

THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART II. GENERAL ADMINISTRATION [204 PA. CODE CH. 29]

Promulgation of Financial Regulations Pursuant to 42 Pa.C.S. § 3502(a); No. 273 Judicial Administration No. 1

Order

Per Curiam

And Now, this 14th day of June, 2005, it is Ordered pursuant to Article V, Section 10(c) of the Constitution of Pennsylvania and Section 3502(a) of the Judicial Code, 42 Pa.C.S. § 3502(a), that the Court Administrator of Pennsylvania is authorized to promulgate financial regulations in accordance with all applicable statutory provisions pertaining to the distribution and disbursement of all fines, fees, costs, reparations, restitution, penalties and other remittances imposed and collected by the Criminal Division of the Courts of Common Pleas, Philadelphia Municipal Court, and any other entity on behalf of the Court using the Common Pleas Criminal Court Case Management System (CPCMS).

To the extent that notice of proposed rule-making may be required by Pa.R.J.A. 103, the immediate promulgation of the regulations is hereby found to be in the interest of efficient administration.

This Order is to be processed in accordance with Pa.R.J.A. 103(b) and is effective immediately.

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART II. GENERAL ADMINISTRATION

CHAPTER 29. MISCELLANEOUS PROVISIONS

Subchapter K. COSTS, FINES AND FEES

TITLE 42. JUDICIARY AND JUDICIAL PROCEDURE

PART IV. FINANCIAL MATTERS

CHAPTER 35. BUDGET AND FINANCE

General Principles

The Supreme Court of Pennsylvania, pursuant to general authority set forth by Art. V, § 10 of the Pennsylvania Constitution, and 42 Pa.C.S. § 1721, has authorized the Court Administrator of Pennsylvania to promulgate regulations in accordance with all applicable statutory provisions pertaining to the distribution and disbursement of all fines, fees, costs, reparations, restitution, penalties and other remittances imposed and collected by the Criminal Division of the Courts of Common Pleas, Philadelphia Municipal Court, and any other entity on behalf of the Court using the Common Pleas Criminal Court Case Management System (CPCMS).

These regulations, as amended, are effective immediately.

I. Schedule for Standard Distribution of Funds Collected by the Criminal Division of the Courts of Common Pleas, Philadelphia Municipal Court, and any other entity on behalf of the Court Using the Common Pleas Criminal Court Case Management System (CPCMS).

A. All fines, fees, costs, reparations, restitution, penalties and other remittances imposed and collected by the Criminal Division of the Courts of Common Pleas, Philadelphia Municipal Court and any other entity on behalf of the Court using the CPCMS shall be distributed in the following prioritized order:

1. The collection agency fee provided for in 42 Pa.C.S. Section 9730.1 shall be paid first, but only in cases wherein the private collection agency has secured the funds from the defendant or a third party and the payment is made to the court. No more than 25% of each payment secured from the defendant by the private collection agency may be applied towards this fee.

2. The Crime Victim Compensation Fund and Victim Witness Services Fund shall be paid, but only in cases in which the defendant has been sentenced to incarceration, probation or is admitted into an accelerated rehabilitative disposition program (see 18 P.S. § 11.1101). Otherwise, these costs shall be distributed in accordance with subsection (A)(6) of these regulations.

3. At least 50% of any additional payment shall go to restitution until it is paid in full (see 42 Pa.C.S. § 9728(g.1)). When restitution is ordered to more than one recipient at the same time, the court shall set the priority of payment as follows, in accordance with 18 Pa.C.S. § 1106(c)(1)(ii)(A)—(D):

i. the victim;

ii. the Crime Victim's Compensation Board;

iii. any other governmental agency which has provided reimbursement to the victim as a result of the defendant's criminal conduct;

iv. any insurance company which has provided reimbursement to the victim as a result of the defendant's criminal conduct.

4. Judicial Computer Project/Access To Justice (JCS/ATJ) Fee (see 42 Pa.C.S. § 3733(a.1)).

5. Electronic monitoring fees, offender supervision fees (as set forth in 18 P.S. § 11.1102(c)), alcohol highway safety school fees (see 75 Pa.C.S. § 1548(b)), service fees (such as sheriff's fees set forth in 42 P.S. § 21101 et. seq., and constable's fees set forth in 42 Pa.C.S. § 2950), transcript fees (see Pa.R.J.A. No. 5000.7), witness fees (as provided for in 42 Pa.C.S. § 5903), and other similar fees shall be paid based upon a pro-rated formula, unless the fees are prioritized by court order or the judicial district. The Administrative Office of Pennsylvania Courts may preclude a fee from being classified as an "other similar fee." The amount of the payment allocated to each outstanding item shall be determined by dividing the outstanding balance for the individual item by the combined total of the outstanding balances for all items. The resulting number is then multiplied by the amount of the payment to determine how much of the payment shall be allocated to the outstanding balance of the individual item involved.

For example, a defendant owes \$80.00 in electronic monitoring fees, \$10.00 in offender supervision fees, and

\$10.00 in service fees, for a total of \$100.00 in outstanding fees. Defendant makes a payment of \$10.00 in his/her case. To determine the amount to be allocated to electronic monitoring fees, divide the outstanding balance of the electronic monitoring fee (\$80.00) by the combined total outstanding balances of all items ($\$80.00 + 10.00 + 10.00 = \100.00). The result in this example is .8 (80/100). Multiply the resulting figure by the amount of the payment to determine the allocation to electronic monitoring fees, which in this example is $\$8.00 (.8 \times \$10.00 = \$8.00)$.

6. All other fines, fees, costs, reparations, penalties and other remittances except for judgment or satisfaction fees shall be distributed based upon a pro-rated formula. Specifically, the amount of the payment allocated to each outstanding item shall be determined by dividing the outstanding balance for the individual item by the combined total of the outstanding balances for all items. The resulting number is then multiplied by the amount of the payment to determine how much of the payment shall be allocated to the outstanding balance of the individual item involved.

For example, a defendant owes \$80.00 in costs, \$10.00 in fines, and \$10.00 in fees, for a total of \$100.00 in outstanding costs, fines and fees. Defendant makes a payment of \$20.00 in his/her case. To determine the amount to be allocated to the fines, divide the outstanding balance of the fines (\$10.00) by the combined total outstanding balances of all items ($\$80.00 + 10.00 + 10.00 = \100.00). The result in this example is .1 (10/100). Multiply the resulting figure by the amount of the payment to determine the allocation to the fines, which in this example is $\$2.00 (.1 \times \$20.00 = \$2.00)$.

7. Fees charged by the clerk of courts, prothonotary, other entity in the county responsible for the distribution and disbursement of all fines, fees, costs, reparations, restitution, penalties, or other remittances, or the Clerk of Philadelphia Municipal Court for the entry or satisfaction of a civil judgment related to a criminal proceeding, as set forth in 42 Pa.C.S. § 1725, 42 P.S. §§ 21010, 21042, and 21071 shall be paid last. The amount of the payment allocated to each fee shall be determined by dividing the outstanding balance for the individual fee by the combined total of the outstanding balances for both fees. The resulting number is then multiplied by the amount of the payment to determine how much of the payment shall be allocated to the outstanding balance of the individual fee involved.

For example, a defendant owes \$60.00 in judgment fees and \$40.00 in satisfaction fees for a total of \$100.00 in outstanding fees. Defendant makes a payment of \$10.00 in his/her case. To determine the amount to be allocated to judgment fee, divide the outstanding balance of the judgment fee (\$60.00) by the combined total outstanding balances of all items ($\$60.00 + 40.00 = \100.00). The result in this example is .6 (60/100). Multiply the resulting figure by the amount of the payment to determine the allocation to judgment fee, which in this example is $\$6.00 (.6 \times \$10.00 = \$6.00)$.

B. Each payment shall be applied to a single case, unless otherwise ordered by the court.

II. The county probation department or other agent designated to collect all fines, fees, costs, reparations, restitution, penalties and other remittances pursuant to 42 Pa.C.S. § 9728, shall use the Common Pleas Criminal Court Case Management System when performing collection related activities.

III. Nothing in these regulations shall be applicable to the collection and/or distribution of any filing fee which is authorized by law. Filing fees shall include but not be limited to the clerk of courts automation fee set forth in 42 Pa.C.S. Section 1725.4(b).

[Pa.B. Doc. No. 05-1207. Filed for public inspection June 24, 2005, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CH. 7]

Order Amending Rule 720; No. 321 Criminal Procedural Rules; Doc. No. 2

The Criminal Procedural Rules Committee has prepared a Final Report explaining the June 8, 2005 amendments to Rule of Criminal Procedure 720. These rule changes address *Commonwealth v. Grant*, 572 Pa. 48, 813 A.2d 726 (2002), in which the Court held, inter alia, that “as a general rule, a petitioner should wait to raise claims of ineffective assistance of trial counsel until collateral review,” and “a claim raising trial counsel ineffectiveness will no longer be considered waived because new counsel on direct appeal did not raise a claim related to prior counsel’s ineffectiveness,” at 738, and *Commonwealth v. Kohan*, 825 A.2d 702 (Pa. Super. Ct. 2003), in which the Superior Court held, inter alia, “claims of after-discovered evidence raised for the first time on direct appeal, like claims of ineffective assistance of counsel, will be dismissed without prejudice to their being raised in a timely filed petition under the PCRA,” at 709. The Final Report follows the Court’s Order.

Order

Per Curiam:

Now, this 8th day of June, 2005, upon the recommendation of the Criminal Procedural Rules Committee, the proposal having been submitted without publication pursuant to Pa.R.J.A. 103(a)(3) in the interests of justice, and a Final Report to be published with this *Order*:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule of Criminal Procedure 720 is amended in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective August 1, 2005.

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

CHAPTER 7. POST-TRIAL PROCEDURES IN COURT CASES

PART B. Post-Sentence Procedures

Rule 720. Post-Sentence Procedures; Appeal.

(A) TIMING.

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

* * * * *

(C) AFTER-DISCOVERED EVIDENCE.

A **post-sentence** 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.]

* * * * *
Comment
* * * * *

TIMING

* * * * *

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. Ct. 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).

* * * * *

OPTIONAL POST-SENTENCE MOTION

* * * * *

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*, 553 Pa. 415, 719 A.2d 306 ([Pa.] 1998) (any issues not raised in a 1925(b) statement will be deemed waived).

* * * * *

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] 607(A).

* * * * *

BRIEFS; TRANSCRIPTS; ARGUMENT

* * * * *

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*, 256 Pa. Super. 196, 389 A.2d 668 ([Pa. Super.] 1978). On the powers of courts en banc, see *Commonwealth v. Bonser*, 215 Pa. Super. 452, 258 A.2d 675 ([Pa. Super.] 1969). For cases in which there has been a change of venue, see Rule 584.

* * * * *

DISPOSITION

* * * * *

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*, 472 Pa. 602, 373 A.2d 90 ([Pa.] 1977).

* * * * *

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 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. Ct. 1998), concerning the contents of the order memorializing the withdrawal of a post-sentence motion.

* * * * *

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.]

Commonwealth v. Grant, 572 Pa. 48, 813 A.2d 726 (2002), which overrules *Commonwealth v. Hubbard*, 472 Pa. 259, 372 A.2d 687 (1977), provides that a defendant should wait until collateral review to raise ineffective counsel claims.

* * * * *

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*, 444 Pa. Super. 296, 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*, 520 Pa. 385, 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*, 437 Pa. 288, 263 A.2d 339 ([Pa.] 1970) (inherent power of the court to correct obvious and patent mistakes).

* * * * *

Unlike ineffective counsel claims, which are the subject of *Commonwealth v. Grant*, 572 Pa. 48, 813 A.2d 726 (2002), paragraph (C) requires that any claim of after-discovered evidence must be raised promptly after its discovery. Accordingly, after-discovered evidence discovered during the post-sentence stage must be raised promptly with the trial judge at the post-sentence stage; after-discovered evidence discovered during the direct appeal process must be raised promptly during the direct appeal process, and should include a request for a remand to the trial judge; and after-discovered evidence discovered after completion of the direct appeal process should be raised in the context of the PCRA. See 42 Pa.C.S. § 9545(b)(1)(ii) and (b)(2) (PCRA petition raising after-discovered evidence must be filed within 60 days of date claim could have been presented). *Commonwealth v. Kohan*, 825 A.2d 702 (Pa. Super. Ct. 2003), is superseded by the 2005 amendments to paragraphs (A) and (C) of the rule.

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*, 451 Pa. Super. 248, 679 A.2d 779, 784 ([Pa. Super.] 1996).

Official 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; amended March 3, 2004, effective July 1, 2004; Comment revised June 4, 2004, effective November 1, 2004; amended June 8, 2005, effective August 1, 2005.

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. [1477] 1478 (March 18, 2000).

* * * * *

Final Report explaining the June 8, 2005 changes concerning ineffective counsel claims and concerning after-discovered evidence published with the Court's Order at 35 Pa.B. 3545 (June 25, 2005).

FINAL REPORT¹

Amendments to Pa.R.Crim.P. 720

¹ The Committee's Final Reports 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 Committee's explanatory Final Reports.

Ineffective Assistance of Counsel Claims; After-Discovered Evidence

On June 8, 2005, effective August 1, 2005, upon the recommendation of the Criminal Procedural Rules Committee, the Court amended Rule of Criminal Procedure 720 to address *Commonwealth v. Grant*, 572 Pa. 48, 813 A.2d 726 (2002), in which the Court held, inter alia, that "as a general rule, a petitioner should wait to raise claims of ineffective assistance of trial counsel until collateral review," and "a claim raising trial counsel ineffectiveness will no longer be considered waived because new counsel on direct appeal did not raise a claim related to prior counsel's ineffectiveness," at 738, and *Commonwealth v. Kohan*, 825 A.2d 702 (Pa. Super. Ct. 2003), in which the Superior Court held, inter alia, "claims of after-discovered evidence raised for the first time on direct appeal, like claims of ineffective assistance of counsel, will be dismissed without prejudice to their being raised in a timely filed petition under the PCRA," at 709.

I. COMMONWEALTH V. GRANT DISCUSSION

Following the publication of *Commonwealth v. Grant*, supra., the Committee received a number of inquiries concerning the implications of *Grant* on post-sentence procedures. The Committee exhaustively discussed the case, raising a number of issues. First, the members expressed concern about the few scenarios when a defendant might not want to wait until the post-conviction stage to raise ineffectiveness.² In addition, the members considered the interplay between the waiver provision of the Post Conviction Relief Act, 42 Pa.C.S. § 9544(b), which provides "an issue is waived if the petitioner could have raised it but failed to do so before trial, at trial, during unitary review, on appeal or in a prior state postconviction proceeding," and *Grant* and its progeny, notwithstanding the language in *Grant* that the "holding today does not alter the waiver provision of the PCRA, 42 Pa.C.S. § 9544(b); it merely alters the time when a claim will be considered waived," 813 A.2d 726, 738. Lastly, the Committee considered the impact of the 10-day time limit for filing post-sentence motions and new counsel's ability to fully develop an ineffectiveness claim in the post-sentence motion in that time frame.

Sensitive to the concerns about reinventing waiver, the Committee discussed whether there would be ways to permit an ineffective assistance of counsel claim to be raised in a post-sentence motion without having a waiver if new counsel does not raise it. We did not want a return to the situation in which new counsel has to raise ineffectiveness in the post-sentence motion or have the claim waived. Although some members were reluctant to not propose any changes to Rule 720 because of the uncertainty concerning waiver at this stage, others suggested the rule should remain silent to allow the procedural aspects and the waiver issues to be resolved by case law. Ultimately, the Committee developed a proposal that was intended to make it clear in Rule 720 that (1) generally ineffective assistance of counsel claims should be postponed until the post-conviction collateral review process, and (2) no purpose is served by appointing new counsel at the post-verdict stage to litigate ineffective assistance of counsel when a defendant wishes to proceed pursuant to the new "general rule" promulgated in

² For example, the Court in *Commonwealth v. Bomar*, 573 Pa. 426, 826 A.2d 831 (2003), held that cases in which the appellant's ineffectiveness claim has been properly raised and preserved in the trial court are exceptions to *Grant's* general rule of deferral. The Superior Court in *Commonwealth v. Salisbury*, 823 A.2d 914 (Pa. Super. Ct. 2003), has carved out as an exception cases in which the defendant would be precluded from challenging counsel's effectiveness because of the short duration of the imprisonment.

Grant.³ The proposal also explained if the defendant seeks to litigate ineffectiveness of trial counsel as soon as possible, the appointment of new counsel would be appropriate at the post-verdict stage and then new counsel must raise the ineffectiveness claim in the post-sentence motion in order to preserve the issue for appeal.

The Committee received a number of comments in response to this initial proposal, many expressing concerns about reinventing the waiver of ineffective counsel claims at the post-sentence stage when *Grant* seemingly abrogates waiver. Other correspondents urged the Committee to take no action at this time to allow the post-*Grant* evolution in the case law to fill in any procedural gaps. After reviewing the publication responses, the Committee reevaluated the proposal, re-raising all the concerns articulated when the proposal was developed. After a thorough discussion of all these issues, and in view of the continuing post-*Grant* evolution in the case law, the Committee concluded the bench and bar would be best aided at this time if text of Rule 720 was not amended, thereby scraping the initial proposal, and the Rule 720 Comment is revised to include a cross-reference to *Grant*. The new language has been added as the first paragraph immediately following the "Miscellaneous" caption in the Comment. In addition, because of the long history under *Commonwealth v. Hubbard*, 472 Pa. 259, 372 A.2d 687 (1977), the paragraph in the Comment referencing *Hubbard*, which is overruled by *Grant*, and *Commonwealth v. Dancer*, 460 Pa. 95, 331 A.2d 435 (1975), has been deleted.

II. AFTER-DISCOVERED EVIDENCE CLAIMS DISCUSSION

During the Committee's consideration of the Rule 720 *Grant*-related changes, the Superior Court handed down the panel decision in *Commonwealth v. Kohan*, 825 A.2d 702 (Pa. Super. Ct. 2003). As part of our ongoing review of the *Grant* progeny, the Committee reviewed *Kohan*. The members expressed concern that *Kohan* conflicts with the Rule 720(C) requirement that after-discovered evidence must be raised promptly after it is discovered, and if that discovery is during the post-sentence motion proceedings, the after-discovered evidence must be raised in that proceeding. The members discussed whether Rule 720(C) or the panel decision in *Kohan* should prevail, and concluded that after-discovered evidence claims are not the same as ineffective assistance of counsel claims and should not be handled in the same manner, notwithstanding the holding in *Kohan*. In view of these considerations, the Committee reasoned without some clarification in

Rule 720 about the proper procedure for handling after-discovered evidence in view of the conflict between *Kohan* and Rule 720(C), the bench and bar likely would be confused about how to proceed, with some following Rule 720(C) and others following *Kohan*, which would lead to unnecessary litigation about this issue.

The Committee discussed how best to address this conflict, and provide clarification for the bench and bar. Although the Committee thought Paragraph (C) was clear concerning how after-discovered evidence claims should be handled—a motion for a new trial on the ground of after-discovered evidence must be filed in writing promptly after such discovery—we agreed the paragraph should be amended by adding "post-sentence" before "motion" in the first sentence and deleting the last sentence, thus making it absolutely clear in the rule that the after-discovered evidence provision is referring only to such claims raised in the post-sentence motion context. Similarly, a reference to paragraph (C) has been added to the "except" clause in paragraph (A) since after-discovered evidence claims are exceptions to the time requirements in paragraph (A).

In addition, the Committee agreed to add a new Comment provision elaborating on the intent of Rule 720(C) as well as the law concerning after-discovered evidence. The new Comment provision is the tenth paragraph in the Miscellaneous section. This new provision explains the procedures for raising after-discovered evidence claims, and: (1) distinguishes ineffective counsel claims, with a reference to *Commonwealth v. Grant*, 572 Pa. 48, 813 A.2d 726 (2002), from the provisions in Rule 720(C) governing after-discovered evidence; (2) elaborates on the after-discovered evidence procedures by explaining that (a) after-discovered evidence discovered during the post-sentence stage must be raised promptly with the trial judge at the post-sentence stage, (b) after-discovered evidence discovered during the direct appeal process must be raised promptly during the direct appeal process, and should include a request for a remand to the trial judge, and (c) after-discovered evidence discovered after completion of the direct appeal process should be raised in the context of a PCRA, which establishes a 60-day time limit for raising after-discovered evidence, 42 Pa.C.S. § 9545(b)(1)(ii); and (3) includes a provision that explains that *Commonwealth v. Kohan*, 825 A.2d. 702 (Pa. Super. Ct. 2003), is superseded by the 2005 amendments to paragraphs (A) and (C) of Rule 720.

[Pa.B. Doc. No. 05-1208. Filed for public inspection June 24, 2005, 9:00 a.m.]

³ See Committee explanatory Report, 33 Pa.B. 2162 (May 3, 2003).