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Comments of Pennsylvanians for Modern Courts to the Proposal of the Supreme Court’s Criminal Procedural Rules Committee to Amend Rules 646 and 647

Pennsylvanians for Modern Courts (“PMC”)¹ supports the proposal of the Criminal Procedural Rules Committee to amend Rules 646 and 647 to permit jurors to have copies of the judge’s instructions regarding elements of the offense, lesser included offenses, and any defenses upon which the jury has been orally charged while they are deliberating. While PMC believes the entirety of the judge’s charge should be provided in written form to the jury, these less expansive rule changes will nonetheless assist jurors in understanding how to apply the law to the evidence presented and ultimately will help them reach just verdicts.

The importance of the charge is reflected in the judicial time spent preparing and delivering it as well as the numerous appellate cases that focus on alleged errors in jury instructions. Lawyers required to submit proposed jury instructions can attest to the challenge judges face as they draft jury charges on the elements of crimes, burdens of proof, and the process for weighing conflicting testimony and demonstrative evidence. Jurors have long reported that they find lengthy charges to be confusing, particularly after a complicated trial. The charge, however, arguably is one of the most important elements of the trial: it offers the jury a template upon which to organize the evidence that has been presented so that

¹ PMC is a nonprofit, nonpartisan court reform organization working to improve Pennsylvania’s courts, including increasing the number of citizens reporting for jury duty, enhancing the diversity of our jury pools and improving the juror experience.

it can reach a verdict. When a judge sets forth the elements of the crime that must be established to find a defendant guilty, the judge is handing the jury a set of organizing principles to guide its deliberations. This tool is critical for the jury.

Giving the jury a copy of the judge's charge concerning elements of the offenses and the possible defenses would provide the jurors with a critical reference tool during deliberations. Rather than being forced to rely on possibly competing memories of those portions of the oral charge, jurors would be able to refer to the actual written portion of the instructions if questions on those points were to arise during deliberations. If the jury feels it needs additional guidance, it can specifically request it from the judge. In such a case, the judge can tailor his or her instructions to the need of the jurors, rather than simply rereading, or attempting to recreate, the original charge. One could envision a scenario where the jurors are confused about a particular phrase or legal definition: rather than reread the confusing language, the judge could elaborate on the original instructions, guided by the identified need of the jurors. This process would not only conserve limited judicial resources, but also would assist the jurors in reaching a verdict.

The proposed rules address the Court's longstanding reasons for prohibiting jurors from having the instructions while deliberating. In Commonwealth v. Oleynik, 524 Pa. 41 (1990), the Court was concerned that a jury might assign undue weight to the written instructions in their possession and disregard the totality of the oral charge. The proposed rules address that point directly—should the judge provide the jurors with the written elements of the charge, he or she is required to instruct the jurors that the written and oral portions are to be given equal weight in their deliberations. Further, the written elements would comprise only a portion of the entire charge, a portion which has been identified as proving frequently confusing to jurors. As the written portion would merely serve to clarify for the jurors what is recognized as a complex and technical area, they would still derive the majority of their direction from the judge's oral instructions.

The Oleynik Court was also concerned that if the jury were in possession of written instructions, it would work to resolve on its own any questions about the meaning of the charge rather than request clarification from the Court. While the Court correctly observed that such a jury could consult the written charge to resolve the disagreement, its concern could be addressed in two ways. First, in many cases, reference to the written elements of the charge might appropriately resolve the question, which may have resulted from faulty memories. The Criminal Procedural Rules Committee notes in its report that the majority of requests for clarification from jurors concern the points covered by the proposed amendments—elements of the offense, lesser included offenses, and the defenses upon which they have been charged. The majority of such questions could be preempted by having the instructions about those complex issues available in written form.

Second, and more important, the Criminal Rules Procedural Committee itself addresses this concern in the proposed amendments. The amended rules specify that judges submitting written instructions to juries include the directive that the jurors submit questions regarding any portion of the charge to the Court, a point echoed in the sample written instruction to be included in the commentary to the proposed amendments. This language might be strengthened to more thoroughly address the Court's concerns by *requiring* in both the oral and the written charge that questions about the meaning of the instructions should be presented to the Court, that jurors should not attempt to resolve disputes over interpretation on their own, and that any portions of the charge provided in writing to the jury are provided only for the convenience of the jury and are not to be viewed as a substitute for consulting the Court with questions. This point, however, can be addressed according to a judge's assessment of the need on a case by case basis.

The proposed amendments would enable a deliberating jury to look to the charge and discuss each element of the crime, the evidence pertaining to it, available defenses and whether the burden of proof was satisfied in an organized, direct manner. We expect this

thoroughness of jurors now, but we rely on their memories of the charge to guide them through the process. Under the proposed rule, a single juror's memory, or more dangerously, perceived understanding of criminal law, will not direct the deliberations of the jury. Instead, the foreperson, or another juror, can always point back to the elements provided by the judge in the charge and seek clarification as necessary. This is a more preferable way for juries to conduct deliberations and reach verdicts.

PMC cherishes our jury system and the citizen jurors who serve with dedication and seriousness of purpose every day. The task imposed on jurors is mentally, physically and emotionally challenging. We present jurors with very complex questions, the answers to which have profound implications for the parties involved and for society as a whole. If there are measures the Court can take to assist juries in performing their duties, the Court should take them. The proposed amendments are important steps toward achieving these results. PMC urges the Court to adopt the proposed amendments to Rules 646 and 647.