CLE Board may approve entire courses focusing on capital litigation, or individual portions of other courses dealing with general areas relevant to capital cases (such as trial advocacy). It is expected that counsel will attend training programs encompassing the full range of issues confronting the capital litigator from the investigative and pretrial stages through appellate and post-conviction litigation in the state and federal courts.

Determination of experience will be accomplished by the appointing or admitting court, by colloquy or otherwise.

For the entry of appearance and withdrawal of counsel requirements generally, see Rule 120.

For the appointment of trial counsel, see Rule 122.

For the entry of appearance and appointment of counsel in post-conviction collateral proceedings, see Rule 904.

NOTE: Adopted June 4, 2004, effective November 1, 2004.

RULE **[801]** **802**. NOTICE OF AGGRAVATING CIRCUMSTANCES.

The Commonwealth shall file a Notice of Aggravating Circumstances that the Commonwealth intends to submit at the sentencing hearing and contemporaneously provide the defendant with a copy of such Notice of Aggravating Circumstances. Notice shall be filed at or before the time of arraignment, unless the attorney for the Commonwealth becomes aware of the existence of an aggravating circumstance after arraignment or the time for filing is extended by the court for cause shown.

COMMENT: This rule provides for pretrial disclosure of those aggravating circumstances that the Commonwealth intends to prove at the sentencing hearing. *See* Sentencing Code, 42 Pa.C.S. § 9711(d). It is intended to give the defendant sufficient time and information to prepare for the sentencing hearing. Although the rule requires that notice generally be given no later than the time of arraignment, it authorizes prompt notice thereafter when a circumstance becomes known to the attorney for the Commonwealth at a later time. The language "for cause shown" contemplates, for example, a situation in which, at the time of arraignment, an ongoing investigation of an aggravating circumstance must be completed before the attorney for the Commonwealth can know whether the evidence is sufficient to warrant submitting the circumstance at the sentencing hearing.

The 1995 amendment requires the Commonwealth to file the Notice of Aggravating Circumstances.

For purposes of this rule, the notice requirement is satisfied if the notice to the defendant sets forth the existing aggravating circumstances substantially in the language of the statute. *See* 42 Pa.C.S. § 9711(d). The extent of disclosure of underlying evidence is governed by Rule 573.

For time of arraignment, see Rule 571.

If the trial court orders a new sentencing hearing, or the Supreme Court remands a case for a redetermination of penalty pursuant to 42 Pa.C.S. § 9711(h)(4), the attorney for the Commonwealth may not introduce any new aggravating

circumstance except when there has been an intervening conviction for an offense committed prior to the present conviction which would constitute an aggravating circumstance. The trial judge must set the time within which the attorney for the Commonwealth must notify the defendant of such an additional circumstance, and the time set for notice must allow the defendant adequate time to prepare for the new sentencing hearing. No additional notice is required for those aggravating circumstances previously offered and not struck down upon review.

NOTE: Previous Rule 352 adopted July 1, 1985, effective August 1, 1985; renumbered Rule 353 February 1, 1989, effective July 1, 1989. Present Rule 352 adopted February 1, 1989, effective as to cases in which the arraignment is held on or after July 1, 1989; *Comment* revised October 29, 1990, effective January 1, 1991; amended January 10, 1995, effective February 1, 1995; renumbered Rule 801 and amended March 1, 2000, effective April 1, 2001 **[.] ; renumbered Rule 802 June 4, 2004, effective November 1, 2004.**

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COMMITTEE EXPLANATORY REPORTS:

Report explaining the October 29, 1990 Comment revision published at 20 Pa.B. 5736 (November 17, 1990).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

RULE **[802] 803**. GUILTY PLEA PROCEDURE.

(A) When a defendant charged with murder enters a plea of guilty to a charge of murder generally, the judge before whom the plea is entered shall alone determine the degree of guilt.

(B) If the crime is determined to be murder of the first degree the sentencing proceeding shall be conducted as provided by law.

COMMENT: For the procedure for the entry of guilty pleas, see Rule 590. For the sentencing procedure if the crime is determined to be murder of the first degree, see Sentencing Code 42 Pa.C.S. § 9711(b).

NOTE: Original Rule 352 adopted September 22, 1976, effective November 1, 1976; amended May 26, 1977, effective July 1, 1977; rescinded April 2, 1978, effective immediately. Former Rule 352 adopted July 1, 1985, effective August 1, 1985; renumbered Rule 353 February 1, 1989, effective July 1, 1989; renumbered Rule 802 and amended March 1, 2000, effective April 1, 2001 **[.] ; renumbered Rule 803 June 4,2004, effective November 1, 2004.**

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COMMITTEE EXPLANATORY REPORTS:

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

RULE **[803] 804**. PROCEDURE WHEN JURY TRIAL IS WAIVED.

(A) When a defendant charged with murder waives a jury trial, the trial judge shall alone hear the evidence, determine all questions of law and fact, and render a verdict which shall have the same force and effect as a verdict of a jury.

(B) If the crime is determined to be murder of the first degree the sentencing proceeding shall be conducted as provided by law.

COMMENT: For the procedure for waiver of jury trial, see Rules 620 and 621. For the sentencing procedure if the crime is determined to be murder of the first degree, see Sentencing Code, 42 Pa.C.S. § 9711(b).

NOTE: Original Rule 353 adopted September 22, 1976, effective March 1, 1977, effective date extended to April 1, 1977; amended May 26, 1977, effective July 1, 1977; rescinded April 2, 1978, effective immediately. Former Rule 353 adopted July 1, 1985, effective August 1, 1985, renumbered Rule 354 February 1, 1989, effective July 1, 1989; renumbered Rule 803 and amended March 1, 2000, effective April 1, 2001 **[.] ; renumbered Rule 804 June 4, 2004, effective November 1, 2004.**

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COMMITTEE EXPLANATORY REPORTS:

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

RULE **[804] 805**. NO SEALED VERDICT.

No sealed verdict shall be permitted under this chapter.

NOTE: Original Rule 354 adopted September 22, 1976, effective November 1, 1976; rescinded April 2, 1978, effective immediately. Former Rule 354 adopted July 1, 1985, effective August 1, 1985; renumbered Rule 355 February 1, 1989, effective July 1, 1989; renumbered Rule 804 and amended March 1, 2000, effective April 1, 2001 **[.] ; renumbered Rule 805 June 4, 2004, effective November 1, 2004.**

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COMMITTEE EXPLANATORY REPORTS:

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

RULE **[805] 806**. CLOSING ARGUMENTS AT SENTENCING HEARING.

After the presentation of evidence at the sentencing hearing, each party shall be entitled to present one closing argument for or against the sentence of death. The defendant's argument shall be made last.

COMMENT: *See* Sentencing Code, 42 Pa.C.S. § 9711(a)(3).

NOTE: Rule 356 adopted February 1, 1989, effective July 1, 1989; renumbered Rule 805 and *Comment* revised March 1, 2000, effective April 1, 2001 **[.] ; renumbered Rule 806 June 4, 2004, effective November 1, 2004.**

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COMMITTEE EXPLANATORY REPORTS:

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

RULE **[806] 807**. SENTENCING VERDICT SLIP.

(A) JURY

(1) In all cases in which the sentencing proceeding is conducted before a jury, the judge shall furnish the jury with a jury sentencing verdict slip in the form provided by Rule **[807] 808**.

(2) Before the jury retires to deliberate, the judge shall meet with counsel and determine those aggravating and mitigating circumstances of which there is some evidence. The judge shall then set forth those circumstances on the sentencing verdict slip using the language provided by law.

(3) The trial judge shall make the completed sentencing verdict slip part of the record.

(B) TRIAL JUDGE

(1) In all cases in which the defendant has waived a sentencing proceeding before a jury and the trial judge determines the penalty, the trial judge shall complete a sentencing verdict slip in the form provided by Rule **[808] 809**.

(2) The trial judge shall make the completed sentencing verdict slip part of the record.

COMMENT: The purpose of this rule is to provide statewide, uniform jury and trial judge sentencing verdict slips in death penalty cases. The jury sentencing verdict slip is not intended to replace those jury instructions required by law. *See* Sentencing Code, 42 Pa.C.S. § 9711(c). For the sentencing procedure under paragraph (B), see Sentencing Code, 42 Pa.C.S. § 9711(b).

NOTE: Rule 357 adopted February 1, 1989, effective July 1, 1989; renumbered Rule 806 and amended March 1, 2000, effective April 1, 2001**[.] ; renumbered Rule 807 June 4, 2004, effective November 1, 2004.**

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COMMITTEE EXPLANATORY REPORTS:

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

RULE **[807] 808**. FORM FOR JURY SENTENCING VERDICT SLIP.

IN THE COURT OF COMMON PLEAS OF_____COUNTY, PENNSYLVANIA

CRIMINAL

COMMONWEALTH OF PENNSYLVANIA :

vs. : NO._____

:

FIRST DEGREE MURDER
SENTENCING VERDICT SLIP

I. GENERAL INSTRUCTIONS

A. READ THROUGH THE ENTIRE VERDICT SLIP BEFORE BEGINNING DELIBERATIONS.

B. AGGRAVATING AND MITIGATING CIRCUMSTANCES PRESENTED TO THE JURY.

1. The following aggravating circumstance(s) (is) (are) submitted to the jury and must be proved by the Commonwealth beyond a reasonable doubt:

[List and number separately]

(1)

_____

_____

(2)

_____

_____

(3)

_____

_____

(4) _____

_____

2. The following mitigating circumstance(s) (is) (are) submitted to the jury and must be proved by the defendant by a preponderance of the evidence:

[List and number separately]

(1) _____

_____

(2) _____

_____

(3) _____

_____

(4) Any other evidence of mitigation concerning the character and record of the defendant and the circumstances of the defendant's offense.

C. DO NOT COMPLETE THIS SENTENCING VERDICT SLIP UNTIL YOUR DELIBERATIONS ARE CONCLUDED. THIS SENTENCING VERDICT SLIP IS ONLY TO BE USED TO RECORD YOUR SENTENCING VERDICT AND THE FINDINGS UPON WHICH IT IS BASED.

D. IF, AFTER SUFFICIENT DELIBERATION, YOU CANNOT UNANIMOUSLY REACH A SENTENCING VERDICT, DO NOT COMPLETE OR SIGN THIS SLIP, BUT RETURN IT TO THE JUDGE. THE JUDGE WILL DETERMINE IF FURTHER DELIBERATIONS ARE REQUIRED; IF THEY ARE NOT, THE JUDGE WILL SENTENCE THE DEFENDANT TO LIFE IMPRISONMENT.

II. SENTENCING VERDICT AND FINDINGS

If you have reached a unanimous verdict, complete this part of the form.

In Section A, indicate whether the sentencing verdict is death or life imprisonment. If the sentence is death, indicate the basis for that verdict by completing Section B. If the sentence is life imprisonment, indicate the basis for that verdict by completing Section C.

A. We, the jury, unanimously sentence the defendant to (check one):

_____ Death

_____ Life Imprisonment

B. The findings on which the sentence of death is based are (check one):

_____1. At least one aggravating circumstance and no mitigating circumstance.

The aggravating circumstance(s) unanimously found (is) (are):

_____
_____

_____2. One or more aggravating circumstances which outweigh(s) any mitigating circumstance(s).

The aggravating circumstance(s) unanimously found (is) (are):

_____
_____

The mitigating circumstance(s) found by one or more of us (is) (are):

_____
_____

C. The findings on which the sentence of life imprisonment is based are (check one):

_____1. No aggravating circumstance exists.

_____2. The mitigating circumstance(s) (is) (are) not outweighed by the aggravating circumstance(s).

The mitigating circumstance(s) found by one or more of us (is) (are):

_____
_____

The aggravating circumstance(s) unanimously found (is) (are):

_____
_____

_____ DATE _____ JURY FOREPERSON

COMMENT: The general instructions contained in Part I of the verdict slip are not intended to replace the jury instructions required by law. *See* Sentencing Code, 42 Pa.C.S. § 9711(c)(1) and (2).

The judge should caution the jury that the verdict slip is to be used to record the sentencing verdict and findings, and that the slip should be completed only after their deliberations are concluded.

In Part I, General Instructions, the judge should set forth those aggravating and mitigating circumstances of which there is some evidence. The list should include the mitigating circumstance "concerning the character and record of the defendant and the circumstances of his offense." 42 Pa.C.S. § 9711(e)(8). *See Commonwealth v. Moody,* 382 A.2d 442

(Pa. 1977), *cert.* den. 438 U.S. 914 (1978), and *Lockett v. Ohio*, 438 U.S. 586 (1978).

The list of aggravating and mitigating circumstances completed by the judge in Part I, and by the jury foreperson in Part II, should use the language provided by law for each circumstance. *See* Sentencing Code, 42 Pa.C.S. § 9711(d) and (e). The judge's instructions on the weighing of aggravating and mitigating circumstances must comply with *Mills v. Maryland*, 108 S.Ct. 1860 (1988).

Note: Rule 358A adopted February 1, 1989, effective July 1, 1989; renumbered Rule 807 and amended March 1, 2000, effective April 1, 2001 **[.] ; renumbered Rule 808 June 4, 2004, effective November 1, 2004.**

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COMMITTEE EXPLANATORY REPORTS:

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

RULE **[808] <u>809</u>**. FORM FOR TRIAL JUDGE SENTENCING VERDICT SLIP

IN THE COURT OF COMMON PLEAS OF_____ COUNTY, PENNSYLVANIA

CRIMINAL

COMMONWEALTH OF PENNSYLVANIA :

vs. : NO._____

:

FIRST DEGREE MURDER
<u>SENTENCING VERDICT SLIP</u>

A. I, _____ J., sentence the defendant to:

_____ Death

_____ Life Imprisonment

B. The findings on which the sentence of death is based are:

_____1. At least one aggravating circumstance and no mitigating circumstance.

The aggravating circumstance(s) (is) (are):

_____
_____.

_____2. One or more aggravating circumstances which outweigh(s) any mitigating circumstance(s).

The aggravating circumstance(s) (is) (are):

_____
_____.

The mitigating circumstance(s) (is) (are):

_____
_____.

C. The findings on which the sentence of life imprisonment is based are:

_____1. No aggravating circumstance exists.

_____2. The mitigating circumstance(s) (is) (are) not outweighed by the aggravating circumstance(s).

The mitigating circumstance(s) (is) (are):

_____
_____

The aggravating circumstance(s) (is) (are):

_____
_____

_____ DATE _____, J.

COMMENT: In listing aggravating and/or mitigating circumstances in Sections B or C, the trial judge should use the language provided by law for each circumstance. *See* Sentencing Code, 42 Pa.C.S. § 9711(d) and (e).

NOTE: Rule 358B adopted February 1, 1989, effective July 1, 1989; renumbered Rule 808 and *Comment revised* March 1, 2000, effective April 1, 2001**[.] ; renumbered Rule 809 June 4, 2004, effective November 1, 2004.**

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COMMITTEE EXPLANATORY <u>REPORTS</u>:

<u>Final</u> <u>Report</u> explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 <u>Pa.B.</u> 1478 (March 18, 2000).

RULE **[809] 810**. SENTENCE.

In all cases in which a verdict of guilty of murder of the first degree has been returned, once a sentence has been determined, the court may immediately impose that sentence.

COMMENT: Although this rule authorizes the immediate imposition of sentence, there may be circumstances in an individual case when the judge would want to delay imposition of sentence. The case should then proceed under the time limits in Rule 704(A).

When sentence is imposed immediately pursuant to this rule, the judge must still comply with the applicable requirements of Rule 704(C).

Once sentence has been imposed, the time for filing the post-sentence motion begins to run. *See* Rules **[810] 811** and 720.

NOTE: Previous rule, originally numbered Rule 355, adopted September 22, 1976, effective November 1, 1976; rescinded April 2, 1978, effective immediately. Former Rule 355 adopted July 1, 1985, effective August 1, 1985; amended and renumbered Rule 359 December 31, 1987, effective immediately; *Comment* revised October 29, 1990, effective January 1, 1991; rescinded March 22, 1993, effective as to cases in which the determination of guilt occurs on or after January 1, 1994, and replaced by present Rules 360, 1405, and 1410. Present Rule 359 adopted March 22, 1993, effective as to cases in which the determination of guilt occurs on or after January 1, 1994; renumbered Rule 809 and *Comment revised* March 1, 2000, effective April 1, 2001 **[.] ; renumbered Rule 810 and *Comment* revised June 4, 2004, effective November 1, 2004.**

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COMMITTEE EXPLANATORY REPORTS:

Final Report explaining the provisions of the new rule published with the Court's Order at 23 Pa.B. 1699 (April 10, 1993).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

RULE **[810] 811**. POST-SENTENCE MOTION.

In all cases in which a sentence has been imposed, the case shall proceed pursuant to Rule 720, except that, in cases in which a death sentence has been determined and imposed, the post-sentence motion shall be decided promptly, but shall not be denied by operation of law.

COMMENT: This rule, Rule **[809] 810**, Rule 704, and Rule 720 replace previous Rule 359.

When a sentence of death has been imposed, the sentence may be challenged initially at the trial level as part of the general post-sentence motion.

Under Rule 720, the post-sentence motion must be decided within 120 days of filing or is deemed denied by operation of law. It is intended that, as to those cases in which a life sentence has been imposed, this and all other Rule 720 time limits for disposition of the post-sentence motion apply. In cases in which a sentence of death has been imposed, however, the post-sentence motion may not be denied by operation of law if the judge fails to decide the motion within the 120-day limit. The judge must rule on the motion as promptly as the interests of justice allow.

NOTE: Rule 360 adopted March 22, 1993, effective as to cases in which the determination of guilt occurs on or after January 1, 1994; renumbered Rule 810 and amended March 1, 2000, effective April 1, 2001 **[.] ; renumbered Rule 811 and *Comment* revised June 4, 2004, effective November 1, 2004.**

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COMMITTEE EXPLANATORY REPORTS:

Final Report explaining the provisions of the new rule published with the Court's Order at 23 Pa.B. 1699 (April 10, 1993).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

RULE 901. INITIATION OF POST-CONVICTION COLLATERAL PROCEEDINGS.

(A) A petition for post-conviction collateral relief shall be filed within one year of the date the judgment becomes final, except as otherwise provided by statute.

(B) A proceeding for post-conviction collateral relief shall be initiated by filing a petition and 3 copies with the clerk of the court in which the defendant was convicted and sentenced. The petition shall be verified by the defendant.

COMMENT: The rules in Chapter 9 govern proceedings to obtain relief authorized by the Post Conviction Relief Act, 42 Pa.C.S. §§ 9541 *et seq.* (hereinafter PCRA).

By statute, a court may not entertain a request for any form of relief in anticipation of the filing of a petition for post-conviction collateral relief. *See* 42 Pa.C.S. § 9545(a). For stays of execution, see 42 Pa.C.S. § 9545(c) and Rule 909(A).

The petition for post-conviction relief under these rules is not intended to be a substitute for or a limitation on the availability of appeal or a post-sentence motion. *See* Pa.Rs.Crim.P. 720 and **[810]** **811**. Rather, the Chapter 9 Rules are intended to require that, in a single proceeding, the defendant must raise and the judge must dispose of all grounds for relief available after conviction and exhaustion of the appellate process, either by affirmance or by the failure to take a timely appeal.

Except as provided in Rule 902(E)(2) for death penalty cases, no discovery is permitted at any stage of the proceedings, except upon leave of the court with a showing of exceptional circumstances. *See* Rule 902(E)(1), which implements 42 Pa.C.S. § 9545(d)(2).

As used in the Chapter 9 Rules, "petition for post-conviction collateral relief" and "petition" are intended to include an amended petition filed pursuant to Rule 905, except where the context indicates otherwise.

Under the 1995 amendments to the PCRA, a petition for post-conviction relief, including second and subsequent petitions, must be filed "within one year of the date the judgment becomes final," 42 Pa.C.S. § 9545(b)(1), unless one of the statutory exceptions applies, see 42 Pa.C.S. § 9545(b)(1)(i)-(iii). Any petition invoking one of these exceptions must be filed within 60 days of the date the claim could have been presented. *See* 42 Pa.C.S. § 9545(b)(2).

The 1995 amendments to the PCRA apply to petitions filed on or after January 16, 1996. A petitioner whose judgment has become final on or before the effective date of the Act is deemed to have filed a timely petition under the Act if the first petition is filed within one year of the effective date of the Act. *See* Section 3 of Act 1995-32 (SS1).

For the purposes of the PCRA, a judgment becomes final at the conclusion of direct review, which includes discretionary review in the Supreme Court of the United States and the Supreme Court of Pennsylvania, or at the expiration of time for seeking the review. *See* 42 Pa.C.S. § 9545(b)(3).

NOTE: Previous Rule 1501 adopted January 24, 1968, effective August 1, 1968; amended November 25, 1968, effective February 3, 1969; amended February 15, 1974, effective immediately; rescinded December 11, 1981, effective June 27, 1982; rescission vacated June 4, 1982; rescinded November 9, 1984, effective January 2, 1985. Former Rule 1501 adopted November 9, 1984, effective January 2, 1985; rescinded February 1, 1989, effective July 1, 1989, and replaced by present Rule 1502. Present Rule 1501 adopted February 1, 1989, effective July 1, 1989; amended March 22, 1993, effective January 1, 1994; amended August 11, 1997, effective immediately; *Comment* revised July 23, 1999, effective September 1, 1999; renumbered Rule 901 and amended March 1, 2000, effective April 1, 2001 **[.] ; *Comment* revised June 4, 2004, effective November 1, 2004.**

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COMMITTEE EXPLANATORY REPORTS:

Final Report explaining the March 22, 1993 amendments published with the Court's Order at 23 Pa.B. 1699 (April 10, 1993).

Final Report explaining the August 11, 1997 amendments published with the Court's Order at 27 Pa.B. 4305 (August 23, 1997).

Final Report explaining the July 23, 1999 Comment revision concerning stays published with the Court's Order at 29 Pa.B. 4167 (August 7, 1999).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000.

RULE 904. ENTRY OF APPEARANCE AND APPOINTMENT OF COUNSEL; *IN FORMA PAUPERIS*.

(A) Counsel for defendant shall file a written entry of appearance with the clerk of courts promptly after being retained or appointed, and serve a copy on the attorney for the Commonwealth. If a firm name is entered, the name of an individual lawyer shall be designated as being responsible for the conduct of the case.

(B) Except as provided in paragraph (G), when an unrepresented defendant satisfies the judge that the defendant is unable to afford or otherwise procure counsel, the judge shall appoint counsel to represent the defendant on the defendant's first petition for post-conviction collateral relief.

(C) On a second or subsequent petition, when an unrepresented defendant satisfies the judge that the defendant is unable to afford or otherwise procure counsel, and an evidentiary hearing is required as provided in Rule 908, the judge shall appoint counsel to represent the defendant.

(D) The judge shall appoint counsel to represent a defendant whenever the interests of justice require it.

(E) An appointment of counsel shall be effective throughout the post-conviction collateral proceedings, including any appeal from disposition of the petition for post-conviction collateral relief.

(F) When a defendant satisfies the judge that the defendant is unable to pay the costs of the post-conviction collateral proceedings, the judge shall order that the defendant be permitted to proceed *in forma pauperis*.

(G) Appointment of Counsel in Death Penalty Cases.

(1) At the conclusion of direct review in a death penalty case, which includes discretionary review in the Supreme Court of the United States, or at the expiration of time for seeking the review, upon remand of the record, the trial judge shall appoint new counsel for the purpose of post-conviction collateral review, unless:

(a) the defendant has elected to proceed *pro se* or waive post-conviction collateral proceedings, and the judge finds, after a colloquy on the record, that the defendant is competent and the defendant's election is knowing, intelligent, and voluntary;

(b) the defendant requests continued representation by original trial counsel or direct appeal counsel, and the judge finds, after a colloquy on the record, that the petitioner's election constitutes a knowing, intelligent, and voluntary waiver of a claim that counsel was ineffective; or

(c) the judge finds, after a colloquy on the record, that the defendant has engaged counsel who has entered, or will promptly enter, an appearance for the collateral review proceedings.

(2) The appointment of counsel shall be effective throughout the post-conviction collateral proceedings, including any appeal from disposition of the petition for post-conviction collateral relief.

(3) When the defendant satisfies the judge that the defendant is unable to pay the costs of the post-conviction collateral proceedings, the judge shall order that the defendant be permitted to proceed *in forma pauperis.*

COMMENT: If a defendant seeks to proceed without an attorney, the court may appoint standby counsel. *See* Rule 121.

Consistent with Pennsylvania post-conviction practice, it is intended that counsel be appointed in every case in which a defendant has filed a petition for post-conviction collateral relief for the first time and is unable to afford counsel or otherwise procure counsel. However, the rule now limits appointment of counsel on second or subsequent petitions so that counsel should be appointed *only* if the judge determines that an evidentiary hearing is required. Of course, the judge has the discretion to appoint counsel in any case when the interests of justice require it.

Pursuant to paragraphs (E) and (G)(2), appointed counsel retains his or her assignment until final judgment, which includes all avenues of appeal through the Supreme Court of Pennsylvania. In making the decision whether to file a petition for allowance of appeal, counsel must (1) consult with his or her client, and (2) review the standards set forth in Pa.R.A.P. 1114 (Considerations Governing Allowance of

Appeal) and the note following that rule. If the decision is made to file a petition, counsel must carry through with that decision. *See Commonwealth v. Liebel*, 825 A.2d 630 (Pa. 2003). Concerning counsel's obligations as appointed counsel, see *Jones v. Barnes*, 463 U.S. 745 (1983). *See also Commonwealth v. Padden*, 783 A.2d 299 (Pa. Super. 2001).

Paragraph (G) was added in 2000 to provide for the appointment of counsel for the first petition for post-conviction collateral relief in a death penalty case at the conclusion of direct review.

An attorney may not be appointed to represent a defendant in a capital case unless the attorney meets the educational and experiential requirements set forth in Rule 801 (Qualifications for Defense Counsel in Capital Cases).

NOTE: Previous Rule 1504 adopted January 24, 1968, effective August 1, 1968; rescinded December 11, 1981, effective June 27, 1982; rescission vacated June 4, 1982; rescinded February 1, 1989, effective July 1, 1989, and replaced by Rule 1507. Present Rule 1504 adopted February 1, 1989, effective July 1, 1989; amended August 11, 1997, effective immediately; amended January 21, 2000, effective July 1, 2000; renumbered Rule 904 and amended March 1, 2000, effective April 1, 2001; amended February 26, 2002, effective July 1, 2002; *Comment* revised March 12, 2004, effective July 1, 2004 **[.] ; *Comment* revised June 4, 2004, effective November 1, 2004.**

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COMMITTEE EXPLANATORY REPORTS:

Final Report explaining the August 11, 1997 amendments published with the Court's Order at 27 Pa.B. 4305 (August 23, 1997).

Final Report explaining the January 21, 2000 amendments adding paragraph (F) concerning appointment of counsel published with the Court's Order at 30 Pa.B. 624 (February 5, 2000).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B.1478 (March 18, 2000).

Final Report explaining the February 26, 2002 amendments concerning entry of appearance by counsel published with the Court's Order at 32 Pa.B. 1393 (March 16, 2002).

Final Report explaining the Comment revision concerning duration of counsel's obligation published with the Court's Order at 34 Pa.B. 1672 (March 27, 2004).