

**CHAPTER 95**  
POST-TRIAL MATTERS

**Subchapter**

- A. General Provisions
- B. Post Conviction Relief
- C. Report by District Attorney
- D. Unitary Review in Death Penalty Cases

**Enactment.** The heading of Chapter 95 was added July 9, 1976, P.L.586, No.142, effective 60 days from the date of final enactment of the act of April 28, 1978, P.L.202, No.53, and the remaining provisions were added May 13, 1982, P.L.417, No.122, effective immediately.

**SUBCHAPTER A**  
GENERAL PROVISIONS

**Sec.**

9501. Procedures, motions and other matters.

**Enactment.** The heading of Subchapter A was added May 13, 1982, P.L.417, No.122, effective immediately, and the remaining provisions were added December 20, 1982, P.L.1409, No.326, effective in 60 days.

**§ 9501. Procedures, motions and other matters.**

Except as otherwise provided by this chapter all post-trial procedures, motions and other matters relating to any criminal proceeding shall be conducted in the manner, at the times, on the terms and conditions and in the form prescribed by general rules.

**SUBCHAPTER B**  
POST CONVICTION RELIEF

**Sec.**

- 9541. Short title of subchapter.
- 9542. Scope of subchapter.
- 9543. Eligibility for relief.
- 9543.1. Postconviction DNA testing.
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- 9546. Relief and order.
- 9547. Amendment and withdrawal of petition (Repealed).
- 9548. Answer to petition (Repealed).
- 9549. Hearing on petition (Repealed).
- 9550. Ordering of court and final disposition of petition (Repealed).
- 9551. Pauper petitions (Repealed).

**Enactment.** Subchapter B was added May 13, 1982, P.L.417, No.122, effective immediately.

**Subchapter Heading.** The heading of Subchapter B was amended

April 13, 1988, P.L.336, No.47, effective immediately.

**Cross References.** Subchapter B is referred to in section 9578 of this title.

**§ 9541. Short title of subchapter.**

This subchapter shall be known and may be cited as the Post Conviction Relief Act.

(Apr. 13, 1988, P.L.336, No.47, eff. imd.)

**§ 9542. Scope of subchapter.**

This subchapter provides for an action by which persons convicted of crimes they did not commit and persons serving illegal sentences may obtain collateral relief. The action established in this subchapter shall be the sole means of obtaining collateral relief and encompasses all other common law and statutory remedies for the same purpose that exist when this subchapter takes effect, including habeas corpus and coram nobis. This subchapter is not intended to limit the availability of remedies in the trial court or on direct appeal from the judgment of sentence, to provide a means for raising issues waived in prior proceedings or to provide relief from collateral consequences of a criminal conviction. Except as specifically provided otherwise, all provisions of this subchapter shall apply to capital and noncapital cases.

(Apr. 13, 1988, P.L.336, No.47, eff. imd.; Nov. 17, 1995, 1st Sp.Sess., P.L.1118, No.32, eff. 60 days; June 25, 1997, P.L.324, No.33, eff. imd.)

**§ 9543. Eligibility for relief.**

**(a) General rule.**--To be eligible for relief under this subchapter, the petitioner must plead and prove by a preponderance of the evidence all of the following:

(1) That the petitioner has been convicted of a crime under the laws of this Commonwealth and is at the time relief is granted:

(i) currently serving a sentence of imprisonment, probation or parole for the crime;

(ii) awaiting execution of a sentence of death for the crime; or

(iii) serving a sentence which must expire before the person may commence serving the disputed sentence.

(2) That the conviction or sentence resulted from one or more of the following:

(i) A violation of the Constitution of this Commonwealth or the Constitution or laws of the United States which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.

(ii) Ineffective assistance of counsel which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.

(iii) A plea of guilty unlawfully induced where the circumstances make it likely that the inducement caused the petitioner to plead guilty and the petitioner is innocent.

(iv) The improper obstruction by government officials of the petitioner's right of appeal where a meritorious appealable issue existed and was properly preserved in the trial court.

(v) (Deleted by amendment).

(vi) The unavailability at the time of trial of exculpatory evidence that has subsequently become available and would have changed the outcome of the trial if it had been introduced.

(vii) The imposition of a sentence greater than the lawful maximum.

(viii) A proceeding in a tribunal without jurisdiction.

(3) That the allegation of error has not been previously litigated or waived.

(4) That the failure to litigate the issue prior to or during trial, during unitary review or on direct appeal could not have been the result of any rational, strategic or tactical decision by counsel.

**(b) Exception.--**Even if the petitioner has met the requirements of subsection (a), the petition shall be dismissed if it appears at any time that, because of delay in filing the petition, the Commonwealth has been prejudiced either in its ability to respond to the petition or in its ability to re-try the petitioner. A petition may be dismissed due to delay in the filing by the petitioner only after a hearing upon a motion to dismiss. This subsection does not apply if the petitioner shows that the petition is based on grounds of which the petitioner could not have discovered by the exercise of reasonable diligence before the delay became prejudicial to the Commonwealth.

**(c) Extradition.--**If the petitioner's conviction and sentence resulted from a trial conducted in his absence and if the petitioner has fled to a foreign country that refuses to extradite him because a trial in absentia was employed, the petitioner shall be entitled to the grant of a new trial if the refusing country agrees by virtue of this provision to return him and if the petitioner upon such return to this jurisdiction so requests. This subsection shall apply, notwithstanding any other law or judgment to the contrary.

(Apr. 13, 1988, P.L.336, No.47, eff. imd.; Nov. 17, 1995, 1st Sp.Sess., P.L.1118, No.32, eff. 60 days; June 25, 1997, P.L.324, No.33, eff. imd.; Jan. 27, 1998, P.L.20, No.3, eff. imd.)

**1998 Amendment.** Act 3 added subsec. (c). Section 3 of Act 3 provided that subsec. (c) shall apply to all existing cases within its provisions.

**1997 Amendment.** Act 33 amended subsec. (a)(1).

**Suspension by Court Order.** Subsec. (a)(4) was suspended August 11, 1997, S.Ct. Order, insofar as it references "unitary review."

**Cross References.** Section 9543 is referred to in section 9543.1 of this title.

#### **§ 9543.1. Postconviction DNA testing.**

**(a) Motion.--**

(1) An individual convicted of a criminal offense in a court of this Commonwealth and serving a term of imprisonment or awaiting execution because of a sentence of death may apply by making a written motion to the sentencing court for the performance of forensic DNA testing on specific evidence that is related to the investigation or prosecution that resulted in the judgment of conviction.

(2) The evidence may have been discovered either prior to or after the applicant's conviction. The evidence shall be available for testing as of the date of the motion. If the evidence was discovered prior to the applicant's conviction, the evidence shall not have been subject to the DNA testing requested because the technology for testing was not in existence at the time of the trial or the applicant's counsel did not seek testing at the time of the trial in a case where a verdict was rendered on or before January 1, 1995, or the applicant's counsel sought funds from the court to pay for the

testing because his client was indigent and the court refused the request despite the client's indigency.

**(b) Notice to the Commonwealth.--**

(1) Upon receipt of a motion under subsection (a), the court shall notify the Commonwealth and shall afford the Commonwealth an opportunity to respond to the motion.

(2) Upon receipt of a motion under subsection (a) or notice of the motion, as applicable, the Commonwealth and the court shall take the steps reasonably necessary to ensure that any remaining biological material in the possession of the Commonwealth or the court is preserved pending the completion of the proceedings under this section.

**(c) Requirements.--**In any motion under subsection (a), under penalty of perjury, the applicant shall:

(1) (i) specify the evidence to be tested;

(ii) state that the applicant consents to provide samples of bodily fluid for use in the DNA testing; and

(iii) acknowledge that the applicant understands that, if the motion is granted, any data obtained from any DNA samples or test results may be entered into law enforcement databases, may be used in the investigation of other crimes and may be used as evidence against the applicant in other cases.

(2) (i) assert the applicant's actual innocence of the offense for which the applicant was convicted; and

(ii) in a capital case:

(A) assert the applicant's actual innocence of the charged or uncharged conduct constituting an aggravating circumstance under section 9711(d)

(relating to sentencing procedure for murder of the first degree) if the applicant's exoneration of the conduct would result in vacating a sentence of death; or

(B) assert that the outcome of the DNA testing would establish a mitigating circumstance under section 9711(e)(7) if that mitigating circumstance was presented to the sentencing judge or jury and facts as to that issue were in dispute at the sentencing hearing.

(3) present a prima facie case demonstrating that the:

(i) identity of or the participation in the crime by the perpetrator was at issue in the proceedings that resulted in the applicant's conviction and sentencing; and

(ii) DNA testing of the specific evidence, assuming exculpatory results, would establish:

(A) the applicant's actual innocence of the offense for which the applicant was convicted;

(B) in a capital case, the applicant's actual innocence of the charged or uncharged conduct constituting an aggravating circumstance under section 9711(d) if the applicant's exoneration of the conduct would result in vacating a sentence of death; or

(C) in a capital case, a mitigating circumstance under section 9711(e)(7) under the circumstances set forth in subsection (c)(1)(iv).

**(d) Order.--**

(1) Except as provided in paragraph (2), the court shall order the testing requested in a motion under subsection (a) under reasonable conditions designed to preserve the integrity of the evidence and the testing process upon a determination, after review of the record of the applicant's trial, that the:

(i) requirements of subsection (c) have been met;

(ii) evidence to be tested has been subject to a chain of custody sufficient to establish that it has not been altered in any material respect; and

(iii) motion is made in a timely manner and for the purpose of demonstrating the applicant's actual innocence and not to delay the execution of sentence or administration of justice.

(2) The court shall not order the testing requested in a motion under subsection (a) if, after review of the record of the applicant's trial, the court determines that there is no reasonable possibility that the testing would produce exculpatory evidence that:

(i) would establish the applicant's actual innocence of the offense for which the applicant was convicted;

(ii) in a capital case, would establish the applicant's actual innocence of the charged or uncharged conduct constituting an aggravating circumstance under section 9711(d) if the applicant's exoneration of the conduct would result in vacating a sentence of death; or

(iii) in a capital case, would establish a mitigating circumstance under section 9711(e)(7) under the circumstances set forth in subsection (c)(1)(iv).

**(e) Testing procedures.--**

(1) Any DNA testing ordered under this section shall be conducted by:

(i) a laboratory mutually selected by the Commonwealth and the applicant;

(ii) if the Commonwealth and the applicant are unable to agree on a laboratory, a laboratory selected by the court that ordered the testing; or

(iii) if the applicant is indigent, the testing shall be conducted by the Pennsylvania State Police or, at the Pennsylvania State Police's sole discretion, by a laboratory designated by the Pennsylvania State Police.

(2) The costs of any testing ordered under this section shall be paid:

(i) by the applicant; or

(ii) in the case of an applicant who is indigent, by the Commonwealth of Pennsylvania.

(3) Testing conducted by the Pennsylvania State Police shall be carried out in accordance with the protocols and procedures established by the Pennsylvania State Police.

**(f) Posttesting procedures.--**

(1) After the DNA testing conducted under this section has been completed, the applicant may, pursuant to section 9545(b)(2) (relating to jurisdiction and proceedings), during the 60-day period beginning on the date on which the applicant is notified of the test results, petition to the court for postconviction relief pursuant to section 9543(a)(2)(vi) (relating to eligibility for relief).

(2) Upon receipt of a petition filed under paragraph (1), the court shall consider the petition along with any answer filed by the Commonwealth and shall conduct a hearing thereon.

(3) In any hearing on a petition for postconviction relief filed under paragraph (1), the court shall determine whether the exculpatory evidence resulting from the DNA testing conducted under this section would have changed the outcome of the trial as required by section 9543(a)(2)(vi).

**(g) Effect of motion.--**The filing of a motion for forensic DNA testing pursuant to subsection (a) shall have the following effect:

(1) The filing of the motion shall constitute the

applicant's consent to provide samples of bodily fluid for use in the DNA testing.

(2) The data from any DNA samples or test results obtained as a result of the motion may be entered into law enforcement databases, may be used in the investigation of other crimes and may be used as evidence against the applicant in other cases.

**(h) Definitions.**--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Applicant." The individual who files a motion under subsection (a).

"DNA." Deoxyribonucleic acid.  
(July 10, 2002, P.L.745, No.109, eff. 60 days)

**2002 Amendment.** Act 109 added section 9543.1.

**§ 9544. Previous litigation and waiver.**

**(a) Previous litigation.**--For purposes of this subchapter, an issue has been previously litigated if:

(1) (Deleted by amendment).

(2) the highest appellate court in which the petitioner could have had review as a matter of right has ruled on the merits of the issue; or

(3) it has been raised and decided in a proceeding collaterally attacking the conviction or sentence.

**(b) Issues waived.**--For purposes of this subchapter, 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.

(Apr. 13, 1988, P.L.336, No.47, eff. imd.; Nov. 17, 1995, 1st Sp.Sess., P.L.1118, No.32, eff. 60 days)

**Suspension by Court Order.** Subsec. (b) was suspended August 11, 1997, S.Ct. Order, insofar as it references "unitary review."

**§ 9545. Jurisdiction and proceedings.**

**(a) Original jurisdiction.**--Original jurisdiction over a proceeding under this subchapter shall be in the court of common pleas. No court shall have authority to entertain a request for any form of relief in anticipation of the filing of a petition under this subchapter.

**(b) Time for filing petition.**--

(1) Any petition under this subchapter, including a second or subsequent petition, shall be filed within one year of the date the judgment becomes final, unless the petition alleges and the petitioner proves that:

(i) the failure to raise the claim previously was the result of interference by government officials with the presentation of the claim in violation of the Constitution or laws of this Commonwealth or the Constitution or laws of the United States;

(ii) the facts upon which the claim is predicated were unknown to the petitioner and could not have been ascertained by the exercise of due diligence; or

(iii) the right asserted is a constitutional right that was recognized by the Supreme Court of the United States or the Supreme Court of Pennsylvania after the time period provided in this section and has been held by that court to apply retroactively.

(2) Any petition invoking an exception provided in paragraph (1) shall be filed within 60 days of the date the claim could have been presented.

(3) For purposes of this subchapter, a judgment becomes

final at the conclusion of direct review, including discretionary review in the Supreme Court of the United States and the Supreme Court of Pennsylvania, or at the expiration of time for seeking the review.

(4) For purposes of this subchapter, "government officials" shall not include defense counsel, whether appointed or retained.

**(c) Stay of execution.--**

(1) No court shall have the authority to issue a stay of execution in any case except as allowed under this subchapter.

(2) Except for first petitions filed under this subchapter by defendants whose sentences have been affirmed on direct appeal by the Supreme Court of Pennsylvania between January 1, 1994, and January 1, 1996, no stay may be issued unless a petition for postconviction relief which meets all the requirements of this subchapter has been filed and is pending and the petitioner makes a strong showing of likelihood of success on the merits.

(3) If a stay of execution is granted, all limitations periods set forth under sections 9574 (relating to answer to petition), 9575 (relating to disposition without evidentiary hearing) and 9576 (relating to evidentiary hearing) shall apply to the litigation of the petition.

**(d) Evidentiary hearing.--**

(1) Where a petitioner requests an evidentiary hearing, the petition shall include a signed certification as to each intended witness stating the witness's name, address, date of birth and substance of testimony and shall include any documents material to that witness's testimony. Failure to substantially comply with the requirements of this paragraph shall render the proposed witness's testimony inadmissible.

(2) No discovery, at any stage of proceedings under this subchapter, shall be permitted except upon leave of court with a showing of exceptional circumstances.

(3) When a claim for relief is based on an allegation of ineffective assistance of counsel as a ground for relief, any privilege concerning counsel's representation as to that issue shall be automatically terminated.

(Apr. 13, 1988, P.L.336, No.47, eff. imd.; Nov. 17, 1995, 1st Sp.Sess., P.L.1118, No.32, eff. 60 days)

**Suspension by Court Order.** Subsecs. (c)(3) and (d)(2) were suspended August 11, 1997, S.Ct. Order.

**Cross References.** Section 9545 is referred to in section 9543.1 of this title.

**§ 9546. Relief and order.**

**(a) General rule.--**If the court rules in favor of the petitioner, it shall order appropriate relief and issue supplementary orders as to rearraignment, retrial, custody, bail, discharge, correction of sentence or other matters that are necessary and proper.

**(b) Grounds to be stated.--**(Deleted by amendment).

**(c) Status of order.--**(Deleted by amendment).

**(d) Review of order in death penalty cases.--**An order under this subchapter granting the petitioner final relief in a case in which the death penalty has been imposed shall be directly appealable by the Commonwealth to the Supreme Court pursuant to its rules. An order under this subchapter denying a petitioner final relief in a case in which the death penalty has been imposed shall not be reviewable in the Superior Court but shall be reviewable only by petition for allowance of appeal to the Supreme

Court.

(Apr. 13, 1988, P.L.336, No.47, eff. imd.; Nov. 17, 1995, 1st Sp.Sess., P.L.1118, No.32, eff. 60 days; June 25, 1997, P.L.324, No.33, eff. imd.)

**1997 Amendment.** Act 33 amended subsec. (d).

**Suspension by Court Order.** The 1995 and 1997 amendments to section 9546 were suspended August 11, 1997, S.Ct. Order.

**Cross References.** Section 9546 is referred to in section 722 of this title.

**§ 9547. Amendment and withdrawal of petition (Repealed).**

**1988 Repeal.** Section 9547 was repealed April 13, 1988, P.L.336, No.47, effective immediately. Section 6 of Act 47 provided that the repeal of section 9547 shall apply to all actions for collateral relief, whether statutory or common law, instituted on or after the effective date of Act 47, irrespective of the date of conviction or sentence.

**§ 9548. Answer to petition (Repealed).**

**1988 Repeal.** Section 9548 was repealed April 13, 1988, P.L.336, No.47, effective immediately. Section 6 of Act 47 provided that the repeal of section 9548 shall apply to all actions for collateral relief, whether statutory or common law, instituted on or after the effective date of Act 47, irrespective of the date of conviction or sentence.

**§ 9549. Hearing on petition (Repealed).**

**1988 Repeal.** Section 9549 was repealed April 13, 1988, P.L.336, No.47, effective immediately. Section 6 of Act 47 provided that the repeal of section 9549 shall apply to all actions for collateral relief, whether statutory or common law, instituted on or after the effective date of Act 47, irrespective of the date of conviction or sentence.

**§ 9550. Order of court and final disposition of petition (Repealed).**

**1988 Repeal.** Section 9550 was repealed April 13, 1988, P.L.336, No.47, effective immediately. Section 6 of Act 47 provided that the repeal of section 9550 shall apply to all actions for collateral relief, whether statutory or common law, instituted on or after the effective date of Act 47, irrespective of the date of conviction or sentence.

**§ 9551. Pauper petitions (Repealed).**

**1988 Repeal.** Section 9551 was repealed April 13, 1988, P.L.336, No.47, effective immediately. Section 6 of Act 47 provided that the repeal of section 9551 shall apply to all actions for collateral relief, whether statutory or common law, instituted on or after the effective date of Act 47, irrespective of the date of conviction or sentence.

### SUBCHAPTER C

#### REPORT BY DISTRICT ATTORNEY

**Sec.**

9561. Report by district attorney.

**Enactment.** Subchapter C was added February 21, 1986, P.L.41,



No.14, effective in 60 days.

**§ 9561. Report by district attorney.**

**(a) Reports by district attorneys of felony convictions against health care professionals.**--Whenever a health care professional has been found guilty, has pleaded guilty or has entered a plea of nolo contendere to a felony in this Commonwealth, the district attorney of the county in which the case was prosecuted shall notify the appropriate State board within 30 days of the court's entry of a finding of guilt, acceptance of a guilty plea or acceptance of a plea of nolo contendere.

**(b) Definitions.**--The following words and phrases when used in this section shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

**"Health care professional."** A person licensed, certified or registered by any of the State boards as defined in this section.

**"State board."** Includes the following departmental administrative boards within the Department of State: the State Board of Medicine, the State Board of Osteopathic Medicine, the State Board of Dentistry, the State Board of Podiatry, the State Board of Pharmacy, the State Board of Nursing, the State Board of Physical Therapy, the State Board of Occupational Therapy Education and Licensure, the State Board of Optometry, the State Board of Examiners of Nursing Home Administrators, the State Board of Chiropractic, the State Board of Psychology, the State Board of Massage Therapy, the State Board of Social Workers, Marriage and Family Therapists and Professional Counselors, the State Board of Examiners in Speech-Language and Hearing and any other health-related administrative board which issues professional or occupational licenses within the Department of State.  
(Dec. 18, 2013, P.L.1181, No.109, eff. 60 days)

**2013 Amendment.** Act 109 amended subsec. (b).

## SUBCHAPTER D

### UNITARY REVIEW IN DEATH PENALTY CASES

**Sec.**

- 9570. Short title of subchapter.
- 9571. Scope of subchapter.
- 9572. Representation of counsel.
- 9573. Time for petition; contents of petition.
- 9574. Answer to petition.
- 9575. Disposition without evidentiary hearing.
- 9576. Evidentiary hearing.
- 9577. Disposition and appeal.
- 9578. Subsequent petitions.
- 9579. Certification.

**Enactment.** Subchapter D was added November 17, 1995, 1st Sp.Sess., P.L.1118, No.32, effective in 60 days.

**Applicability.** Section 3(2) of Act 32 of 1995, 1st Sp.Sess, provided that Subchapter D shall apply in all cases in which the death penalty is imposed on or after January 1, 1996.

**§ 9570. Short title of subchapter.**

This subchapter shall be known and may be cited as the Capital Unitary Review Act.

**Suspension by Court Order.** Section 9570 was suspended August

11, 1997, S.Ct. Order.

**§ 9571. Scope of subchapter.**

(a) **Capital unitary review.**--This subchapter establishes the sole means of challenging proceedings that resulted in a sentence of death. The unitary review proceeding provided by this subchapter shall replace postappeal collateral review of death penalty cases with preappeal collateral review.

(b) **Appointment of collateral counsel.**--Under the action provided in this subchapter, a person sentenced to death shall be immediately entitled to new counsel for purposes of collateral review. The collateral proceeding shall occur in the trial court after the imposition of sentence and before appeal. The petitioner may raise any claim that could not have been raised previously, including claims of ineffective assistance of counsel.

(c) **Capital appeal.**--Direct appeal shall occur after the trial court has concluded collateral review. Claims raised on direct appeal shall be limited to those claims that were preserved at trial and that may be resolved on the basis of the record created up to and including sentencing. Collateral appeal shall occur simultaneously with direct appeal. Claims raised on collateral appeal shall be limited to claims that were preserved in the collateral proceeding in the trial court and to any other claim that could not have been raised previously, including claims of ineffective assistance of counsel on direct appeal.

(d) **Limitation on subsequent petitions.**--No further review shall be available except as provided in this subchapter.

(e) **Capital case in which death penalty not imposed.**--This subchapter does not apply to capital cases in which the death penalty was not imposed.

**Suspension by Court Order.** Section 9571 was suspended August 11, 1997, S.Ct. Order.

**§ 9572. Representation of counsel.**

(a) **Collateral counsel.**--Immediately after the formal imposition of sentence on all charges or within 30 days of the verdict of the death penalty, whichever occurs later, the court shall appoint new counsel for the purposes of collateral review, unless:

- (1) the petitioner has elected to proceed pro se and the court finds, after a colloquy on the record, that the petitioner's election is knowing, intelligent and voluntary; or
- (2) the petitioner retains counsel for the unitary review proceeding.

(b) **Prior attorney.**--No petitioner may be represented on collateral review, either in the trial court or on appeal, by an attorney, whether retained or appointed, who has represented the petitioner at any other stage of the proceedings, including direct appeal, unless the court finds, after a colloquy on the record, that the petitioner has knowingly, intelligently and voluntarily waived his right to challenge the effectiveness of that attorney's representation.

(c) **Standards for appointment of counsel.**--The Supreme Court shall adopt standards for the appointment of counsel in capital cases. These standards shall apply for the appointment of trial counsel, collateral review counsel and appellate counsel. When adopting the standards, the Supreme Court shall consider, where practicable, the following criteria:

- (1) Counsel is admitted to practice in Pennsylvania.
- (2) Counsel is an experienced and active trial practitioner with at least five years' litigation experience in the field of criminal law.

(3) Counsel has prior experience as counsel in a specified number of trials or other relevant proceedings.

(4) Counsel is familiar with the practice and procedure of the appropriate courts, including Federal courts of the jurisdiction.

(5) Counsel has demonstrated the necessary proficiency and commitment which exemplify the quality of representation appropriate to capital cases.

(6) Local practice for the appointment of counsel in capital cases.

Absent standards established under this subsection, the court may appoint such counsel as it deems qualified, in accordance with any local rules or practices. The existence or applicability of or failure to comply with such standards shall not provide a basis for relief.

**Suspension by Court Order.** Section 9572 was suspended August 11, 1997, S.Ct. Order.

**§ 9573. Time for petition; contents of petition.**

(a) **Filing date.**--Any petition under this subchapter shall be filed within 120 days of the date the trial transcript is filed with the court. The court may, for good cause shown, grant extensions of time totaling no more than 90 days.

(b) **Subsequent or untimely claims.**--Any claim raised after the time specified in subsection (a) shall be dismissed unless it satisfies section 9578 (relating to subsequent petitions).

(c) **Evidentiary hearing.**--Where the petitioner requests an evidentiary hearing, the petition shall include a signed certification as to each intended witness stating the witness's name, address, date of birth and substance of testimony and shall include any documents material to that witness's testimony. Failure to substantially comply with the requirements of this subsection shall render the proposed witness's testimony inadmissible.

(d) **Discovery.**--Discovery shall be permitted, and no reasonable discovery request of the petitioner shall be denied except upon demonstration of exceptional circumstances justifying denial of the discovery requests.

(e) **Claim for relief.**--When a claim for relief is based on an allegation of ineffective assistance of counsel as a ground for relief, any privilege concerning counsel's representation as to that issue shall be automatically terminated.

**Suspension by Court Order.** Section 9573 was suspended August 11, 1997, S.Ct. Order.

**§ 9574. Answer to petition.**

The Commonwealth may file a written answer to the petition within 120 days of the filing and service of the petition. For good cause shown, the court may grant an extension of time of up to 90 days. Failure to file an answer shall not constitute an admission of any facts alleged in the petition.

**Suspension by Court Order.** Section 9574 was suspended August 11, 1997, S.Ct. Order.

**Cross References.** Section 9574 is referred to in section 9545 of this title.

**§ 9575. Disposition without evidentiary hearing.**

(a) **Evidentiary hearing.**--No more than 20 days after the Commonwealth answers the petition or, if no answer is filed, 20 days after the deadline for answering, the court shall determine whether or not an evidentiary hearing is warranted. An evidentiary

hearing shall not be warranted unless controverted, previously unresolved factual issues material to petitioner's conviction or sentence exist.

**(b) Written order.**--Failure of the court to issue a written order within the period prescribed under subsection (a) shall constitute a determination that an evidentiary hearing is warranted on any controverted, previously unresolved factual issues material to petitioner's conviction or sentence.

**(c) Disposing of petition.**--If the determination is made that no evidentiary hearing is warranted, the court shall, no later than 90 days from the date of that determination, dispose of the petition, after oral argument if requested, and any postsentence motions filed under the Pennsylvania Rules of Criminal Procedure.

**Suspension by Court Order.** Section 9575 was suspended August 11, 1997, S.Ct. Order.

**Cross References.** Section 9575 is referred to in section 9545 of this title.

#### § 9576. Evidentiary hearing.

**(a) Order.**--If the court determines that an evidentiary hearing is warranted, the court shall enter an order no more than 20 days after the Commonwealth answers the petition or, if no answer is filed, 20 days after the deadline for answering, setting a date for the hearing.

**(b) Date.**--The hearing shall be scheduled to occur not less than ten days and not more than 45 days from the date of the order setting the hearing. The court may, for good cause shown, grant leave to continue the hearing.

**(c) Disposing of petition.**--Not later than 90 days after the evidentiary hearing, the court shall dispose of the petition and any postsentence motions filed under the Pennsylvania Rules of Criminal Procedure.

**Suspension by Court Order.** Section 9576 was suspended August 11, 1997, S.Ct. Order.

**Cross References.** Section 9576 is referred to in section 9545 of this title.

#### § 9577. Disposition and appeal.

**(a) Capital unitary review.**--Review by the Supreme Court under section 9711(h) (relating to review of death sentence) shall comprise direct appeal and collateral appeal. The common pleas court order disposing of the petition under this subchapter shall constitute the final judgment for purposes of this review.

**(b) Briefs for petitioner.**--Unless the petitioner has waived the right to new counsel on collateral review, separate briefs shall be filed for direct appeal and collateral appeal. The time for filing the collateral appeal brief shall begin to run from service of the petitioner's brief on direct appeal.

**(c) Brief for the Commonwealth.**--The Commonwealth shall file a brief in response to the petitioner's direct and collateral appeal briefs. The time for filing the Commonwealth's brief shall begin to run from service of the petitioner's brief on collateral appeal.

**Suspension by Court Order.** Section 9577 was suspended August 11, 1997, S.Ct. Order.

#### § 9578. Subsequent petitions.

**(a) Further review.**--No further review shall be available unless a petition is filed under Subchapter B (relating to post conviction relief) alleging that:

- (1) the failure to raise the claim previously was the

result of interference by government officials with the presentation of the claim in violation of the Constitution of the United States or laws of the United States or the Constitution of Pennsylvania or laws of this Commonwealth;

(2) the facts upon which the claim is predicated were unknown to the petitioner and could not have been ascertained in the exercise of due diligence; or

(3) the right asserted is a constitutional right that was recognized by the Supreme Court of the United States or the Supreme Court of Pennsylvania after the time period provided in this section and has been held by that court to apply retroactively.

**(b) Exception petition.**--Any petition invoking an exception provided in subsection (a) shall be filed within 60 days of the date the claim could have been presented.

**Suspension by Court Order.** Section 9578 was suspended August 11, 1997, S.Ct. Order.

**Cross References.** Section 9578 is referred to in section 9573 of this title.

**§ 9579. Certification.**

**(a) General rule.**--By presenting to the court, whether by signing, filing, submitting or later advocating, a pleading, written motion or other papers regarding a petition for collateral relief, an attorney or unrepresented party is certifying that, to the best of the person's knowledge, information and belief, formed after an inquiry reasonable under the circumstances, the following:

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims and other legal contentions in it are warranted by existing law or by a nonfrivolous argument for extension, modification or reversal of existing law or the establishment of new law; and

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation.

**(b) Sanctions.**--If, after notice and a reasonable opportunity to respond, the court determines that this section has been violated, the court may impose an appropriate sanction on the attorneys, law firms or parties that have violated this section.

**Suspension by Court Order.** Section 9579 was suspended August 11, 1997, S.Ct. Order.