

FINAL REPORT¹

Revision of the Comment to Pa.R.Crim.P. 122

WITHDRAWAL OF COUNSEL: *COMMONWEALTH v. ALBERTA*

On February 26, 2010, effective April 1, 2010, upon the recommendation of the Criminal Procedural Rules Committee, the Court approved the revision of the *Comment* to Rule of Criminal Procedure 122 (Assignment of Counsel) to add a citation to *Commonwealth v. Alberta*, 601 Pa. 473, 974 A.2d 1158 (2009).

The Committee undertook a review of *Commonwealth v. Alberta, supra*, at the request of the Court. The Court asked the Committee to consider "amending Rule 122 to clarify that during the course of a direct appeal, once counsel has been permitted to withdraw pursuant to *Anders*, a defendant is not entitled to the appointment of subsequent counsel."

The Committee discussed two approaches – amending the text of Rule 122 or revising the Rule 122 *Comment*. The Committee was concerned that an amendment to the text of the rule adding procedures related to withdrawal of counsel pursuant to *Anders* could lead to confusion about the extent of the application of *Alberta* to post-conviction collateral and appellate proceedings. Ultimately, the Committee concluded the best approach would be to add a citation to *Alberta* to the Rule 122 *Comment*. Accordingly, the Rule 122 *Comment* has been revised by adding the citation to *Alberta* and a quotation from the holding explaining that "appointed counsel who has complied with *Anders* and is permitted to withdraw discharges the direct appeal obligations of counsel. Once counsel is granted leave to withdraw per *Anders*, a necessary consequence of that decision is that the right to appointed counsel is at an end." The new *Comment* provision also includes a citation to *Anders v. California*, 386 U.S. 738 (1967) because *Anders* is not cited anywhere else in Rule 122.

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*.