

**Proposed Amendments to Pa.Rs.Crim.P. 907, 908, and 909, and the Revision of
the Comment to Pa.R.Crim.P. 910**

INTRODUCTION

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Rules of Criminal Procedure 907 (Disposition Without Hearing), 908 (Hearing), and 909 (Procedures for Petitions in Death Penalty Cases: Stays of Execution of Sentence; Hearing; Disposition), and approve the revision of the Comment to Rule of Criminal Procedure 910 (Appeal). The proposed changes clarify that a new notice of appeal has to be filed within 30 days of the order reinstating the direct appeal rights nunc pro tunc. The proposed changes also clarify the requirements for issuing and filing orders following a PCRA disposition. 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 the proposed amendments to the Rules precedes the Report. Additions are shown in bold and are underlined; deletions are in bold and brackets.

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

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Criminal Procedural Rules Committee
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no later than Friday, September 17, 2010.

July 12, 2010

BY THE CRIMINAL PROCEDURAL RULES COMMITTEE:

Risa Vetri Ferman, Chair

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TIME FOR APPEAL NUNC PRO TUNC REPORT: 7/12/2010

RULE 907. DISPOSITION WITHOUT HEARING.

Except as provided in Rule 909 for death penalty cases,

(1) the judge shall promptly review the petition, any answer by the attorney for the Commonwealth, and other matters of record relating to the defendant's claim(s). If the judge is satisfied from this review that there are no genuine issues concerning any material fact and that the defendant is not entitled to post-conviction collateral relief, and no purpose would be served by any further proceedings, the judge shall give notice to the parties of the intention to dismiss the petition and shall state in the notice the reasons for the dismissal. The defendant may respond to the proposed dismissal within 20 days of the date of the notice. The judge thereafter shall order the petition dismissed, grant leave to file an amended petition, or direct that the proceedings continue.

(2) A petition for post-conviction collateral relief may be granted without a hearing when the petition and answer show that there is no genuine issue concerning any material fact and that the defendant is entitled to relief as a matter of law.

(3) The judge may dispose of only part of a petition without a hearing by ordering dismissal of or granting relief on only some of the issues raised, while ordering a hearing on other issues.

(4) When the petition is dismissed without a hearing, the judge **promptly** shall issue an order to that effect and shall advise the defendant by certified mail, return receipt requested, of the right to appeal from the final order disposing of the petition and of the time **limits** within which the appeal must be **[taken] filed**. **The order shall be filed and served as provided in Rule 114.**

(5) When the petition is granted without a hearing, the judge promptly shall issue an order granting a specific form of relief, and issue any supplementary orders appropriate to the proper disposition of the case. The order shall be filed and served as provided in Rule 114.

COMMENT: The judge is permitted, pursuant to paragraph (1), to summarily dismiss a petition for post-conviction collateral relief in certain limited cases. To determine whether a summary dismissal is appropriate, the judge should thoroughly review the petition, the answer, if any, and all other relevant information that is included in the record. If, after this review, the judge determines that the petition is patently frivolous and without support in the record, or that the facts alleged

would not, even if proven, entitle the defendant to relief, or that there are no genuine issues of fact, the judge may dismiss the petition as provided herein.

A summary dismissal would also be authorized under this rule if the judge determines that a previous petition involving the same issue or issues was filed and was finally determined adversely to the defendant. See 42 Pa.C.S. § 9545(b) for the timing requirements for filing second and subsequent petitions.

Second or subsequent petitions will not be entertained unless a strong *prima facie* showing is offered to demonstrate that a miscarriage of justice may have occurred. See *Commonwealth v. Szuchon*, 534 Pa. 483, 486, 633 A.2d 1098, 1099 (1993) (citing *Commonwealth v. Lawson*, 519 Pa. 504, 549 A.2d 107 (1988)). This standard is met if the petitioner can demonstrate either: (1) that the proceedings resulting in the petitioner's conviction were so unfair that a miscarriage of justice occurred which no civilized society can tolerate; or (2) that the petitioner is innocent of the crimes charged. See *Commonwealth v. Szuchon*, 534 Pa. 483, 487, 633 A.2d 1098, 1100 (1993).

When the disposition granting a petition reinstates a defendant's direct appeal rights *nunc pro tunc*, the judge must advise the defendant by certified mail, return receipt requested that a new notice of appeal must be filed within 30 days of the order.

The clerk of courts must comply with the notice and docketing requirements of Rule 114 with regard to any orders entered pursuant to this rule.

For the requirements for appointment of counsel on second and subsequent petitions, see Rule 904(B).

Relief may be granted without a hearing under paragraph (2) only after an answer has been filed either voluntarily or pursuant to court order.

A PCRA petition may not be dismissed due to delay in filing except after a hearing on a motion to dismiss. See 42 Pa.C.S. § 9543(b) and Rule 908.

Nothing in this rule is intended to preclude a judicial district from utilizing the United States Postal Service's return receipt electronic option, or any similar service that electronically provides a return receipt, when using certified mail, return receipt requested.

NOTE: Previous Rule 1507 adopted January 24, 1968, effective August 1, 1968; rescinded December 11, 1981, effective June 27, 1982; rescission vacated June 4, 1982; amended January 28, 1983, effective July 1, 1983; rescinded February 1, 1989, effective July 1, 1989, and not replaced. Present Rule 1507 adopted February 1, 1989, effective July 1, 1989; amended August 11, 1997, effective immediately; renumbered Rule 907 and amended March 1, 2000, effective April 1, 2001; *Comment* revised September 18, 2008, effective February 1, 2009 **[.] ; amended**, **2010, effective**, **2010.**

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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 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 September 18, 2008 revision of the Comment concerning the United States Postal Service's return receipt electronic option published with the Court's Order at 38 Pa.B. 5428 (October 4, 2008).

Report explaining the proposed amendments to paragraph (4) and the addition of paragraph (5) concerning orders and the proposed revision of the Comment concerning appeals nunc pro tunc published at 40 Pa.B. (, 2010).

RULE 908. HEARING.

(A) Except as provided in Rule 907, the judge shall order a hearing:

(1) whenever the Commonwealth files a motion to dismiss due to the defendant's delay in filing the petition; or

(2) when the petition for post-conviction relief or the Commonwealth's answer, if any, raises material issues of fact. However, the judge may deny a hearing on a specific issue of fact when a full and fair evidentiary hearing upon that issue was held at trial or at any proceeding before or after trial.

The judge shall schedule the hearing for a time that will afford the parties a reasonable opportunity for investigation and preparation, and shall enter such interim orders as may be necessary in the interests of justice.

(B) The judge, on petition or request, shall postpone or continue a hearing to provide either party a reasonable opportunity, if one did not exist previously, for investigation and preparation regarding any new issue of fact raised in an amended petition or amended answer.

(C) The judge shall permit the defendant to appear in person at the hearing and shall provide the defendant an opportunity to have counsel.

(D) Upon the conclusion of the hearing the judge shall ~~[:] [(1)]~~ determine all material issues raised by the defendant's petition and the Commonwealth's answer, or by the Commonwealth's motion to dismiss, if any ~~[:]~~ .

[(2)] (1) If the judge dismisses the petition, the judge promptly shall issue an order denying relief [or]. The order shall be filed and served as provided in Rule 114.

(2) If the judge grants the petition, the judge promptly shall issue an order granting a specific form of relief, and issue any supplementary orders appropriate to the proper disposition of the case. The order shall be filed and served as provided in Rule 114.

(E) If the judge disposes of the case in open court **in the presence of the defendant** at the conclusion of the hearing, the judge shall advise the defendant on the record of the right to appeal from the final order disposing of the petition and of the time within which the appeal must be taken. If the case is taken under advisement, **or when the defendant is not present in open court,** the judge, by certified mail, return receipt requested, shall advise the defendant of the right to appeal **from the final order**

disposing of the petition and of the time limits within which the appeal must be filed.

COMMENT: The judge's power, under paragraph (A), to deny a hearing on a specific factual issue is intended to apply when an issue of fact already has been heard fully, but has never been determined. The judge need not rehear such an issue, but would be required to determine it under paragraph (D).

The 1997 amendment to paragraph (A)(1) requires a hearing on every Commonwealth motion to dismiss due to delay in the filing of a PCRA petition. See 42 Pa.C.S. § 9543(b), as amended in 1995.

When the disposition reinstates a defendant's direct appeal rights *nunc pro tunc*, the judge, pursuant to paragraph (E), also must advise the defendant that a new notice of appeal must be filed within 30 days of the order reinstating the direct appeal rights.

The clerk of courts must comply with the notice and docketing requirements of Rule 114 with regard to any orders entered pursuant to this rule.

See *also* Rule 909 for procedures in death penalty cases.

Except as provided in Rule 902(E)(2) for first counseled petitions in 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 42 Pa.C.S. § 9545(d)(2).

Nothing in this rule is intended to preclude a judicial district from utilizing the United States Postal Service's return receipt electronic option, or any similar service that electronically provides a return receipt, when using certified mail, return receipt requested.

NOTE: Rule 1508 adopted February 1, 1989, effective July 1, 1989; amended August 11, 1997, effective immediately; renumbered Rule 908 and amended March 1, 2000, effective April 1, 2001; *Comment* revised

September 18, 2008, effective February 1, 2009 [.] ;
amended _____, 2010, effective _____, 2010.

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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 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 September 18, 2008 revision of the Comment concerning the United States Postal Service's return receipt electronic option published with the Court's Order at 38 Pa.B. 5428 (October 4, 2008).

Report explaining the proposed amendments to paragraphs (D) and (E) concerning orders and notice to the defendant, and the proposed revision of the Comment concerning appeals nunc pro tunc published at 40 Pa.B. (_____, 2010).

RULE 909. PROCEDURES FOR PETITIONS IN DEATH PENALTY CASES:
STAYS OF EXECUTION OF SENTENCE; HEARING; DISPOSITION.

(A) Stays of Execution

(1) In a case in which the defendant has received a sentence of death, any request for a stay of execution of sentence should be made in the petition for post-conviction collateral relief.

(2) In all cases in which a stay of execution has been properly granted, the stay shall remain in effect through the conclusion of all PCRA proceedings, including review in the Supreme Court of Pennsylvania, or the expiration of time for seeking such review.

(B) Hearing; Disposition

(1) No more than 20 days after the Commonwealth files an answer pursuant to Rule 906(E)(1) or (E)(2), or if no answer is filed as permitted in Rule 906(E)(2), within 20 days after the expiration of the time for answering, the judge shall review the petition, the Commonwealth's answer, if any, and other matters of record relating to the defendant's claim(s), and shall determine whether an evidentiary hearing is required.

(2) If the judge is satisfied from this review that there are no genuine issues concerning any material fact, the defendant is not entitled to post-conviction collateral relief, and no legitimate purpose would be served by any further proceedings,

(a) the judge shall give notice to the parties of the intention to dismiss the petition and shall state in the notice the reasons for the dismissal.

(b) The defendant may respond to the proposed dismissal within 20 days of the date of the notice.

(c) No later than 90 days from the date of the notice, or from the date of the defendant's response, the judge shall **issue an order**:

(i) **dismiss~~ing~~** the petition **[and issue an order to that effect]**;

(ii) **grant~~ing~~** the defendant leave to file an amended petition; or

(iii) **order~~ing~~** that an evidentiary hearing be held on a date certain.

The order shall be filed and served as provided in Rule 114.

(3) If the judge determines that an evidentiary hearing is required, the judge shall enter an order setting a date certain for the hearing, which shall not be scheduled for fewer than 10 days or more than 45 days from the date of the order. The

judge may, for good cause shown, grant leave to continue the hearing. No more than 90 days after the conclusion of the evidentiary hearing, the judge shall dispose of the petition.

(4) When the 90-day time periods in paragraphs (B)(2)(c) and (B)(3) must be delayed, the judge, for good cause shown, may enter an order extending the period for not longer than 30 days.

(5) If the judge does not act within the 90 days mandated by paragraphs (B)(2)(c) and (B)(3), or within the 30 day-extension permitted by paragraph (B)(4), the clerk of courts shall send a notice to the judge that the time period for disposing of the petition has expired. The clerk shall enter the date and time of the notice on the docket, and shall send a copy of the notice to the attorney for the Commonwealth, the defendant, and defense counsel, if any.

(6) If the judge does not dispose of the defendant's petition within 30 days of the clerk of courts' notice, the clerk immediately shall send a notice of the judge's non-compliance to the Supreme Court. The clerk shall enter the date and time of the notice on the docket, and shall send a copy of the notice to the attorney for the Commonwealth, the defendant, and defense counsel, if any.

(7) When the petition for post-conviction collateral relief is dismissed by order of the court,

(a) the clerk immediately shall furnish a copy of the order by mail or personal delivery to the Prothonotary of the Supreme Court, the attorney for the Commonwealth, the defendant, and defense counsel, if any.

(b) The order shall advise the defendant of the right to appeal from the final order disposing of the petition, and of the time within which the appeal must be taken.

COMMENT: Paragraph (A)(1) was added in 1999 to provide the avenue by which a defendant in a death penalty case may request a stay of execution. Failure to include a request for a stay in the petition for post-conviction collateral relief may not be construed as a waiver, and the defendant may file a separate request for the stay. In cases involving second or subsequent petitions when an application for a stay is filed separately from the PCRA petition, *Commonwealth v. Morris*, 565 Pa. 1, 771 A.2d 721, 741 (2001) provides that the separate stay application "must set forth a statement of jurisdiction; if necessary, a statement that a petition is currently pending before the court; and a statement showing a likelihood of prevailing on the merits."

Paragraph (A)(2) provides, if a stay of execution is properly

granted, that the stay will remain in effect throughout the PCRA proceedings in the trial court and during the appeal to the Pennsylvania Supreme Court. Nothing in this rule is intended to preclude a party from seeking review of an order granting or denying a stay of execution. See Pa.Rs.A.P. 1702(d) (Stay of Execution) and 3316 (Review of Stay of Execution Orders in Capital Cases).

Paragraph (B)(3) permits the judge to continue the hearing when there is good cause, such as when the judge determines that briefing and argument are necessary on any of the issues, or when there is a problem with securing the defendant's appearance.

It is intended that once a determination is made under paragraph (B)(3) of this rule that an evidentiary hearing is required, the provisions of Rule 908(C), (D), and (E) apply.

Paragraph (B)(4) was added in 2002 to permit the judge to enter an order for one 30-day extension of the 90-day time limit within which the judge must act pursuant to paragraphs (B)(2)(c) and (B)(3) of this rule. When the judge extends the time, the judge promptly must notify the clerk of courts of the extension order.

Paragraph (B)(5) addresses the situation in which the judge does not comply with the rule's time limits. The clerk of courts is required to give the judge notice that the 90-day time period, or the 30-day extension, has expired. Further non-compliance requires the clerk to bring the case to the attention of the Supreme Court, which is responsible for the administration of the unified judicial system.

It is expected, if there are extenuating circumstances why the judge cannot act within the time limits of the rule, the judge will provide a written explanation to the Supreme Court.

Paragraph (B)(7) requires the clerk to immediately notify the Prothonotary of the Supreme Court, the attorney for the Commonwealth, the defendant, and defense counsel, if any, that the petition has been denied. This notice is intended to protect the defendant's right to appeal.

When the disposition reinstates a defendant's direct appeal rights *nunc pro tunc*, the judge must advise the defendant either in person or by certified mail,

return receipt requested that a new notice of appeal must be filed within 30 days of the order.

The clerk of courts must comply with the notice and docketing requirements of Rule 114 with regard to any orders entered pursuant to this rule.

NOTE: Previous Rule 1509 adopted February 1, 1989, effective July 1, 1989; renumbered Rule 1510 August 11, 1997, effective immediately. Present Rule 1509 adopted August 11, 1997, effective immediately; amended July 23, 1999, effective September 1, 1999; renumbered Rule 909 and amended March 1, 2000, effective April 1, 2001; amended February 12, 2002, effective July 1, 2002; amended October 7, 2005, effective February 1, 2006 [.] ; **amended _____, 2010, effective _____, 2010.**

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COMMITTEE EXPLANATORY REPORTS:

Final Report explaining the August 11, 1997 adoption of new Rule 1509 published with the Court's Order at 27 Pa.B. 4305 (August 23, 1997).

Final Report explaining the July 23, 1999 amendments 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).

Final Report explaining the February 12, 2002 amendments concerning extensions of time and sanctions published with the Court's Order at 32 Pa.B. 1174 (March 2, 2002).

Final Report explaining the October 7, 2005 amendments to paragraph (A)(2) and revision of the Comment concerning Commonwealth v. Morris published with the Court's Order at 35 Pa.B. 5772 (October 22, 2005).

Report explaining the proposed amendments to paragraph (2)(c) concerning orders and the revision of the Comment concerning appeals nunc pro tunc published at 40 Pa.B. _____ (_____, 2010).

RULE 910. APPEAL.

An order granting, denying, dismissing, or otherwise finally disposing of a petition for post-conviction collateral relief shall constitute a final order for purposes of appeal.

COMMENT: Disposition without a hearing under Rule 907(A) and (B), or under Rule 909(C)(3)(a), constitutes a final order under this rule. A partial disposition under Rule 907(C) is not a final order until the judge has fully disposed of all claims.

When the disposition reinstates a defendant's direct appeal rights *nunc pro tunc*, a new notice of appeal must be filed within 30 days of the order.

NOTE: Previously Rule 1509, adopted February 1, 1989, effective July 1, 1989; renumbered Rule 1510 and amended August 11, 1997, effective immediately; renumbered Rule 910 and *Comment* revised March 1, 2000, effective April 1, 2001 [.] ; **Comment revised _____, 2010, effective _____, 2010.**

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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 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 Comment revision concerning appeal *nunc pro tunc* published at 40 Pa.B. (_____, 2010).

REPORT

Proposed Amendments to Pa.Rs.Crim.P. 907, 908, and 909, and the Revision of the Comment to Pa.R.Crim.P. 910

TIME TO FILE APPEAL *NUNC PRO TUNC*

I. INTRODUCTION

The Committee is planning to propose to the Supreme Court revisions of the *Comments* to Rules of Criminal Procedure 907 (Disposition Without Hearing), 908 (Hearing), 909 (Procedures for Petitions in Death Penalty Cases: Stays of Execution of Sentence; Hearing; Disposition), and 910 (Appeal) that clarify that a new notice of appeal must be filed within 30 days of the order reinstating the defendant's direct appeal rights *nunc pro tunc*. The Committee also is proposing amendments to Rules of Criminal Procedure 907, 908, and 909 that clarify the procedures for the issuing and filing of orders in PCRA dispositions.

The Appellate Court Procedural Rules Committee noted from case law and anecdotal information from its members that apparently there is confusion about the procedures for proceeding with a direct appeal *nunc pro tunc*. Specifically, some defendants do not understand that they must file a new notice of appeal and that the time for filing is within 30 days of the order reinstating the direct appeal right. The Appellate Court Rules Committee asked the Criminal Procedural Rules Committee to consider clarifying this issue in the Criminal Rules when the reinstatement of appellate rights occurs in procedures under the Post Conviction Relief Act (PCRA).

The Committee reviewed the rules in Chapter 9 (Post-Conviction Collateral Relief Proceedings), noting that Rules 907, 908, and 909 require the judge to advise the defendant of his or her appeal rights following the disposition the PCRA petition. The members initially thought the rules already provide adequate notice even for the reinstated appeal case following the granting of a PCRA petition. After further consideration, because there is confusion in practice, the members agreed something should be said in the rules. However, because this would clarification would be how to handle a particular type of case – appeals *nunc pro tunc* – that already is covered generally in the rule requirements that the judge advise the defendant of his or her right

to appeal, the clarification should be in the *Comments* to the rules. Accordingly, the *Comments* to Rules 907, 908, and 909 would be revised to emphasize that, when appellate rights have been reinstated, the PCRA judge must advise the defendant that a new notice of appeal is required to be filed within 30 days of the order reinstating the direct appeal rights *nunc pro tunc*. In addition, because Rule 910 addresses appeals following a PCRA disposition, a comparable provision would be added to the Rule 910 *Comment*.

During the Committee's examination of Rules 907, 908, and 909, several members opined that the provisions concerning the issuing of orders following the disposition of a petition are incomplete because the rules do not explicitly require an order when the petition is granted nor do the rules require the orders be filed. The Committee agreed the rules should be amended to clarify the procedures governing the issuing and filing of orders in PCRA cases to ensure there is no confusion about these procedures.

II. DISCUSSION OF PROPOSED RULE CHANGES

Rule 907

Rule 907 sets forth the procedures for the disposition of a PCRA petition without a hearing. Paragraph (4) requires a judge to issue an order when the petition is dismissed. The Committee is proposing the paragraph be amended to include the requirement that the judge act promptly and that the order be filed and served as provided in Rule 114. A new paragraph (5) would be added to set forth the procedures when a petition is granted. This new paragraph conforms with the provisions in Rule 908(D)(2) with regard to issuing supplementary orders appropriate to the disposition of the cases.

The *Comment* includes the new language emphasizing the judge's responsibility to advise the defendant to file a new notice of appeal when the disposition is the reinstatement of the defendant's appellate rights and that the notice of appeal must be filed within 30 days of the order reinstating the appellate rights. Similar language is being included in the *Comments* to Rules 908 and 909.

In addition, an explanatory paragraph is added concerning the obligation of the

clerk of courts to comply with the requirements for Rule 114 comparable to the paragraph in the Rule 909 *Comment*.

Rule 908

Rule 908 sets forth the procedures for the hearing on a PCRA petition. Paragraph (D) addresses what is to occur at the conclusion of the hearing. The Committee is proposing that the paragraph be restructured and amended to more clearly enumerate the judge's responsibilities at the conclusion of the hearing. Current paragraph (D)(1) would be moved into paragraph (D) to read:

Upon the conclusion of the hearing, the judge shall determine all material issues raised by the defendant's petition and the Commonwealth's answer, or by the Commonwealth's motion to dismiss, if any.

Current paragraph (D)(2) would be reorganized into two subparagraphs. New paragraph (D)(1) would provide the procedures when the judge dismisses the petition and new paragraph (D)(2) would provide the procedures when the judge grants the petition. In both situations, the judge is required to act promptly and the order must be filed and served as provided in Rule 114.

The Committee also is proposing some clarifying amendments to paragraph (E). Paragraph (E) permits the judge to announce the decision in open court or to take the matter under advisement. The proposed amendments emphasize the difference in the method of providing notice to the defendant of the appellate rights (1) when the decision is announced in open court with the defendant present and (2) when the defendant is not present, or when the matter is taken under advisement.

Rule 909

Rule 909 governs procedures specifically related to death penalty cases. Paragraph (B)(2)(c) sets forth the actions the judge must take following giving notice of an intention to dismiss the petition. The Committee is proposing a few housekeeping amendments and the addition of the requirement that the judge's order be filed and served as provided in Rule 114.

Rule 910

Rule 910 provides that the orders under the PCRA rules granting, denying, dismissing, or otherwise finally disposing of the PCRA petition is a final order for purposes of appeal. The only change being proposed for Rule 910 is the addition to the *Comment* of the provision clarifying that when the disposition is the reinstatement of the defendant's appellate rights, the new notice of appeal must be filed within 30 days of the order.