

**SUPREME COURT OF PENNSYLVANIA
CRIMINAL PROCEDURAL RULES COMMITTEE
NOTICE OF PROPOSED RULEMAKING**

Proposed Amendment to Pa.R.Crim.P. 1006

The Criminal Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the amendment of Rule 1006 (Notice of Right to Appeal or to Petition for *Certiorari*; Guilty Plea Challenge Procedure.) for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any reports, notes, or comments in the proposal have been inserted by the Committee for the convenience of those using the rules. They neither will constitute a part of the rules nor will be officially adopted by the Supreme Court.

Additions to the text of the proposal are bolded and underlined; deletions to the text are bolded and bracketed.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

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Criminal Procedural Rules Committee
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All communications in reference to the proposal should be received by **no later than Friday, February 24, 2017**. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

January 3, 2017

BY THE CRIMINAL PROCEDURAL RULES COMMITTEE:

*Charles A. Ehrlich
Chair*

RULE 1006. NOTICE OF RIGHT TO APPEAL OR TO PETITION FOR *CERTIORARI*;
GUILTY PLEA CHALLENGE PROCEDURE.

(A) Immediately after the imposition of sentence, the judge shall inform the defendant:

(1) in the case of a trial and verdict of guilty:

(a) of the right to file a petition for a writ of *certiorari* within 30 days without costs or to appeal for trial *de novo* within 30 days without costs;

(b) of the right to jury trial on appeal; and

(c) that the charge on which the defendant was found guilty in the Municipal Court will be considered by the district attorney as the basis for the preparation of an information after the filing of the notice of appeal;

(2) in the case of a plea of guilty:

(a) of the right to file a motion challenging the validity of the plea or the denial of a motion to withdraw the plea;

(b) of the 10-day time limit within which such motion must be filed;

(c) of the right to be represented by counsel in preparing and litigating the motion and to have counsel appointed in the event the defendant is unable to afford counsel;

(d) of the right to appeal from the final order disposing of the motion within 30 days after such order;

(e) that only the claims raised in the motion may be raised on appeal; and

(3) in any case, of the right to counsel to represent the defendant on appeal and of the right to have counsel appointed to represent the defendant on appeal in the event the defendant is unable to afford counsel.

(B) After a petition for writ of *certiorari* or notice of appeal for trial *de novo* is filed, the Municipal Court shall take no further action in the case, unless otherwise provided in these Rules.

COMMENT: For the right to file a petition for a writ of *certiorari* to the court of common pleas, see Article V, Section 26 of the Pennsylvania Constitution, and the Judicial Code, 42 Pa.C.S. § 934. See also *Commonwealth v. Speights*, 509 A.2d 1263 (Pa. Super. 1986) (petition challenging sufficiency of the evidence), and *Commonwealth v. Frazier*, 471 A.2d 866 (Pa. Super. 1984) (petition alleging that judge erred in denying motion to suppress). *Certiorari* is available in non-summary cases only. Compare Rule 460.

NOTE: Rule 6006 adopted December 30, 1968, effective January 1, 1969; amended July 1, 1980, effective August 1, 1980; amended February 21, 1996, effective July 1, 1996; renumbered Rule 1006 and amended March 1, 2000, effective April 1, 2001 [.] ; amended _____, 2017, effective _____, 2017.

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COMMITTEE EXPLANATORY REPORTS:

Final Report explaining the February 21, 1996 amendments published with the Court's Order at 26 Pa.B. 991 (March 9, 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).

Report explaining the proposed amendment regarding the effect that taking an appeal has on the ability of the Municipal Court to take further action in a case published for comment at 47 Pa.B. (_____, 2017).

REPORT

Proposed Amendments to Pa.R.Crim.P. 1006

WRITS OF *CERTIORARI* AND APPEALS FOR TRIAL *DE NOVO* IN THE PHILADELPHIA MUNICIPAL COURT

The Committee recently considered the opinion of the Pennsylvania Superior Court in the case of *Commonwealth v. Richards*, 128 A.3d 786 (Pa. Super. 2015), *appeal denied*, 145 A.3d 164 (Pa. 2016). *Richards* involved a defendant charged with DUI of a controlled substance. The Philadelphia Municipal Court granted defendant's motion to suppress and the Commonwealth petitioned for writ of *certiorari* to the Court of Common Pleas. After the petition had been filed, the Commonwealth withdrew the charges at a status hearing in the Municipal Court, apparently by mistake. The Court of Common Pleas subsequently dismissed the appeal as moot. The Commonwealth appealed to the Superior Court on the basis that the Municipal Court should not have approved the withdrawal since Rule of Appellate Procedure 1701 bars a lower court from conducting proceedings when a case is on appeal. The Superior Court held that the Rules of Appellate Procedure do not apply to a court of common pleas acting in its role as an appellate court deciding a petition for writ of *certiorari* unless that court expressly adopted such Rules. This finding was based on a plain reading of Rule of Appellate Procedure 103 that limits the applicability of those rules to the Supreme, Superior and Commonwealth Courts.

Rule 1006 provides the procedures for appeal from the Philadelphia Municipal Court. Rule 1006 provides two options for taking an appeal from a Municipal Court judgment: (1) to request a trial *de novo* before the Common Pleas Court; or (2) to file a petition for writ of *certiorari*, asking the Philadelphia Court of Common Pleas, sitting as an appellate court, to review the record made in the Municipal Court. See *Commonwealth v. Williams*, 125 A.3d 425 (Pa.Super. 2015). A trial *de novo* gives the defendant a new trial without reference to the Municipal Court record while a petition for writ of *certiorari* asks the Common Pleas Court to review the record made in the Municipal Court. Generally, a defendant is required to raise all claims in a writ of *certiorari* pertaining to the proceedings in the municipal court, or they will be considered

waived on appeal. *Commonwealth v. Coleman*, 19 A.3d 1111 (Pa. Super. 2011).

The specific provision in Rule 1006 related to the filing of a writ of *certiorari* as an option for appeals from the Municipal Court was added in 1996. The Committee provided the rationale for this addition in the *Final Report* from that amendment:

Several members noted that, although the Philadelphia Public Defender's office utilized petitions for writs of *certiorari* fairly frequently, many members of the private bar apparently were not aware of the continued availability of *certiorari* as an alternative to an appeal for a trial de novo in the court of common pleas. We therefore agreed that the rules should expressly provide for this procedure. *Final Report*, 26 Pa.B. 989 (March 9, 1996).

This provision merely codifies the right contained in Article V, Section 26 of the Pennsylvania Constitution, and the Judicial Code, 42 Pa.C.S. § 934.¹

Rule of Appellate Procedure 1701 describes the effects on a case when an appeal has been filed. The general rule contained in Rule 1701(A) states, “Except as otherwise prescribed by these rules, after an appeal is taken or review of a quasi-judicial order is sought, the trial court or other government unit may no longer proceed further in the matter.” As the *Richards* case holds, the Rules of Appellate Procedure do not apply to appeal to the court of common pleas.

¹ Article V, Section 26 provides:

§ 26. Writs of *certiorari*.

Unless and until changed by rule of the Supreme Court, in addition to the right of appeal under section 9 of this article, the judges of the courts of common pleas, within their respective judicial districts, shall have power to issue writs of *certiorari* to the municipal court in the City of Philadelphia, justices of the peace and inferior courts not of record and to cause their proceedings to be brought before them, and right and justice to be done.

42 Pa.C.S. § 934 provides:

Unless and until changed by general rule, the judges of the courts of common pleas, within their respective judicial districts, shall have power, in addition to the right of appeal under section 9 of Article V of the Constitution of Pennsylvania, to issue writs of *certiorari* to the minor judiciary.

Therefore, the Committee concluded that the principle that the Municipal Court cannot act in a matter once a petition for writ of *certiorari* has been filed with the Court of Common Pleas would have to be specifically added to the rules to be effective. The Committee concluded that such a provision prohibiting action by the Municipal Court once an appeal was filed would be advisable to prevent confusion such as occurred in *Richards* where two courts were acting at the same time on the case to cross purposes.

This provision also would be consistent with other rules which prevent cases from moving back and forth between courts of common pleas and the minor judiciary. See *e.g.* Rule 541 (if the right to preliminary hearing is reinstated after defendant waived preliminary hearing, the preliminary hearing must be in common pleas court, unless the parties and judge agree that the issuing authority conduct the preliminary hearing) and Rule 543 (G) (once a case is bound over to the court of common pleas, the case shall not be remanded to the issuing authority.) It would also be consistent with the general principle that an appeal moves the case from one court to another.

In a case in which an appeal for trial *de novo* has been filed, it is much clearer that any action must be taken by the Court of Common Pleas. The Committee concluded that these appeals should also be included in the new provision for clarity. A new paragraph (B) would be added to Rule 1006 stating that once case has been appealed from the Municipal Court to the Philadelphia Court of Common Pleas, the Municipal Court may no longer take action on that case.