

Proposed New Pa.R.Crim.P. 911

INTRODUCTION

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania adopt new Rule of Criminal Procedure 911 (Bail Motions After Disposition of Post-Conviction Collateral Relief Petition) that would clarify when the PCRA court may grant a defendant's request for release on bail. This proposal is correlative to a proposal by the Appellate Court Procedural Rules Committee for new Pa.R.A.P. 1765, and amendments to Pa.Rs.A.P. 1561 and 1701. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's considerations in formulating this proposal. Please note that the Committee's Report should not be confused with the official Committee Comments to the rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the explanatory Reports.

The text of proposed new Rule 911 precedes the Report.

We request that interested persons submit suggestions, comments, or objections concerning this proposal in writing to the Committee through counsel,

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no later than Friday, July 3, 2009.

May 19, 2009

BY THE CRIMINAL PROCEDURAL RULES COMMITTEE:

D. Peter Johnson, Chair

*Anne T. Panfil
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*Jeffrey M. Wasileski
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[This is an entirely new rule.]

RULE 911. BAIL MOTIONS AFTER DISPOSITION OF POST-CONVICTION
COLLATERAL RELIEF PETITION.

(A) After disposition of a post-conviction collateral relief petition, the petitioner by motion filed within 30 days of entry of the disposition on the docket may request release on bail with the judge only when:

- (1) the judge has granted post-conviction relief; or
- (2) an appellate court has reversed the PCRA court's denial of post-conviction relief.

(B) Upon receipt of a motion requesting release on bail, the judge shall hold a hearing. At the hearing, the judge shall consider any relevant evidence, including information about:

- (1) the release criteria set forth in Rule 523 and the types of release on bail set forth in Rule 524;
- (2) any interest that will be served by detaining the defendant;
- (3) any interest that will be served by releasing the defendant;
- (4) the likelihood that the defendant will prevail if a new trial or sentencing is held;
- (5) the seriousness of the criminal offense committed;
- (6) the danger the defendant may pose to any other person, the community, or himself or herself if he or she is released;
- (7) the likelihood that the defendant may flee if released; and
- (8) any other factors relevant to the case.

(C) Release shall not be granted unless necessary in the interest of justice, in exceptional circumstances, and for compelling reasons.

(D) At the conclusion of the hearing, the judge shall state on the record the reasons for the decision granting or denying the motion for release on bail.

COMMENT: This rule provides the procedures for the filing and disposition of motions for release on bail in post-conviction collateral relief cases either after the judge has granted the petition or once an appellate court has reversed the judge's denial of the petition. See Rules of Appellate Procedure 1701(b)(1), 1762(b)(2), and 1765. Also see Rule 908(C)(2) and 42 Pa.C.S. § 9546(a).

Unlike pretrial and pre-sentence release on bail, a PCRA petitioner is not entitled to release on bail as a matter of right. Rather, bail may be allowed in the discretion of the judge. Paragraph (C) cautions the judge about the limitations on the exercise of discretion in these cases. Article I, § 14 of the Pennsylvania Constitution, that provides "all prisoners shall be bailable by sufficient sureties, unless for capital offenses or for offenses for which the maximum sentence is life imprisonment or unless no condition or combination of conditions other than imprisonment will reasonably assure the safety of any person and the community when the proof is evident or presumption great" also limits the judge's discretion. See also Rule 521.

"Judge," as used in this rule, refers to the judge of the court of common pleas handling the PCRA proceedings at the time the motion for release on bail is filed.

The parties may introduce copies of the record from any proceedings, including pretrial, trial, direct appeal, or PCRA, during the bail hearing.

NOTE: Adopted _____, effective _____.

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COMMITTEE EXPLANATORY REPORTS:

Report explaining the provisions of the proposed new rule published at 39 Pa.B. (_____, 2009).

REPORT

Proposed new Rule of Criminal Procedure 911

BAIL MOTIONS AFTER DISPOSITION OF POST-CONVICTION COLLATERAL RELIEF PETITION

I. INTRODUCTION

The Committee, in conjunction with the Appellate Court Procedural Rules Committee,¹ is planning to propose to the Supreme Court new Rule of Criminal Procedure 911 that would clarify when a PCRA judge² at the conclusion of a post-conviction collateral proceeding may grant a defendant's request for release on bail. The need for this new rule was suggested to the Committee by the Appellate Court Procedural Rules Committee.

The Appellate Court Procedural Rules Committee noted that, because there are no procedural rules specific to bail after the conclusion of the PCRA proceedings, there is a great deal of confusion about whether bail may be considered and, if so, how and when. Because the issues implicate both the Appellate Court Procedural Rules and the Criminal Procedural Rules, a Joint Subcommittee of members from both Committees was formed to assist the two Committees in addressing these concerns. The Joint Subcommittee's recommendation for new Pa.R.A.P. 1765 and amendments to Pa.Rs.A.P. 1561 and 1701, and, correlatively, for new Rule of Criminal Procedure 911 has been approved for publication by both Committees.

The Joint Subcommittee initially proposed changes to the Rules of Appellate Court Procedure prohibiting applications for bail in the trial or appellate court during the

¹ The Appellate Court Procedural Rules Committee proposal is for new Pa.R.A.P. 1765 and amendments to Pa.Rs.A.P. 1561 and 1701.

² "PCRA judge" refers to the judge of the court of common pleas handling the proceedings under the Post Conviction Relief Act ("PCRA") at the time the motion for release on bail is filed.

pendency of appeal of the denial of the petition for post-conviction relief, and appeals from a denial of bail.³

After reviewing the publication responses, the Appellate Court Rules Committee asked the Joint Subcommittee to re-evaluate the original proposal. In particular, the Joint Subcommittee was to consider whether, because bail is a collateral proceeding to an underlying action, the option to request bail exists when the PCRA judge has granted the defendant's PCRA petition or when the Appellate Court has reversed the PCRA judge's denial of the petition. After a thorough re-examination of the issues, the original proposal has been amended to permit a bail request by the defendant in the limited situations in which the PCRA judge has granted the PCRA petition and when the Appellate Court has reversed the PCRA judge's denial of the petition. To accomplish this, the Joint Subcommittee recommended to the respective Committees that there be changes made to both the Appellate Court Procedural Rules and the Criminal Procedural Rules.⁴

II. PROPOSED NEW RULE of CRIMINAL PROCEDURE 911(Bail Motions After Disposition of Post-Conviction Collateral Relief Petition)

Proposed new Rule 911 sets forth the procedures for release on bail in the limited circumstances after disposition of a post-conviction collateral relief petition either when the PCRA judge has granted post-conviction relief or when an appellate court has reversed the PCRA judge's denial of post-conviction relief. Because bail at this stage is extremely restricted, the changes also include cautionary language making the limitations clear. In addition, because the procedures occur only after the conclusion of the PCRA proceedings, the new rule is being numbered Rule 911, the last rule of the PCRA rules in Chapter 9.

Paragraph (A) sets forth the motion procedure and the limitations on when bail may be requested. The burden is on the defendant to file a motion with the PCRA

³ This proposal was published for comment on May 24, 2008. See 38 Pa.B. 2359.

⁴ The Appellate Court Procedural Rules Committee's recommendation explaining the proposed changes to the Rules of Appellate Court Procedure has been published with this proposal.

judge and the motion must be filed within 30 days of entry of the disposition of a post-conviction collateral relief petition on the docket. The time to make a request for bail is limited to when the PCRA judge has granted post-conviction relief or when an appellate court has reversed the PCRA judge's denial of post-conviction relief.

After the PCRA judge receives a request for release on bail, the judge is required to hold a hearing. At the hearing, the PCRA judge is required to consider the criteria enumerated in paragraph (B) and the restrictions set forth in paragraph (C) before making a decision. When the case is proceeding pursuant to the PCRA, the defendant does not have a right to release on bail because a court has found a defendant guilty and that determination has been affirmed on direct appeal.⁵ The fact that the nature of the PCRA court's inquiry is different is reflected in the new Rule 911(B) criteria and the further restrictions enumerated in paragraph (C). These points are elaborated in the *Comment*.

Paragraph (D) requires the PCRA judge to state on the record the reasons for granting or denying bail. This requirement is necessary to make a record for purposes of appeal.

The *Comment* includes a reference to the relevant Rules of Appellate Procedure. The *Comment* also includes references to Rule of Criminal Procedure 908 and 42 Pa.C.S. § 9546(a) that provide the PCRA judge's authority to issue supplementary orders appropriate to the proper disposition of the case.

Finally, recognizing that, at this stage in the proceedings, some of the information that would be relevant to making a determination about releasing a defendant on bail may be in the records of earlier proceedings that might not be available to the PCRA court, the *Comment* explains that the parties may introduce copies of these records at the hearing.

⁵ Prior to conviction, defendants have a constitutional right to release on bail except in limited cases set forth in Article I, § 14 of the Pennsylvania Constitution. See Pa.Rs.Crim.P. 520 and 521.