

## FINAL REPORT<sup>1</sup>

Revision to the Comment to Pa.R.Crim.P. 119

### **CONSENT TO USE OF TWO-WAY SIMULTANEOUS AUDIO-VISUAL TECHNOLOGY AT POST CONVICTION RELIEF ACT HEARINGS**

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On May 4, 2009, effective August 1, 2009, upon the recommendation of the Criminal Procedural Rules Committee, the Court approved the revision of the *Comment* to Rule 119 (Use of Two-Way Simultaneous Audio-Visual) to clarify that a hearing held pursuant to Rule 908(C) for purposes of the Post Conviction Relief Act, may utilize two-way simultaneous audio-visual communication, but only if the defendant consents.

This revision originated with a question to the Committee from a member of the Attorney General's Office regarding the interplay between Rule 119, that permits the use of two-way simultaneous audio-visual communication in certain criminal proceedings, and Rule 908, that provides the procedures for Post-Conviction Relief Act (PCRA) hearings. The inquirer queried whether Rule 119 technology may be used to conduct PCRA hearings as a matter of course or whether the defendant has a right to appear in person at a Rule 908 PCRA hearing.

The Committee examined the history of then-Rule 1508 (now Rule 908). Noting that the rule included from its inception the requirement that the judge permit the defendant to be present at the hearing, the Committee concluded that the defendant's interests in the hearing were such that the hearing could not be held using advanced communications technology over the defendant's objection. However, the Committee also believes that there might be circumstances under which a defendant would wish to waive personal appearance for this type of proceeding. For example, transportation to attend a PCRA hearing in a county distant from the defendant's place of incarceration

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<sup>1</sup> 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*.

might entail a lengthy absence and result in the loss of certain privileges at the place of incarceration.

Therefore, the Court has approved a revision of the *Comment* to Rule 119 to clarify that a Post Conviction Relief Act hearing may be held using two-way simultaneous audio-visual communication if the defendant consents to proceed in this manner.