# The Greene Reports

Official Legal Publication for Greene County, Pennsylvania
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Greene County Courthouse, Waynesburg, PA 15370

**Vol. XXXVIIII, No. 54** **August 3, 2023**

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Serving the Legal Community of Greene County
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Honorable Jeffry N. Grimes, Judge

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**THE GREENE REPORTS**
Owned and published by the GREENE COUNTY BAR ASSOCIATION
Editor: Kayla M. Sammons
E-mail address: editor.greenereports@yahoo.com

**EDITORIAL POLICY**

All articles published in The Greene Reports are intended to inform, educate or amuse. Any article deemed by the editorial staff to be reasonably interpreted as offensive, demeaning or insulting to any individual or group will not be published.

The views expressed in the articles represent the views of the author and are not necessarily the views of The Greene Reports or the Greene County Bar Association.

The Greene Reports welcomes letters to the Editor both for publication and otherwise. All letters should be addressed to: Editor, The Greene Reports, Greene County Courthouse, 10 East High Street, Waynesburg, PA 15370. Letters must include signature, address and telephone number. Anonymous correspondence will not be published. All letters for publication are subject to editing and, upon submission, become the property of The Greene Reports.

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**THE GREENE COUNTY BAR ASSOCIATION**
Christopher M. Simms, President
Timothy M. Ross, Vice-President
Allen J. Koslovsky, Secretary
Lukas B. Gatten, Treasurer
Jessica L. Phillips, Ex-Officio

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## DEED TRANSFERS

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The following property transfers have been recorded in the Greene County Recorder of Deeds office.

**ALEPPO TOWNSHIP**
Denny C. Brown, et ux., to Consol Pennsylvania Coal Company, LLC, et ux., 7 Acres, $220,000.00 (7-26-23)

**CUMBERLAND TOWNSHIP**
Karen Lee Santucci to Valley Abstracting, LLC, 2 Tracts, $1,200.00 (7-27-23)

**DUNKARD TOWNSHIP**
Secretary of Housing & Urban Development to Robert E. Rush, II, et ux., Lot 181, Bobtown, $20,800.00 (7-31-23)
John Stephen Fecsko to Nicolas W. Zmija, et ux., Lot 71, Bobtown, $82,500.00 (7-31-23)
Nicole M. Gacek to Leland P. Gallatin, Lots 7-9, WC & FC Ross Plan, $5,000.00 (7-31-23)

**JEFFERSON TOWNSHIP**
Joseph G. Grash by POA, et ux., to Vincent N. Cekada, Lots 74-75, Moredock Plan, $75,000.00 (7-26-23)
Holly L. Stallard by Agent, et ux., to Equity Point Real Estate, LLC, Lot, Delancy Heights Plan, $28,500.00 (7-26-23)

**MORGAN TOWNSHIP**
Coco Dawn Pahanish to William C. Schamp, Lot 518 Mather, $5,000.00 (7-26-23)

**MORRIS TOWNSHIP**
Ella Mae Thurston, et ux., to CNX Gas Company, LLC, .75 Acres, O&G, $600.00 (7-26-23)
Deann Joy Nartatez, et ux., to CNX Gas Company, LLC, .75 Acres, O&G, $600.00 (7-26-23)

**PERRY TOWNSHIP**
Blairsville Enterprises, Inc., et ux., to Chris D. Carter, et ux., Lot, $15,000.00 (7-27-23)

**RICES LANDING BOROUGH**
Jane K. Christopher to Starlet M. Nestor, Lot, Bayard Addition, $50,000.00 (7-27-23)

**WAYNE TOWNSHIP**
Shelly D. Bell to Donald Welshans, Jr., et ux., .5396 Acres, $165,000.00 (7-28-23)
Rodney Lee Moats, Jr., et ux., to Rhonda L. Cosner, 8.451 Acres, $260,000.00 (8-1-23)

**WAYNEBURG BOROUGH**
Tonya Filer Patton A/K/A Tonya Patton, et al., to Andrew M. Corfont, et ux., Tract, $10,000.00 (7-31-23)
Debra L. Kesner to Scott M. Stephenson, Lots 2, 3, 20 & 21, Timothy Ross Plan, $108,000.00 (8-1-23)

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## ESTATE NOTICES

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**NOTICE** is hereby given of the grant of letters by the Register of Wills to the Estates of the following named decedents. All persons having claims are requested to make known the same and all persons indebted to the decedent are requested to make payment to the personal representative or his attorney without delay.

**FIRST PUBLICATION**

LEDGERTON, ERIC STANLEY, JR.,
Late of Mount Morris, Perry Township, Greene County, Pennsylvania
Executor: Eric Stanley Ledgerton III, 71 Downing Farm Road, Front Royale, VA 22630
Attorney: Lori J. Paletta-Davis, Esquire, 130 Colonial Drive, Waynesburg, PA 15370

**SECOND PUBLICATION**

HOWARD, RICHARD WILLIAM A/K/A RICHARD W. HOWARD
Late of Franklin Township, Greene County, Pennsylvania
Executrix: Donna M. Howard, 103 Eagle Alley, Waynesburg, PA 15370
Attorney: David F. Pollock, Esquire, Pollock Morris Belletti & Simms, LLC, 54 South Washington Street, Waynesburg, PA 15370

KELLEY, GEORGE EDWARD
Late of Monongahela Township, Greene County, Pennsylvania
Administrator: Donald T. Kelley, 233 School Bus Road, Mt. Morris, PA 15349
Attorney: Timothy N. Logan, Esquire, Logan & Gatten Law Offices, 54 N. Richhill Street, Waynesburg, PA 15370

MOORE, DORIS E.
Late of Rogersville, Greene County, Pennsylvania
Co-Executor: Kenneth Hull, 333 Sentimental Drive, Moundsville, WV 26041
Co-Executor: Jacob H. Moore, 594 Township Road 267, Amsterdam, OH 43905
Attorney: David F. Pollock, Esquire, Pollock Morris Belletti & Simms, LLC, 54 South Washington Street, Waynesburg, PA 15370

**THIRD PUBLICATION**

GREGG, RUTH ELEANOR A/K/A RUTH E. GREGG
Late of Aleppo, Greene County, Pennsylvania
Co-Executrix: Sandra Jean Gregg, 106 Mt. Carmel Ridge Road, Aleppo, PA 15310
Co-Executrix: Karen Ann Gregg, 106 Mt. Carmel Ridge Road, Aleppo, PA 15310
Attorney: Kirk A. King, Esquire, 77 South Washington Street, Waynesburg, PA 15370
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# SUPREME COURT NOTICE

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**SUPREME COURT OF PENNSYLVANIA**
**COMMITTEE ON RULES OF EVIDENCE**

**NOTICE OF PROPOSED RULEMAKING**

**Proposed Amendment of Pa.R.E. 601**



The Committee on Rules of Evidence is considering proposing to the Supreme Court of Pennsylvania the amendment of Pennsylvania Rule of Evidence 601 concerning the competency of witnesses for the reasons set forth in the accompanying publication report. Pursuant to Pa.R.J.A. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any report accompanying this proposal was prepared by the Committee to indicate the rationale for the proposed rulemaking. It will neither constitute a part of the rules nor be officially adopted by the Supreme Court.

Additions to the text of the proposal are bolded and underlined; deletions to the text are bolded and bracketed.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

**Daniel A. Durst, Counsel**
**Committee on Rules of Evidence**
**Supreme Court of Pennsylvania**
**Pennsylvania Judicial Center**
**PO Boc 62635**
**Harrisburg, PA 17106-2635**
**FAX: 717.531.9536**
**evidencerules@pacourts.us**

All communications in reference to the proposal should be received by **September 15, 2023.** E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

By the Committee on Rules of Evidence,
Sara E. Jacobson, Chair

**Rule 601. Competency.**

(a) **General Rule.** Every person is competent to be a witness except as otherwise provided by statute or in these rules.

(b) **[Disqualification for Specific Defects]** <u>**Grounds for Incompetency.**</u> A person **[is]** <u>**may be**</u> incompetent<u>**, in whole or in part,**</u> to testify if the court finds **[that because of a mental condition or immaturity]** the person;

(1) is, or was, at any relevant time, incapable of perceiving accurately;
(2) is unable to express himself or herself so as to be understood either directly or through an interpreter;
(3) has an impaired memory; or
(4) does not sufficiently understand the duty to tell the truth.

**Comment<u>:</u> [Pa.R.E. 601(a) differs from F.R.E. 601(a). It is consistent, instead, with Pennsylvania statutory law. 42 Pa.C.S. §§ 5911 and 5921 provide that all witnesses are competent except as otherwise provided. Pennsylvania statutory law provides several instances in which witnesses are incompetent. See, e.g., 42 Pa.C.S. § 5922 (persons convicted in a Pennsylvania court of perjury incompetent in civil cases); 42 Pa.C.S. § 5924 (spouses incompetent to testify against each other in civil cases with certain cases with certain exceptions set out in 42 Pa.C.S. §§ 5925, 5926, and 5927); 42 Pa.C.S. §§ 5930-5933 and 20 Pa.C.S. § 2209 (“Dead Man’s statutes”).]**

**Pa.R.E. 601(1) differs from F.R.E. 601 insofar as a person may also be incompetent as provided by statute. Pennsylvania statutory law deems all persons to be fully competent witnesses, except as otherwise provided by statute. See 42 Pa.C.S. §§ 5911, 5921; see also, e.g., 42 Pa.C.S. § 5922 (persons convicted in a Pennsylvania court of perjury incompetent in civil cases ); 42 Pa.C.S. § 5924 (spouses incompetent to testify against each other in civil cases with certain exceptions set out in 42 Pa.C.S. §§ 5925, 5926, and 5927); 42 Pa.C.S. §§ 5930-5933; and 20 Pa.C.S. § 2209 ("Dead Man's statutes"). This rule provides grounds for incompetency in addition to those found in statute.**

Pa.R.E. 601(b) has no counterpart in the Federal Rules. It is consistent with Pennsylvania law concerning the **[factors for determining competency of a person to testify, including persons with a mental defect and children of tender years. *See Commonwealth v Baker*, 466 Pa. 479, 353 A.2d 454 (1976) (standards for determining competency generally); *Commonwealth v. Goldblum,* 498 Pa. 455, 447 A.2d 234 (1982) (mental capacity); *Rosche v McCoy,* 397 Pa. 615, 156 A.2d 307 (1959) (immaturity)] grounds for incompetency. See *Commonwealth v Goldblum*, 447 A.2d 234, 239 (Pa. 1982).**

Pennsylvania case law **[recognizes two other grounds for incompetency,] has recognized that** a child's "tainted" **[testimony, and] recollection or a** hypnotically refreshed **[testimony] recollection may impair a witness's memory to the point of rendering the witnesses incompetent. [In *Commonwealth v Delbridge,* 578 Pa. 641, 855 A.2d 27 (2003), the Supreme Court reiterated concern for the susceptibility of children to suggestion and fantasy and held that a child witness can be rendered incompetent to testify where unduly suggestive or coercive interview techniques corrupt or "taint" the child's memory and ability to testify truthfully about that memory. See also *Commonwealth v Judd*, 897 A.2d 1224 (Pa. Super. 2006).**

**In *Commonwealth v Nazarovitch,* 496 Pa. 97, 436 A.2d 170 (1981), the Supreme Court rejected hypnotically refreshed testimony, where the witness had no prior independent recollection. Applying the test of *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923) for scientific testimony, the Court was not convicted that the process of hypnosis as a means of restoring forgotten or repressed memory had gained sufficient acceptance in its field. *Commonwealth v Nazarovitch, supra; see also Commonwealth v Romanelli,* 522 Pa. 222, 560 A.2d 1384 (1989) (when witness has been hypnotized, he or she may testify concerning matters recollected prior to hypnosis, but not about matters recalled only during or after hypnosis); *Commonwealth v Smoyer,* 505 Pa. 83, 476 A.2d 1304 (1984) (same). Pa.R.E. 601(b) is not intended to change these results.] See *Commonwealth v Delbridge*, 855 A.2d 27 (Pa. 2003) (child's tainted recollection); *Commonwealth v Nazarovitch*, 436 A.2d 170 (Pa. 1981) (hypnotically refreshed recollection); *Commonwealth v Romanelli*, 560 A.2d 1384 (Pa. 1989) (when witness has been hypnotized, he or she may testify concerning matters recollected prior to hypnosis, but not about matters recalled only during or after hypnosis).** For the constitutional implications when a defendant in a criminal case, whose memory has been hypnotically refreshed, seeks to testify, see *Rock v Arkansas*, 483 U.S. 44 (1987).

The application of the standards in Pa.R.E. 601 (b) is a factual question to be resolved by the court as a preliminary question under Rule 104. The party challenging competency bears the burden of proving grounds of incompetency by clear and convincing evidence. **[*Commonwealth v.]* *Delbridge,* **[578 Pa. at 664,]** 855 A.2d at 40. **The court may observe a witness to determine whether there is a compelling need to order a competency evaluation. See *Commonwealth v. Thomas*, 215 A.3d 36, 43-45 (Pa.2019).** In *Commonwealth v Washington*, **[554 Pa. 559,]** 722 A.2d 643 (**Pa.** 1998), a case involving child witnesses, the Supreme Court announced a *per se* rule requiring trial courts to conduct competency hearings outside the presence of the jury. **See also *Commonwealth v Hutchinson*, 25 A.3d 277, 295 (Pa. 2011) (finding arguable merit that the trial court's *vior dire* procedure violated the *per se* rule promulgated in Washington).** Expert testimony has been used when competency under these **[standards has been] grounds is** an issue. See e.g., *Commonwealth v Baker,* **[466 Pa. 479,]** 353 A.2d 454, **457-458** (**Pa.** 1976); *Commonwealth v Gaerttner,* **[355 Pa. Super. 203,]** 484 A.2d 92, **98-99** (**Pa. Super.** 1984).

**[Official Note: Adopted May 8, 1998, effective October 1, 1998; amended November 2, 2007, effective December 14. 2007; rescinded and replaced January 17, 2013, effective March 18, 2013.**

***Committee Explanatory Reports:***

**Final Report explaining the January 17, 2013 recission and replacement published with the Court's Order at 43 Pa.B. 651 (February 2, 2013).]**

**SUPREME COURT OF PENNSYLVANIA**
**COMMITTEE ON RULES OF EVIDENCE**

**Publication Report Proposed Amendment of Pa.R.E. 601**

The Committee on Rules of Evidence has undertaken a review of Pennsylvania Rule of Evidence 601 concerning the competency of fact witnesses. While Pennsylvania's law of competency is based upon statute and case law, the Committee's review focused on grounds for incompetency established by case law and codified in the rule at subdivision (b). Several amendments to the rule text and commentary are proposed.

Within subdivision (b), the Committee proposes changing the title from "Disqualification for Specific Defect" to "Grounds for Incompetency." No substantive effect is intended; rather, the title will more accurately describe the remainder of the subdivision.

Next, the word "is" would be replaced with "may be" to clarify that the presence of any of the grounds in subdivisions (b)(1)-(b)(4) does not render a witness incompetent. The amendment recognizes that these grounds may also serve as bases for impeachment of a competent witness. *See, e.g., Commonwealth v. Rizzuto,* 777 A.2d 1069, 1082 (Pa. 2001) ("When a witness suffers a condition relevant to his or her ability to accurately observe and report events, the jury must be informed of that witness' disability in order to properly assess the weight and credibility of the testimony."), *abrogated on other grounds, Commonwealth v. Freeman,* 827 A.2d 385 (Pa. 2003). Competency relates to the "capacity of the witness to communicate, to observe an event and accurately recall that observation, and to understand the necessity to speak the truth. A competency hearing is not concerned with credibility. Credibility involves an assessment of whether or not what the witness says is true." *Commonwealth v. Delbridge,* 855 A.2d 27, 40 (Pa. 2003).

Additionally, the Committee proposes inserting "in whole or in part" to recognize that a witness may be incompetent to testify on some matters but not all matters. For example, a witness with dementia may have some recollection of distant memories but not of recent memories. Under that circumstance, the witness should be able to testify about the memories the witness can recall. Another example is a child with a tainted recollection - the child may not be competent to testify about the tainted recollection but could be competent to testify about other matters.

Finally, the Committee proposes to remove the phrase, "that because of mental condition or immaturity," from subdivision (b). The phrase was thought to be too limited and unintentionally omitted a physical condition as a cause for incompetency. This change would eliminate causation as a factor so that the grounds for incompetency are based upon the witness's ability.

The Comment to Pa.RE. 601 is proposed to be extensively rewritten. The first paragraph is restated to highlight the difference between Pa.RE. 601(a) and F.RE. 601 concerning the sources of authority for exceptions to the general rule of witness competency. The revised paragraph also clarifies that Pa.RE. 601 is an independent source of such authority. The second paragraph is intended to identify the common law underpinning the grounds for incompetency without a string of case citations. Given that the rule itself is a source of authority, its genealogy is less relevant to the application of the rule.

The third paragraph presently states that Pennsylvania case law recognizes two other grounds for incompetency based on tainted testimony and hypnotic recollection. The Committee believes both of those grounds are actually a subset of subdivision (b)(3) (impaired memory). The third paragraph of the Comment has been revised accordingly.

Additionally, rather than attempt to explain the case law cited within the third and fourth paragraphs of the Comment, the Committee proposes to remove those discussions and cite the cases and add parenthetical descriptions of the holdings. This approach allows the opinions to "speak for themselves."

The fifth paragraph is proposed to be amended to recognize the use of judicial observation and witness *voir* dire/colloquy as means of determining whether a competency hearing and expert is necessary. *See Commonwealth v. Thomas,* 215 A.3d 36, 43-45 (Pa. 2019). The Committee also proposes modifying the discussion of competency hearings being conducted outside the presence of the jury.

The discussion of *Commonwealth v. Washington,* 722 A.2d 643 (Pa. 1998), as it relates to proceeding outside the presence of the jury, is also located in Pa.RE. 104, cmt. at ,I 6 concerning preliminary questions. In *Commonwealth v. Hutchinson,* 25 A.3d 277 (Pa. 2011), the trial court judge conducted a brief colloquy of a minor to determine whether the minor understood the duty to tell the truth. Thereafter, the prosecutor conducted *voir dire* to establish the minor's competency as a witness. The prosecutor conducted *voir dire* of another minor witness to establish competency. Both the colloquy and *voir dire* were performed in the presence of the jury.

Through a PCRA, the defendant claimed that counsel was ineffective for not objecting to the competency colloquy and *voir dire* being conducted in the presence of the jury. On appeal, the Court concluded that the claim had arguable merit given the requirement of *Washington. See id.* at 295. Thus, it appears that a colloquy or *voir dire* for the purpose of determining custody must be conducted outside of the presence of the jury. However, the Court held that the defendant was not prejudiced because the judge did not make a formal ruling that the minors were competent. *See id.* Further, the jury was instructed that they were solely responsible for determining credibility. *See id.* at 295-296. Finally, the notes of testimony indicated that the minor witnesses were competent. *See id.* at 296 - 299.

All comments, concerns, and suggestions concerning this proposal are welcome.



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# SUPREME COURT NOTICE

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**SUPREME COURT OF PENNSYLVANIA**
**APPELLATE COURT PROCEDURAL RULES COMMITTEE**

**NOTICE OF PROPOSED RULEMAKING**

**Proposed Amendment of Pa.R.A.P. 102 and 904**

The Appellate Court Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Pa.R.A.P. 102 and 904 relating to appeals from the Orphans' Court for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being published in *the Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any report accompanying this proposal was prepared by the Committee to indicate the rationale for the proposed rulemaking. It will neither constitute a part of the rules nor be adopted by the Supreme Court.

Additions to the text of the proposal are bolded and underlined; deletions to the text are bolded and bracketed.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

**Karla M. Shultz, Counsel**
**Appellate Court Procedural Rules Committee**
**Supreme Court of Pennsylvania**
**Pennsylvania Judicial Center**
**PO Box 62635**
**Harrisburg, PA 17106-2635**
**FAX: 717-231-9551**
**appellaterules@pacourts.us**

All communications in reference to the proposal should be received by **October 6, 2023**. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

By the Appellate Court Procedural Rules Committee, Peter J. Gardner Chair

**Rule 102. Definitions.**

Subject to additional definitions contained in subsequent provisions of these rules which are applicable to specific provisions of these rules, the following words and phrases when used in these rules shall have, unless the context clearly indicates otherwise, the meanings given to them in this rule:

* * *

**Orphan's Court Appeal. Any appeal from an order of the Orphans' Court Division as set forth in Pa.R.A.P. 342.**

* * *

**Rule 904. Content of the Notice of Appeal.**

(a) **Form.** Except as otherwise prescribed by this rule, the notice of appeal shall be in substantially the following form:

* * *

(b) **Caption.**

(1) **General Rule.** The parties shall be stated in the caption as they appeared on the record of the trial court at the time the appeal was taken.

(2) **Appeal of Custody Action.** In an appeal of a custody action where the trial court has used the full name of the parties in the caption, upon application of a party and for cause shown, an appellate court may exercise its discretion to use the initials of the parties in the caption based upon the sensitive nature of the facts included in the case record and the best interest of the child.

(c) **Request for Transcript.** The request for transcript contemplated by Pa.R.A.P. 1911 or a statement signed by counsel that either there is no verbatim record of the proceedings or the complete transcript has been lodged of record shall accompany the notice of appeal, but the absence of or defect in the request for transcript shall not affect the validity of the appeal.

(d) **Docket Entry**. The notice of appeal shall include a statement that the order appealed from has been entered on the docket. A copy of the docket entry showing the entry of the order appealed from shall be attached to the notice of appeal.

(e) **Content in Criminal Cases.** [When] If the Commonwealth takes an appeal pursuant to Pa.R.A.P. 311(d), the notice of appeal shall include a certification by counsel that the order will terminate or substantially handicap the prosecution.

(f) **Content in Children's Fast Track Appeals.** In a children's fast track appeal, the notice of appeal shall include a statement advising the appellate court that the appeal is a children's fast track appeal.

(g) **Content in Orphans' Court Appeals. In an Orphans' Court appeal, the notice of appeal shall include a statement advising the appellate court that the appeal is an Orphans' Court appeal.**

**(h)** **Completely Consolidated Civil Cases**. In an appeal of completely consolidated civil cases where only one notice of appeal is filed, a copy of the consolidation order shall be attached to the notice of appeal.

**Comment:**



The Offense Tracking Number (OTN) is required only in an appeal in a criminal proceeding. It enables the Administrative Office of the Pennsylvania Courts to collect and forward to the Pennsylvania State Police information pertaining to the disposition of all criminal cases as provided by the Criminal History Record Information Act, 18 Pa.C.S. §§ 9101 *et seq.*

The notice of appeal must include a statement that the order appealed from has been entered on the docket. Because generally a separate notice of appeal must be filed on each docket on which an appealable order is entered so as to appeal from that order, **[*see*]** **see** Pa.R.A.P. 902(a), the appellant is required to attach to the notice of appeal a copy of the docket entry showing the entry of the order appealed from on that docket. The appellant does not need to certify that the order has been reduced to judgment. This omission does not eliminate the requirement of reducing an order to judgment before there is a final appealable order where required by applicable practice or case law.

Subdivision (b)(2) provides the authority for an appellate court to initialize captions in custody appeals. See also **[Pa.R.C.P.]** **Pa.R.Civ.P.** 1915.10.

With respect to subdivision (e), in *Commonwealth v. Dugger*, 486 A.2d 382, 386 (Pa. 1985), the Supreme Court held that the Commonwealth's certification that an order will terminate or substantially handicap the prosecution is not subject to review as a prerequisite to the Superior Court's review of the merits of the appeal. The principle in *Dugger* has been incorporated in and superseded by Pa.R.A.P. 311(d). *Commonwealth v. Dixon*, 907 A.2d 468, 471 n.8 (Pa. 2006). Thus, the need for a detailed analysis of the effect of the order, formerly necessarily a part of the Commonwealth's appellate brief, has been eliminated.

A party filing a cross-appeal should identify it as a cross-appeal in the notice of appeal to assure that the prothonotary will process the cross-appeal with the initial appeal. **[*See also*]** **See also** Pa.R.A.P. 2113, 2136, and 2185 regarding briefs in cross- appeals and Pa.R.A.P. 2322 regarding oral argument in multiple appeals.

**See Pa.R.A.P. 342 for the orders that may be appealed as of right in Orphans' Court matters**.

A party appealing completely consolidated civil cases using one notice of appeal must attach a copy of the consolidation order to the notice of appeal to assure the applicability of Pa.R.A.P. 902.

**SUPREME COURT OF PENNSYLVANIA**
**APPELLATE COURT PROCEDURAL RULES COMMITTEE**

**PUBLICATION REPORT**

**Proposed Amendment of Pa.R.A.P. 102 and 904**

The Appellate Court Procedural Rules Committee is considering proposing to the Supreme Court the amendment of Pennsylvania Rules of Appellate Procedure 102 and 904 relating to appeals from the Orphans' Court. This proposal is the result of the Committee's evaluation of a request to amend Pa.R.A.P. 108 (date of entry of orders) to recognize the operation of relatively new Pa.R.O.C.P. 4.6 in establishing the date of entry of an adjudication or court order on the Orphans' Court docket.

Pa.R.A.P. 108 operates to establish the date of entry of an order for purposes of computing any time period involving the date of an order under the Pennsylvania Rules of Appellate Procedure. Pa.R.A.P. 108(b) provides that the date of entry of an order for civil cases is the date on which the clerk of the trial court makes a notation on the docket that notice of the

entry of the order was given as required by Pa.R.Civ.P. 236. Additional provisions address emergency appeals and criminal orders. However, Pa.R.A.P. 108 is silent on the date of entry of orders in the Orphans' Court.

The reason for that silence is that, when the relevant provisions of Pa.R.A.P. 108 were drafted, the Pennsylvania Rules of Orphans' Court Procedure were also silent on the matter of notice of an adjudication or court order. Notably, however, former Pa.R.O.C.P. 3.1 required conformity with the Pennsylvania Rules of Civil Procedure when the Orphans' Court Rules did not provide guidance on a particular matter. Therefore, appellants in Orphans' Court cases were essentially guided by Pa.R.Civ.P. 236, which aligned with Pa.R.A.P. 108(b).

The Rules of Orphans' Court Procedure were largely rewritten and adopted, effective September 1, 2016. The rewrite included new rule Pa.R.O.C.P. 4.6, which established a notice procedure analogous to and derived from Pa.R.Civ.P. 236. The instant proposal is intended to acknowledge that rule albeit, as explained below, the Committee determined that amendment of Pa.R.A.P. 108 was not the most effective vehicle.

The Committee recognized that the request to amend Pa.R.A.P. 108 also implicated a need to effectively identify Orphans' Court appeals for purposes of docketing statements. To effectuate Pa.R.A.P. 108 generally, when a notice of appeal is filed with the Superior Court, the prothonotary of that court sends:

> a docketing statement form [to the appellant] which shall be completed and returned within ten (10) days in order that the Court shall be able to more efficiently and expeditiously administer the scheduling of argument and submission of cases on appeal. Failure to file a docketing statement may result in dismissal of the appeal.

Pa.R.A.P. 3517. At present, there are three docketing statement forms: (a) Civil Docketing Statement; (b) Criminal Docketing Statement; and (c) Family and Domestic Relations Docketing Statement. The Civil Docketing Statement requires entry of the date of the Pa.R.Civ.P. 236 notice, although the Family and Domestic Relations Docketing Statement does not. In the absence of an Orphans' Court specific form, the Civil Docketing Statement presumably has been used with Orphans' Court appeals. There is a concern that omission of the Pa.R.O.C.P. 4.6 notice date from the Docketing Statement may lead an appellant to complete the form incorrectly, resulting in possible delays or confusion.

As mentioned above, the Committee initially considered a proposed amendment of Pa.R.A.P. 108 to add a new subdivision pertaining to orders subject to the Rules of Orphans' Court Procedure and specifying that the date of entry of such an order is the date on which the clerk of the Orphans' Court makes the notation in the docket that written notice of the entry of the order has been given as required by Pa.R.O.C.P. 4.6. This approach, however, was thought to be insufficient in two respects. First, it was unlikely that counsel or a self-represented party would look to Pa.R.A.P. 108 for the requirement to file a docketing statement. Second, Orphans' Court appeals are not routinely identified as such when the notice of appeal is filed. As a result, filing office staff would not be aware which docketing statement should be sent to counsel or a self-represented party.

The Committee therefore devised a different approach to address both concerns, which is reflected in the present proposal. Pa.R.A.P. 342 sets forth the orders of the Orphans' Court that are appealable as of right. The proposal would amend Pa.R.A.P. 102 (definitions) to add a definition of "Orphans' Court Appeal" with a reference to Pa.R.A.P. 342 so that counsel or a self-represented party filing such an appeal is advised of the Rule of Appellate Procedure applicable to that appeal. In addition, Pa.R.A.P. 904 would be amended to add a new subdivision requiring the notice of appeal to include a statement advising the appellate court that the appeal is an Orphans' Court appeal. Identifying the appeal as an Orphans' Court matter should assist filing office staff in issuing an Orphans' Court docketing



statement in a timely fashion. Finally, a statement cross-referencing Pa.R.A.P. 342 regarding orders that may be appealed as of right in Orphans' Court matters would be added to the comment to Pa.R.A.P. 904.

Accordingly, the Committee invites all comments, objections, concerns, and suggestions regarding this proposed rulemaking.

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# SUPREME COURT NOTICE

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**SUPREME COURT OF PENNSYLVANIA**
**CRIMINAL PROCEDURAL RULES COMMITTEE**

**NOTICE OF PROPOSED RULEMAKING**

**Proposed Amendment of Pa.R.Crim.P. 632.**

The Criminal Procedural Rules Committee is considering proposing to the Supreme Court the amendment of Pa.R.Crim.P. 632 for the reasons set forth in the accompanying publication report. Pursuant to Pa.R.J.A. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any report accompanying this proposal was prepared by the Committee to indicate the rationale for the proposed rulemaking. It will neither constitute a part of the rules nor be adopted by the Supreme Court.

Additions to the text of the proposal are bolded and underlined; deletions to the text are bolded and bracketed.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

**Joshua M. Yohe, Counsel**
**Criminal Procedural Rules Committee**
**Supreme Court of Pennsylvania**
**Pennsylvania Judicial Center PO Box 62635**
**Harrisburg, PA 17106-2635**
**FAX: (717) 231-9521**
**criminalrules@pacourts.us**

All communications in reference to the proposal should be received by **Tuesday, September 12, 2023.** E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

By the Criminal Procedural Rules Committee, Stefanie Salavantis
Chair

**Rule 632. Juror Information Questionnaire.**

**[(A)]<u>(a)</u>**Prior to *voir dire*:

(1) Each prospective juror shall complete and verify the standard, confidential juror information questionnaire required by **[paragraph (H)]** **<u>subdivision (i)</u>** of this rule, and any supplemental questionnaire provided by the court.

(2) The president judge shall designate the method for distributing and maintaining the juror information questionnaires.

(3) The trial judge and the attorneys shall receive copies of the completed questionnaires for use during *voir dire*, and the attorneys shall be given a reasonable opportunity to examine the questionnaires.

**[(B)]**<u>**(b)**</u>The information provided by the jurors on the questionnaires shall be confidential and limited to use for the purpose of jury selection **[only]** <u>**and**</u> <u>**pursuant to subdivision (h)**</u>. Except for disclosures made during *voir dire*, or unless the trial judge otherwise orders pursuant to **[paragraph (F) this]** <u>**subdivision (f)**</u>, <u>**non-aggregated, personally identifiable**</u> information shall only be made available to the trial judge, the defendant**[(s)]** and the attorney**[(s)]** for the defendant**[(s)]**, and the attorney for the Commonwealth.

**[(C)]**<u>**(c)**</u>The original and any copies of the juror information questionnaires shall not constitute a public record.

**[(D)]**<u>**(d)**</u>Juror information questionnaires shall be used in conjunction with the examination of the prospective jurors conducted by the judge or counsel pursuant to Rule 631(E)<u>**, or for the purposes of subdivision (h)**</u>.

**[(E)]**<u>**(e)**</u>If the court adjourns before *voir dire* is completed, the trial judge may order that the attorneys be permitted to retain their copies of the questionnaires during the adjournment. When copies of the questionnaires are permitted to be taken from the courtroom, the copies:

(1) shall continue to be subject to the confidentiality requirements of this rule, and to the disclosure requirements of **[paragraph (B)]** <u>**subdivision (b)**</u>; and

(2) shall not be duplicated, distributed, or published.
The trial judge may make such other order to protect the copies as is appropriate.

**[(F)]**<u>**(f)**</u>The original questionnaires of all impaneled jurors shall be retained in a sealed file and shall be destroyed upon completion of the jurors' service, unless otherwise ordered by the trial judge <u>**or retained for the purposes of subdivision (h)**</u>. Upon completion of *voir dire*, all copies of the questionnaires shall be returned to the trial judge and destroyed, unless otherwise ordered by the trial judge at the request of the defendant**[(s)],** the attorney**[(s)]** for the defendant**[(s)],** or the attorney for the Commonwealth<u>**, or unless retained for the purposes of subdivision (h).**</u>

**[(G)]**<u>**(g)Subject to subdivision (h),**</u> **[The]** <u>**the**</u> original and any copies of questionnaires of all prospective jurors not impaneled or not selected for any trial shall be destroyed upon completion of the jurors' service.

<u>**(h) Nothing in this rule shall prevent judicial districts from individually electing to retain the information provided by prospective or impaneled jurors on their questionnaires for the purpose of assessing their district's juror demographics as it relates to the constitutional guarantee that juries be drawn from a representative cross-section of**</u>



<u>**the community, provided that such information may only be retained or published by the districts in the aggregate and in a manner that does not contain or reveal any personally identifiable information of the prospective or impaneled jurors.**</u>

**[(H)]**<u>**(i)**</u>The form of the juror information questionnaire shall be as follows:

**JUROR INFORMATION QUESTIONNAIRE**
**CONFIDENTIAL; NOT PUBLIC RECORD**

NAME: LAST FIRST MIDDLE INITIAL

CITY/TOWNSHIP COMMUNITIES IN WHICH YOU RESIDED OVER THE PAST 10 YEARS:

MARITAL STATUS:
MARRIED o SINGLE o SEPARATED o DIVORCED o
WIDOWED o

OCCUPATION OCCUPATION(S) PAST 10 YEARS

OCCUPATION OF SPOUSE/OTHER PAST 10 YEARS OCCUPATION OF SPOUSE/OTHER

NUMBER OF CHILDREN **[RACE:**
**o WHITE o BLACK o HISPANIC**
**o OTHER]**

<u>**RACE (Circle all that apply)**</u>

<u>**American Indian or Alaska Native: A person having origins in any of the original peoples of North and South America (including Central America) and who maintains tribal affiliation or community attachment.**</u>

<u>**Asian: A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.**</u>

<u>**Black or African American: A person having origins in any of the Black racial groups of Africa.**</u>

<u>**Native Hawaiian or Other Pacific Islander: A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.**</u>

<u>**White: A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.**</u>

**ETHNICITY (Circle One)**

**Hispanic or Latino: A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race.**

**Not Hispanic or Latino.**

**GENDER (Circle One)**

**Male**
**Female**
**Other ___________**

LEVEL OF EDUCATION
YOURS SPOUSE/OTHER CHILDREN

**YES** **NO**

1. Have you ever served as a juror before? ☐ ☐

If so, were you ever on a hung jury? ☐ ☐

2. Do you have any religious, moral, or ethical beliefs that would prevent you from sitting in judgment in
a criminal case and rendering a fair verdict? ☐ ☐

3. Do you have any physical or psychological disability that might interfere with or prevent you from
serving as a juror? ☐ ☐

4. Have you or anyone close to you ever been the victim of a crime? ☐ ☐

5. Have you or anyone close to you ever been charged with or arrested for a crime, other than a traffic violation? ☐ ☐

6. Have you or anyone close to you ever been an eyewitness to a crime, whether or not it ever came to court? ☐ ☐

7. Have you or anyone close to you ever worked in law enforcement or the justice system? This includes
police, prosecutors, attorneys, detectives, security or prison guards, and court related agencies.
☐ ☐

8. Would you be more likely to believe the testimony of a police officer or any other law enforcement
officer because of his or her job? ☐ ☐

9. Would you be less likely to believe the testimony of a police officer or other law enforcement officer
because of his or her job? ☐ ☐



10. Would you have any problem following the court's instruction that the defendant in a criminal case
is presumed to be innocent unless and until proven guilty beyond a reasonable doubt? ☐ ☐

11. Would you have any problem following the court's instruction that the defendant in a criminal case does
not have to take the stand or present evidence, and it cannot be held against the defendant if he or she elects
to remain silent or present no evidence? ☐ ☐

12. Would you have any problem following the court's instruction in a criminal case that just because
someone is arrested, it does not mean that the person is guilty of anything? ☐ ☐

13. In general, would you have any problem following and applying the judge's instruction on the law? ☐ ☐

14. Would you have any problem during jury deliberations in a criminal case discussing the case fully but
still making up your own mind? ☐ ☐

15. Are you presently taking any medication that might interfere with or prevent you from serving as a juror? ☐ ☐

16. Is there any other reason you could not be a fair juror in a criminal case? ☐ ☐

**I hereby certify that the answers on this form are true and correct. I understand that false answers provided herein subject me to penalties under 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.**

SIGNATURE_____ DATE__

**Comment:** This rule requires that, prior to *voir dire* in any criminal case, the prospective jurors, including prospective alternate jurors, must complete the standard, confidential juror information questionnaire required in **[paragraph (H)]** **subdivision (i)**, and that the trial judge and attorneys must automatically be given copies of the completed questionnaires in time to examine them before *voir dire* begins. *Compare* Rule 625, which provides that attorneys must request copies of juror qualification forms for the jurors summoned in their case.

Under **[paragraph (A)(2)]** **subdivision (a)(2)**, it is intended that the president judge of each judicial district may designate procedures for submitting the questionnaire to the jurors and maintaining them upon completion. For example, some districts may choose to mail them along with their jury qualification form, while others may desire to have the questionnaire completed by the panel of prospective jurors when they report for jury service. This rule, however, mandates that the questionnaires be completed by each prospective juror to a criminal case.

Each judicial district must provide the jurors with instructions for completing the form**[,]** and inform them of the procedures for maintaining confidentiality of the questionnaires.

It is expected that each judicial district will inform the jurors that the questionnaires will only be used for jury selection **or for the limited purposes provided in subdivision (h)**. Pursuant to **[paragraph (C)]** **subdivision (c)**, the juror information questionnaire is not a public record and therefore may not be combined in one form with the qualification questionnaire required by Rule 625. However, nothing in this rule would prohibit the distribution of both questionnaires in the same mailing.

Under **[paragraph (B)]** **subdivision (b)**, the **disaggregated** information provided by the jurors **that contains their individualized, personally identifiable information** is confidential and may be used only for the purpose of jury selection. Except for disclosures made during *voir dire*, **[the]** **such** information in the completed questionnaires may not be disclosed to anyone except the trial judge, the attorneys and any persons assisting the attorneys in jury selection, such as a member of the trial team or a consultant hired to assist in jury selection, the defendant, and any court personnel designated by the judge. Even once disclosed to such persons, however, the information in the questionnaires remains confidential. **Nothing in this rule is intended to prohibit or discourage the collection and retention of aggregated juror demographic data pursuant to subdivision (h).**
Although the defendant may participate in *voir dire* and have access to information from the questionnaire, nothing in this rule is intended to allow a defendant to have a copy of the questionnaire.

**[Paragraph (D)]** **Subdivision (d)** makes it clear that juror information questionnaires are to be used in conjunction with the oral examination of the prospective jurors**[,]** and are not to be used as a substitute for the oral examination. Juror information questionnaires facilitate and expedite the *voir dire* examination by providing the trial judge and attorneys with basic background information about the jurors, thereby eliminating the need for many commonly asked questions. Although nothing in this rule is intended to preclude oral questioning during *voir dire*, the scope of *voir dire* is within the discretion of the trial judge. *See, e.g.*, *Commonwealth v. McGrew*, 100 A.2d 467 (Pa. 1953) and Rule 631(E).

**[Paragraph (E)]** **Subdivision (e)** provides, upon order of the trial judge, that only attorneys in the case, subject to strict limitations imposed by the court, may retain their copies of the juror information questionnaires during adjournment.

**[Paragraph (F)]** **Subdivision (f)** provides the procedures for the collection and disposition of the original completed questionnaires and copies for impaneled jurors. Once *voir dire* is concluded, all copies of the completed questionnaires are returned to the official designated by the president judge pursuant to **[paragraph (A)(2),]** **subdivision (a)(2)** and destroyed promptly **or retained for the limited purposes of subdivision (h)**. The original completed questionnaires of the impaneled jury must be retained in a sealed file in the manner prescribed pursuant to **[paragraph (A)(2),]** **subdivision (a)(2)** and destroyed upon the conclusion of the juror's service, unless the trial judge orders otherwise **or unless retained for the limited purposes of subdivision (h)**. Because the information in the questionnaires is confidential, the trial judge should only order retention of the original questionnaires under unusual circumstances. Such a circumstance would arise, for example, if the questionnaires were placed at issue for post- verdict review. In that event, the judge would order the preservation of the questionnaires in order to make them part of the appellate record. **Nothing in this rule is intended to prevent the trial or president judge, court administrator, or other relevant official from retaining the original questionnaires for the limited purposes of subdivision (h).**

Under **[paragraph (G)]** **subdivision (g)**, the original and any copies of the questionnaires of those jurors not impaneled and not selected for any jury must be destroyed



**[without exception]** upon completion of their service **unless retained for the limited purposes of subdivision (h)**.

There may be situations in which the attorneys and judge would want to prepare an individualized questionnaire for a particular case. In this situation, a supplemental questionnaire**, as permitted by subdivision (a)(1),** would be used together with the standard juror information questionnaire, and the disclosure and retention provisions in **[paragraphs (B) and (F)]** **subdivisions (b) and (f)** would apply. **[*See* paragraph (A)(1).]**

**[Official Note: Former Rule 1107 rescinded September 28, 1975. Present Rule 1107 adopted September 15, 1993, effective January 1, 1994; suspended December 17, 1993 until further Order of the Court; the September 15, 1993 Order is superseded by the September 18, 1998 Order, and present Rule 1107 adopted September 18, 1998, effective July 1, 1999; renumbered Rule 632 and amended March 1, 2000, effective April 1, 2001; amended May 2, 2005, effective August 1, 2005; amended July 7, 2015, effective October 1, 2015.**

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***COMMITTEE EXPLANATORY REPORTS*:**

***Final Report explaining the September 18, 1998 adoption of new Rule 1107 concerning juror information questionnaires published with the Court's Order at 29 Pa.B. 4887 (October 3, 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 May 2, 2005 amendments to the mandatory juror information questionnaire form published at 35 Pa.B. 2870 (May 14, 2005).***

***Final Report explaining the July 7, 2015 amendments correcting cross- references to Rules 625 and 631 published with the Court's Order at 45 Pa.B. 3985 (July 25, 2015).*]**

**SUPREME COURT OF PENNSYLVANIA**
**CRIMINAL PROCEDURAL RULES COMMITTEE**

**REPUBLICATION REPORT**

**Proposed Amendment of Pa.R.Crim.P. 632.**

The Criminal Procedural Rules Committee is considering proposing to the Supreme Court the amendment of Pa.R.Crim.P. 632. The proposed amendment would revise the juror information questionnaire by increasing the number of categories of race and ethnicity from which a juror may choose, including a query for gender, and including an optional query for religion. The rule would also be amended to explicitly permit judicial districts to retain information provided by prospective and impaneled jurors so long as such information is only retained in the aggregate.

Currently, Pa.R.Crim.P. 632(H) sets forth the juror information questionnaire. Among sections seeking biographical information, *e.g.*, name, city, and marital status, there is a section

soliciting prospective jurors to identify their race. The form presents the juror with four choices: "white," "black," "Hispanic," and "other." Each choice is accompanied by a corresponding checkbox. The "other" checkbox, however, does not have an accompanying space for the juror to disclose a specific race. The questionnaire does not solicit prospective or impaneled jurors to identify their ethnicity, their gender, or their religion. This current version of the juror information questionnaire containing a "race box" was first adopted in 1998. *See* 28 Pa.B. 4883 (October 3, 1998). The purpose of the questionnaire was to "reduce otherwise lengthy *voir dire* practices [ ] and ensure that basic information about the jurors is known to the parties." As governed by Pa.R.Crim.P. 632, the information contained in the questionnaires is made available only to the trial judge, the defendant, the defendant's attorney, and the attorney for the Commonwealth and only for the purpose of jury selection. Pa.R.Crim.P. 632(B). The questionnaires are to be returned to the judge at the completion of a juror's service and destroyed.

The Committee's review of Pa.R.Crim.P. 632 was prompted by an observation that the questionnaire's options for race and ethnicity were too limited. Additionally, the Pennsylvania Interbranch Commission for Gender, Racial and Ethnic Fairness (Interbranch) requested that the rule be amended to permit judicial districts to retain aggregated, non-identifiable juror demographic information for the purpose of assessing whether juries are drawn from a representative cross-section of the community.

As previously published, *see* 53 Pa.B. 1660 (March 25, 2023), the Committee expanded the categories of race and ethnicity to include sufficient categories for use in a *Batson* challenge and proposed querying for gender to provide additional relevant *Batson* information. *See Batson v. Kentucky*, 476 U.S. 79 (1986). In response to the Interbranch's request, the Committee proposed subdivision (h), which would permit retention of juror data, provided the data is retained in the aggregate and in a manner that does not contain or reveal any personally identifiable information of the prospective or impaneled jurors. Please note, subdivision (h) is intended to permit the retention of this information; it is not intended to require retention.Whether that data is retained is an administrative, rather than procedural, matter.

After publishing the prior proposal for comment, the Committee was urged by a commenter to include a query for religious affiliation. In response, the Committee is proposing the addition of a blank space on the questionnaire for a prospective juror to identify their religion. Recognizing that *Batson* has not yet been extended to prohibit peremptory strikes based on religion, *see Davis v. Minnesota*, 511 U.S. 1115 (1994) (denying *certiorari*), *see also U.S. v. DeJesus*, 347 F.3d 500 (3rd Cir. 2003) (affirming the district court and declining to "reach the issue of whether a peremptory strike based solely on religious affiliation would be unconstitutional"), the Committee has chosen to make providing this information optional, as indicated on the questionnaire. To better inform itself, the Committee seeks public comment on the merit of this proposed revision to the juror questionnaire. In all other respects, this proposal is identical to the previously published proposal.