Pennsylvania Rules of Appellate Procedure

COMMONWEALTH COURT

Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts; No. 126 Misc. Doc. No. 3

[47 Pa.B. 7851]
[Saturday, December 30, 2017]

Order

And Now, this 12th day of December, 2017, in accordance with Section 7(C) of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts, it is hereby *Ordered* that all documents filed with the Commonwealth Court of Pennsylvania that contain confidential information shall be filed in two versions, a redacted version and an unredacted version.

This Order shall be effective January 6, 2018.

MARY HANNAH LEAVITT,
President Judge

Chapter 1
General Provisions

In General

Rule 101. | Title and Citation of Rules.

These rules shall be known as the Pennsylvania Rules of Appellate Procedure and may be cited as "Pa.R.A.P."

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:

"Action." Any action or proceeding at law or in equity.

"Argument." Where required by the context, the term includes submission on briefs.

"Administrative Office." The Administrative Office of Pennsylvania Courts.

"Appeal." Any petition or other application to a court for review of subordinate governmental determinations. The term includes an application for certiorari under 42 Pa.C.S. §934 (writs of certiorari) or under any other provision of law. Where required by the context, the term includes proceedings on petition for review.

Note: Under these rules a "subordinate governmental determination" includes an order of a lower court. The definition of "government unit" includes courts, and the definition of "deter0mination" includes action or inaction by (and specifically an order entered by) a court or other government unit. In general any appeal now extends to the whole record, with like effect as upon an appeal from a judgment entered upon the verdict of a jury in an action at law and the scope of review of an order on appeal is not limited as on broad or narrow certiorari. See 42 Pa.C.S. §5105(d) (scope of appeal).

"Appellant." Includes petitioner for review.

"Appellate Court." The Supreme Court, the Superior Court or the Commonwealth Court.

"Appellee." Includes a party named as respondent in a petition for review.

"Application." Includes a petition or a motion.

"Appropriate Security." Security which meets the requirements of Rule 1734 (appropriate security).

"Children's fast track appeal." Any appeal from an order involving dependency, termination of parental rights, adoptions, custody or paternity. See 42 Pa.C.S. §§ 6301 et seq.; 23 Pa.C.S. §§ 2511 et seq.; 23 Pa.C.S. §§ 2101 et seq.; 23 Pa.C.S. §§ 5301 et seq.; 23 Pa.C.S. §§ 5102 et seq.

"Clerk." Includes Prothonotary.

"Counsel." Counsel of record.

"Determination." Action or inaction by a government unit which action or inaction is subject to judicial review by a court under Section 9 of Article V of the Constitution of Pennsylvania or otherwise. The term includes an order entered by a government unit.

"Docket Entries." Includes the schedule of proceedings of a government unit.

"General Rule." A rule or order promulgated by or pursuant to the authority of the Supreme Court. "Government Unit." The Governor and the departments, boards, commissions, officers, authorities and other agencies of the Commonwealth, including the General Assembly and its officers and agencies and any court or other officer or agency of the unified judicial system, and any political subdivision or municipal or other local authority or any officer or agency of any such political subdivision or local authority. The term includes a board of arbitrators whose determination is subject to review under 42 Pa.C.S. §763(b) (awards of arbitrators).

"Judge." Includes a justice of the Supreme Court.

"Lower Court." The court from which an appeal is taken or to be taken. With respect to matters arising under Chapter 17 (effect of appeals; supersedeas and stays), the term means the trial court from which the appeal was first taken.

"Matter." Action, proceeding or appeal. The term includes a petition for review.

"Order." Includes judgment, decision, decree, sentence and adjudication.

"Petition for Allowance of Appeal."

(a) A petition under Rule 1112 (appeals to the Supreme Court by allowance); or

(b) a statement pursuant to Rule 2119(f) (discretionary aspects of sentence). See 42 Pa.C.S. § 9781.

"Petition for Permission to Appeal." A petition under Rule 1311 (interlocutory appeals by permission). "Petition for Review." A petition under Rule 1511 (manner of obtaining judicial review of governmental determinations).

"President Judge." When applied to the Supreme Court, the term means the Chief Justice of Pennsylvania.

"Proof of Service." Includes acknowledgment of service endorsed upon a pleading.

"Quasijudicial Order." An order of a government unit, made after notice and opportunity for hearing, which is by law reviewable solely upon the record made before the government unit, and not upon a record made in whole or in part before the reviewing court.

"Reargument." Includes, in the case of applications for reargument under Chapter 25 (postsubmission proceedings), reconsideration and rehearing.

"Reconsideration." Includes reargument and rehearing. "Reproduced Record." That portion of the record which has been reproduced for use in an Appellate Court.

The term includes any supplemental reproduced record.

"Rule of Court." A rule promulgated by a court regulating practice or procedure before the promulgating court.

"Verified Statement." A document filed with a clerk under these rules containing statements of fact and a statement by the signatory that it is made subject to the penalties of 18 Pa.C.S. §4904 (unsworn falsification to authorities).

Note: Based on 42 Pa.C.S. §102 (definitions). The definition of "determination" is not intended to affect the scope of review provided by 42 Pa.C.S. §5105(d) (scope of appeal) or other provision of law.

Editor's Note: Amended December 11, 1978, effective December 30, 1978; amended September 10, 2008, effective December 1, 2008; amended January 13, 2009, effective as to all appeals filed 60 days or more after adoption; amended May 28, 2014, effective July 1, 2014.

Rule 103. | Scope of Rules.

These rules govern practice and procedure in the Supreme Court, the Superior Court and the Commonwealth Court, including procedure in appeals to such courts from lower courts and the procedure for direct review in such courts of determinations of government units.

Rule 104. | Rules of Court.

(a) *General Rule*.—Each Appellate Court may from time to time make and amend rules of court governing its practice:

(1) On any subject within the scope of Chapter 23 (sessions and arguments) notwithstanding any inconsistent provision of such chapter.

(2) On any subject covered by these rules where these rules expressly authorize the adoption of a rule of court inconsistent with a provision of these rules applicable to Appellate Courts generally.

(3) On any other subject, if such rule of court is not inconsistent with these rules.

All rules of court and changes therein adopted pursuant to this rule shall be promulgated as amendments to Chapters 33, 35 or 37, as appropriate. In all cases not provided for by rule, the Appellate Courts may regulate their practice in any manner not inconsistent with these rules.

(b) *Briefs and Reproduced Records in Commonwealth Court Evidentiary Hearing Matters*.—The Commonwealth Court may from time to time make and amend rules of court governing its practice in matters which under the applicable law may be determined in whole or in part upon the record made before the court, notwithstanding any inconsistent provision of Chapter 21 (briefs and reproduced record) or Chapter 25 (postsubmission proceedings).

Note: Under 42 Pa.C.S. §323 (powers) every court has, except as otherwise prescribed by general rules, power to make such rules and orders of court as the interest of justice or the business of the court may require.

All rules of court must be adopted in compliance with Pa.R.J.A. 103, which (except in the case of Supreme Court rules of court) requires filing in the Administrative Office prior to the effectiveness of such rules.

Rules contained in Chapters 33, 35 and 37 applicable to a particular Appellate Court should always be examined to determine whether they have superseded provisions of these rules applicable to Appellate Courts generally.

Also, review of any applicable internal operating procedures may afford material guidance. See e.g. 210 Pa. Code Ch. 67 (internal operating procedures of the Commonwealth Court).

Editor's Note: Note amended December 11, 1978, effective December 30, 1978; note amended February 27, 1980, effective March 15, 1980.

Rule 105. | Waiver and Modification of Rules.

(a) *Liberal construction and modification of rules*.— These rules shall be liberally construed to secure the just, speedy and inexpensive determination of every matter to which they are applicable. In the interest of expediting decisions, or for other good cause shown, an Appellate Court may, except as otherwise provided in Subdivision (b) of this rule, disregard the requirements or provisions of any of these rules in a particular case on application of a party or on its own motion and may order proceedings in accordance with its direction.

(b) *Enlargement of Time*.—An Appellate Court for good cause shown may upon application enlarge the time prescribed by these rules or by its order for doing any act, or may permit an act to be done after the expiration of such time; but the court may not enlarge the time for filing a notice of appeal, a petition for allowance of appeal, a petition for permission to appeal, or a petition for review.

Note: 42 Pa.C.S. §5504 (judicial extension of time) provides that the time limited by, inter alia, Chapter 55D (appeals) of the Judicial Code shall not be extended by order, rule or otherwise except that the time limited may be extended to relieve fraud or its equivalent, but that there shall be no extension of time as a matter of indulgence or with respect to any criminal proceeding. However, under 42 Pa.C.S. §5571(a) (appeals generally) statutory time limits under Chapter 55D do not apply to appeals to or other judicial review by the Supreme, Superior or Commonwealth Courts.

Subdivision (b) of this rule is not intended to affect the power of a court to grant relief in the case of fraud or breakdown in the processes of a court.

Editor's Note: Note amended December 11, 1978, effective December 30, 1978.

Rule 106. | Original Jurisdiction Matters.

Unless otherwise prescribed by these rules the practice and procedure in matters brought before an Appellate Court within its original jurisdiction shall be in accordance with the appropriate general rules applicable to practice and procedure in the courts of common pleas, so far as they may be applied.

Note: Based on former Commonwealth Court Rule 119. The last clause of the rule refers to provisions which must be adapted to the nature and jurisdiction of the court involved.

Editor's Note: Amended December 11, 1978, effective December 30, 1978.

Rule 107. | Rules of Construction.

Chapter 19 of Title I of the Pennsylvania Consolidated Statutes (rules of construction) so far as not inconsistent with any express provision of these rules, shall be applicable to the interpretation of these rules and all amendments hereto to the same extent as if these rules were enactments of the General Assembly.

Note: The effect of this rule is substantially the same as Pa.R.C.P. 76 to 153, which were in turn patterned after the Statutory Construction Act. See also former Commonwealth Court Rules 120 and 121.

Rule 108. | Date of Entry of Orders.

(a) *General Rule*.—

(1) Except as otherwise prescribed in this rule, in computing any period of time under these rules involving the date of entry of an order by a court or other government unit, the day of entry shall be the day the clerk of the court or the office of the government unit mails or delivers copies of the order to the parties, or if such delivery is not otherwise required by law, the day the clerk or office of the government unit makes such copies public. The day of entry of an order may be the day of its adoption by the court or other government unit, or any subsequent day, as required by actual circumstances.

(2) When pursuant to law a determination of a government unit other than a court is deemed to have been made by reason of the expiration of a specified period of time after submission of a matter to the government unit or after another prior event, any person affected may treat the expiration of such period as equivalent to the entry of an order for the purposes of appeal (in which event the notice of appeal or other document seeking review shall set forth briefly facts showing the applicability of this paragraph) and shall so treat the expiration of the period where the person has actual knowledge (other than knowledge of the mere lapse of time) that the implied determination has occurred.

(b) *Civil Orders*.—The date of entry of an order in a matter subject to the Pennsylvania Rules of Civil Procedure shall be the day on which the clerk makes the notation in the docket that notice of entry of the order has been given as required by Pa.R.C.P. 236(b).

(c) *Emergency Appeals*.—Notwithstanding Sub-divisions (a) and (b) of this rule, an order subject to Rule 301 (e) (emergency appeals) shall be deemed entered for the purposes of these rules when the party intending to appeal has complied with such rule to the extent practicable under the circumstances.

(d) *Criminal orders*.

(1) In determining the date of entry of criminal orders, subdivision (a)(1) shall apply except as provided in subparagraph (d)(2).

(2) In a criminal case in which no postsentence motion has been filed, the date of imposition of sentence in open court shall be deemed to be the date of entry of the judgment of sentence.

Note: Based in part on 42 Pa.C.S. §5572 (time of entry of order) (which is not applicable to appeals or judicial review of quasijudicial orders by the Supreme, Superior or Commonwealth Courts; see 42 Pa.C.S. §5571 (a) (appeals generally)) and 1 Pa. Code §31.13. The purpose of this rule is to fix a date from which the time periods such as those set forth in Rules 903 (time for appeal), 1113 (time for petitioning for allowance of appeal), 1311 (interlocutory appeals by permission), 1512 (time for petitioning for review) and 2542 (time for application for reargument) shall be computed. Rule 5101(g) (statutes suspended) suspends all inconsistent statutes so that all appellate time periods are now computed on the same basis.

Subdivision (a)(2) is patterned after 42 Pa.C.S. §5571(c)(6) (implied determinations). See note to Rule 903 (time for appeal). The purpose of the provision is, on the one hand, to permit an aggrieved party to appeal immediately after the expiration of the period notwithstanding the failure of the government unit to take formal action, and on the other, to eliminate complicated calendar watching by forcing the government unit or another affected person to notify all parties of the expiration of the period as a prerequisite to commencement of the running of the appeal period for the purpose of the finality of the implied determination. See, e.g. Rule 1571(b)(3) (determinations of the Board of Finance and Revenue). See Pa.R.A.P. 301(a)(1) and (2), Pa.R.A.P. 903(c)(3), and Pa.R.Crim. P. 462, 720, and 721 governing criminal appeals.

Editor's Note: Note amended December 11, 1978, effective December 30, 1978; rule and note amended May 16, 1979, effective October 1, 1979; note amended February 27, 1980, effective March 15, 1980; amended January 18, 2007, effective August 1, 2007.

EXPLANATORY COMMENT—1979

Where a determination is implied by the passage of time without action by a government unit, an aggrieved party is given the option either to appeal at once at the expiration of the period or to rely on the government unit or other affected person to give notice that an implied determination has been made.

EXPLANATORY COMMENT—2007

New subdivision (d) governs criminal appeals. Under new subdivision (d), when no postsentence motion is filed, the time for appeal begins to run from the date of imposition of sentence. See Pa.R.Crim.P. 462(G)(2), 720(A)(3) and (D), and 721(B)(2)(a)(ii), and the conforming amendments to Pa.R.A.P. 301(a)(2) and 903(c)(3), and 2006 Explanatory Comment thereto. See also Commonwealth v. Green, 862 A.2d 613 (Pa. Super. 2004) (en banc), allocatur denied, 584 Pa. 692, 882 A.2d 477 (2005). When postsentence motions are denied by operation of law, the appeal period shall run from the date of entry of the order denying the motion by operation of law. See Pa.R.Crim.P. 720(B)(3)(c).

Rule 120. | Entry of Appearance.

(a) Filing. Any counsel filing papers required or permitted to be filed in an appellate court must enter an appearance with the prothonotary of the appellate court unless that counsel has been previously noted on the docket as counsel pursuant to Rules 907(b), 1112(f), 1311(d) or 1514(d). New counsel appearing for a party after docketing pursuant to Rules 907(b), 1112(f), 1311(d), or 1514(d) shall file an entry of appearance simultaneous with or prior to the filing of any papers signed by new counsel. The entry of appearance shall specifically designate each party the attorney represents and the attorney shall file a certificate of service pursuant to Subdivision (d) of Rule 121 and Rule 122. Where new counsel enters an appearance on behalf of a party currently represented by counsel and there is no simultaneous withdrawal of appearance, new counsel shall serve the party that new counsel represents and all other counsel of record and file a certificate of service.

Official Note: See Subdivision (b) of Rule 907, Subdivision (f) of Rule 1112, Subdivision (d) of Rule 1311 and Subdivision (d) of Rule 1514.

For admission pro hac vice, see Pa.B.A.R. 301

Editor's Note: Adopted March 15, 2004, effective 60 days after adoption; amended December 10, 2013, effective February 10, 2014.

Documents Generally

Rule 121. | Filing and Service.

(a) *Filing*.—Papers required or permitted to be filed in an appellate court shall be filed with the prothonotary. Filing may be accomplished by mail addressed to the prothonotary, but except as otherwise provided by these rules, filing shall not be timely unless the papers are received by the prothonotary within the time fixed for filing. If an application under these rules requests relief which may be granted by a single judge, a judge in extraordinary circumstances may permit the application and any related papers to be filed with that judge. In that event the judge shall note thereon the date of filing and shall thereafter transmit such papers to the clerk.

A pro se filing submitted by a prisoner incarcerated in a correctional facility is deemed filed as of the date it is delivered to the prison authorities for purposes of mailing or placed in the institutional mailbox, as evidenced by a properly executed prisoner cash slip or other reasonably verifiable evidence of the date that the prisoner deposited the pro se filing with the prison authorities.

(b) *Service of all Papers Required*.—Copies of all papers filed by any party and not required by these rules to be served by the prothonotary shall, concurrently with their filing, be served by a party or person acting on behalf of that party or person on all other parties to the matter. Service on a party represented by counsel shall be made on counsel.

(c) *Manner of Service*.—Service may be:

(1) by personal service, which includes delivery of the copy to a clerk or other responsible person at the office of the person served, but does not include interoffice mail;

(2) by first class, express, or priority United States Postal Service mail;

(3) by commercial carrier with delivery intended to be at least as expeditious as first class mail if the carrier can verify the date of delivery to it;

(4) by facsimile or email with the agreement of the party being served as stated in the certificate of service.

(d) *Proof of Service*.—Papers presented for filing shall contain an acknowledgment of service by the person served, or proof of service certified by the person who made service. Acknowledgment or proof of service may appear on or be affixed to the papers filed. The clerk may permit papers to be filed without acknowledgment or proof of service but shall require such to be filed promptly thereafter.

(e) *Additional time after service by mail and commercial carrier*.—Whenever a party is required or permitted to do an act within a prescribed period after service of a paper upon that party (other than an order of a court or other government unit) and the paper is served by United States mail or by commercial carrier, three days shall be added to the prescribed period.

Official Note: Subdivision (a)—The term "related papers" in subdivision (a) of this rule includes any appeal papers required under Rule 1702 (stay ancillary to appeal) as a prerequisite to an application for a stay or similar relief.

In 2008, the term "paperbooks" was replaced with "briefs and reproduced records" throughout these rules. The reference to the deemed filing date for paperbooks when first class mail was used that was formerly found in subdivision (a) is now found in rule 2185 regarding filing briefs and in Rule 2186 regarding filing reproduced records.

As to pro se filings by persons incarcerated in correctional facilities, see *Commonwealth v. Jones*, 549 Pa. 58, 700 A.2d 423 (1997); *Smith v. Pa. Bd. of Prob. & Parole*, 546 Pa. 115, 683 A.2d 278 (1996); *Commonwealth v. Johnson*, 860 A.2d 146 (Pa.Super. 2004).

Subdivision (c)—An acknowledgement of service may be executed by an individual other than the person served, e.g., by a clerk or other responsible person.

Subdivision (d)—With respect to appearances by new counsel following the initial docketing of appearances pursuant to Subdivision (d) of this rule, please note the requirements of Rule 120 (entry of appearance).

Subdivision (e)—Subdivision (e) of the rule does not apply to the filing of a notice of appeal, a petition for allowance of appeal, a petition for permission to appeal, or a petition for reconsideration or reargument, since under these rules the time for filing such papers runs from the entry and service of the related order, nor to the filing of a petition for review, which is governed by similar considerations. However, these rules permit the filing of such notice and petitions (except a petition for reconsideration or reargument) in the local county (generally in the county court house; otherwise in a post office), thus eliminating a major problem under the prior practice. The amendments to Rules 903(b), 1113(b) and 1512(a)(2) clarified that subdivision (e) does apply to calculating the deadline for filing cross-appeals, cross petitions for allowance of appeal and additional petitions for review.

Editor's Note: Amended July 7, 1997, effective September 5, 1997; amended March 15, 2004, effective 60 days after amended; amended September 10, 2008, effective December 1, 2008; amended April 9, 2012, effective 30 days after amendment.

Rule 122. | Content and Form of Proof of Service.

(a) *Content*.—A proof of service shall contain a statement of the date and manner of service and of the names of the persons served.

(b) *Form*.—Each name and address shall be separately set forth in the form of a mailing address, including applicable zip code, regardless of the actual method of service employed. The proof of service shall also show the telephone number, the party represented, and, where applicable, an email or facsimile address. The name, address and telephone number of the serving party shall be similarly set forth, followed by the attorney's registration number. A proof of service may be in substantially the following form:

See Forms Index

Note: Under 18 Pa.C.S. §4904 (unsworn falsification to authorities) a knowingly false proof of service constitutes a misdemeanor of the second degree.

Editor's Note: Amended February 27, 1980, effective March 15, 1980; further amended April 20, 1990, effective May 12, 1990; amended September 10, 2008, effective December 1, 2008.

EXPLANATORY COMMENT—1976

The name and address of the serving party is added to the certificate of service so that it also readily available if the certificate is xeroxed to form an address list.

Rule 123. | Application for Relief.

(a) *Contents of Applications for Relief*.—Unless another form is elsewhere prescribed by these rules, an application for an

order or other relief shall be made by filing a written application for such order or relief with proof of service on all other parties. The application shall contain or be accompanied by any matter required by a specific provision of these rules governing such an application, shall state with particularity the grounds on which it is based, and shall set forth the order or relief sought. If an application is supported by briefs, verified statements, or other papers, they shall be served and filed with the application. An application may be made in the alternative and seek such alternative relief or action by the court as may be appropriate. All grounds for relief demanded shall be stated in the application and failure to state a ground shall constitute a waiver thereof. Except as otherwise prescribed by these rules, a request for more than one type of relief may be combined in the same application.

(b) *Answer*.—Any party may file an answer to an application within 14 days after service of the application, but applications under Chapter 17 (effect of appeals; supersedeas and stays), or for delay in remand of the record, may be acted upon after reasonable notice, unless the exigency of the case is such as to impel the court to dispense with such notice. The court may shorten or extend the time for answering any application. Answers shall be deemed filed on the date of mailing if first class, express, or priority United States Postal Service mail is utilized.

(c) *Speaking Applications*.—An application or answer which sets forth facts which do not already appear of record shall be verified by some person having knowledge of the facts, except that the court, upon presentation of such an application or answer without a verified statement, may defer action pending the filing of a verified statement or it may in its discretion act upon it in the absence of a verified statement if the interests of justice so require.

(d) *Oral Argument*.—Unless otherwise ordered by the court, oral argument will not be permitted on any application.

(e) *Power of Single Judge to Entertain Applications*.—In addition to the authority expressly conferred by these rules or by law or rule of court, a single judge of an Appellate Court may entertain and may grant or deny any request for relief which under these rules may properly be sought by application, except that an Appellate Court may provide by order or rule of court that any application or class of applications must be acted upon by the court. The action of a single judge may be reviewed by the court except for actions of a single judge under Pa.R.A.P. 3102(c)(2) (relating to a quorum in Commonwealth Court in any election matter).

(f) *Certificate of compliance with Case Records Public Access Policy of the Unified Judicial System of Pennsylvania.*—An application or answer filed under this Rule shall contain the certificate of compliance required by Pa.R.A.P. 127.

Official Note: The 1997 amendment precludes review by the Commonwealth Court of actions of a single judge in election matters.

Editor's Note: Amended December 11, 1978, effective December 30, 1978; amended December 30, 1987, effective January 16, 1988; further amended July 7, 1997, effective September 5, 1997; amended September 10, 2008, effective December 1, 2008; amended January 5, 2018, effective January 6, 2018; amended June 1, 2018, effective July 1, 2018.

Rule 124. | Form of Papers; Number of Copies.

(a) *Size and other physical characteristics*.—All papers filed in an appellate court shall be on 8 1/2 inch by 11 inch paper and shall comply with the following requirements:

(1) The papers shall be prepared on white paper (except for covers, dividers and similar sheets) of good quality.

(2) The first sheet (except the cover of a brief or reproduced record) shall contain a 3 inch space from the top of the paper for all court stampings, filing notices, etc.

(3) Text must be double spaced, but quotations more than two lines long may be indented and single spaced. Footnotes may be single spaced. Except as provided in subdivision (2), margins must be at least one inch on all four sides.

(4) Lettering shall be clear and legible and no smaller than 14 point in the text and 12 point in footnotes. Lettering shall be on only one side of a page, except that exhibits and similar supporting documents, briefs and reproduced records may be lettered on both sides of a page.

(5) Any metal fasteners or staples must be covered. Originals must be unbound. Copies must be firmly bound.

(6) No backers shall be necessary.

(b) *Nonconforming papers*.—The prothonotary of an appellate court may accept any nonconforming papers.

(c) *Copies*.—Except as otherwise prescribed by these rules:

(1) An original of an application for continuance or advancement of a matter shall be filed.

(2) An original and three copies of any other application in the appellate courts shall be filed, but the court may require additional copies.

Official Note: The 2013 amendment increased the minimum text font size from 12 point to 14 point and added a minimum footnote font size of 12 point. This rule requires a clear and legible font. The Supreme, Superior, and Commonwealth Courts use Arial, Verdana, and Times New Roman, respectively, for their opinions. A brief using one of these fonts will be satisfactory.

Editor's Note: Amended May 16, 2003. Effective 60 days after adoption; amended September 10, 2008, effective December 1, 2008; amended March 27, 2013, effective to all appeals and petitions for review filed 60 days after adoption.

EXPLANATORY NOTE—1979

The Supreme Court "short paper" (i.e. 11 inches rather than 13 or 14 inch legal size) rule is extended to the entire Pennsylvania Judicial System. This result follows from a new requirement that all papers filed in an Appellate Court, including the original record made before the trial court, be submitted on short paper. The change also applies to printed paperbooks (briefs and reproduced records). The note to the rule makes clear that the change is prospective only, but that by early 1980 it is anticipated that the bar and all elements of the Pennsylvania Judicial System will have converted over to the use of modern lettersize paper.

EXPLANATORY COMMENT—2006

The 2006 amendment changes the required type size from "no smaller than point 11" to "no smaller than point 12" and conforms the type size requirements to Pa.R.C.P. No. 204.1 and Pa.R.Crim.P. 575.

Editor's Note: Amended September 15, 2006, effective immediately.

Rule 125. | Electronic Filing.

Electronic filing of documents in the appellate courts shall be through the PACFile appellate court electronic filing system. Electronic filing of documents shall be governed Administrative Orders of the Supreme Court of Pennsylvania, which may be found at http://ujsportal.pacourts.us/refdocuments/judicialorder.pdf.

Official Note: This is an interim rule permitting electronic filing of documents in the Pennsylvania appellate courts. Initially, electronic filing will be available only in the Supreme Court. Subsequently, electronic filing will become available in the Superior and Commonwealth Courts. After experience is gained with electronic filing, the Pennsylvania Rules of Appellate Procedure will be amended where needed and as appropriate.

Editor's Note: Adopted October 24, 2012, effective November 1, 2012; amended December 20, 2013, effective December 20, 2013; amended November 13, 2015, effective immediately.

Rule 126. | Citations of Authorities.

(a) *General Rule*.—When citing authority, a party should direct the court's attention to the specific part of the authority on which the party relies. A party citing authority that is not readily available shall attach the authority as an appendix to its filing. If a party cites a decision as authorized in paragraph (b), (c), or (d), the party shall indicate the value or basis for such citation in a parenthetical following the citation.

(b) *Non-Precedential Decisions.*

(1) As used in this rule, "non-precedential decision" refers to an unpublished non-precedential memorandum decision of the Superior Court filed after May 1, 2019 or an unreported memorandum opinion of the Commonwealth Court filed after January 15, 2008.

(2) Non-precedential decisions as defined in (b)(1) may be cited for their persuasive value.

(c) *Single-Judge Opinions of the Commonwealth Court.*

(1) A reported single-judge opinion in an election law matter filed after October 1, 2013, may be cited as binding precedent only in an election law matter.

(2) All other single-judge opinions, even if reported, shall be cited only for persuasive value and not as binding precedent.

(d) *Law of the Case and Related Doctrines.*—Any disposition may always be cited if relevant to the doctrine of law of the case, *res judicata*, or collateral estoppel, or if relevant to a criminal action or proceeding because it recites issues raised and reasons for a decision affecting the same defendant in a prior action or proceeding.

Official Note:

Paragraph (a)

Pa.R.A.P. 126 is intended to ensure that cited authority is readily available to the court and parties. Paragraph (a) encourages parties to provide citations to the specific pages of cases and sections or subsections of statutes or rules that are relevant to the reason for the citation.

Although the rule does not establish rules for citation, the following guidelines regarding the citation of Pennsylvania cases and statutes are offered for parties' benefit:

Regarding cases, the rule does not require parallel citation to the National Reporter System and the official reports of the Pennsylvania appellate courts. Parties may cite to the National Reporter System alone.

Regarding statutes, Pennsylvania has officially consolidated only some of its statutes. Parties citing a statute enacted in the Pennsylvania Consolidated Statutes may use the format "1 Pa.C.S. § 1928." Parties citing an unconsolidated statute may refer to the Pamphlet Laws or other official collection of the Legislative Reference Bureau, with a parallel citation to *Purdon's Pennsylvania Statutes Annotated*, if available, using the format, "Act of February 14, 2008, P.L. 6, 65 P.S. §§ 67.101—67.3104" or "Section 3(a) of the Act of May 16, 1923, P.L. 207, *as amended*, 53 P.S. § 7106(a)." Parties are advised that *Purdon's* does not represent an official version of Pennsylvania statutes. *In re Appeal of Tenet HealthSystems Bucks Cnty., LLC*, 880 A.2d 721, 725-26 (Pa. Cmwlth. 2005), appeal denied, 897 A.2d 1185 (Pa. 2006).

Litigants are directed to provide, as far as practicable, citations to non-precedential decisions from electronic databases, such as LEXIS or Westlaw or any other readily available website. Opinions of the appellate courts are posted at http://www.pacourts.us and that website has searching and filtering capabilities. If another Rule of Appellate Procedure requires a paper copy, one should be provided.

Prior to Pa.R.A.P. 126, the format for citation was discussed only in Pa.R.A.P. 2119(b), a rule applicable to briefs. The format guidelines are not mandatory, and a party does not waive an argument merely by failing to follow the format. The guidelines do, however, provide assistance to parties looking for generally acceptable citation format in Pennsylvania's appellate courts.

Paragraph (b)

Paragraph (b) defines non-precedential decisions and their value for citation purposes. The new term is intended to harmonize the designations of intermediate appellate court opinions. Thus, "non-precedential decision" encompasses what are referred to as unpublished non-precedential memorandum decisions of the Superior Court and unreported memorandum opinions of the Commonwealth Court.

EXPLANATORY COMMENT

The Committee is proposing to amend Pa.R.A.P. 126 to permit citation of all panel or full-court decisions after the effective date of the rule. Any decision designated as "non-precedential memorandum" or "unpublished" would, however, be citable only for the persuasive value that the court chooses to attribute to it. Commonwealth Court would continue to allow citation from 2008 forward, and would continue to restrict citation to single-judge opinions, but the Committee is proposing to integrate the Commonwealth Court's practice, currently found at Pa.R.A.P. 3716, into Pa.R.A.P. 126, in order to have a single rule that governs the citation of authority in the appellate courts.

Prior to 2015, the only rule of appellate procedure that addressed the citation of authorities was Pa.R.A.P. 2119(b), which by its terms addressed only the argument section of briefs. The only other discussions of authority were in the internal operating procedures of the Superior and Commonwealth Courts. That year, however, Rules 126 and 3716 were adopted. Pa.R.A.P. 126 made the principles that had applied to arguments in briefing applicable whenever authority is cited to an appellate court. Pa.R.A.P. 3716 took what had been an internal operating procedure and made it a rule.

When Pa.R.A.P. 126 was adopted, there was a conscious decision not to address the differences among the appellate courts. The Committee now proposes to amend Pa.R.A.P. 126 to establish a more uniform protocol for the citation of decisions in the appellate courts. This proposal reflects several value judgments as to which the Committee desires the input of the bench and bar:

First, there is a value in being able to cite unpublished memorandum decisions. At the least, it is important to be able to draw to the attention of the appellate courts matters that have been addressed in unpublished memorandum decisions but not in published opinions, or matters that appear to have been resolved inconsistently in unpublished memorandum decisions.

Second, the value of the opportunity to cite to unpublished memorandum decisions is somewhat offset by the determination of the panel that the decision did not warrant a published opinion; accordingly, the intermediate appellate

courts should be able to decide for themselves whether to give an unpublished memorandum decision no weight, some weight, or persuasive weight.

Third, given the volume of decisions and the longstanding tradition of non-citation in the Superior Court, the method that the Commonwealth Court employed—*i.e.*, making citation available going forward from the date of adoption of the rule permitting citation—is sensible.

Fourth, the bar (and the bench of the Court of Common Pleas) should be able to look to a rule and not to an internal operating procedure to understand how and when they can cite decisions.

Fifth, there should be a single rule that governs the citation of authorities.

The current proposal attempts to balance several competing values. On the one hand, the current proposal recognizes that it is important that lawyers and Courts of Common Pleas have the opportunity to raise to the appellate courts unpublished memorandum decisions that appear to answer the question presented, or that appear to have reached a conclusion contrary to another opinion of the same court. On the other, the current proposal seeks to accommodate the desire for courts to be able to write less and other panels of that court to pay correspondingly less attention to decisions that a panel thinks do not warrant published opinions.

Editor's Note: Adopted November 24, 2015, effective January 1, 2016; amended March 4, 2019, effective May 1, 2019.

Rule 127. | Confidential Information and Confidential Documents. Certification.

(a) Unless public access is otherwise constrained by applicable authority, any attorney or any unrepresented party who files a document pursuant to these rules shall comply with the requirements of Sections 7.0 and 8.0 of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* ("Public Access Policy"). In accordance with the Policy, the filing shall include a certification of compliance with the Policy and, as necessary, a Confidential Information Form, unless otherwise specified by rule or order of court, or a Confidential Document Form.

(b) Unless an appellate court orders otherwise, case records or documents that are sealed by a court, government unit, or other tribunal shall remain sealed on appeal.

***Official Note*:** Paragraph (a)—"Applicable authority" includes but is not limited to statute, procedural rule, or court order. *The Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* ("Public Access Policy") can be found at http://www.pacourts.us/public-records. Sections 7.0(D) and 8.0(D) of the Public Access Policy provide that the certification shall be in substantially the following form:

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

Appropriate forms can be found at http://www.pacourts.us/public-records. Pursuant to Section 7.0(C) of the Policy, a court may adopt a rule or order that permits, in lieu of a Confidential Information Form, the filing of a document in two versions, that is, a "Redacted Version" and an "Unredacted Version." For certification of the Reproduced Record and Supplemental Reproduced Record in compliance with the Public Access Policy, *see* Pa.R.A.P. 2152, 2156, 2171, and accompanying notes.

Paragraph (b)—Once a document is sealed, it shall remain sealed on appeal unless the appellate court orders, either *sua sponte* or on application, that the case record or document be opened.

Editor's Note: Adopted January 5, 2018, effective January 6, 2018; amended June 1, 2018, effective July 1, 2018.

Chapter 3
Orders from Which Appeals May be Taken

In General

Rule 301. | Requisites for an Appealable Order.

(a) *Entry Upon Docket Below*.

(1) Except as provided in paragraph (2) of this subdivision, no order of a court shall be appealable until it has been entered upon the appropriate docket in the lower court. Where under the applicable practice below an order is entered in two or more dockets, the order has been entered for the purposes of appeal when it has been entered in the first appropriate docket.

(2) In a criminal case in which no postsentence motion has been filed, a judgment of sentence is appealable upon the imposition of sentence in open court.

(b) *Separate Document Required*.—Every order shall be set forth on a separate document.

(c) *Non-appealable Orders*.—Except as provided in subdivision (a)(2), a direction by the lower court that a specified judgment, sentence or other order shall be entered, unaccompanied by actual entry of the specified order in the docket, does not constitute an appealable order. Any such order shall be docketed before an appeal is taken.

(d) *Entry of Appealable Orders*.—Subject to any inconsistent general rule applicable to particular classes of matters, the clerk of the lower court shall on praecipe of any party (except a party who by law may not praecipe for entry of an adverse order) forthwith prepare, sign and enter an appropriate order judgment or final decree in the docket evidencing any action from which an appeal lies either as of right or upon permission to appeal or allowance of appeal.

(e) *Emergency Appeals*.—Where the exigency of the case is such as to impel an immediate appeal and the party intending to appeal an adverse action is unable to secure the formal entry of an appealable order pursuant to the usual procedures, the party may file in the lower court and serve a praecipe for entry of an adverse order, which action shall constitute entry of an appealable order for the purposes of these rules. The interlocutory or final nature of the action shall not be affected by this subdivision.

Note: See Rules of Appellate Procedure 311 authorizing interlocutory appeals as of right, 312 authorizing interlocutory appeals by permission, and 341 to 843 authorizing appeals from final orders.

See also Rules of Appellate Procedure 903 governing time for filing notice of appeal, 1113 governing time for filing petition for allowance of appeal, 1311(b) governing time for filing petition for permission for appeal, and 1512 governing time for filing petition for review.

The 1986 Amendment to Rule 301 states that no order shall be appealable until entered in the docket and deletes reference to reduction of an order to judgment as a prerequisite for appeal in every case. This deletion does

not eliminate the requirement of reduction of an order to judgment in an appropriate case. Due to the variety of orders issued by courts in different kinds of cases, no single rule can delineate the requirements applicable in all cases. The bar is cautioned that if the applicable practice or case law requires that an order be reduced to judgment or final decree before it becomes final, that requirement must still be met before the order can be appealed. An appeal may be remanded or subject to other appropriate action of the Appellate Court when the order is such that it may be reduced to judgment or final decree and entered in the docket but such action has not been taken. Rule 902. Examples of orders which may be remanded under Rule 902 when the order appealed from has not been reduced to judgment or final decree include:

1. an order denying a motion for a new trial or judgment notwithstanding the verdict after a trial by jury, *Dennis v. Smith*, 288 Pa. Super. 185, 431 A.2d 350 (1981);

2. an order dismissing exceptions to the decision after a trial without jury, *Black Top Paving Co., Inc. v. John Carlo, Inc.*, 292 Pa. Super. 404, 437 A. 2d 446 (1981); and

3. an order dismissing exceptions to the decree nisi in an equity action, *Kopchak v. Springer*, 292 Pa. Super. 441, 437 A. 2d 756 (1981).

An appeal will also be quashed where the order appealed from is interlocutory and the appeal is not authorized by Rule 311 governing interlocutory appeals as of right or Rule 312 governing interlocutory appeals by permission. Examples of interlocutory orders include:

1. an order granting a petition for appointment of an arbitrator, *Cassidy v. Keystone Ins. Co.*, 297 Pa. Super. 421, 443 A. 2d 1193 (1982); and
2. an order relating to alimony pendente lite, and interim counsel fees and expenses is not appealable. *Fried v. Fried*, 509 Pa. 89, 501 A. 2d 211 (1985).

Subdivision (a) extends former Supreme Court Rule 19A and former Commonwealth Court Rule 29A to the Superior Court. The second sentence of the subdivision codifies *Stotsenburg v. Frost*, 465 Pa. 187, 348 A. 2d 418 (1975).

The requirement of Subdivision (b) for a separate document is patterned after Fed. Rules Civ. Proc. 58, as interpreted in *United States v. Indrelunas*, 93 S.Ct. 1562, 411 U.S. 216, 36 L.Ed.2d 202 (1973), so as to render certain the date on which an order is entered for purposes of computing the running of the time for appeal. See also *Bankers Trust Co. v. Mallis*, 98 S.Ct. 1117, 435 U.S. 381, 55 L. Ed.2d 357 (1978) (requirement of separate document may be waived by appellee). This requirement is intended to control over any inconsistent civil (including Orphans' Court) or criminal procedural rule, since such rules are not primarily concerned with the appellate process.

Subdivision (c) sets forth the frequently overlooked requirement for an appealable order that an order must be docketed before it may be appealed. The subdivision also sets forth the rule that an appeal is premature where the court directs that a judgment sentence or order be entered in the docket and the prothonotary fails to do so. *Friedman v. Kasser*, 293 Pa. Super. 294, 438 A. 2d 1001 (1981). Moreover, an order of court then directing that a complaint as set forth will be dismissed upon the passage of time or occurrence or failure of an event is not appealable; only a subsequent order of dismissal would be appealable. See *Ayre v. Mountaintop Area Joint San. Auth.*, 58 Pa. Commw. 510, 427 A. 2d 1294 (1981).

This rule does not supersede rules such as Pa.R.C.P. 237 which impose additional requirements or procedures in connection with filing a praecipe for a final order.

Subdivision (d) provides a remedy for the appellant where no appealable order has been entered on the docket, and is similar to Pa.R.C.P. 227.4. The exception refers to cases such as certain matrimonial matters, where it has been held that the defendant is not entitled to cause an adverse decision to be formally entered as judgment. See, e.g. *Mirarchi v. Mirarchi*, 226 Pa. Super. 53, 311 A. 2d 698 (1973).

The filing in the lower court required by Subdivision (e) may under Rule 121 (a) (filing) be made with a judge of the lower court in connection with an application under Chapter 17 (effect of appeals, supersedeas and stays).

See Pa.R.A.P. 108 and Explanatory Comment—2007 thereto, Pa.R.A.P. 903(c)(3), and Pa.R.Crim. P. 462, 720, and 721 governing criminal appeals.

Editor's Note: Amended May 16, 1979, effective June 2, 1979; further amended December 10, 1986, effective January 31, 1987; amended January 18, 2007, effective August 1, 2007.

EXPLANATORY COMMENT—1976

Language clarified to conform to *Stotsenburg v. Frost*, 465 Pa. 187, 348 A.2d 418 (1975).

Rule 302. | Requisites for Reviewable Issue.

(a) General Rule.—Issues not raised in the trial court are waived and cannot be raised for the first time on appeal.

(b) Charge to Jury.—A general exception to the charge to the jury will not preserve an issue for appeal. Specific exception shall be taken to the language or omission complained of.

Official Note: *Paragraph (a)—See Commonwealth v. Piper*, 328 A.2d 845, 847 (Pa. 1974) ("[I]ssues not raised in the court below are waived and cannot be raised for the first time on appeal. . . .").

Paragraph (b)—In the civil context, the Supreme Court held in *Jones v. Ott*, 191 A.3d 782, 791 n.13 (Pa. 2018), that "in order to preserve a jury-charge challenge under Pa.R.C.P. 227.1 by filing proposed points for charge with the prothonotary, a party must make requested points for charge part of the record pursuant to Pa.R.C.P. 226(a), obtain an explicit trial court ruling upon the challenged instruction, and raise the issue in a post-trial motion. *See* Pa.R.A.P. 302(a); Pa.R.C.P. 226(a), 227, 227.1." *See Dilliplaine v. Lehigh Valley Trust Co.*, 322 A.2d 114 (Pa. 1974) (specific exception to trial court's jury instruction must be made in order to preserve a point for appellate review).

In the criminal context, the procedure for raising and preserving objections to a jury charge is found in Pa.R.Crim.P. 647(B) and (C). *See also Commonwealth v. Pressley*, 887 A.2d 220, 225 (Pa. 2005) ("[M]ere submission and subsequent denial of proposed points for charge that are inconsistent with or omitted from the instructions actually given will not suffice to preserve an issue, absent a specific objection or exception to the charge or the trial court's ruling respecting the points."); *Commonwealth v. Light*, 326 A.2d 288 (Pa. 1974) (plurality opinion) (failure to take a specific exception to the language complained of in a jury charge forecloses review by the appellate court).

Failure to follow the appropriate procedure may result in waiver of this issue.

Cross references—Pa.R.A.P. 2117(c) (statement of place of raising or preservation of issues) and Pa.R.A.P. 2119(e) (statement of place of raising or preservation of issues) require that the brief, in both the statement of the case and in the argument, expressly refer to the place in the record where the issue presented for decision on appeal has been raised or preserved below. See Pa.R.A.P. 1551 (scope of review) as to requisites for reviewable issues on petition.

Amended June 23, 1976, effective July 1, 1976; further amended February 27, 1980, effective March 15, 1980.

EXPLANATORY COMMENT—1976

Rule 302 provides that in an appeal from a lower court procedural objections not raised below are waived. Rule 1551(a)(1) is amended to conform with that principle so that on review of a quasijudicial order a procedural objection not raised below is waived. This amendment is not applicable to appellate review of government unit proceedings where the administrative proceedings below commenced prior to September 1, 1976.

Editor's Note: Amended October 7, 2020, effective immediately.

Interlocutory Appeals

Rule 311. | Interlocutory Appeals as of Right.

(a) General rule.—An appeal may be taken as of right and without reference to Pa.R.A.P. 341(c) from:

(1) *Affecting judgments*.—An order refusing to open, vacate, or strike off a judgment. If orders opening, vacating, or striking off a judgment are sought in the alternative, no appeal may be filed until the court has disposed of each claim for relief.

(2) *Attachments, etc.*—An order confirming, modifying, dissolving, or refusing to confirm, modify or dissolve an attachment, custodianship, receivership, or similar matter affecting the possession or control of property, except for orders pursuant to 23 Pa.C.S. §§ 3323(f), 3505(a).

(3) *Change of criminal venue or venire.*—An order changing venue or venire in a criminal proceeding.

(4) *Injunctions.*—An order that grants or denies, modifies or refuses to modify, continues or refuses to continue, or dissolves or refuses to dissolve an injunction unless the order was entered:

(i) Pursuant to 23 Pa.C.S. §§ 3323(f), 3505(a); or

(ii) After a trial but before entry of the final order. Such order is immediately appealable, however, if the order enjoins conduct previously permitted or mandated or permits or mandates conduct not previously mandated or permitted, and is effective before entry of the final order.

(5) *Peremptory judgment in mandamus*.—An order granting peremptory judgment in mandamus.

(6) *New trials.*—An order in a civil action or proceeding awarding a new trial, or an order in a criminal proceeding awarding a new trial where the defendant claims that the proper disposition of the matter would be an absolute discharge or where the Commonwealth claims that the trial court committed an error of law.

(7) *Partition*.—An order directing partition.

(8) *Other cases*—An order that is made final or appealable by statute or general rule, even though the order does not dispose of all claims and of all parties.

(b) Order sustaining venue or personal or in rem jurisdiction.—An appeal may be taken as of right from an order in a civil action or proceeding sustaining the venue of the matter or jurisdiction over the person or over real or personal property if:

(1) the plaintiff, petitioner, or other party benefiting from the order files of record within ten days after the entry of the order an election that the order shall be deemed final; or

(2) the court states in the order that a substantial issue of venue or jurisdiction is presented.

(c) *Changes of venue, etc*.—An appeal may be taken as of right from an order in a civil action or proceeding changing venue, transferring the matter to another court of coordinate jurisdiction, or declining to proceed in the matter on the basis of forum non conveniens or analogous principles.

(d) Commonwealth appeals in criminal cases.—In a criminal case, under the circumstances provided by law, the Commonwealth may take an appeal as of right from an order that does not end the entire case where the Commonwealth certifies in the notice of appeal that the order will terminate or substantially handicap the prosecution.

(e) *Orders overruling preliminary objections in eminent domain cases*.—An appeal may be taken as of right from an order overruling preliminary objections to a declaration of taking and an order overruling preliminary objections to a petition for appointment of a board of viewers.

(f) *Administrative remand.*—An appeal may be taken as of right from: (1) an order of a common pleas court or government unit remanding a matter to an administrative agency or hearing officer for execution of the adjudication of the reviewing tribunal in a manner that does not require the exercise of administrative discretion; or (2) an order of a common pleas court or government unit remanding a matter to an administrative agency or hearing officer that decides an issue that would ultimately evade appellate review if an immediate appeal is not allowed.

(g) Waiver of objections.

(1) Except as provided in subparagraphs (g)(1)(ii), (iii), and (iv), failure to file an appeal of an interlocutory order does not waive any objections to the interlocutory order:

(i) (Rescinded).

(ii) Failure to file an appeal from an interlocutory order under subparagraph (b)(1) or paragraph (c) of this rule shall constitute a waiver of all objections to jurisdiction over the person or over the property involved or to venue, etc., and the question of jurisdiction or venue shall not be considered on any subsequent appeal.

(iii) Failure to file an appeal from an interlocutory order under paragraph (e) of this rule shall constitute a waiver of all objections to such an order.

(iv) Failure to file an appeal from an interlocutory order refusing to compel arbitration, appealable under 42 Pa.C.S. § 7320(a)(1) and subparagraph (a)(8) of this rule, shall constitute a waiver of all objections to such an order.

(2) Where no election that an interlocutory order shall be deemed final is filed under subparagraph (b)(1) of this rule, the objection may be raised on any subsequent appeal.

(h) Further proceedings in the trial court.—Pa.R.A.P. 1701(a) shall not be applicable to a matter in which an interlocutory order is appealed under subparagraphs (a)(2) or (a)(4) of this rule.

Official Note: Authority—This rule implements 42 Pa.C.S. § 5105(c), which provides:

(c) Interlocutory appeals. There shall be a right of appeal from such interlocutory orders of tribunals and other government units as may be specified by law. The governing authority shall be responsible for a continuous review of the operation of section 702(b) (relating to interlocutory appeals by permission) and shall from time to time establish by general rule rights to appeal from such classes of interlocutory orders, if any, from which appeals are regularly permitted pursuant to section 702(b).

The appeal rights under this rule and under Pa.R.A.P. 312, Pa.R.A.P. 313, Pa.R.A.P. 341, and Pa.R.A.P. 342 are cumulative; and no inference shall be drawn from the fact that two or more rules may be applicable to an appeal from a given order.

Paragraph (a)—If an order falls under Pa.R.A.P. 311, an immediate appeal may be taken as of right simply by filing a notice of appeal. The procedures set forth in Pa.R.A.P. 341(c) and 1311 do not apply to an appeal under Pa.R.A.P. 311.

Subparagraph (a)(1)—The 1989 amendment to subparagraph (a)(1) eliminated interlocutory appeals of right from orders opening, vacating, or striking off a judgment while retaining the right of appeal from an order refusing to take any such action.

Subparagraph (a)(2)—The 1987 Amendment to subparagraph (a)(2) is consistent with appellate court decisions disallowing interlocutory appeals in matrimonial matters. Fried v. Fried, 501 A.2d 211 (Pa. 1985); O'Brien v. O'Brien, 519 A.2d 511 (Pa. Super. 1987).

Subparagraph (a)(3)—Change of venire is authorized by 42 Pa.C.S. § 8702Pa.R.Crim.P. 584 treats changes of venue and venire the same. Thus an order changing venue or venire is appealable by the defendant or the Commonwealth, while an order refusing to change venue or venire is not.

See also Pa.R.A.P. 903(c)(1) regarding time for appeal.

Subparagraph (a)(4)—The 1987 amendment to subparagraph (a)(4) is consistent with appellate court decisions disallowing interlocutory appeals in matrimonial matters. Fried v. Fried, 501 A.2d 211, 215 (Pa. 1985); O'Brien v. O'Brien, 519 A.2d 511, 514 (Pa. Super. 1987).

The 1996 amendment to subparagraph (a)(4) reconciled two conflicting lines of cases by adopting the position that generally an appeal may not be taken from a decree nisi granting or denying a permanent injunction.

The 2009 amendment to the rule conformed the rule to the 2003 amendments to the Pennsylvania Rules of Civil Procedure abolishing actions in equity and thus eliminating the decree nisi. Because decrees nisi were in general not appealable to the extent they were not effective immediately upon entry, this principle has been expressly incorporated into the body of the rule as applicable to any injunction.

Subparagraph (a)(5)—Subparagraph (a)(5), added in 1996, authorizes an interlocutory appeal as of right from an order granting a motion for peremptory judgment in mandamus without the condition precedent of a motion to open the peremptory judgment in mandamus. An order denying a motion for peremptory judgment in mandamus remains unappealable.

Subparagraph (a)(8)—Subparagraph (a)(8) recognizes that orders that are procedurally interlocutory may be made appealable by statute or general rule. For example, see 27 Pa.C.S. § 8303. The Pennsylvania Rules of Civil Procedure, the Pennsylvania Rules of Criminal Procedure, etc., should also be consulted.

Following a 2005 amendment to Pa.R.A.P. 311, orders determining the validity of a will or trust were appealable as of right under former subparagraph (a)(8). Pursuant to the 2011 amendments to Pa.R.A.P. 342, such orders are now immediately appealable under Pa.R.A.P. 342(a)(2).

The term "civil action or proceeding'' is broader than the term "proceeding at law or in equity'' under the prior practice and is intended to include orders entered by the orphans' court division. Cf. In the Matter of Phillips, 370 A.2d 307 (Pa. 1977).

In subparagraph (b)(1), a plaintiff is given a qualified (because it can be overridden by petition for and grant of permission to appeal under Pa.R.A.P. 312) option to gamble that the venue of the matter or personal or in rem jurisdiction will be sustained on appeal. Subparagraph (g)(1)(ii) provides that if the plaintiff timely elects final treatment, the failure of the defendant to appeal constitutes a waiver. The appeal period under Pa.R.A.P. 903 ordinarily runs from the entry of the order, and not from the date of filing of the election, which procedure will ordinarily afford at least 20 days within which to appeal. See Pa.R.A.P. 903(c) as to treatment of special appeal times. If the plaintiff does not file an election to treat the order as final, the case will proceed to trial unless (1) the trial court makes a finding under subparagraph (b)(2) of the existence of a substantial question of jurisdiction and the defendant elects to appeal, (2) an interlocutory appeal is permitted under Pa.R.A.P. 312, or (3) another basis for appeal appears, for example, under subparagraph (a)(1), and an appeal is taken. Presumably, a plaintiff would file such an election where plaintiff desires to force the defendant to decide promptly whether the objection to venue or jurisdiction will be seriously pressed. Paragraph (b) does not cover orders that do not sustain jurisdiction because they are, of course, final orders appealable under Pa.R.A.P. 341.

Subparagraph (b)(2)—The 1989 amendment to subparagraph (b)(2) permits an interlocutory appeal as of right where the trial court certifies that a substantial question of venue is present. This eliminated an inconsistency formerly existing between paragraph (b) and subparagraph (b)(2).

Paragraph (c)—Paragraph (c) is based in part on the act of March 5, 1925 (P.L. 23, No. 15). The term "civil action or proceeding'' is broader than the term "proceeding at law or in equity'' under the prior practice and is intended to include orders entered by the orphans' court division. Cf. In the Matter of Phillips, 370 A.2d 307, 308 (Pa. 1977).

Paragraph (c) covers orders that do not sustain venue, such as orders under Pa.R.C.P. 1006(d) and (e).

However, the paragraph does not relate to a transfer under 42 Pa.C.S. § 933(c)(1), 42 Pa.C.S. § 5103, or any other similar provision of law, because such a transfer is not to a "court of coordinate jurisdiction'' within the meaning of this rule; it is intended that there shall be no right of appeal from a transfer order based on improper subject matter jurisdiction. Such orders may be appealed by permission under Pa.R.A.P. 312, or an appeal as of right may be taken from an order dismissing the matter for lack of jurisdiction. See Balshy v. Rank, 490 A.2d 415, 416 (Pa. 1985).

Other orders relating to subject matter jurisdiction (which for this purpose does not include questions as to the form of action, such as between law and equity, or divisional assignment, see 42 Pa.C.S. § 952 will be appealable under Pa.R.A.P. 341 if jurisdiction is not sustained, and otherwise will be subject to Pa.R.A.P. 312.

Paragraph (d)—Pursuant to paragraph (d), the Commonwealth has a right to take an appeal from an interlocutory order provided that the Commonwealth certifies in the notice of appeal that the order terminates or substantially handicaps the prosecution. See Pa.R.A.P. 904(e). This rule supersedes Commonwealth v. Dugger, 486 A.2d 382, 386 (Pa. 1985). Commonwealth v. Dixon, 907 A.2d 468, 471 n.8 (Pa. 2006).

Paragraph (f)—Pursuant to paragraph (f), there is an immediate appeal as of right from an order of a common pleas court or government unit remanding a matter to an administrative agency or hearing officer for execution of the adjudication of the reviewing tribunal in a manner that does not require the exercise of administrative discretion. Examples of such orders include: a remand by a court of common pleas to the Department of Transportation for removal of points from a drivers license; and an order of the Workers' Compensation Appeal Board reinstating compensation benefits and remanding to a referee for computation of benefits.

Paragraph (f) further permits immediate appeal from an order of a common pleas court or government unit remanding a matter to an administrative agency or hearing officer that decides an issue that would ultimately evade appellate review if an immediate appeal is not allowed. See Lewis v. Sch. Dist. of Philadelphia, 690 A.2d 814, 816 (Pa. Cmwlth. 1997).

Subparagraph (g)(1)(iv)—Subparagraph (g)(1)(iv), added in 2015, addresses waiver in the context of appeals from various classes of arbitration orders. All six types of arbitration orders identified in 42 Pa.C.S. § 7320(a) are immediately appealable as of right. Differing principles govern these orders, some of which are interlocutory and some of which are final. The differences affect whether an order is appealable under this rule or Pa.R.A.P. 341(b) and whether an immediate appeal is necessary to avoid waiver of objections to the order.

- Section 7320(a)(1)—An interlocutory order refusing to compel arbitration under 42 Pa.C.S. § 7320(a)(1) is immediately appealable pursuant to Pa.R.A.P. 311(a)(8). Failure to appeal the interlocutory order immediately waives all objections to it. See Pa.R.A.P. 311(g)(1)(iv). This supersedes the holding in Cooke v. Equitable Life Assurance Soc'y, 723 A.2d 723, 726 (Pa. Super. 1999). Pa.R.A.P. 311(a)(8) and former Pa.R.A.P. 311(g)(1)(i) require a finding of waiver based on failure to appeal the denial order when entered).
- Section 7320(a)(2)—Failure to appeal an interlocutory order granting an application to stay arbitration under 42 Pa.C.S. § 7304(b) does not waive the right to contest the stay; an aggrieved party may appeal such an order immediately under Pa.R.A.P. 311(a)(8) or challenge the order on appeal from the final judgment.
- Section 7320(a)(3)—(a)(6)—If an order is appealable under 42 Pa.C.S. § 7320(a)(3), (4), (5), or (6) because it is final, that is, the order disposes of all claims and of all parties, see Pa.R.A.P. 341(b), failure to appeal immediately waives all issues. If the order does not dispose of all claims or of all parties, then the order is interlocutory. An aggrieved party may appeal such an order immediately under Pa.R.A.P. 311(a)(8) or challenge the order on appeal from the final judgment.

Paragraph (h)—See note to Pa.R.A.P. 1701(a).

Editor's Note: Most recently amended December 30, 1987; March 31, 1989; and May 6, 1992, effective July 6, 1992 to govern only actions or administrative proceedings originally commenced in a court, Commonwealth agency or local agency after July 6, 1992. Further amended April 10, 1996, effective April 27, 1996; amended October 14, 2009, effective in 30 days; amended December 29, 2011, effective 45 days after amendment, amended December 14, 2015, effective April 1, 2016.

Rule 312. | Interlocutory Appeals by Permission.

An appeal from an interlocutory order may be taken by permission pursuant to Chapter 13 (interlocutory appeals by permission).

Rule 313. | Collateral Orders.

Special Notice: It was erroneously reported in the *Pennsylvania Bulletin* that Pa.R.A.P. 313 had been rescinded. We want to assure you that Pa.R.A.P. 313 has not been repealed.—Appellate Court Procedural Rules Committee, November 14, 1997.

(a) *General Rule*. An appeal may be taken as of right from a collateral order of an administrative agency or lower court.

(b) *Definition*. A collateral order is an order separable from and collateral to the main cause of action where the right involved is too important to be denied review and the question presented is such that if review is postponed until final judgment in the case, the claim will be irreparably lost.

Official Note: Rule 313 is a codification of existing case law with respect to collateral orders. See *Pugar v. Greco*, 483 Pa. 68, 73, 394 A.2d 542, 545 (1978) (quoting *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541 (1949)). Examples of collateral orders include orders denying pre-trial motions to dismiss based on double jeopardy in which the court does not find the motion frivolous, *Commonwealth v. Brady*, 510 Pa. 336, 508 A.2d 286, 28991 (1986) (allowing an immediate appeal from denial of double jeopardy claim under collateral order doctrine where trial court does not make a finding of frivolousness); if the trial court finds the motion frivolous, the defendant may secure review only by first filing a petition for review under Pa.R.A.P. 1573. *See Commonwealth v. Orie*, 22 A.2d 1021 (Pa. 2011). Other examples of collateral order are an order denying a petition to permit the payment of death taxes, *Hankin v. Hankin*, 338 Pa. Super. 442, 487 A.2d 1363 (1985); and an order denying a petition for removal of an executor, *Re: Estate of Georgianna*, 312 Pa. Super. 339, 458 A.2d 989 (1983), aff'd, 504 Pa. 510, 475 A.2d 744. Thorough discussions of the collateral order doctrine as it has been applied by Pennsylvania appellate courts are found in the following sources: Darlington, McKeon, Schuckers and Brown, 1 Pennsylvania Appellate Practice Second Edition, §§313:1313:201 (1994) and Byer, Appealable Orders under the Pennsylvania Rules of Appellate Procedures in Practice and Procedures in Pennsylvania Appellate Courts (PBI No. 1994869); Pines, Pennsylvania Appellate Practice: Procedural Requirements and the Vagaries of Jurisdiction, 91 Dick. L. Rev. 55, 107115 (1986).

If an order falls under Rule 313, an immediate appeal may be taken as of right simply by filing a notice of appeal. The procedures set forth in Rules 341(c) and 1311 do not apply under Rule 313.

***Editor's Note*:** Adopted May 6, 1992, effective July 6, 1992. Official note amended July 7, 1997, effective September 5, 1997.

Official Note: Amended June 4, 2013, effective July 4, 2013.

Final Orders

Rule 341. | Final Orders; Generally.

(a) *General rule*.—Except as prescribed in paragraphs (d) and (e) of this rule, an appeal may be taken as of right from any final order of a government unit or trial court.

(b) *Definition of final order*.—A final order is any order that:

(1) disposes of all claims and of all parties; or

(2) (Rescinded)

(3) is entered as a final order pursuant to paragraph (c) of this rule.

(c) *Determination of finality*. When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim or third-party claim, or when multiple parties are involved, the trial court or other government unit may enter a final order as to one or more but fewer than all of the claims and parties only upon an express determination that an immediate appeal would facilitate resolution of the entire case. Such an order becomes appealable when entered. In the absence of such a determination and entry of a final order, any order or other form of decision that adjudicates fewer than all the claims and parties shall not constitute a final order. In addition, the following conditions shall apply:

(1) The trial court or other government unit is required to act on an application for a determination of finality under paragraph (c) within 30 days of entry of the order. During the time an application for a determination of finality is pending the action is stayed.

(2) A notice of appeal may be filed within 30 days after entry of an order as amended unless a shorter time period is provided in Pa.R.A.P. 903(c). Any denial of such an application is reviewable only through a petition for permission to appeal under Pa.R.A.P. 1311.

(3) Unless the trial court or other government unit acts on the application within 30 days of entry of the order, the trial court or other government unit shall no longer consider the application and it shall be deemed denied.

(4) The time for filing a petition for review will begin to run from the date of entry of the order denying the application for a determination of finality or, if the application is deemed denied, from the 31st day. A petition for review may be filed within 30 days of the entry of the order denying the application or within 30 days of the deemed denial unless a shorter time period is provided by Pa.R.A.P. 1512(b).

(d) *Superior Court and Commonwealth Court orders*.—Except as prescribed by Pa.R.A.P. 1101 no appeal may be taken as of right from any final order of the Superior Court or of the Commonwealth Court.

(e) *Criminal orders*.—An appeal may be taken by the Commonwealth from any final order in a criminal matter only in the circumstances provided by law.

Official Note: Related Constitutional and statutory provisions— Section 9 of Article V of the Constitution of Pennsylvania provides that "there shall be a right of appeal from a court of record or from an administrative agency to a court of record or to an appellate court." The constitutional provision is implemented by 2 Pa.C.S. §702, 2 Pa.C.S. §752, and 42 Pa.C.S. §5105.

Criminal law proceedings—Commonwealth appeals—Orders that do not dispose of the entire case that were formerly appealable by the Commonwealth in criminal cases are under Pa.R.A.P. 341 appealable as interlocutory appeals as of right under paragraph (d) of Pa.R.A.P. 311.

Final orders—pre-and post-1992 Practice—The 1992 amendment generally eliminated appeals as of right under Pa.R.A.P. 341 from orders that do not end the litigation as to all claims and as to all parties. Prior to 1992, there were cases that deemed an order final if it had the practical effect of putting a party out of court, even if the order did not end the litigation as to all claims and all parties.

A party needs to file only a single notice of appeal to secure review of prior non-final orders that are made final by the entry of a final order, see *K.H. v. J.R.*, 826 A.2d 863, 870-71 (Pa. 2003) (following trial); *Betz v. Pneumo Abex LLC*, 44 A.3d 27, 54 (Pa. 2012) (summary judgment). Where, however, one or more orders resolves issues arising on more than one docket or relating to more than one judgment, separate notices of appeal must be filed. *Commonwealth v. C.M.K.*, 932 A.2d 111, 113 & n.3 (Pa. Super. 2007) (quashing appeal taken by single notice of appeal from order on remand for consideration under Pa.R.Crim.P. 607 of two persons' judgments of sentence).

The 1997 amendments to paragraphs (a) and (c), substituting the conjunction "and" for "or," are not substantive. The amendments merely clarify that by definition any order that disposes of all claims will dispose of all parties and any order that disposes of all parties will dispose of all claims.

Rescission of subparagraph (b)(2)—Former subparagraph (b)(2) provided for appeals of orders defined as final by statute. The 2015 rescission of subparagraph (b)(2) eliminated a potential waiver trap created by legislative use of the adjective "final" to describe orders that were procedurally interlocutory but nonetheless designated as appealable as of right. Failure to appeal immediately an interlocutory order deemed final by statute waived the right to challenge the order on appeal from the final judgment. Rescinding subparagraph (b)(2) eliminated this potential waiver of the right to appeal. If an order designated as appealable by a statute disposes of all claims and of all parties, it is appealable as a final order pursuant to Pa.R.A.P. 341. If the order does not meet that standard, then it is interlocutory regardless of the statutory description. Pa.R.A.P. 311(a)(8) provides for appeal as of right from an order that is made final or appealable by statute or general rule, even though the order does not dispose of all claims or of all parties and, thus, is interlocutory. Pa.R.A.P. 311(g) addresses waiver if no appeal is taken immediately from such interlocutory order.

One of the further effects of the rescission of subparagraph (b)(2) is to change the basis for appealability of orders that do not end the case but grant

or deny a declaratory judgment. See Nationwide Mut. Ins. Co. v. Wickett, 763 A.2d 813, 818 (Pa. 2000); Pa. Bankers Ass'n v. Pa. Dep't. of Banking, 948 A.2d 790, 798 (Pa. 2008). The effect of the rescission is to eliminate waiver for failure to take an immediate appeal from such an order. A party aggrieved by an interlocutory order granting or denying a declaratory judgment, where the order satisfies the criteria for "finality" under Pennsylvania Bankers Association, may elect to proceed under Pa.R.A.P 311(a)(8) or wait until the end of the case and proceed under subparagraph (b)(1) of this rule.

An arbitration order appealable under 42 Pa.C.S. § 7320(a) may be interlocutory or final. If it disposes of all claims and all parties, it is final and, thus, appealable pursuant to Pa.R.A.P. 341. If the order does not dispose of all claims and all parties, that is, the order is not final, but rather interlocutory, it is appealable pursuant to Pa.R.A.P. 311. Failure to appeal an interlocutory order appealable as of right may result in waiver of objections to the order. See Pa.R.A.P. 311(g).

Paragraph (c)—Determination of finality—Paragraph (c) permits an immediate appeal from an order dismissing less than all claims or parties from a case only upon an express determination that an immediate appeal would facilitate resolution of the entire case. Factors to be considered under paragraph (c) include, but are not limited to:

(1) whether there is a significant relationship between adjudicated and unadjudicated claims;

(2) whether there is a possibility that an appeal would be mooted by further developments;

(3) whether there is a possibility that the court or government unit will consider issues a second time; and

(4) whether an immediate appeal will enhance prospects of settlement.

The failure of a party to apply to the government unit or trial court for a determination of finality pursuant to paragraph (c) shall not constitute a waiver and the matter may be raised in a subsequent appeal following the entry of a final order disposing of all claims and all parties.

Where the government unit or trial court refuses to amend its order to include the express determination that an immediate appeal would facilitate resolution of the entire case and refuses to enter a final order, a petition for permission to appeal under Pa.R.A.P. 1311 of the unappealable order of denial is the exclusive mode of review. The filing of such a petition does not prevent the trial court or other government unit from proceeding further with the matter pursuant to Pa.R.A.P. 1701(b)(6). Of course, as in any case, the appellant may apply for a discretionary stay of the proceeding below.

Subparagraph (c)(2) provides for a stay of the action pending determination of an application for a determination of finality. If the application is denied, and a petition for permission to appeal is filed challenging the denial, a stay or supersedeas will issue only as provided under Chapter 17 of these rules.

In the event that a trial court or other government unit enters a final order pursuant to paragraph (c) of this rule, the trial court or other government unit may no longer proceed further in the matter, except as provided in Pa.R.A.P. 1701(b)(1)—(5).

The following is a partial list of orders previously interpreted by the courts as appealable as final orders under Pa.R.A.P. 341 that are no longer appealable as of right unless the trial court or government unit makes an express determination that an immediate appeal would facilitate resolution of the entire case and expressly enters a final order pursuant to Pa.R.A.P. 341(c):

(1) an order dismissing one of several causes of action pleaded in a complaint but leaving pending other causes of action;

(2) an order dismissing a complaint but leaving pending a counterclaim;

(3) an order dismissing a counterclaim but leaving pending the complaint that initiated the action;

(4) an order dismissing an action as to less than all plaintiffs or as to less than all defendants but leaving pending the action as to other plaintiffs and other defendants;

(5) an order granting judgment against one defendant but leaving pending the complaint against other defendants; and

(6) an order dismissing a complaint to join an additional defendant or denying a petition to join an additional defendant or denying a petition for late joinder of an additional defendant.

The 1997 amendment adding subparagraph (c)(3) provided for a deemed denial where the trial court or other government unit fails to act on the application within 30 days.

Editor's Note: Rule 341 and the notes thereto have been rescinded and new rule 341 was adopted on May 6, 1992, effective July 6, 1992; amended July 7, 1997, effective September 5, 1997; amended October 13, 2006, effective December 11, 2006; amended April 16, 2013, effective as to appeals and petitions for review filed 30 days after adoption; official note amended May 28, 2014, effective July 1, 2014. Amended December 14, 2015, effective April 1, 2016..

Rule 342. | Appealable Orphans' Court Orders.

(a) *General rule*. An appeal may be taken as of right from the following orders of the Orphans' Court Division:

(1) An order confirming an account, or authorizing or directing a distribution from an estate or trust;

(2) An order determining the validity of a will or trust;

(3) An order interpreting a will or a document that forms the basis of a claim against an estate or trust;

(4) An order interpreting, modifying, reforming or terminating a trust;

(5) An order determining the status of fiduciaries, beneficiaries, or creditors in an estate, trust, or guardianship;

(6) An order determining an interest in real or personal property;

(7) An order issued after an inheritance tax appeal has been taken to the Orphans' Court pursuant to either 72 Pa.C.S. § 9186(a)(3) or 72 Pa.C.S. § 9188, or after the Orphans' Court has made a determination of the issue protested after the record has been removed from the Department of Revenue pursuant to 72 Pa.C.S. § 9188(a); or

(8) An order otherwise appealable as provided by Chapter 3 of these rules.

(b) *Definitions*. As used in this rule:

(1) "estate" includes the estate of a decedent, minor, incapacitated person, or principal under Chapters 33, 35, 51, 55 and 56 of Title 20 of the Pennsylvania Consolidated Statutes ("Probate, Estates and Fiduciaries Code") ("PEF Code");

(2) "trust" includes inter vivos and testamentary trusts and the "custodial property" under Chapters 53 and 77 of the PEF Code; and

(3) "guardianship" includes guardians of the person for both minors and incapacitated persons under Chapters 51 and 55 of the PEF Code.

(c) *Waiver of objections*. Failure to appeal an order that is immediately appealable under paragraphs (a)(1)—(7) of this rule shall constitute a waiver of all objections to such order and such objections may not be raised in any subsequent appeal.

Official Note: In 1992, the Supreme Court amended Rule 341 to make clear that, as a general rule, a final order is an order that ends a case as to all claims and all parties. Because of this amendment, many Orphans' Court orders that may have been considered constructive final orders prior to 1992

became unappealable interlocutory orders. Although some Orphans' Court orders were construed by case law to be appealable as collateral orders, *see Estate of Petro*, 694 A.2d 627 (Pa. Super. 1997), the collateral order doctrine was neither consistently applied nor was it applicable to other Orphans' Court orders that previously had been considered final under the "final aspect" doctrine. *See, e.g. Estate of Habazin*, 679 A.2d 1293 (Pa. Super. 1996).

In response, the Supreme Court revised Rule 342 that initially permitted appeals from Orphans' Court orders concerning distribution even if the order was not considered final under the definition of Rule 341(b). In 2001, Rule 342 was amended to also allow appeals from orders determining an interest in realty or personalty or the status of individuals or entities, in additional to orders of distribution, if the Orphans' Court judge made a determination that the particular order should be treated as final. In 2005, the Supreme Court amended Rule 342 again, adding subdivision (2) to clarify that Rule 342 was not the exclusive method of appealing Orphans' Court orders.

Also, in 2005, the Supreme Court amended Rule 311 to provide for an interlocutory appeal as of right from an order determining the validity of a will or trust. See former Rule 311(a)(8). Such an order needed to be immediately appealable and given finality so that the orderly administration of the estate or trust could proceed appropriately.

Since 2005, it has become apparent that other adversarial disputes arise during the administration of an estate, trust or guardianship, and that orders adjudicating these disputes also must be resolved with finality so that the ordinary and routine administration of the estate, trust or guardianship can continue. *See Estate of Stricker*, 602 Pa. 54, 63-64, 977 A.2d 1115, 1120 (2009) (Saylor, J., concurring). Experience has proven that the determination of finality procedure in subdivision (1) of Rule 342 is not workable and has been applied inconsistently around the Commonwealth. *See id*. (*citing Commonwealth v. Castillo*, 585 Pa. 395, 401, 888 A.2d 775, 779 (2005) (rejecting the exercise of discretion in permitting appeals to proceed)).

Experience has also proven that it is difficult to analogize civil litigation to litigation arising in estate, trust and guardianship administration. The civil proceeding defines the scope of the dispute, but the administration of a trust or estate does not define the scope of the litigation in Orphans' Court. Administration of a trust or an estate continues over a period of time. Litigation in Orphans' Court may arise at some point during the administration, and when it does arise, the dispute needs to be determined promptly and with finality so that the guardianship or the estate or trust administration can then continue properly and orderly. Thus, the traditional notions of finality that are applicable in the context of ongoing civil adversarial proceedings do not correspond to litigation in Orphans' Court.

In order to facilitate orderly administration of estates, trusts and guardianships, the 2011 amendments list certain orders that will be immediately appealable without any requirement that the Orphans' Court make a determination of finality. Orders falling within subdivisions (a)(1)—(7) no longer require the lower court to make a determination of finality.

Subdivisions (a)(1)—(7) list orders that are unique to Orphans' Court practice, but closely resemble final orders as defined in Rule 341(b). Subdivision (a)(1) provides that the adjudication of any account, even an interim or partial account, is appealable. Previously, only the adjudication of the final account would have been appealable as a final order under Rule 341. The prior limitation has proven unworkable for estate administration taking years and trusts established for generations during which interim and partial accounts may be adjudicated and confirmed. The remainder of subdivision (a)(1) permits appeals from orders of distribution as Rule 342 always has permitted since its initial adoption. Subdivision (a)(2) is a new placement for orders determining the validity of a will or trust that previously were appealable as interlocutory appeals as of right following the 2005 amendment to Rule 311. See prior Rule 311(a)(8). Subdivision (a)(3) is a new provision that allows an immediate appeal from an order interpreting a will or other relevant document that forms the basis of a claim asserted against an estate or trust. Such orders can include, among other things, an order determining that a particular individual is or is not a beneficiary or determining if an underlying agreement executed by the decedent during life creates rights against the estate. Subdivision (a)(4) addresses trusts and is similar to subdivision (a)(3), but also permits immediate appeals from orders modifying, reforming or terminating a trust since such judicial actions are now permitted under 20 Pa.C.S. § 7740 et seq. Subdivision (a)(5) is intended to clarify prior Rule 342 in several respects: First, an appealable Orphans' Court order concerning the status of individuals or entities means an order determining if an individual or entity is a fiduciary, beneficiary or creditor, such as an order determining if the alleged creditor has a valid claim against the estate. Second, such orders include orders pertaining to trusts and guardianships as well as estates. Finally, this subdivision resolves a conflict in prior appellate court decisions by stating definitively that an order removing or refusing to remove a fiduciary is an immediately appealable order. Subdivision (a)(6) retains the same language from prior Rule 342. Subdivision (a)(7) permits appeals of an Orphans' Court order concerning an inheritance tax appraisement, assessment, allowance or disallowance when such order is issued separately and not in conjunction with the adjudication of an account. Sections 9186 and 9188 of Chapter 72 provide three procedures, outside the context of an accounting, whereby either the personal representative or the Department of Revenue may bring before the Orphans' Court a dispute over inheritance taxes imposed. *See also Estate of Gail B. Jones*, 796 A.2d 1003 (Pa. Super. 2002) (analogizing a petition regarding the apportionment of inheritance taxes to a declaratory judgment petition given that an estate account had not yet been filed). A decision concerning inheritance taxes issued in conjunction with the adjudication of an account would be appealable under subdivision (a)(1).

In keeping with the 2005 amendment that added subdivision (2) to prior Rule 342, subdivision (a)(8) tracks subdivision (2) of former Rule 342. Subdivision (2) was adopted in response to *Estate of Sorber*, 2002 Pa. Super. 226, 803 A.2d 767 (2002), a panel decision holding that Rule 342 precluded immediate appeals from orders that would have otherwise been appealable as collateral orders under Rule 313 unless the Orphans' Court judge made a determination of finality under Rule 342. Subdivision (a)(8) makes clear that Rule 342, as amended, is still not the sole method of appealing an Orphans' Court order and an order not otherwise immediately appealable under Rule 342 may still be immediately appealable if it meets the criteria under another rule in Chapter 3 of these rules. Examples would include injunctions appealable under Rule 311(a)(4), Interlocutory Orders Appealable by Permission under Rules 312 and 1311, Collateral Orders appealable under Rule 313, and an order approving a final accounting which is a true final order under Rule 341. Whether or not such orders require certification or a further determination of finality by the trial court depends on the applicable rule in Chapter 3. *Compare* Rules 311(a)(4), 313 and 341(c) with Rules 312 and 1311.

Failure to appeal an order that is immediately appealable under subdivisions (a)(1)—(7) of this rule shall constitute a waiver of all objections to such order and may not be raised in any subsequent appeal. See Subdivision (c) of this Rule. The consequences of failing to appeal an Orphans' Court order under (a)(8) will depend on whether such order falls within Rules 311, 312, 313, 1311 or 341.

Editor's Note: Adopted December 29, 2011, effective 45 days after adoption.

Editor's Note: Amended December 20, 2000, effective January 1, 2001; Amendments adopted June 29, 2005, effective 60 days after adoption; rescinded December 29, 2011, effective in 45 days.

Rule 343. | Order Determining Challenge to a Plea of Guilty. [Rescinded July 7, 1997, effective September 5, 1997.]

Official Note: The Supreme Court rescinded this Rule in 1997 as obsolete in view of the changes to the Rules of Criminal Procedure rescinding Pa.R.Crim.P. 321 and adopting new Pa.R.Crim.P. 1410, effective as to cases in which the determination of guilt occurs on or after January 1, 1994. See Criminal Procedural Rules Committee Final Report at 620621 A.2d (Pennsylvania Reporter Series) pages CVIIICXXXIII.

Chapter 5
Persons Who May Take or Participate in Appeals

In General

Rule 501. | Any Aggrieved Party May Appeal.

Except where the right of appeal is enlarged by statute, any party who is aggrieved by an appealable order, or a fiduciary whose estate or trust is so aggrieved, may appeal therefrom.

Note: Whether or not a party is aggrieved by the action below is a substantive question determined by the effect of the action on the party, etc.

Editor's Note: Note amended December 11, 1978, effective December 30, 1978.

Rule 502. | Substitution of Parties.

(a) *Death of a Party*.—If a party dies after a notice of appeal or petition for review is filed or while a matter is otherwise pending in an Appellate Court, the personal representative of the deceased party may be substituted as a party on application filed by the representative or by any party with the Prothonotary of the Appellate Court. The application of a party shall be served upon the representative in accordance with the provisions of Rule 123 (applications for relief). If the deceased party has no representative, any party may suggest the death on the record and proceedings shall then be had as the Appellate Court may direct. If a party against whom an appeal may be taken or a petition for review may be filed dies after entry of an order below but before a notice of appeal or petition for review is filed, an appellant may proceed as if death had not occurred. After the notice of appeal or petition for review is filed substitution shall be effected in the Appellate Court in accordance with this subdivision. If a party entitled to appeal or petition for review shall die before filing a notice of appeal or petition for review, the notice of appeal or petition for review may be filed by his personal representative, or, if he has no personal representative, by his counsel, within the time prescribed by these rules. After the notice of appeal or petition for review is filed substitution shall be effected in the Appellate Court in accordance with this subdivision.

(b) *Substitution in Other Cases or for Other Causes*.—If substitution of a party in an Appellate Court is necessary in connection with a petition for allowance of appeal or a petition for permission to appeal, or in connection with any other matter other than a notice of appeal or petition for review, or if substitution of a party in an Appellate Court is necessary for any reason other than death, substitution shall be effected in accordance with the procedure prescribed in Subdivision (a) of this rule.

(c) *Death or Separation from Office of Public Officer*.—When a public officer is a party to an appeal or other matter in an Appellate Court in his official capacity and during its pendency dies, resigns or otherwise ceases to hold office, the matter does not abate and his successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

Note: Pa.R.C.P. 2351 to 2375 relate to substitution of parties in the Courts of Common Pleas, but this rule, which is patterned after Fed. Rules App. Proc. 43(a), (b) and (c)(1), covers the subject in the Appellate Courts for the first time.

Rule 503. | Description of Public Officers.

When a public officer is a party to an appeal or other matter in his official capacity he may be described as a party by his official title rather than by name; but the Appellate Court may require his name to be added.

Note: Patterned after Fed. Rules App. Proc. 43(c)(2).

Multiple Appeals

Rule 511. | Cross-Appeals.

The timely filing of an appeal shall extend the time for any other party to cross-appeal as set forth in Pa.R.A.P. 903(b) (cross-appeals), 1113(b) (cross-petitions for allowance of appeal), and 1512(a)(2) (cross-petitions for review). The discontinuance of an appeal by a party shall not affect the right of appeal or cross-appeal of any other party regardless of whether the parties are adverse.

Official Note: 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.

An appellee should not be required to file a cross-appeal because the court below ruled against it on an issue, as long as the judgment granted appellee the relief it sought. *See Lebanon Valley Farmers Bank v. Commonwealth*, 83 A.3d 107, 112 (Pa. 2013); *Basile v. H & R Block, Inc.*, 973 A.2d 417, 421 (Pa. 2009).

If, however, an intermediate appellate court awards different relief than the trial court or other government unit, a party may wish to file a cross-petition for allowance of appeal under Pa.R.A.P. 1112. *See, e.g., Meyer, Darragh, Buckler, Bebenek & Eck, P.L.L.C. v. Law Firm of Malone Middleman, P.C.*, 179 A.3d 1093, 1098 & n.5 (Pa. 2018); *Meyer, Darragh, Buckler, Bebenek & Eck, P.L.L.C. v. Law Firm of Malone Middleman, P.C.*, 137 A.3d 1247 (Pa. 2016).

In deciding whether to cross-appeal, parties may also consider that appellate courts have discretion, but are not required, to affirm for any reason appearing in the record. *See Commonwealth v. Fant*, 146 A.3d 1254, 1265 n.13 (Pa. 2016); *Pa. Dept. of Banking v. NCAS of Del., LLC*, 948 A.2d 752, 762 (Pa. 2008); *Am. Future Sys., Inc. v. Better Bus. Bureau of E. Pa.*, 923 A.2d 389, 401 (Pa. 2007).

Editor's Note: Amended October 18, 2002, effective December 2, 2002; amended March 15, 2019, effective July 1, 2019.

Rule 512. | Joint Appeals.

Parties interested jointly, severally or otherwise in any order in the same matter or in joint matters or in matters consolidated for the purposes of trial or argument, may join as appellants or be joined as appellees in a single appeal where the grounds for appeal are similar, or any one or more of them may appeal separately or any two or more may join in an appeal.

Official Note: This describes who may join in a single notice of appeal. The rule does not address whether a single notice of appeal is adequate under the circumstances presented. Under Rule 341, a single notice of appeal will not be adequate to take an appeal from orders entered on more than one trial court docket. See Rule 341, Note ("Where, however, one or more orders resolves issues arising on more than one docket or relating to more than one judgment, separate notices of appeal must be filed.").

Editor's Note: Amended April 16, 2013, effective to appeals and petitions for review filed 30 days after adoption.

Rule 513. | Consolidation of Multiple Appeals.

Where there is more than one appeal from the same order, or where the same question is involved in two or more appeals

in different cases, the Appellate Court may, in its discretion, order them to be argued together in all particulars as if but a single appeal. Appeals may be consolidated by stipulation of the parties to the several appeals.

Note: The first sentence is substantially the same as former Supreme Court Rule 29, former Superior Court Rule 21 and former Commonwealth Court Rule 27. The second sentence is patterned after Fed. Rules App. Proc. 3(b).

Official Participation upon Challenge to Statutes or Rules

Rule 521. | Notice to Attorney General of Challenge to Constitutionality of Statute.

(a) *Notice*.—It shall be the duty of a party who draws in question the constitutionality of any statute in any matter in an Appellate Court to which the Commonwealth or any officer thereof, acting in his official capacity, is not a party, upon the filing of the record, or as soon thereafter as the question is raised in the Appellate Court, to give immediate notice in writing to the Attorney General of Pennsylvania of the existence of the question; together with a copy of the pleadings or other portion of the record raising the issue, and to file proof of service of such notice.

(b) *Status of Attorney General*.—The Attorney General may be heard on the question of the constitutionality of the statute involved without formal intervention. If the Attorney General files a brief concerning the question the Commonwealth shall thereafter be deemed to be an intervening party in the matter.

Note: Based on Pa.R.C.P. 235 and Fed. Rules App. Proc. 44. The provisions of Subdivision (b) are intended to place the Commonwealth in a position to obtain review in the Supreme Court of Pennsylvania or the Supreme Court of the United States of an adverse decision on the constitutional question.

Rule 522. | Notice to Court Administrator of Pennsylvania of Challenge to Constitutionality of General Rules.

(a) *Notice*.—It shall be the duty of a party who draws in question the constitutionality of any general rule to give notice in writing to the Court Administrator of Pennsylvania in accordance with the procedure prescribed in Rule 521 (notice to Attorney General of challenge to constitutionality of statute).

(b) *Status of Court Administrator*.—The Court Administrator of Pennsylvania may be heard on the question of the constitutionality of the general rule involved without formal intervention. If the Court Administrator files a brief concerning the question the Commonwealth, acting by and through the Court Administrator of Pennsylvania, shall thereafter be deemed to be an intervening party in the matter.

Note: The purpose of this rule is to prevent the recurrence of situations such as *Swarb v. Lennox*, 405 U.S. 191 (1972), where by reason of the withdrawal of the Attorney General of Pennsylvania, there was no official defense of the challenged rule of the Supreme Court of Pennsylvania. It is anticipated that the Court Administrator will coordinate with the appropriate rules committee.

Amicus Curiae

Rule 531. | Participation by Amicus Curiae.

(a) General.—An amicus curiae is a non-party interested in the questions involved in any matter pending in an appellate court.

(b) Briefs

(1) Amicus Curiae Briefs Authorized.—An amicus curiae may file a brief (i) during merits briefing; (ii) in support of or against a petition for allowance of appeal, if the amicus curiae participated in the underlying proceeding as to which the petition for allowance of appeal seeks review; or (iii) by leave of court. An amicus curiae does not need to support the position of any party in its brief.

(2) Content.—An amicus curiae brief must contain a statement of the interest of amicus curiae. The statement of interest shall disclose the identity of any person or entity other than the amicus curiae, its members, or counsel who (i) paid in whole or in part for the preparation of the amicus curiae brief or (ii) authored in whole or in part the amicus curiae brief. It does not need to contain a Statement of the Case and does not need to address jurisdiction or the order or other determinations in question. An amicus curiae brief shall contain the certificate of compliance required by Pa.R.A.P. 127.

(3) Length.—An amicus curiae brief under subparagraph (b)(1)(i) is limited to 7,000 words. An amicus curiae brief under subparagraph (b)(1)(ii) is limited to 4,500 words. An amicus curiae brief under subparagraph (b)(1)(iii) is limited to the length specified by the court in approving the motion or, if no length is specified, to half the length that a party would be permitted under the rules of appellate procedure. Any amicus curiae brief must comply with the technical requirements for briefs, including certificates of compliance, set forth in Pa.R.A.P. 1115, 2135(b)—(d), 2171—2174, and 2187, or other pertinent rules.

(4) Time for filing briefs.—An amicus curiae brief must be filed on or before the date of the filing of the party whose position as to affirmance or reversal the amicus curiae will support. If the amicus curiae will not support the position of any party, the amicus curiae brief must be filed on or before the date of the appellant's filing. In an appeal

proceeding under Pa.R.A.P. 2154(b), 2185(c), and 2187(b), the amicus curiae must file on or before the date of service of the advance text by the party whose position as to affirmance or reversal the amicus curiae supports or, if the amicus curiae does not support the position of any party, on or before the date of service of the advance text of the appellant.

(c) Oral argument.—Oral argument may be presented by amicus curiae only as the appellate court may direct. Requests for leave to present oral argument shall be by application and will be granted only for extraordinary reasons.

Official Note The Pennsylvania Supreme Court has held that "[a] n amicus curiae is not a party and cannot raise issues that have not been preserved by the parties." Commonwealth v. Cotto, 753 A.2d 217, 224 n.6 (Pa. 2000). In addition, the Court shares the view of the United States Supreme Court that "[a]n amicus curiae brief that brings to the attention of the Court relevant matter not already brought to its attention by the parties may be of considerable help to the Court. An amicus curiae brief that does not serve this purpose burdens the Court, and its filing is not favored." See U.S. Supreme Ct. R. 37.1.

The rule allows interested persons to be amicus curiae as to one or more questions during the merits briefing on that question. An amicus curiae can file a brief of right in support of or against a petition for allowance of appeal only if the amicus curiae participated in the underlying proceedings giving rise to the order for which further review is sought. Any persons wishing to file amicus curiae briefs in any other circumstance must seek leave of court.

The 2016 amendment to the rule set forth content and length requirements for amicus curiae briefs. The amendment also established a requirement that all amicus curiae briefs include a statement of interest disclosing whether any party to the appeal has paid in whole or in part for the preparation of the brief.

The 2011 amendment to the rule clarified when those filing amicus curiae briefs should serve and file their briefs when the appellant has chosen or the parties have been directed to proceed under the rules related to large records (Pa.R.A.P. 2154(b)), advance text (Pa.R.A.P. 2187(b)) and definitive copies (Pa.R.A.P. 2185(c)). Under those rules, the appellant may defer preparation of the reproduced record until after the briefs have been served. The parties serve on one another (but do not file) advance texts of their briefs within the times required by Pa.R.A.P. 2185(c). At the time they file their advance texts, each party includes certified record designations for inclusion in the reproduced record. The appellant must then prepare and file the reproduced record within 21 days of service of the appellee's advance text (Pa.R.A.P. 2186(a)(2)). Within 14 days of the filing of the reproduced record, each party that served a brief in advance text may file and serve definitive copies of their briefs. The definitive copy must include references to the pages of the reproduced record, but it may not otherwise include changes from the advance text other than correction of typographical errors. Those filing amicus curiae briefs may choose to serve an advance text and then file and serve definitive copies according to the procedure required of the parties or they may choose to file a definitive brief without citations to the reproduced record.

Editor's Note: Rule amended May 16, 1979, effective October 1, 1979; note amended February 27, 1980, effective March 15, 1980; further amended September 25, 1992, effective immediately; amended October 3, 2011, effective in 30 days, amended June 7, 2016, effective October 1, 2016; amended January 5, 2018, effective January 6, 2018.

In Forma Pauperis

Rule 551. | Continuation of In Forma Pauperis Status for Purposes of Appeal.

(a) *General Rule*.—A party who has been granted leave by a lower court to proceed *in forma pauperis* may proceed *in forma pauperis* in an Appellate Court upon filing with the clerk of the lower court two copies of a verified statement stating:

(1) The date on which the lower court entered the order granting leave to proceed *in forma pauperis*.

(2) That there has been no substantial change in the financial condition of the party since such date.

(3) That the party is unable to pay the fees and costs on appeal.

(b) *Effect on Filing Fees*—A verified statement conforming to Subdivision (a) of this rule, papers transmitted therewith, and papers subsequently tendered by a party which has filed such a verified statement, shall be filed by any clerk who has notice of such filing without the payment of any fee required under Chapter 27 (fees and costs in Appellate Courts and on appeal).

Note: Ordinarily the copies of the verified statement under this rule would be filed with the clerk of the lower court at the time copies of the notice of appeal are filed under Rule 905 (filing of notice of appeal). See note to Rule 124 (form of papers; number of copies) as to method of counting number of copies.

Editor's Note: Rule and note amended May 16, 1979, effective October 1, 1979.

EXPLANATORY COMMENT—1979

In forma pauperis rules are revised to permit the appellate prothonotary to permit an appeal to be taken without payment of fee where the IFP documentation is completed promptly after demand therefor, to reflect the integration (by the amendments to Rules 905 and 907) of appellate docketing and the filing of the notice of appeal in the lower court, and to conform the procedures on nonpayment of required filing fees with the general requirements of Chapter 27.

Rule 552. | Application to Trial Court for Leave to Appeal In Forma Pauperis.

(a) General Rule.—A party who is not eligible to file a verified statement under Pa.R.A.P. 551 (continuation of *in forma pauperis* status for purposes of appeal) may apply to the trial court for leave to proceed on appeal *in forma pauperis*. The application may be filed before or after the taking of the appeal, but if filed before the taking of the appeal, the application shall not extend the time for the taking of the appeal.

(b) *Accompanying Verified Statement*—Except as prescribed in paragraph (d) of this rule, the application shall be accompanied by a verified statement substantially conforming to the requirements of Pa.R.A.P. 561 (form of IFP verified statement) showing in detail the inability of the party to pay the fees and costs provided for in Chapter 27 (fees and costs in Appellate Courts and on appeal).

(c) *No Filing Fee Required*.—The clerk of the trial court shall file an application under this rule without the payment of any filing fee.

(d) *Automatic Approval in Certain Cases*.—If the applicant is represented by counsel who certifies on the application or by separate document that the applicant is indigent and that such counsel is providing free legal service to the

applicant, the clerk of the trial court shall forthwith enter an order granting the application. The clerk may accept and act on an application under this paragraph without an accompanying verified statement by the party.

(e) *Consideration and Action by the Court*.—Except as prescribed in paragraph (d) of this rule, the application and verified statement shall be submitted to the court, which shall enter its order thereon within 20 days from the date of the filing of the application. If the application is denied, in whole or in part, the court shall briefly state its reasons.

(f) *Certificate of compliance with Case Records Public Access Policy of the Unified Judicial System of Pennsylvania.*—An application filed under this Rule shall contain the certificate of compliance required by Pa.R.A.P. 127.

Official Note: Extends the substance of former Supreme Court Rule 61(b) (part) and 61 (c) (part) to the Superior and Commonwealth Courts and provides for action by the clerk in lieu of the court. It is anticipated that an application under this rule ordinarily would be acted upon prior to the docketing of the appeal in the Appellate Court and the transmission of the record.

Relief from requirements for posting a supersedeas bond in civil matters must be sought under Pa.R.A.P. 1732 (application for stay or injunction pending appeal) and relief from bail requirements in criminal matters must be sought as prescribed by Pa.R.A.P. 1762 (release in criminal matters), but under Pa.R.A.P. 123 (applications for relief) the applications under Pa.R.A.P. 552 (or 553) and other rules may be combined into a single document.

Editor's Note: Note amended May 16, 1979, effective 120 days after June 2, 1979; amended February 27, 1980, effective March 15, 1980; amended December 22, 1983, effective January 1, 1984; amended January 5, 2018, effective January 6, 2018; amended June 1, 2018, effective July 1, 2018.

Rule 553. | Application in Appellate Court.

(a) *General Rule*.—A party who has been denied relief under Rule 552 (application to lower court for leave to appeal in forma pauperis), or who has been unable to file an application under such rule because the matter is an original action in the Appellate Court, or a petition for review proceeding relating to a government unit other than a court, or for any other reason, may apply to the Appellate Court for leave to proceed *in forma pauperis* in the Appellate Court.

(b) *Form and Procedure*.—An application under this rule shall be governed by Rule 552 so far as it may be applied.

Note: See former Supreme Court Rule 61(d), which required an affidavit (verified statement) in all cases. Unlike the prior rule, this rule makes clear that the application may be renewed in the Appellate Court

Editor's Note: Amended December 22, 1983, effective January 1, 1984.

Rule 554. | Effect of Application and Approval Thereof.

(a) *Appeal Taken Before Application Filed*.—If an application under Rule 552 (application to lower court for leave to appeal in forma pauperis) or Rule 553 (application in Appellate Court) is not filed before an appeal is taken, all applicable filing fees which are due before such an application is filed shall be treated as unpaid for purposes of Chapter 27 (fees and costs in Appellate Courts and on appeal).

(b) *Appeal Taken Before Application Acted Upon*.—If an application under Rule 522 or Rule 553 has been filed but has not been acted upon any clerk who has notice of such filing shall accept any papers relating to the appeal without the payment of any fees required under Chapter 27. Transmission of a copy of the application under Rule 552 pursuant to Rule 905(b) (transmission to Appellate Court) or otherwise shall constitute notice to an appellate prothonotary of the pendency thereof for the purposes of this rule. If the application under Rule 552 or Rule 553 is thereafter denied the applicant shall pay all applicable filing fees required under Chapter 27.

(c) *Appeal Taken After Application Granted*.—If an appeal is taken after an application under Rule 552 has been granted, the party shall proceed under Rule 551 (continuation of *in forma pauperis* status for purposes of appeal), except that a copy of the order granting the application may be substituted for the verified statement required by Rule 551.

Note: In addition to its elimination of the requirement for the payment of fees, IFP status eliminates the requirement of reproducing the record, see Rule 2151(b) (in forma pauperis), and reduces the number of copies of the brief required to be served and filed. See Rule 2187(c) (in forma pauperis).

Editor's Note: Rule and note amended May 16, 1979, effective October 1, 1979.

Rule 555. | Obligation to Inform of Improved Financial Circumstances.

A party permitted to proceed *in forma pauperis* has a continuing obligation to inform the Appellate Court of improvement in the financial circumstances of the party. Counsel for a party shall likewise be under a continuing obligation to inform the Appellate Court of such improvement within a reasonable time after counsel learns of it.

Note: Extends former Supreme Court Rule 61(e) to the Superior and the Commonwealth Courts.

Rule 556. | Unemployment Compensation Cases.

A claimant/appellant in an unemployment compensation matter may proceed *in forma pauperis* without applying for leave to do so. The petition for review, papers transmitted therewith and papers subsequently tendered by the party in such a matter shall be filed by the clerk without the payment of any fee required under Chapter 27 (fees and costs in Appellate Courts and on appeal).

Note: A claimant/appellant in a workers' compensation matter, who was within the scope of the former version of this Rule, remains free to apply for leave to proceed in forma pauperis pursuant to Rule 553. Amended December 22, 1983. effective January 1, 1984.

Rule 561. | Form of IFP Verified Statement.

A verified statement under this chapter in support of an application for leave to proceed *in forma pauperis* shall be in substantially the following form:

See Forms Index

Note: Extends former Supreme Court Rule 61 (form) to the Superior and Commonwealth Courts and makes no change in substance other than the substitution of the statutory verification for an affidavit.

Editor's Note: Amended February 27, 1980, effective March 15, 1980.

Chapter 7
Courts to Which Appeals Shall be Taken

In General

Rule 701. | Interlocutory Orders.

An appeal authorized by law from an interlocutory order in a matter shall be taken to, and petitions for permission to appeal from an interlocutory order in a matter shall be filed in, the Appellate Court having jurisdiction of final orders in such matters.

Note: Based on 42 Pa.C.S. §702(a) (appeals authorized by law).

Editor's Note: Note amended December 11, 1978, effective December 30, 1978.

Rule 702. | Final Orders.

(a) *General Rule*.—An appeal authorized by law from a final order shall be taken to, and petitions for allowance of appeal from a final order shall be filed in, the Appellate Court vested by law with jurisdiction over appeals from such order.

(b) *Matters Tried With Capital Offenses*.—If an appeal is taken to the Supreme Court under Rule 1941 (review of death sentences), any other appeals relating to sentences for lesser offenses imposed on a defendant as a result of the same criminal episode or transaction and tried with the capital offense shall be taken to the Supreme Court.

(c) *Supervision of Special Prosecutions or Investigations*.—All petitions for review under Rule 3331 (review of special prosecutions or investigations) shall be filed in the Supreme Court.

Note: Because of frequent legislative modifications it is not desirable to attempt at this time to restate Appellate Court jurisdiction in these rules. However, the Administrative Office of Pennsylvania Courts publishes from time to time at 204 Pa. Code §201.2 an unofficial chart of the Unified Judicial System showing the appellate jurisdiction of the several courts of this Commonwealth, and it is expected that the several publishers of these rules will include a copy of the current version of such chart in their respective publications.

Subdivisions (b) and (c) are based upon 42 Pa.C.S. §722(i) (direct appeals from courts of common pleas). Under Rule 751 (transfer of erroneously filed cases) an appeal from a lesser offense improvidently taken to the Superior Court or the Commonwealth Court will be transferred to the Supreme Court for consideration and decision with the capital offense.

Under Rule 701 (interlocutory orders) the jurisdiction described in Subdivision (c) extends also to interlocutory orders. See Rule 102 (definitions) where the term "appeal" includes proceedings on petition for review. Ordinarily Rule 701 will have no application to matters within the scope of Subdivision (b), since that subdivision is contingent upon entry of a final order in the form of a sentence of death; the mere possibility of such a sentence is not intended to give the Supreme Court direct appellate jurisdiction over interlocutory orders in homicide and related cases since generally a death sentence is not imposed.

Editor's Note: Amended December 11, 1978, effective December 30, 1978; rule and note amended April 26, 1982, effective September 13, 1982 (120 days after publication in the Pennsylvania Bulletin).

Rule 703. | Arbitration Awards in Public Employment Disputes.

Editor's Note: Rule rescinded and note amended December 11, 1978, effective December 30, 1978.

Note: Former Rule 703 (arbitration awards in public employment disputes) and former Rule 2102 of the Pennsylvania Rules of Judicial Administration related to jurisdiction to review an award of arbitrators appointed in conformity with statute (e.g. Act of June 24, 1968 (P.L. 237, No. 111) (43 P.S. §217.1 et seq.) See now 42 Pa.C.S. §763(b) (awards of arbitrators). Compare 42 Pa.C.S. §933(b) (awards of arbitrators).

Objections to Jurisdiction

Rule 741. | Waiver of Objections to Jurisdiction.

(a) *General Rule*.—The failure of an appellee to file an objection to the jurisdiction of an Appellate Court on or prior to the last day under these rules for the filing of the record shall, unless the Appellate Court otherwise orders, operate to perfect the appellate jurisdiction of such Appellate Court, notwithstanding any provision of law vesting jurisdiction of such appeal in another Appellate Court.

(b) *Exception*.—Subdivision (a) shall not apply to any defect in the jurisdiction of an Appellate Court which arises out of:

(1) The failure to effect a filing within the time provided by these rules.

(2) An attempt to take an appeal from an interlocutory order which has not been made appealable by Rule 311 (interlocutory appeals as of right) or pursuant to Chapter 13 (interlocutory appeals by permission).

Note: Based on 42 Pa.C.S. §704 (waiver of objection to jurisdiction). It is the intention of this rule that where a case is appealed to the wrong Appellate Court, only the Court may require transfer after the briefing schedule has commenced. In view of Subdivision (b)(2), the practice in *Gurnick v. Government Employees Ins. Co.*, 278 Pa. Super. 437, 420 A.2d 620 (1980) is disapproved.

Editor's Note: Amended June 23, 1976, effective July 1, 1976; further amended December 11, 1978, effective December 30, 1978. Amended April 26, 1982, effective September 15, 1982.

EXPLANATORY COMMENT—1976

This provision makes clear that an Appellate Court may not extend the time for appellate review or (other than by the Chapter 13 procedure) make appealable a nonappealable interlocutory order.

Transfers of Cases

Rule 751. | Transfer of Erroneously Filed Cases.

(a) *General Rule*.—If an appeal or other matter is taken to or brought in a court or magisterial district which does not have jurisdiction of the appeal or other matter, the court or district justice shall not quash such appeal or dismiss the matter, but shall transfer the record thereof to the proper court of this Commonwealth, where the appeal or other matter shall be treated as if originally filed in the transferee court on the date first filed in a court or magisterial district.

(b) *Transfers by Prothonotaries*.—An appeal or other matter may be transferred from a court to another court under this rule by order of court or by order of the Prothonotary of any Appellate Court affected.

Note: Based on 42 Pa.C.S. §5103(a) (transfer of erroneously filed matters). See Rule 2703 (erroneously filed cases).

Editor's Note: Amended December 11, 1978, effective December 30, 1978.

Rule 752. | Transfers Between Superior and Commonwealth Courts.

(a) *General Rule*.—The Superior Court and the Commonwealth Court, on their own motion or on application of any party, may transfer any appeal to the other court for consideration and decision with any matter pending in such other court involving the same or related questions of fact, law or discretion.

(b) *Content of Application; Answer*.—The application shall contain a statement of the facts necessary to an understanding of the same or related questions of fact, law or discretion; a statement of the questions themselves; and a statement of the reasons why joint consideration of the appeals would be desirable. The application shall be served on all other parties to all appeals or other matters involved, and shall include or have annexed thereto a copy of each order from which any appeals involved were taken and any findings of fact, conclusions of law and opinions relating thereto. Any other party to any appeal or other matter involved may file an answer in opposition in accordance with Pa.R.A.P. 123(b). An application or answer filed under this Rule shall contain the certificate of compliance required by Pa.R.A.P. 127. The application and answer shall be submitted without oral argument unless otherwise ordered.

(c) *Effect of Filing Application*.—An application to transfer under this rule shall not stay proceedings in any appeal or other matter involved unless the Appellate Court in which the appeal or other matter is pending or a judge thereof shall so order.

(d) *Grant of Application*.—If the application to transfer is granted the prothonotary of the transferor court shall transfer the record of the appeal involved to the prothonotary of the transferee court, who shall immediately give written notice by first class mail of the transfer to all parties to all appeals or other matters involved. The notice shall set forth any necessary changes in the schedule in the transferee court for concurrent briefing and argument of the original and transferred appeals or other matters.

Note: Based on 42 Pa.C.S. §705 (transfers between intermediate Appellate Courts).

Editor's Note: Note amended December 11, 1978, effective December 30, 1978; amended July 7, 1997, effective September 5, 1997; amended January 5, 2018, effective January 6, 2018.

ARTICLE II
APPELLATE PROCEDURE

Chapter 9
Appeals from Lower Courts

Rule 901. | Scope of Chapter.

This chapter applies to all appeals from a trial court to an Appellate Court except:

(1) An appeal by allowance taken under 42 Pa.C.S. §724 (allowance of appeals from Superior and Commonwealth Courts). See Rule 1112 (appeals by allowance).

(2) An appeal by permission taken under 42 Pa.C.S §702(b) (interlocutory appeals by permission). See Rule 1311 (interlocutory appeals by permission).

(3) An appeal which may be taken by petition for review pursuant to Rule 1762(b)(2), which governs applications relating to bail when no appeal is pending.

(4) An appeal which may be taken by petition for review pursuant to Rule 1770, which governs out of home placement in juvenile delinquency matters.

(5) Automatic review of sentences pursuant to 42 Pa.C.S. §9711(h) (review of death sentence). See Rule 1941 (review of death sentences).

(6) An appeal which may be taken by petition for review pursuant to Rule 3331 (review of special prosecutions or investigations).

(7) An appeal which may be taken only by a petition for review pursuant to Rule 1573, which governs review when a trial court has denied a motion to dismiss on the basis of double jeopardy as frivolous.

Editor's Note: Amended December 11, 1978, effective December 30, 1978; amended February 27, 1980, effective March 15, 1980; amended April 26, 1982, effective September 13, 1982 (120 days after publication in the *Pennsylvania Bulletin*); amended May 15, 2007, effective immediately; amended December 10, 2012, effective 60 days after amendment; amended June 4, 2013, effective July 4, 2013.

Rule 902. | Manner of Taking Appeal.

(a) An appeal permitted by law as of right from a lower court to an Appellate Court shall be taken by filing a notice of appeal with the clerk of the lower court within the time allowed by Rule 903 (time for appeal). Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but it is grounds only for such action as the Appellate Court deems appropriate, which may include but is not limited to, remand of the matter to the lower court so that the omitted procedural step may be taken.

Official Note: 42 Pa.C.S. §703 (place and form of filing appeals) provides that appeals, petitions for review, petitions for permission to appeal and petitions for allowance of appeal shall be filed in such office and in such form as may be prescribed by general rule.

This chapter represents a significant simplification of practice. In all appeals the appellant prepares two documents: (1) a simple notice of appeal, and (2) a proof of service. The notice of appeal is filed in the lower court and copies thereof, together with copies of the proof of service, are mailed and delivered to all who need to know of the appeal; other parties, lower court judge, official court reporter. The clerk of the Trial Court transmits one set of the filed papers to the appellate prothonotary (with the requisite filing fee). The appellate prothonotary notes the appellate docket number of the notice of appeal and may utilize photocopies of the markedup notice of appeal to notify the parties, the lower court and Administrative Office of the fact of docketing.

The new procedure has a number of advantages: (1) the taking of the appeal is more certain in counties other than Dauphin, Philadelphia and Pittsburgh, because the appellant may toll the time for appeal by filing the notice of appeal in his local court house thereby eliminating the time lost in transmission of the appeal by mail; (2) the initial filing in the lower court raises an immediate caveat on the record before irreversible or undesirable action is taken on the faith of the judgment appealed from; (3) the immediate recording of the appeal below will simplify criminal appeal matters, e.g. by avoiding in certain cases the unnecessary holding and transfer of defendants between sentencing and perfecting an appeal; (4) the new procedure necessarily eliminates the "trap" of failure to perfect an appeal, since the notice of appeal is selfperfecting; and (5) the paper work of all parties and the appellate prothonotary is significantly reduced, since the preparation of the writ of certiorari and certain other papers is eliminated.

The 1986 revision to the last sentence of the rule indicates a change in approach to formal defects. The reference to dismissal of the appeal has been deleted in favor of a preference toward remanding the matter to the lower court so that the omitted procedural step may be taken, thereby enabling the Appellate Court to reach the merits of the appeal. Nevertheless, dismissal of the appeal ultimately remains a possible alternative where counsel fails to take the necessary steps to correct the defect. See Note to Rule 301 for examples of when an appeal may be remanded because an order has not been reduced to judgment or final decree and docketed.

Section 9781 of the Sentencing Code (42 Pa.C.S. §9781) provides that the defendant or the Commonwealth may file a petition for allowance of appeal of the discretionary aspects of a sentence for a felony or a misdemeanor. The notice of appeal under this chapter (see Rule 904 (content of the notice of appeal)), , in conjunction with the requirements set forth in Pa.R.A.P. 2116(b) and 2119(f), operates as the petition for allowance of appeal under the Sentencing Code. No additional wording is required or appropriate in the notice of appeal.

In effect, the filing of the petition for allowance of appeal contemplated by the statute is deferred by these rules until the briefing stage, where the question of the appropriateness of the discretionary aspects of the sentence may be briefed and argued in the usual manner. See Pa.R.A.P. 2116(b) and the note thereto; Pa.R.A.P. 2119(f) and the note thereto.

Editor's Note: Note amended December 11, 1978, effective December 30, 1978; amended May 16, 1979, effective June 2, 1979; amended February 27, 1980, effective March 15, 1980; note amended April 26, 1982, effective September 13, 1982 (120 days after publication in the *Pennsylvania Bulletin*); further amended December 10, 1986, effective January 31, 1987; official note amended May 28, 2014, effective July 1, 2014.

Rule 903. | Time for Appeal.

(a) *General Rule*.—Except as otherwise prescribed by this rule, the notice of appeal required by Rule 902 (manner of taking appeal) shall be filed within 30 days after the entry of the order from which the appeal is taken.

(b) *Cross Appeals*.—Except as otherwise prescribed in subdivision (c) of this rule, if a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 14 days of the date on which the first notice of appeal was served, or within the time otherwise prescribed by this rule, whichever period last expires.

(c) *Special Provisions*.—Notwithstanding any other provision of this rule:

(1) An appeal from any of the following orders shall be taken within 10 days after the entry of the order from which the appeal is taken:

(i) An order changing venue or venire in a criminal proceeding. See Rule 311(a)(3) (change of criminal venue or venire).

(ii) An order in any matter arising under the Pennsylvania Election Code.

(iii) An order in any matter arising under the Local Government Unit Debt Act or any similar statute relating to the authorization of public debt.

(2) Where an election has been filed under Rule 311(b) (order sustaining venue or personal or in rem jurisdiction), the notice of appeal shall be filed within 30 days after the filing of the election.

(3) In a criminal case in which no postsentence motion hasbeen filed, the notice of appeal shall be filed within 30 days of the imposition of the judgment of sentence in open court.

Official Note: 42 Pa.C.S. §5571(a) (appeals generally) provides that the time for filing an appeal, a petition for allowance of appeal, a petition for permission to appeal or a petition for review of a quasijudicial order, in the Supreme Court, the Superior Court or the Commonwealth Court shall be governed by general rules and that no other provision of 42 Pa.C.S. Ch. 55D shall be applicable to such matters. In order to prevent inadvertent legislative creation of nonuniform appeal times, 42 Pa.C.S. §1722(c) (time limitations) expressly authorizes the suspension by general rule of nonuniform statutory appeal times. See also 42 Pa.C.S. §5501(a) (scope of chapter), which makes Chapter 55 (limitation of time) of the Judicial Code subordinate to any other statute prescribing a different time in the case of an action or proceeding, but which does not so provide in the case of an appeal.

Thus, on both a statutory and constitutional basis, this rule supersedes all inconsistent statutory provisions prescribing times for appeal.

As to Subdivision (b), compare 42 Pa.C.S. §5571(f) (cross appeals).

A party filing a cross appeal pursuant to subdivision (b) 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 Rule 511 (cross appeals), Rule 2113 (reply brief), Rule 2136 (briefs in cases involving cross appeals), Rule 2185 (service and filing of briefs) and Rule 2322 (cross and separate appeals).

In *Re Petition of the Board of School Directors of the Hampton Township School District*, 688 A.2d 279 (Pa. Cmwlth. 1997), the Commonwealth Court panel held that Rule 903(b) does not extend the appeal period for any other party to file an appeal unless the party is "adverse." Under the 2002 amendment to Rule 511, the requirement that a party be adverse in order to file a cross appeal is eliminated. Once a notice of appeal is filed by one party, any other party may file a cross appeal within fourteen days.

Rule of Appellate Procedure 107 incorporates by reference the rules of construction of the Statutory Construction Act of 1972, 1 Pa.C.S. §1901-1991. See 1 Pa.C.S. §1908 relating to computation of time for the rule of construction relating to (1) the exclusion of the first day and inclusion of the last day of a time period and (2) the omission of the last day of a time period which falls on Saturday, Sunday or legal holiday.

See Rule 108 and (date of entry of orders) Explanatory Comment—2007 thereto, rule 301(a)(1) and (2) (entry upon docket below), and Pa.R.Crim.P. 462, 720, and 721 governing criminal appeals.

EXPLANATORY COMMENT — 2001

The 2001 amendment to Subdivision (c) clarifies that the appeal period for appealing from orders in civil cases sustaining venue or personal or in rem jurisdiction runs from the date of the election under Pa.R.A.P. 311(b)(1), not the date of the original order. The 2000 amendment extends the appeal period following such an election from ten days to thirty days to conform the appeal period for civil orders changing venue pursuant to Pa.R.A.P. 311(c).

The portion of the Note suggesting the necessity of taking an appeal within the 20 day pleading period is misleading and is deleted. For this reason, the bracketed material of the Note is deleted.

EXPLANATORY COMMENT—2002

See Comment following Pa.R.A.P., Rule 511.

Editor's Note: Amended October 18, 2002, effective December 2, 2002; amended January 18, 2007, effective August 1, 2007; amended April 9, 2012, effective 30 days after amendment.

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:

See Forms Index

(b) *Caption*. The parties shall be stated in the caption as they stood upon the record of the trial court at the time the appeal was taken.

(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 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.

Official Note: 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. 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.

With respect to paragraph (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 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.

Editor's Note: Note amended December 11, 1978, effective December 30, 1978; rule amended April 26, 1982, effective retroactive to July 15, 1981 (applicable to all matters commenced thereafter and matters then pending, where just and practicable); amended December 16, 1983, effective January 1, 1984; amended December 10, 1986, effective January 31, 1987; further amended July 7, 1997, effective September 5, 1997; amended October 18, 2002, effective December 2, 2002; amended January 13, 2009, effective as to all appeals filed 60 days or more after adoption; amended December 14, 2015, effective April 1, 2016..

Rule 905. | Filing of Notice of Appeal.

(a) *Filing With Clerk*.

(1) Two copies of the notice of appeal, the order for transcript, if any, and the proof of service required by Pa.R.A.P. 906, shall be filed with the Clerk of the Trial Court. If the appeal is to the Supreme Court, the jurisdictional statement required by Pa.R.A.P. 909 shall also be filed with the clerk of the trial court.

(2) If the appeal is a children's fast track appeal, a concise statement of errors complained of on appeal as described in Pa.R.A.P. 1925(a)(2) shall be filed with the notice of appeal and served on the trial judge in accordance with Pa.R.A.P. 906(a)(2).

(3) Upon receipt of the notice of appeal, the clerk shall immediately stamp it with the date of receipt, and that date shall constitute the date when the appeal was taken, which date shall be shown on the docket.

(4) If a notice of appeal is mistakenly filed in an Appellate Court, or is otherwise filed in an incorrect office within the unified judicial system, the clerk shall immediately stamp it with the date of receipt and transmit it to the clerk of the Court which entered the order appealed from, and upon payment of an additional filing fee the notice of appeal shall be deemed filed in the trial court on the date originally filed.

(5) A notice of appeal filed after the announcement of a determination but before the entry of an appealable order shall be treated as filed after such entry and on the day thereof.

(b) *Transmission to Appellate Court*.—The clerk shall immediately transmit to the Prothonotary of the Appellate Court named in the notice of appeal a copy of the notice of appeal and all attachments, as well as a receipt showing collection of any docketing fee in the Appellate Court required under paragraph (c). If the appeal is a children's fast track appeal, the clerk shall stamp the notice of appeal with a "Children's Fast Track" designation in red ink, advising the appellate court that the appeal is a children's fast track appeal, and the clerk shall also transmit to the prothonotary of the appellate court named in the notice of appeal the concise statement of errors complained of on appeal required by subparagraph (a)(2) of this rule. The clerk shall also transmit with such papers:

1. copies of all orders for transcripts relating to orders on appeal;
2. a copy of any verified statement, application, or other document filed under Pa.R.A.P. 551—561 relating to *in forma pauperis*; and
3. if the appeal is to the Supreme Court, the jurisdictional statement required by Pa.R.A.P. 909.

(c) *Fees*.—The appellant upon filing the notice of appeal shall pay any fees therefor (including docketing fees in the Appellate Court) prescribed by Chapter 27.

Official Note: To preserve a mailing date as the filing date for an appeal as of right from an order of the Commonwealth Court, *see* Pa.R.A.P. 1101(b).

As to number of copies, *see* Pa.R.A.P. 124, note. The Appellate Court portion of the filing fee will be transmitted pursuant to regulations adopted under 42 Pa.C.S. §3502.

Editor's Note: Note amended December 11, 1978, effective December 30, 1978; further amended May 16, 1979, effective October 2, 1979. Amended April 26, 1982, effective July 15, 1981; further amended December 10, 1986, effective January 31, 1987. Note amended May 16, 1979, effective October 1, 1979. Note amended September 10, 2008, effective December 1, 2008; amended January 13, 2009, effective as to all appeals filed 60 days or more after adoption; amended June 24, 2019, effective October 1, 2019.

Rule 906. | Service of Notice of Appeal.

(a) *General Rule*.—Concurrently with the filing of the notice of appeal under Pa.R.A.P. 905, the appellant shall serve copies thereof, and of any request for transcript, and copies of a proof of service showing compliance with this rule, upon:

(1) All parties to the matter in the trial court, including parties previously dismissed pursuant to an interlocutory order unless; (i) the interlocutory order of dismissal was reviewed by an appellate court and affirmed; or (ii) the interlocutory order of dismissal was made final under Pa.R.A.P. 341(c) and no party appealed from that date;

(2) The judge of the court below, whether or not the reasons for the order appealed from already appear of record;

(3) The official court reporter of the trial court, whether or not a request for transcript accompanies the papers; and

(4) The district court administrator or other person designated by the administrator pursuant to Rule 4007(B)(3) of the Pennsylvania Rules of Judicial Administration.

(b) *Appeals to the Supreme Court*.—In addition to the requirements of paragraph (a), the appellant shall serve copies of the jurisdictional statement required by Pa.R.A.P. 909 upon all parties to the matter in the trial court. The proof of service shall show compliance with this paragraph.

Official Note: *See* Pa.R.A.P. 908.

Editor's Note: Rule amended May 16, 1979, effective October 1, 1979; rule amended and note rescinded April 26, 1982, effective retroactive to July 15, 1981 (applicable to all matters commenced thereafter and matters then pending, insofar as just and practicable). Rule 906 further amended December 10, 1986, effective January 31, 1987; further amended July 7, 1997, effective September 5, 1997; amended December 2, 2016, effective January 1, 2017.

EXPLANATORY COMMENT—1979

Service of a copy of the notice of appeal is required to be made upon the official court reporter, even where the evidence has been transcribed and filed, because a number of lower courts have requested that this information be made available to facilitate the checking of the record prior to certification.

Rule 907. | Docketing of Appeal.

(a) *Docketing of Appeal*.—Upon the receipt of the papers specified in Rule 905(b) (transmission to Appellate Court) the Prothonotary of the Appellate Court shall immediately enter the appeal upon the docket, note the appellate docket number upon the notice of appeal, and give written notice of the docket number assignment in person or by first class mail to the clerk of the lower court, to the appellant and to the persons named in the proof of service accompanying the notice of appeal. An appeal shall be docketed under the caption given to the matter in the lower court, with the appellant identified as such, but if such caption does not contain the name of the appellant, his name, identified as appellant, shall be added to the caption in the Appellate Court.

(b) *Entry of Appearance*.—Upon the docketing of the appeal the Prothonotary of the Appellate Court shall note on the record as counsel for the appellant the name of counsel, if any, set forth in or endorsed upon the notice of appeal, and, as counsel for other parties, counsel, if any, named in the proof of service. The Prothonotary of the Appellate Court shall upon praecipe of any such counsel for other parties, filed within 30 days after filing of the notice of appeal, strike off or correct the record of appearances. Thereafter a counsel's appearance for a party may not be withdrawn without leave of court, unless another lawyer has entered or simultaneously enters an appearance for the party.

Official Note: The transmission of a photocopy of the notice of appeal, showing a stamped notation of filing and the appellate docket number assignment, without a letter of transmittal or other formalities, will constitute full compliance with the notice requirement of Subdivision (a) of this rule.

With regard to subdivision (b) and withdrawal of appearance without leave of the appellate court, counsel may nonetheless be subject to trial court supervision pursuant to Pa.R.Crim.P. 904 (Appointment of counsel; forma pauperis).

With respect to appearances by new counsel following the initial docketing appearances pursuant to Subdivision (b) of this rule, please note the requirements of Rule 120.

Editor's Note: Rule and note amended May 16, 1979, effective October 1, 1979; amended July 7, 1997, effective September 5, 1997; amended March 15, 2004, effective 60 days after amended.

Rule 908. | Parties on Appeal.

All parties to the matter in the court from whose order the appeal is being taken shall be deemed parties in the Appellate Court, unless the appellant shall notify the Prothonotary of the Appellate Court of the belief of the appellant that one or more of the parties below have no interest in the outcome of the appeal. A copy of such notice shall be served on all parties to the matter in the lower court, and a party noted as no longer interested may remain a party in the Appellate Court by filing a notice that he has an interest in the appeal with the Prothonotary of the Appellate Court. All parties in the Appellate Court other than the appellant shall be appellees, but appellees who support the position of the appellant shall meet the time schedule for filing papers which is provided in these rules for the appellant.

Note: Based on U.S. Supreme Court Rule 10(4).

Editor's Note: Adopted June 23, 1976, effective July 1, 1976.

EXPLANATORY COMMENT—1976

The mechanics of determining who are the appellees, etc. in an appeal are clarified. The amendments are based on U.S. Supreme Court Rule 10(4).

Rule 909. | Appeals to the Supreme Court. Jurisdictional Statement. Sanctions.

(a) *General Rule*.—Upon filing a notice of appeal to the Supreme Court, the appellant shall file with the Prothonotary of the Trial Court an original and eight copies of a jurisdictional statement. The statement shall be in the form prescribed by Rule 910(a) and (b). No statement need be filed in cases arising under Pa.R.A.P. 1941 (Review of Death Sentences).

(b) *Answer*.—Within 14 days after service of a jurisdictional statement, an adverse party may file with the Prothonotary of the Supreme Court an original and eight copies of an answer thereto in the form prescribed by Rule 911. The answer shall be deemed filed on the date of mailing if first class, express, or priority United States Postal Service mail is utilized. No separate motion to dismiss a jurisdictional statement will be received. A party entitled to file an answer who does not intend to do so shall, within the time fixed by these rules for filing an answer, file a letter stating that an answer to the jurisdictional statement will not be filed. The failure to file an answer will not be construed as concurrence in the jurisdictional statement.

(c) *Action by the Supreme Court*.—After consideration of the jurisdictional statement and the brief in opposition thereto, if any, the court will enter an appropriate order which may include summary dismissal for lack of subject matter jurisdiction. If the Supreme Court in its order notes probable jurisdiction or postpones consideration of jurisdiction to the hearing on the merits, the Prothonotary of the Supreme Court forthwith shall notify the court below and the attorneys of record of the noting or postponement, and the case will then stand for briefing and oral argument. In such case, the parties shall address the question of jurisdiction at the outset of their briefs and oral arguments.

(d) *Sanctions*.—If the court finds that the parties have not complied with Rules 909 through 911, it may impose appropriate sanctions including but not limited to dismissal of the action, imposition of costs or disciplinary sanction upon the attorneys.

Editor's Note: Rule 909 adopted December 10, 1986, effective January 31, 1987; suspended April 21, 1987 with respect to death penalty cases until further notice. Further amended December 30, 1987, effective January 16, 1988; amended September 10, 2008, effective December 1, 2008.

Rule 910. | Jurisdictional Statement. Content. Form.

(a) *General rule.*—The jurisdictional statement required by Pa.R.A.P. 909 shall contain the following in the order set forth:

(1) A reference to the official and unofficial reports of the opinions delivered in the courts below, if any, and if reported, the citation thereto. Any unreported opinions shall be appended to the jurisdictional statement;

(2) A statement of the basis, either by Act of Assembly or general rule, for the jurisdiction of the Supreme Court or the cases believed to sustain that jurisdiction;

(3) The text of the order in question, or the portions thereof sought to be reviewed, and the date of its entry in the court. The order may be appended to the statement;

(4) A concise statement of the procedural history of the case; and

(5) The questions presented for review, expressed in the terms and the circumstances of the case but without unnecessary detail. The statement of questions presented will be deemed to include every subsidiary question fairly comprised therein. Only the questions set forth in the statement, or fairly comprised therein will ordinarily be considered by the court.

(b) *Matters of form.*—The jurisdictional statement need not be set forth in numbered paragraphs in the manner of a pleading. It shall be as short as possible and shall not exceed 1000 words, excluding the appendix.

(c) *Certificate of compliance*.

(1) *Word count.*—A jurisdictional statement that does not exceed five pages when produced on a word processor or typewriter shall be deemed to meet the requirements of paragraph (b) of this rule. In all other cases, the attorney or the unrepresented filing party shall include a certification that the statement complies with the word count limits. The certificate may be based on the word count of the word processing system used to prepare the statement.

(2) *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania.*—A jurisdictional statement shall contain the certificate of compliance required by Pa.R.A.P. 127.

(d) *Nonconforming statements.*—The Prothonotary of the Supreme Court shall not accept for filing any statement that does not comply with this rule. The Prothonotary shall return the statement to the appellant, and inform all parties in which respect the statement does not comply with the rule. The prompt filing and service of a new and correct statement within seven days after return by the prothonotary shall constitute a timely filing of the jurisdictional statement.

Editor's Note: Rule 910 adopted December 10, 1986, effective January 31, 1987; amended March 27, 2013, effective to all appeals and petitions for review filed 60 days after adoption; amended January 5, 2018, effective January 6, 2018; amended June 1, 2018, effective July 1, 2018.

Rule 911. | Answer to Jurisdictional Statement. Content. Form.

(a) *General rule*.—An answer to a jurisdictional statement shall set forth any procedural, substantive, or other argument or ground why the order appealed from is not reviewable as of right and why the Supreme Court should not grant an appeal by allowance. The answer need not be set forth in numbered paragraphs in the manner of a pleading and shall not exceed [five pages] 1000 words.

(b) *Certificate of compliance*.

(1) *Word count.*—An answer to a jurisdictional statement that does not exceed five pages when produced on a word processor or typewriter shall be deemed to meet the requirements of paragraph (a) of this rule. In all other cases, the attorney or the unrepresented filing party shall include a certification that the answer complies with the word count limits. The certificate may be based on the word count of the word processing system used to prepare the answer.

(2) *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania.*—An answer to a jurisdictional statement shall contain the certificate of compliance required by Pa.R.A.P. 127.

Official Note: The Supreme Court has, in a number of cases, determined that a party has no right of appeal, but has treated the notice of appeal as a petition for allowance of appeal and granted review. See *Gossman v. Lower Chanceford Tp. Bd. of Supervisors*, 469 A. 2d 996 (Pa. 1983); *Xpress Truck Lines, Inc. v. Pennsylvania Liquor Control Board*, 469 A.2d 1008 (Pa. 1983); *O'Brien v. State Employment Retirement Board*, 469 A.2d 1000 (Pa. 1983). See also R.A.P. 1102. Accordingly, a party opposing a jurisdictional statement shall set forth why the order appealed from is not reviewable on direct appeal and why the court should not grant an appeal by allowance.

Editor's Note: Rule 911 adopted December 10, 1986, effective January 31, 1987; amended September 10, 2008, effective December 1, 2008; amended March 27, 2013, effective to all appeals and petitions for review filed 60 days after adoption; amended January 5, 2018, effective January 6, 2018; amended June 1, 2018, effective July 1, 2018.

Chapter 11
Appeals from Commonwealth Court and Superior Court

Appeals as of Right from Commonwealth Court

Rule 1101. | Appeals as of Right from the Commonwealth Court.

(a) *Scope of Rule*.—This rule applies to any appeal to the Supreme Court from an order of the Commonwealth Court entered in:

(1) Any matter which was originally commenced in the Commonwealth Court and which does not constitute an appeal to the Commonwealth Court from another court, a District Justice or another government unit.

(2) Any appeal from a decision of the Board of Finance and Revenue.

(b) *Procedure on Appeal*.—An appeal within the scope of Subdivision (a) of this rule shall be taken to the Supreme Court in the manner prescribed in Chapter 9 (appeals from lower courts), except that if the notice of appeal is transmitted to the Prothonotary of the Commonwealth Court by means of first class, express, or priority United States Postal Service mail, the notice of appeal shall be deemed received by the prothonotary for the purposes of Rule 121(a) (filing) on the date deposited in the United States mail, as shown on a United States Postal Service Form 3817 Certificate of Mailing or other similar United States Postal Service form from which the date of deposit can be verified. The certificate of mailing or other similar Postal Service form from which the date of deposit can be verified shall be cancelled by the Postal Service, shall show the docket number of the matter in the Commonwealth Court and shall be either enclosed with the notice of appeal or separately mailed to the prothonotary. Upon actual receipt of the notice of appeal the prothonotary shall immediately stamp it with the date of actual receipt. That date, or the date of earlier deposit in the United States mail as prescribed in this subdivision, shall constitute the date when the appeal was taken, which date shall be shown on the docket.

Note: Subdivision (a) is based on 42 Pa.C.S. §723 (appeals from the Commonwealth Court). This rule is not applicable to an appeal under 42 Pa.C.S. §763(b) (awards of arbitrators). See also 42 Pa.C.S. §5105(b) (successive appeals) which provides as follows:

(b) Successive Appeals.—Except as otherwise provided in this subsection, the rights conferred by subsection (a) are cumulative, so that a litigant may as a matter of right cause a final order of any tribunal in any matter which itself constitutes an appeal to such tribunal, to be further reviewed by the court having jurisdiction of appeals from such tribunal. Except as provided in section 723 (relating to appeals from the Commonwealth Court) there shall be no right of appeal from the Superior Court or the Commonwealth Court to the Supreme Court under this section or otherwise.

Appealable orders to which this rule is not applicable are governed by the procedures of Rule 1111 (form of papers; number of copies) et seq.

Rule 906(4) (service of notice of appeal) is not applicable to an appeal under this rule since that provision relates only to service upon the district court administrator of a Court of Common Pleas.

The United States Postal Service Form 3817 mentioned in Subdivision (b) is reproduced in the note to Rule 1112 (appeals by allowance).

Editor's Note: Amended December 11, 1978, effective December 30, 1978; note amended May 16, 1979, effective October 1, 1979: note amended April 26, 1982, effective retroactive to July 15, 1981 (applicable to all matters commenced thereafter and matters pending, insofar as just and practicable): amended December 16, 1983, effective January 1, 1984; amended September 10, 2008, effective December 1, 2008.

EXPLANATORY COMMENT—1976

Where an interlocutory order of a trial court is by statute appealable as of right to an Appellate Court (Rule 311), it is not clear that such right extends to appeals to the Supreme Court from orders of the Commonwealth Court sitting as a trial court and language which could be real to deny such right, if any, is deleted. The filing-by-mail procedure applicable to filing petitions for allowance of appeal to the Supreme Court from the Commonwealth Court is extended to filing notice of appeal to the Supreme Court, wherever a right of appeal exists.

Rule 1102. | Improvident Appeals.

If an appeal is improvidently taken to the Supreme Court under Rule 1101 (appeals as of right from the Commonwealth Court) in a case where the proper mode of review is by petition for allowance of appeal under this chapter, this alone shall not be a ground for dismissal, but the papers whereon the appeal was taken shall be regarded and acted on as a petition for allowance of appeal and as if duly filed in the Supreme Court at the time the appeal was taken.

Note: Based on 42 Pa.C.S. §724(b) (improvident appeals). In a similar fashion, any motion to quash the appeal would be regarded as an answer to the petition under Rule 1116 (answer to the petition for allowance of appeal).

Editor's Note: Note amended December 11, 1978, effective December 30, 1978; rule amended May 16, 1979, effective October 1, 1979; amended February 27, 1980, effective March 15, 1980. Note amended September 10, 2008, effective December 1, 2008.

Rule 1103. | Improvident Petitions for Allowance of Appeal.

If a petition for allowance of appeal is improvidently filed in the Supreme Court under Rule 1112 (appeals by allowance) in a case where the proper mode of review is by appeal under Rule 1101 (appeals as of right from the Commonwealth Court), this alone shall not be a ground for dismissal, but the petition for allowance of appeal shall be regarded as a notice of appeal and as if duly filed in the Commonwealth Court at the time the petition for allowance of appeal was filed in the Supreme Court.

Petition for Allowance of Appeal

Rule 1111. | Form of Papers; Number of Copies.

All papers filed under this chapter, other than under Rule 1101 (appeals as of right from the Commonwealth Court), shall be prepared in the manner provided by Rule 2171 (method of reproduction) through Rule 2174 (tables of contents and citations). Eight copies shall be filed with the original.

Note: This rule does not apply to appeals taken under Rule 1101 (appeals as of right from the Commonwealth Court), since those appeals are taken pursuant to Chapter 9 (appeals from lower courts).

Editor's Note: Amended June 23, 1976, effective July 1, 1976.

EXPLANATORY COMMENT—1976

These Rules are intended to require that the documents to which they relate be prepared in brief-type form and cross references to Rules 2172 through 2174 have therefore been added.

Rule 1112. | Appeals by Allowance.

(a) *General rule*.—An appeal may be taken by allowance under 42 Pa.C.S. §724(a) (allowance of appeals from Superior and Commonwealth Courts) from any final order of the Commonwealth Court, not appealable under Rule 1101 (appeals as of right from the Commonwealth Court), or from any final order of the Superior Court.

(b) *Definition. Final Order*.—A final order of the Superior Court or Commonwealth Court is any order that concludes an appeal, including an order that remands an appeal, in whole or in part, unless the appellate court remands and retains jurisdiction.

(c) *Petition for allowance of appeal*.

(1) Allowance of an appeal from a final order of the Superior Court or the Commonwealth Court may be sought by filing a petition for allowance of appeal with the Prothonotary of the Supreme Court within the time allowed by Rule 1113 (time for petitioning for allowance of appeal), with proof of service on all other parties to the matter in the appellate court below.

(2) If the petition for allowance of appeal is transmitted to the Prothonotary of the Supreme Court by means of first class, express, or priority United States Postal Service mail, the petition shall be deemed received by the prothonotary for the purposes of Rule 121(a) (filing) on the date deposited in the United States mail, as shown on a United States Postal Service Form 3817 Certificate of Mailing or other similar United States Postal Service form from which the date of deposit can be verified. The certificate of mailing or other similar Postal Service form from which the date of deposit can be verified shall be cancelled by the Postal Service, shall show the docket number of the matter in the appellate court below and shall be either enclosed with the petition or separately mailed to the prothonotary.

(3) Upon actual receipt of the petition for allowance of appeal the Prothonotary of the Supreme Court shall immediately stamp it with the date of actual receipt. That date, or the date of earlier deposit in the United States mail as prescribed in this subdivision, shall constitute the date when allowance of appeal was sought, which date shall be shown on the docket. The Prothonotary of the Supreme Court shall immediately note the Supreme Court docket number upon the petition for allowance of appeal and give written notice of the docket number assignment in person or by first class mail to the prothonotary of the appellate court below who shall note on the docket that a petition for allowance of appeal has been filed to the petitioner and to the other persons named in the proof of service accompanying the petition.

(4) In a children's fast track appeal, the Prothonotary of the Supreme Court shall stamp the petition for allowance of appeal with a "Children's Fast Track" designation in red ink, advising the Supreme Court that the petition for allowance of appeal is a children's fast track appeal.

(d) *Reproduced Record*.—One copy of the reproduced record, if any, in the Appellate Court below shall be lodged with the Prothonotary of the Supreme Court at the time the petition for allowance of appeal is filed therein. A party filing a cross-petition for allowance of appeal from the same order need not lodge any reproduced record in addition to that lodged by petitioner.

(e) *Fee*.—The petitioner upon filing the petition for allowance of appeal shall pay any fee therefor prescribed by Chapter 27 (fees and costs in Appellate Courts and on appeal).

(f) *Entry of appearance*.—Upon the filing of the petition for allowance of appeal the Prothonotary of the Supreme Court shall note on the record as counsel for the petitioner the name of his or her counsel, if any, set forth in or endorsed upon the petition for allowance of appeal, and, as counsel for other parties, counsel, if any, named in the proof of service. The prothonotary shall upon praecipe of any such counsel for other parties, filed at any time within 30 days after filing of the petition, strike off or correct the record of appearance. Thereafter a counsel's appearance for a party may not be withdrawn without leave of court unless another lawyer has entered or simultaneously enters an appearance for the party.

Official Note: Based on 42 Pa.C.S. §724(a) (allowance of appeals from Superior and Commonwealth Courts). The notation on the docket by the Prothonotary of the Superior Court or Commonwealth Court of the filing of a petition for allowance of appeal renders universal the rule that the appeal status of any order may be discovered by examining the docket of the court in which it was entered.

Where an appellant desires to challenge the discretionary aspects of a sentence of a trial court, the "petition for allowance of appeal" referred to in 42 Pa.C.S. § 9781(b) is deferred until the briefing stage, and the appeal is commenced by filing a notice of appeal pursuant to Chapter 9 rather than a petition for allowance of appeal pursuant to Chapter 11. See note to Pa.R.A.P. 902; note to Pa.R.A.P. 1115; Pa.R.A.P. 2116(b) and the note thereto; Pa.R.A.P. 2119(f) and the note thereto.

The United States Postal Service form may be in substantially the following form:

See Forms Index

With regard to subdivision (f) and withdrawal of appearance without leave of the appellate court, counsel may nonetheless be subject to trial court supervision pursuant to Pa.R.Crim.P. 904 (Entry of Appearance and Appointment of Counsel; In Forma Pauperis).

With respect to appearances by new counsel following the initial docketing of appearances pursuant to Subdivision (f) of this rule, please note the requirements of Rule 1200.

The transmittal should be taken unsealed to the Post Office, the Form 3817 Certificate of Mailing or other similar United States Postal Service form from which the date of deposit can be verified should be obtained, cancelled, and attached to the petition, and the envelope should only then be sealed. Alternately, the cancelled Form 3817 or other similar United States Postal Service form from which the date of deposit can be verified can be submitted to the prothonotary under separate cover with clear identification of the filing to which it relates.

It is recommended that the petitioner obtain a duplicate copy of the Form 3817 or other similar United States Postal Service form from which the date of deposit can be verified as evidence of mailing. Since the Post Office is technically the filing office for the purpose of this rule a petition which was mailed in accordance with this rule and which is subsequently lost in the mail will nevertheless toll the time for petitioning for allowance of appeal. However, counsel will be expected to follow up on a mail filing by telephone inquiry to the appellate prothonotary where written notice of the docket number assignment is not received in due course.

With respect to appearances by new counsel following the initial docketing of appearances pursuant to Subdivision (f) of this rule, please note the requirements of Rule 120.

Where an appellant desires to challenge the discretionary aspects of a sentence of a trial court, the "petition for allowance of appeal" referred to in 42 Pa.C.S. § 9781(b) is deferred until the briefing stage, and the appeal is commenced by filing a notice of appeal pursuant to Chapter 9 rather than a petition for allowance of appeal pursuant to Chapter 11. See note to Pa.R.A.P. 902; note to Pa.R.A.P. 1115; Pa.R.A.P. 2116(b) and the note thereto; Pa.R.A.P. 2119(f) and the note thereto.

Editor's Note: Amended December 11, 1978, effective December 30, 1978: note amended April 26, 1982, effective September 13, 1982, effective January 1, 1984; amended July 7, 1997, effective September 5, 1997; amended March 15, 2004, effective 60 days after amended; amended September 10, 2008, effective December 1, 2008; amended January 13, 2009, effective as to all appeals filed 60 days or more after adoption. Official note amended May 28, 2014, effective July 1, 2014.

EXPLANATORY COMMENT—1976

In view of the fact that the Prothonotary of the Supreme Court will as a matter of course notify the Superior Court and the Commonwealth Court of the filing of a petition for allowance of appeal, the requirement that the petitioner file a copy of the petition in the appellate court below is deleted.

See the Comment following Rule 908.

Rule 1113. | Time for Petitioning for Allowance of Appeal.

(a) *General Rule*.—Except as otherwise prescribed by this rule, a petition for allowance of appeal shall be filed with the Prothonotary of the Supreme Court within 30 days after the entry of the order of the Superior Court or the Commonwealth Court sought to be reviewed.

(1) If a timely application for reargument is filed in the Superior Court or Commonwealth Court by any party, the time for filing a petition for allowance of appeal for all parties shall run from the entry of the order denying reargument or from the entry of the order denying reargument, whether or not that decision amounts to a reaffirmation of the prior decision.

(2) Unless the Superior Court or the Commonwealth Courts acts on the application for reargument within 60 days after it is filed the court shall no longer consider the application, it shall be deemed to have been denied and the Prothonotary of the Appellate Court shall forthwith enter an order denying the application and shall immediately give written notice in person or by first class mail of entry of the order denying the application to each party who has appeared in the Appellate Court. A petition for allowance of appeal filed before the disposition of such an application for reargument shall have no effect. A new petition for allowance of appeal must be filed within the prescribed time measured from the entry of the order denying or otherwise disposing of such an application for reargument.

(3) In a children's fast track appeal, unless the Superior Court acts on the application for reargument within 45 days after it is filed the court shall no longer consider the application, it shall be deemed to have been denied and the Prothonotary of the Superior Court shall forthwith enter an order denying the application and shall immediately give written notice in person or by first class mail of entry of the order denying the application to each party who has appeared in the appellate court. A petition for allowance of appeal filed before the disposition of such an application for reargument shall have no effect. A new petition for allowance of appeal must be filed within the prescribed time measured from the entry of the order denying or otherwise disposing of such an application for reargument.

(b) *Cross Petitions*.—Except as otherwise prescribed in subdivision (c) of this rule, if a timely petition for allowance of appeal is filed by a party, any other party may file a petition for allowance of appeal within 14 days of the date on which the first petition for allowance of appeal was served, or within the time otherwise prescribed by this rule, whichever period last expires.

(c) *Special Provisions*.—Notwithstanding any other provision of this rule, a petition for allowance of appeal from an order in any matter arising under any of the following shall be filed within 10 days after the entry of the order sought to be reviewed:

(1) Pennsylvania Election Code.

(2) Local Government Unit Debt Act or any similar statute relating to the authorization of public debt.

Official Note: See Note to Rule 903 (time for appeal).

A party filing a cross petition for allowance of appeal pursuant to subdivision (b) should identify it as a cross petition to assure that the prothonotary will process the cross petition with the initial petition. See also Rule 511 (cross appeals), Rule 2136 (briefs in cases involving cross appeals) and Rule 2322 (cross and separate appeals).

Editor's Note: Amended October 18, 2002, effective December 2, 2002; amended January 13, 2009, effective as to all appeals filed 60 days or more after adoption; amended April 9, 2012, effective 30 days after amendment.

Rule 1114. | Standards Governing Allowance of Appeal.

(a) *General Rule*. Except as prescribed in Pa.R.A.P. 1101 (appeals as of right from the Commonwealth Court), review of a final order of the Superior Court or the Commonwealth Court is not a matter of right, but of sound judicial discretion, and an appeal will be allowed only when there are special and important reasons therefor.

(b) *Standards*. A petition for allowance of appeal may be granted for any of the following reasons:

(1) the holding of the intermediate appellate court conflicts with another intermediate appellate court opinion;

(2) the holding of the intermediate appellate court conflicts with a holding of the Pennsylvania Supreme Court or the United States Supreme Court on the same legal question;

(3) the question presented is one of first impression;

(4) the question presented is one of such substantial public importance as to require prompt and definitive resolution by the Pennsylvania Supreme Court;

(5) the issue involves the constitutionality of a statute of the Commonwealth;

(6) the intermediate appellate court has so far departed from accepted judicial practices or so abused its discretion as to call for the exercise of the Pennsylvania Supreme Court's supervisory authority; or

(7) the intermediate appellate court has erroneously entered an order quashing or dismissing an appeal.

Official Note: The petition for allowance of appeal is synonymous with a petition for allocatur.

Pa.R.A.P. 1114(b)(7) supersedes the practice described in *Vaccone v. Syken*, 587 Pa. 380, 384 n.2, 899 A.2d 1103, 1106 n.2 (2006).

Editor's Note: Note amended December 11, 1978, effective December 30, 1978; amended February 4, 2011, effective in 30 days; Rule and Official Note amended on May 31, 2013, effective immediately.

Rule 1115. | Content of the Petition for Allowance of Appeal.

(a) *General Rule*.—The petition for allowance of appeal need not be set forth in numbered paragraphs in the manner of a pleading, and shall contain the following (which shall, insofar as practicable, be set forth in the order stated):

(1) A reference to the official and unofficial reports of the opinions delivered in the courts below, if any, and if reported. Any such opinions shall be appended as provided in item 6 of paragraph (a) of this rule.

(2) The text of the order in question, or the portions thereof sought to be reviewed, and the date of its entry in the Appellate Court below. If the order is voluminous, it may, if more convenient, be appended to the petition.

(3) The questions presented for review, expressed in the terms and circumstances of the case but without unnecessary detail. The statement of questions presented will be deemed to include every subsidiary question fairly comprised therein. Only the questions set forth in the petition, or fairly comprised therein, will ordinarily be considered by the court in the event an appeal is allowed.

(4) A concise statement of the case containing the facts material to a consideration of the questions presented.

(5) A concise statement of the reasons relied upon for allowance of an appeal. *See* Pa.R.A.P 1114.

(6) There shall be appended to the petition a copy of any opinions delivered relating to the order sought to be reviewed, as well as all opinions of government units, trial courts, or intermediate appellate courts in the case, and, if reference thereto is necessary to ascertain the grounds of the order, opinions in companion cases. If an application for reargument was filed in the Superior Court or Commonwealth Court, there also shall be appended to the petition a copy of any order granting or denying the application for reargument. If whatever is required by this paragraph to be appended to the petition is voluminous, it may, if more convenient, be separately presented.

(7) There shall be appended to the petition the verbatim texts of the pertinent provisions of constitutional provisions, statutes, ordinances, regulations of other similar enactments which the case involves, and the citation to the volume and page where they are published, including the official edition, if any.

(8) The certificate of compliance required by Pa.R.A.P. 127.

(b) *Caption and Parties*.—All parties to the proceeding in the intermediate Appellate Court shall be deemed parties in the Supreme Court, unless the petitioner shall notify the Prothonotary of the Supreme Court of the belief of the petitioner that one or more of the parties below have no interest in the outcome of the petition. A copy of such notice shall be served on all parties to the matter in the intermediate appellate court, and a party noted as no longer interested may remain a party in the Supreme Court by filing a notice that he has an interest in the petition with the Prothonotary of the Supreme Court. All parties in the Supreme Court other than petitioner shall be named as respondents, but respondents who support the position of the petitioner shall meet the time schedule for filing papers which is provided in this chapter for the petitioner, except that any response by such respondents to the petition shall be filed as promptly as possible after receipt of the petition.

(c) *No Supporting Brief*.—All contentions in support of a petition for allowance of appeal shall be set forth in the body of the petition as provided by item 5 of paragraph (a) of this rule. Neither the briefs below nor any separate brief in support of a petition for allowance of appeal will be received, and the Prothonotary of the Supreme Court will refuse to file any petition for allowance of appeal to which is annexed or appended any brief below or supporting brief.

(d) *Essential Requisites of Petition*.—The failure of a petitioner to present with accuracy, brevity, and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration will be a sufficient reason for denying the petition.

(e) *Multiple Petitioners*.—Where permitted by Pa.R.A.P. 512 a single petition for allowance of appeal may be filed.

(f) *Length*.—A petition for allowance of appeal shall not exceed 9,000 words. A petition for allowance of appeal that does not exceed 20 pages when produced by a word processor or typewriter shall be deemed to meet the 9,000 word limit. In all other cases, the attorney or the unrepresented filing party shall include a certification that the petition complies with the word count limit. The certificate may be based on the word count of the word processing system used to prepare the petition.

(g) *Supplementary matter*.—The cover of the petition for allowance of appeal, pages containing the table of contents, table of citations, proof of service, signature block and anything appended to the petition under subparagraphs (a)(6) and (a)(7) shall not count against the word count limitations of this rule.

Official Note: Former Supreme Court Rule 62 permitted the petitioner in effect to dump an undigested mass of material (such as briefs in and opinions of the court below) in the lap of the Supreme Court, with the burden on the individual justices and their law clerks to winnow the wheat from the chaff. This rule, which is patterned after U.S. Supreme Court Rule 14, places the burden on the petitioner to prepare a succinct and coherent presentation

of the case and the reasons in support of allowance of appeal. Where an appellant desires to challenge the discretionary aspects of a sentence of a trial court the "petition for allowance of appeal'' referred to in 42 Pa.C.S. § 9781(b) is deferred until the briefing stage, and the appeal is commenced by filing a notice of appeal pursuant to Chapter 9 rather than a petition for allowance of appeal pursuant to Chapter 11. Commonwealth v. Tuladziecki, 522 A.2d 17, 18 (Pa. 1987). See note to Pa.R.A.P. 902; Pa.R.A.P. 2116(b) and the note thereto; Pa.R.A.P. 2119(f) and the note thereto.

Editor's Note: Note amended May 16, 1979, effective June 2, 1979; amended September 25, 2008, effective 30 days after entry of order, official note amended May 28, 2014, effective July 1, 2014; amended December 30, 2014, effective 60 days after entry of order; amended January 5, 2018, effective January 6, 2018.

EXPLANATORY COMMENT 2008

The purpose of the requirement in Subsection (a)(6) requiring the attachment of any order granting or denying an application for reargument (which also includes applications for "reconsideration" and "rehearing," see Pa.R.A.P. 102) filed in the Superior Court or Commonwealth Court is to allow the Prothonotary of the Supreme Court to confirm compliance with the time requirements for filing a petition for allowance of appeal under Pa.R.A.P. 1113(a).

Briefs in Opposition

Rule 1116. | Answer to the Petition for Allowance of Appeal.

(a) *General Rule*.— Except as otherwise prescribed by this rule, within 14 days after service of a petition for allowance of appeal an adverse party may file an answer. The answer shall be deemed filed on the date of mailing if first class, express, or priority United States Postal Service mail is utilized. The answer need not be set forth in numbered paragraphs in the manner of a pleading, shall set forth any procedural, substantive or other argument or ground why the order involved should not be reviewed by the Supreme Court and shall comply with Pa.R.A.P. 1115(a).7. No separate motion to dismiss a petition for allowance of appeal will be received. A party entitled to file an answer under this rule who does not intend to do so shall, within the time fixed by these rules for filing an answer, file a letter stating that an answer to the petition for allowance of appeal will not be filed. The failure to file an answer will not be construed as concurrence in the request for allowance of appeal.

(b) *Children's fast track appeals*.—In a children's fast track appeal, within 10 days after service of a petition for allowance of appeal, an adverse party may file an answer.

(c) *Length*.—An answer to a petition for allowance of appeal shall not exceed 9,000 words. An answer that does not exceed 20 pages when produced by a word processor or typewriter shall be deemed to meet the 9,000 word limit. In all other cases, the attorney or the unrepresented filing party shall include a certification that the answer complies with the word count limit. The certificate may be based on the word count of the word processing system used to prepare the answer.

(d) *Supplementary matter*.—The cover of the answer, pages containing the table of contents, table of citations, proof of service, signature block and anything appended to the answer shall not count against the word count limitations of this rule.

(e) *Certificate of compliance with Case Records Public Access Policy of the Unified Judicial System of Pennsylvania.*—An answer to a petition for allowance of appeal shall contain the certificate of compliance required by Pa.R.A.P. 127.

Official Note: This rule and Pa.R.A.P. 1115 contemplate that the petition and answer will address themselves to the heart of the issue, such as whether the Supreme Court ought to exercise its discretion to allow an appeal, without the need to comply with the formalistic pattern of numbered averments in the petition and correspondingly numbered admissions and denials in the response. While such a formalistic format is appropriate when factual issues are being framed in a trial court (as in the petition for review under Chapter 15) such a format interferes with the clear narrative exposition necessary to outline succinctly the case for the Supreme Court in the allocatur context.

Editor's Note: Amended June 23, 1976, effective July 1, 1976; amended September 10, 2008, effective December 1, 2008; amended January 13, 2009, effective as to all appeals filed 60 days or more after adoption; amended December 30, 2014, effective 60 days after entry of order; amended January 5, 2018, effective January 6, 2018; amended June 1, 2018, effective July 1, 2018.

EXPLANATORY COMMENT—1976

The title of the response to a petition for allowance of appeal or petition for permission to appeal is changed from "answer" to "brief in opposition" in the interest of accuracy and to conform to U.S. Supreme Court practice.

Rule 1121. | Transmission of Papers to and Action by the Court.

Upon receipt of the answer to the petition for allowance of appeal, or a letter stating that no answer will be filed, from each party entitled to file such, the petition and the answer, if any, shall be distributed by the Prothonotary to the Supreme Court for its consideration. An appeal may be allowed limited to one or more of the questions presented in the petition, in which case the order allowing the appeal shall specify the question or questions which will be considered by the court.

Editor's Note: Amended June 23, 1976, effective July 1, 1976; amended December 11, 1978, effective December 30, 1978; amended April 30, 1984, effective immediately; amended September 10, 2008, effective December 1, 2008.

Rule 1122. | Allowance of Appeal and Transmission of Record.

If an appeal is allowed the Prothonotary of the Supreme Court shall immediately give written notice in person or by first class mail of the entry of the order allowing the appeal to the Prothonotary of the Appellate Court below and to each party who has appeared in the Supreme Court. The notice shall specify the question or questions which will be considered by the Supreme Court, if an appeal has been allowed as to less than all questions presented. The Prothonotary of the Appellate Court below shall docket the notice in the same manner as a notice of appeal, and shall forthwith transmit the record to the Prothonotary of the Supreme Court, but for the purpose of computing time under these rules the record shall be deemed filed in the Supreme Court on the date of entry of the order allowing the appeal. A notice of appeal need not be filed.

Note: This rule eliminates the little-known procedural "trap" whereby the number of days between the entry of the judgment below and the date of filing the petition for allowance of appeal is subtracted from the time available to the appellant for formal entry of the appeal after it has been allowed. See *Platt/Barber Co. v. Groves*, 193 Pa. 475, 44 Atl. 571 (1899). Under this rule the entry by the Supreme Court of the order allowing the appeal automatically perfects the appeal.

Editor's Note: Rule amended May 16, 1979, effective October 1, 1979.

Rule 1123. | Denial of Appeal; Reconsideration.

(a) *Denial*.—If the petition for allowance of appeal is denied the Prothonotary of the Supreme Court shall immediately give written notice in person or by first class mail of the entry of the order denying the appeal to each party who has appeared in the Supreme Court. After the expiration of the time allowed by paragraph (b) of this rule for the filing of an application for reconsideration of denial of a petition for allowance of appeal, of no application for reconsideration is filed, the Prothonotary of the Supreme Court shall notify the Prothonotary of the Appellate Court below of the denial of the petition.

(b) *Reconsideration*.—Applications for reconsideration of denial of allowance of appeal are not favored and will be considered only in the most extraordinary circumstances. An application for reconsideration of denial of a petition for allowance of appeal shall be filed with the Prothonotary of the Supreme Court within 14 days after entry of the order denying the petition for allowance of appeal. In a children's fast track appeal, the application for reconsideration of denial of a petition for allowance of appeal shall be filed with the Prothonotary of the Supreme Court within 7 days after entry of the order denying the petition for allowance of appeal. Any application filed under this paragraph must comport with the following:

(1) Briefly and distinctly state grounds which are confined to intervening circumstances of substantial or controlling effect.

(2) Be supported by a certificate of counsel to the effect that it is presented in good faith and not for delay. Counsel must also certify that the application is restricted to the grounds specified under subparagraph (b)(1).

(3) Contain the certificate of compliance required by Pa.R.A.P. 127.

No answer to an application for reconsideration will be received unless requested by the Supreme Court. Second or subsequent applications for reconsideration, and applications for reconsideration which are out of time under this rule, will not be received.

(c) *Manner of filing*. If the application for reconsideration is transmitted to the prothonotary of the appellate court by means of first class, express, or priority United States Postal Service mail, the application shall be deemed received by the prothonotary for the purposes of Pa.R.A.P. 121(a) (filing) on the date deposited in the United States mail as shown on a United States Postal Service Form 3817 Certificate of Mailing, or other similar United States Postal Service form from which the date of deposit can be verified. The certificate of mailing or other similar Postal Service form from which the date of deposit can be verified shall be cancelled by the Postal Service, shall show the docket number of the matter in the court in which reconsideration is sought, and shall be enclosed with the application or separately mailed to the prothonotary. Upon actual receipt of the application, the prothonotary shall immediately stamp it with the date of actual receipt. That date, or the date of earlier deposit in the United States mail as prescribed in this paragraph, shall constitute the date when application was sought, which date shall be shown on the docket.

Editor's Note: Amended May 16, 1996, effective July 1, 1996; amended September 10, 2008, effective December 1, 2008; amended January 13, 2009, effective as to all appeals filed 60 days or more after adoption; amended January 5, 2018, effective January 6, 2018.

Chapter 13
Interlocutory Appeals by Permission

Rule 1301. | Form of Papers; Number of Copies.

All papers filed under this chapter may be produced on a word processor/computer or typewriter. Eight copies shall be filed with the original in the Supreme Court. Six copies shall be filed with the original in the Superior Court. One copy and the original shall be filed in the Commonwealth Court.

Note: Counsel are advised to check with the Prothonotary of the Appellate Court before filing as the number of copies required may change from time to time without formal amendment of these rules.

Editor's Note: Amended December 10, 1986, effective January 31, 1987; amended June 26, 2007, effective immediately.

Rule 1311. | Interlocutory Appeals by Permission.

(a) *General Rule*.—An appeal may be taken by permission under 42 Pa.C.S. §702(b) (interlocutory appeals by permission) from any interlocutory order of a lower court or other government unit. See Rule 312 (interlocutory appeals by permission).

(b) *Petition for Permission to Appeal*.—Permission to appeal from an interlocutory order containing the statement prescribed by 42 Pa.C.S. §702(b) may be sought by filing a petition for permission to appeal with the prothonotary of the appellate court within 30 days after entry of such order in the lower court or other government unit with proof of service on all other parties to the matter in the lower court or other government unit and on the government unit or clerk of the lower court, who shall file the petition of record in such lower court. An application for an amendment of an interlocutory order to set forth expressly the statement specified in 42 Pa.C.S. §702(b)

shall be filed with the lower court or other government unit within 30 days after the entry of such interlocutory order and permission to appeal may be sought within 30 days after entry of the order as amended. Unless the trial court or other government unit acts on the application within 30 days after it is filed, the trial court or other government unit shall no longer consider the application and it shall be deemed denied. If the petition for permission to appeal is transmitted to the prothonotary of the appellate court by means of first class, express, or priority United States Postal Service mail, the petition shall be deemed received by the prothonotary for the purposes of Rule 121(a) (filing) on the date deposited in the United States mail, as shown on a United States Postal Service Form 3817 Certificate of Mailing, or other similar United States Postal Service form from which the date of deposit can be verified. The certificate of mailing or other similar Postal Service form from which the date of deposit can be verified shall be cancelled by the Postal Service, shall show the docket number of the matter in the lower court or other government unit and shall be either enclosed with the petition or separately mailed to the prothonotary. Upon actual receipt of the petition for permission to appeal the prothonotary of the appellate court shall immediately stamp it with the date of actual receipt. That date, or the date of earlier deposit in the United States mail as prescribed in this subdivision, shall constitute the date when permission to appeal was sought, which date shall be shown on the docket. The prothonotary of the appellate court shall immediately note the appellate docket number assignment upon the petition for permission to appeal and give written notice of the docket number assignment in person or by first class mail to the government unit or clerk of the lower court, to the petitioner and to the other persons named in the proof of service accompanying the petition.

(c) *Fee*.—The petitioner upon filing the petition for permission to appeal shall pay any fee therefor prescribed by Chapter 27 (fees and costs in Appellate Courts and on appeal).

(d) *Entry of Appearance*.—Upon the filing of the petition for permission to appeal the Prothonotary of the Appellate Court shall note on the record as counsel for the petitioner the name of counsel, if any, set forth in or endorsed upon the petition for permission to appeal, and, as counsel for other parties, counsel, if any, named in the proof of service. The prothonotary shall upon praecipe of any such counsel for other parties, filed at any time within 30 days after filing of the petition, strike off or correct the record of appearance. Thereafter a counsel's appearance for a party may not be withdrawn without leave of court, unless another lawyer has entered or simultaneously enters an appearance for the party.

Official Note: Based on 42 Pa.C.S. §702(b) (interlocutory appeals by permission). See note to Rule 903 (time for appeal). Compare 42 Pa.C.S. §5574 (effect of application for amendment to qualify for interlocutory appeal).

See Official Note to Rule 1112 (appeals by allowance) for an explanation of the procedure when Form 3817 or other similar United States Postal Service form from which the date of deposit can be verified is used.

Where the administrative agency or lower court refuses to amend its order to include the prescribed statement, a petition for review under Chapter 15 of the unappealable order of denial is the proper mode of determining whether the case is so egregious as to justify prerogative appellate correction of the exercise of discretion by the lower tribunal. If the petition for review is granted in such a case, the effect (as in the Federal practice under 28 U.S.C. §1292(b)) is the same as if a petition for permission to appeal had been filed and granted, and no separate petition for permission to appeal needs be filed.

The 1997 amendment to subdivision (b) provides for a deemed denial where the trial court or other governmental unit fails to act on the application within 30 days. Under such circumstances, a party may need to file a praecipe for entry of the deemed denial pursuant to Rule 301(d).

With regard to subdivision (d) and withdrawal of appearance without leave of the appellate court, counsel may nonetheless be subject to trial court supervision pursuant to Pa.R.Crim.P. 904 (Entry of Appearance and Appointment of Counsel; In Forma Pauperis).

With respect to appearances by new counsel following the initial docketing of appearances pursuant to Subdivision (d) of this rule, please note the requirements of Rule 120.

Editor's Note: Amended December 11, 1978, effective December 30, 1978, amended December 16, 1983, effective January 1, 1984; further amended May 6, 1992, effective July 6, 1992; further amended July 7, 1997, effective September 5, 1997; amended March 15, 2004, effective 60 days after amended; amended September 10, 2008, effective December 1, 2008.

Rule 1312. | Content of the Petition for Permission to Appeal.

(a) *General Rule*.—The petition for permission to appeal need not be set forth in numbered paragraphs in the manner of a pleading, and shall contain the following (which shall, insofar as practicable, be set forth in the order stated):

(1) A statement of the basis for the jurisdiction of the Appellate Court.

(2) The text of the order in question, or the portions thereof sought to be reviewed (including the statement by the trial court or other government unit that the order involves a controlling question of law as to which there is a substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the matter), and the date of its entry in the trial court or other government unit. If the order is voluminous, it may, if more convenient, be appended to the petition.

(3) A concise statement of the case containing the facts necessary to an understanding of the controlling questions of law determined by the order of the trial court or other government unit.

(4) The controlling questions of law presented for review, expressed in the terms and circumstances of the case but without unnecessary detail. The statement of questions presented will be deemed to include every subsidiary question fairly comprised therein. Only the questions set forth in the petition, or fairly comprised therein, will ordinarily be considered by the court in the event permission to appeal is granted.

(5) A concise statement of the reasons why a substantial ground exists for a difference of opinion on the

questions and why an immediate appeal may materially advance the termination of the matter.

(6) There shall be appended to the petition a copy of any opinions delivered relating to the order sought to be reviewed, as well as all opinions of trial courts or other government units in the case, and, if reference thereto is necessary to ascertain the grounds of the order, opinions in companion cases. If whatever is required by this paragraph to be appended to the petition is voluminous, it may, if more convenient, be separately presented.

(7) There shall be appended to the petition the verbatim texts of the pertinent provisions of constitutional provisions, statutes, ordinances, regulations or other similar enactments which the case involves, and the citation to the volume and page where they are published, including the official edition, if any.

(8) The certificate of compliance required by Pa.R.A.P. 127.

(b) *Caption and Parties*.—All parties to the proceeding in the trial court or other government unit other than petitioner shall be named as respondents, but respondents who support the position of the petitioner shall meet the time schedule for filing papers which is prescribed in this chapter for the petitioner, except that any response by such respondents to the petition shall be filed as promptly as possible after receipt of the petition.

(c) *No Supporting Brief*.—All contentions in support of a petition for permission to appeal shall be set forth in the body of the petition as prescribed under subparagraph (a)(5). Neither the briefs below nor any separate brief in support of a petition for permission to appeal will be received, and the Prothonotary of the Appellate Court will refuse to file any petition for permission to appeal to which is annexed or appended any brief below or supporting brief.

(d) *Essential Requisites of Petition*.—The failure of a petitioner to present with accuracy, brevity and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration will be a sufficient reason for denying the petition.

(e) *Multiple Petitioners*.—Where permitted by Pa.R.A.P. 512 (joint appeals) a single petition for permission to appeal may be filed.

Official Note: Based on former Commonwealth Court Rule 114. subparagraph (a)(2) of this rule makes clear that the order of the tribunal below must contain a statement that the order involves a controlling question of law as to which there is a difference of opinion.

Interlocutory appeals as of right may be taken by filing a notice of appeal under Chapter 9, rather than by petition under this rule. See Pa.R.A.P. 311.

Editor's Note: Amended December 11, 1978, effective December 30, 1978; amended January 5, 2018, effective January 6, 2018.

Rule 1313. | Effect of Filing Petition.

A petition for permission to appeal shall not stay the proceedings before the lower court or other government unit, unless the lower court or other government unit, or the Appellate Court or a judge thereof shall so order.

Note: Based on (1) 42 Pa.C.S. §702(c) (supersedeas), and (2) former Commonwealth Court Rule 114.

Editor's Note: Amended December 11, 1978, effective December 30, 1978.

Rule 1314. | Answer to the Petition for Permission to Appeal.

Within 14 days after service of a petition for permission to appeal an adverse party may file an answer. The answer shall be deemed filed on the date of mailing if first class, express, or priority United States Postal Service mail is utilized. The answer need not be set forth in numbered paragraphs in the manner of a pleading, shall set forth any procedural, substantive or other argument or ground why the interlocutory order involved should not be reviewed by the appellate court, and shall comply with Pa.R.A.P. 1312(a)(7) (content of petition for permission to appeal). An answer to a petition for permission to appeal shall contain the certificate of compliance required by Pa.R.A.P. 127. No separate motion to dismiss a petition for permission to appeal will be received. A party entitled to file an answer under this rule who does not intend to do so shall, within the time fixed by these rules for filing an answer, file a letter stating that an answer to the petition for permission to appeal will not be filed. The failure to file an answer will not be construed as concurrence in the request for permission to appeal.

Editor's Note: Amended June 23, 1976, effective July 1, 1976; amended and renamed September 10, 2008, effective December 1, 2008; amended January 5, 2018, effective January 6, 2018.

EXPLANATORY COMMENT—1976

The time to respond to a petition for permission to appeal from an interlocutory order is extended from seven to 14 days to conform to the practice under Rule 1116 with respect to a response to the similar petition for allowance of appeal from a final order, thereby eliminating an unintended trap for the unwary.

Rule 1316. | Incorrect Use of Petition for Permission to Appeal or Petition for Review.

(a) General Rule. The appellate court shall treat a request for discretionary review of an order which is immediately appealable as a notice of appeal under the following circumstances:

(1) where a party has filed a timely petition for permission to appeal pursuant to Pa.R.A.P. 1311; or

(2) where a party has filed a timely petition for review from a trial court's refusal of a timely application pursuant to Pa.R.A.P. 1311 to amend the order to set forth expressly the statement specified in 42 Pa.C.S. §702(b).

(b) Additional Requirements. The appellate court may require any additional actions necessary to perfect the appeal.

Official Note: This Rule requires the appellate court to treat a timely, but erroneous, petition for permission to appeal pursuant to Pa.R.A.P. 1311 from an order which is, in fact, immediately appealable as of right, as a timely notice of appeal. See *Commonwealth v. Shull*, 811 A.2d 1 (Pa.Super. 2002). This Rule supersedes *ThermoGuard, Inc. v. Cochran*, 596 A.2d 188, 192 (Pa. Super. 1991), which stated, as dictum, that " . . . in the future, where a petition for permission to appeal seeking review of a final order, appealable as of right, or of an interlocutory order made appealable as of right . . . is filed, this court should simply deny the petition." Also, pursuant to subdivision (a)(2) of this Rule, where the trial court refuses an application to amend an order to set forth expressly the statement specified in 42 Pa.C.S. §702(b), and that order was in fact appealable as of right, the appellate court shall treat a Chapter 15 petition for review of the trial court's refusal to amend as a notice of appeal.

Use of the term "notice of appeal" in this Rule is not intended to preclude treatment of the petition for permission to appeal as a petition for review if the proper method of appeal as of right would be a petition for review addressed to the Commonwealth Court's appellate jurisdiction found at 42 Pa.C.S. §763.

Editor's Note: Adopted December 8, 2004, effective 60 days after adoption.

Rule 1321. | Transmission of Papers to and Action by the Court.

Upon receipt of the answer to the petition for permission to appeal, or a letter stating that no answer will be filed, from each party entitled to file such, the petition and the answer, if any, shall be distributed by the Prothonotary to the Appellate Court for its consideration. Permission to appeal may be limited to one or more of the questions presented in the petition, in which case the order granting permission to appeal shall specify the question or questions which will be considered by the court.

Rule 1322. | Permission to Appeal and Transmission of Record.

If permission to appeal is granted, the Prothonotary of the Appellate Court shall immediately give written notice in person or by ordinary mail of the entry of the order granting permission to appeal to the government unit or clerk of the lower court and to each party who has appeared in the Appellate Court. The notice shall specify the question or questions which will be considered by the Appellate Court, if permission to appeal has been granted as to less than all questions presented. If subsequent proceedings will be governed by Chapter 15 (judicial review of governmental determinations) and if under the applicable law the questions raised by the petition for permission to appeal may be determined in whole or in part upon the record made before the Appellate Court, the notice shall direct the petitioner to serve and file an appropriate petition for review. The clerk of the lower court shall docket the notice in the same manner as a notice of appeal. The record shall be transmitted and filed in accordance with Chapter 19 (preparation and transmission of the record and related matters). The times fixed by those provisions for transmitting the record shall run from the date of the entry of the order granting permission to appeal. A notice of appeal need not be filed.

Editor's Note: Amended December 11, 1978, effective December 30, 1978; amended May 16, 1979, effective October 1, 1979.

EXPLANATORY COMMENT—1979

A separate docket number in an Appellate Court when a petition for allowance of appeal or petition for permission to appeal has been granted is no longer required.

Whenever permission to appeal from an interlocutory determination of a government unit is granted in a situation where the appeal is heard de novo in whole or in part, provision is made for the filing of a long form petition for review to trigger the necessary preliminary pleading in the Appellate Court. Compare Rule 1501(b)(3).

Rule 1323. | Denial of Permission to Appeal.

If the petition for permission to appeal is denied the Prothonotary of the Appellate Court shall immediately give written notice in person or by first class mail of entry of the order denying permission to appeal to the government unit or clerk of the lower court and to each party who has appeared in the Appellate Court.

Editor's Note: Amended December 11, 1978, effective December 30, 1978.

Chapter 15
Judicial Review of Governmental Determinations

In General

Rule 1501. | Scope of Chapter.

(a) *General Rule*.—Except as otherwise prescribed by Subdivisions (b) and (c) of this rule, this chapter applies to:

(1) Appeals from an administrative agency (within the meaning of Section 9 of Article V of the Constitution of Pennsylvania) to an Appellate Court.

(2) Appeals to an Appellate Court pursuant to 2 Pa.C.S. §702 (appeals), 42 Pa.C.S. §5105 (right to appellate review) or any other statute providing for judicial review of a determination of a government unit.

(3) Original jurisdiction actions heretofore cognizable in an appellate court by actions in the nature of equity, replevin, mandamus or quo warranto or for declaratory judgment, or upon writs of certiorari or prohibition.

(4) Matters designated by general rule, e.g., review of orders refusing to certify interlocutory orders for immediate appeal, release prior to sentence, appeals under Section 17(d) of Article II of the Constitution of Pennsylvania and review of special prosecutions or investigations.

(b) *Appeals Governed by Other Provisions of Rules*.—This chapter does not apply to any appeal within the scope of:

(1) Chapter 9 (appeals from lower courts).

(2) Chapter 11 (appeals from Commonwealth Court and Superior Court).

(3) Chapter 13 (interlocutory appeals by permission), except that the provisions of this chapter and ancillary provisions of these rules applicable to practice and procedure on petition for review, so far as they may be applied, shall be applicable: (a) where required by the Note to Rule 341 and the Note to Rule 1311; and (b) after permission to appeal has been granted from a determination which, if final, would be subject to judicial review pursuant to this chapter.

(4) Rule 1941 (review of death sentences).

(c) *Unsuspended Statutory Procedures*.—This chapter does not apply to any appeal pursuant to the following statutory provisions, which are not suspended by these rules:

(1) Section 137 of Title 15 of the Pennsylvania Consolidated Statutes (Court to pass upon rejection of documents by Department of State).

Editor's Note: Section 135 amended to Section 137 on July 7, 1997, effective September 5, 1997.

(2) The Pennsylvania Election Code.

(d) *Jurisdiction of Courts Unaffected*.—This chapter does not enlarge or otherwise modify the jurisdiction and powers of the Commonwealth Court or any other court.

Official Note: This chapter applies to review of any "determination" of a "government unit" as defined in Rule 102 assuming, of course, that the subject matter of the case is within the jurisdiction of a court subject to these rules (see Subdivision (d) of this rule). A "determination" means "action or inaction by a government unit which action or inaction is subject to judicial review by a court under Section 9 of Article V of the Constitution of Pennsylvania or otherwise. The term includes an order entered by a government unit." The term "government unit" is all inclusive and means "the Governor and the departments, boards, commissions, officers, authorities and other agencies of the Commonwealth, including the General Assembly and its officers and agencies and any court or other officer or agency of the unified judicial system, and any political subdivision or municipal or other local authority or any officer or agency of any such political subdivision or local authority. The term includes a board of arbitrators whose determination is subject to review under 42 Pa.C.S. §763(b) (awards of arbitrators)." The term "administrative agency" is not defined in these rules, although the term is used in these rules as a result of its appearance in Section 9 of Article V of the Constitution of Pennsylvania.

Subdivision (a)(4) was added in 2004 to recognize the references in various appellate rules and accompanying notes to petition for review practice. For example, the Notes to Rules 341 and 1311 direct counsel to file a petition for review of a trial court or government agency order refusing to certify an interlocutory order for immediate appeal. Similarly, Rule 1762 directs the filing of a petition for review when a party seeks release on bail before judgment of sentence is rendered, see Rule 1762(b), and Rule 1770 directs the filing of a petition for review when a juvenile seeks review of placement in a juvenile delinquency matter. A petition for review is also the proper method by which to seek judicial review pursuant to Rule 3321 (regarding legislative reapportionment commission) and Rule 3331 (regarding special prosecutions or investigations). The 2004 and 2012 amendments clarify the use of petitions for review in these special situations.

Subdivision (b) of this rule is necessary because otherwise conventional appeals from a court (which is included in the scope of the term "government unit") to an Appellate Court would fall within the scope of this chapter under the provisions of Paragraph (a)(2) of this rule.

Subdivision (c) expressly recognizes that some statutory procedures are not replaced by petition for review practice. Thus, matters brought pursuant to Section 137 of the Associations Code governing judicial review of documents rejected by the Department of State or pursuant to the Election Code are controlled by the applicable statutory provisions and not by the rules in Chapter 15. See 15 Pa.C.S. §137; Act of June 3, 1937, P. L. 1333, as amended 25 P. S. §§2600–3591.

In light of Subdivision (d), where the court in which a petition for review is filed lacks subject matter jurisdiction (e.g., a petition for review of a local government question filed in the Commonwealth Court), Rules 741 (waiver of objections to jurisdiction), 751 (transfer of erroneously filed cases) and 1504 (improvident petitions for review) will be applicable. See also 42 Pa.C.S. §103.

The 2004 amendments are made to petition for review practice to address the evolution of judicial responses to governmental actions. As indicated in the Note to Rule 1502, when the Rules of Appellate Procedure were initially adopted, there was a "long history in the Commonwealth . . . of relatively complete exercise of the judicial review function under the traditional labels of equity, mandamus, certiorari and prohibition." While such original jurisdiction forms of action are still available, their proper usage is now the exception rather than the rule because appellate proceedings have become the norm. Thus, the need to rely on Rule 1503 to convert an appellate proceeding to an original jurisdiction action and vice versa arises less often. Moreover, the emphasis on a petition for review as a generic pleading that permits the court to simultaneously consider all aspects of the controversy is diminished. The primary concern became making the practice for appellate proceedings more apparent to the occasional appellate practitioner. Accordingly, the rules have been amended to more clearly separate procedures for appellate proceedings from those applicable to original jurisdiction proceedings.

The responsibility of identifying the correct type of proceeding to be used to challenge a governmental action is initially that of counsel. Where precedent makes the choice clear, counsel can proceed with confidence. Where the choice is more problematic, then counsel should draft the petition for review so as to satisfy the directives for both appellate and original jurisdiction proceedings. Then the court can designate the proper course of action regardless of counsel's earlier assessment.

Editor's Note: Amended December 11, 1978, effective December 30, 1978; amended May 16, 1979, effective October 1, 1979. Further amended July 7 1997, effective September 5, 1997. Amendments adopted July 8, 2004, and will be effective 60 days after adoption.

Official Note: Amended December 10, 2012, effective 60 days after amendment.

Rule 1502. | Exclusive Procedure.

The appeal and the original jurisdiction actions of equity, replevin, mandamus and quo warranto, the action for a declaratory judgment, and the writs of certiorari and prohibition are abolished insofar as they relate to matters within the scope of a petition for review under this chapter. The petition for review, insofar as applicable under this chapter, shall be the exclusive procedure for judicial review of a determination of a government unit.

Note: This chapter recognizes that the modern label "appeal" has little significance in connection with judicial review of governmental determinations in light of the long history in this Commonwealth of relatively complete exercise of the judicial review function under the traditional labels of equity, mandamus, certiorari and prohibition. If the simple form of notice of appeal utilized in Chapter 9 (appeals from lower courts) were extended to governmental determinations without any requirement for the filing of motions for post-trial relief, a litigant who incorrectly selected the appeal label, rather than the equity, mandamus, replevin, or prohibition, etc. label, would probably suffer dismissal, because the court would be reluctant to try a proceeding in the nature of equity, mandamus, replevin, or prohibition, etc. in the absence of a proper pleading adequately framing the issues.

The solution introduced by these rules is to substitute a new pleading (the petition for review) for all of the prior types of pleading which seek relief from a governmental determination (including governmental inaction). Where the reviewing court is required or permitted to hear the matter de novo, the judicial review proceeding will go forward in a manner similar to an equity or mandamus action. Where the reviewing court is required to decide the questions presented solely on the record made below, the judicial review proceeding will go forward in a manner similar to appellate review of an order of a lower court. However, experience teaches that governmental determinations are so varied in character, and generate so many novel situations, that on occasion it is only at the conclusion of the judicial review process, when a remedy is being fashioned, that one can determine whether the proceeding was in the nature of equity, mandamus, prohibition, or statutory appeal, etc. The petition for review will eliminate the wasteful and confusing practice of filing multiple "shotgun" pleadings in equity, mandamus, prohibition, statutory appeal, etc., and related motions for consolidation, and will permit the parties and the court to proceed directly to the merits unencumbered by procedural abstractions.

Rule 1551 (scope of review) makes clear that the change in manner of pleading does not change the scope or standard of review of governmental determinations or otherwise affect the substantive rights of the parties.

It should be noted that a petition for review in the nature of mandamus or prohibition will lie against a lower court (which is a "government unit"), since such relief is not available under the rules cited in Rule 1501(b).

See 42 Pa.C.S. §708(e) (single form of action) which provides as follows.

(e) *Single Form of Action*.—Where pursuant to general rules review of a determination of a government unit may be had by a petition for review or another single form of action embracing the appeal and actions in the nature of equity, mandamus, prohibition, quo warranto or otherwise, the jurisdiction of the Appellate Court shall not be limited by the provisions of 1 Pa.C.S. §1504 (relating to statutory remedy preferred over common law), but such provisions to the extent applicable shall limit the relief available.

Editor's Note: Note amended December 11, 1978, effective December 30, 1978. Amendments adopted July 8, 2004, and will be effective 60 days after adoption.

Rule 1503. | Improvident Appeals or Original Jurisdiction Actions.

If an appeal is taken from an order of a government unit, or if a complaint in the nature of equity, replevin, mandamus, or quo warranto, or a petition for a declaratory judgment or for a writ in the nature of certiorari or prohibition is filed against a government unit or one or more of the persons for the time being conducting its affairs objecting to a determination by any one or more of them, this alone shall not be a ground for dismissal. The papers whereon the improvident matter was commenced shall be regarded and acted upon as a petition for review of such governmental determination and as if filed at the time the improvident matter was commenced. The court may require that the papers be clarified by amendment.

Note: Based on 42 Pa.C.S. §708 (improvident administrative appeals and other matters).

Editor's Note: Note added December 11, 1978, effective December 30, 1978. Amendments adopted July 8, 2004, and will be effective 60 days after adoption.

Rule 1504. | Improvident Petitions for Review.

If a petition for review is filed against any person, where the proper mode of relief is an original jurisdiction action in equity, replevin, mandamus or quo warranto, or a petition for a declaratory judgment or for a writ of certiorari or prohibition, this alone shall not be a ground for dismissal, but the papers whereon the improvident matter was commenced shall be regarded and acted upon as a complaint or other proper process commenced against such person and as if filed at the time the improvident matter was commenced. The court may require that the papers be clarified by amendment.

Note: Based on 42 Pa.C.S. §102 (definitions) (which includes petition for review proceedings within the statutory definition of "appeal") and 42 Pa.C.S. §708(b) (appeals). When the moving party files a clarifying amendment the amendment will operate to specify that one form of action which the party elects to proceed on.

Editor's Note: Note amended December 11, 1978, effective December 30, 1978. Amendments adopted July 8, 2004, and will be effective 60 days after adoption.

Petition for Review

Rule 1511. | Manner of Obtaining Judicial Review of Governmental Determinations.

Review under this chapter shall be obtained by filing a petition for review with the Prothonotary of the Appellate Court within the time allowed by Rule 1512 (time for petitioning for review). Failure of a petitioner for review to take any step other than the timely filing of a petition for review does not affect the validity of the review proceedings, but is grounds only for such action as the Appellate Court deems appropriate, which may include dismissal of the review proceeding.

Editor's Note: Amended May 16, 1979, effective October 1, 1979.

EXPLANATORY NOTE—1979

A provision is added making clear that any defect in the petition for review procedure is waivable except, of course, failure to file within the applicable appeal period, if any.

Rule 1512. | Time for Petitioning for Review.

(a) *Appeals Authorized by Law*.—Except as otherwise prescribed by subdivision (b) of this rule:

(1) A petition for review of a quasijudicial order, or an order appealable under 42 Pa.C.S. §763(b) (awards of arbitrators) or under any other provision of law, shall be filed with the Prothonotary of the Appellate Court within 30 days after the entry of the order.

(2) If a timely petition for review of such an order is filed by a party, any other party may file a petition for review within 14 days of the date on which the first petition for review was served, or within the time otherwise prescribed by subdivision (a) (1) of this rule, whichever period last expires.

(b) *Special Appellate Provisions*.–A petition for review of:

(1) A determination of the Department of Community and Economic Development in any matter arising under the Local Government Unit Debt Act, 53 Pa.C.S. §§8001–8271, shall be filed within 15 days after entry of the order or the date the determination is deemed to have been made, when no order has been entered.

(2) A determination governed by Rule 1571 (determinations of the Board of Finance and Revenue) shall be filed within the appropriate period therein specified.

(3) A determination governed by Rule 3331 (review of special prosecutions or investigations) shall be filed within 10 days after the entry of the order sought to be reviewed.

(4) A determination of a Commonwealth agency under section 1711.1(g) of the Commonwealth Procurement Code, 62 Pa.C.S. §1711.1(g), shall be filed within 15 days of the mailing date of a final determination denying a protest.

(5) A determination governed by Rule 1770 (review of dispositional order for out of home placement in juvenile delinquency matters) shall be filed within ten days of the order sought to be reviewed.

(c) *Original jurisdiction actions*.—A petition for review of a determination of a government unit not within the scope of Subdivisions (a) or (b) of this rule may be filed with the Prothonotary of the Appellate Court within the time, if any, limited by law.

Note: The note to Rule 903 (time for appeal) addresses the development of the standard 30 day appeal period. Rule 102 defines a "quasijudicial order" as "an order of a government unit, made after notice and opportunity for hearing, which is by law reviewable solely upon the record made before the government unit, and not upon a record made in whole or in part before the reviewing court."

Subdivision (c) relates to matters addressed to the original jurisdiction of an appellate court. For example, equitable matters are governed by existing principles of laches, etc. Other matters, such as petitions for review raising issues formerly cognizable by action in mandamus or quo warranto, etc., are governed by the time limits, if any, applicable under the prior procedure. See generally 42 Pa.C.S. §§1702 (regarding the Supreme Court's rulemaking procedures), 1722(c) (Time limitations), 5501–5574 (Limitations of time).

See Note to Rule 903 (Time for Appeal). A party filing a cross petition for review pursuant to Subdivision (a)(2) should identify it as a cross petition for review to assure that the prothonotary will process the cross petition for review with the initial petition for review. See also Rule 511 (Cross Appeals), Rule 2136 (Briefs in Cases of Cross Appeals) and Rule 2322 (Cross and Separate Appeals).

Editor's Note: Amended October 18, 2002, effective December 2, 2002. Amendments adopted July 8, 2004, and will be effective 60 days after adoption; amended September 30, 2004, effective immediately; amended April 9, 2012, effective 30 days after amendment; amended December 10, 2012, effective 60 days after amendment.

EXPLANATORY COMMENT—1976

The right to file a cross appeal from a quasijudicial order of a government unit (e.g. an order of the Public Utility Commission approving a rate increase) is granted, to conform to Rules 901(b) and 1113(b).

Rule 1513. | Petition for Review.

(a) *Caption and parties on appeal*.—In an appellate jurisdiction petition for review, the aggrieved party or person shall be named as the petitioner and, unless the government unit is disinterested, the government unit and no one else shall be named as the respondent. If the government unit is disinterested, all real parties in interest, and not the government unit, shall be named as respondents.

(b) *Caption and parties in original jurisdiction actions*.—The government unit and any other indispensable party shall be named as respondents. Where a public act or duty is required to be performed by a government unit, it is sufficient to name the government unit, and not its individual members, as respondent.

(c) *Form*.—Any petition for review shall be divided into consecutively numbered paragraphs. Each paragraph shall contain, as nearly as possible, a single allegation of fact or other statement. When petitioner seeks review of an order refusing to certify an interlocutory order for immediate appeal, numbered paragraphs need not be used.

(d) *Content of appellate jurisdiction petition for review*.—An appellate jurisdiction petition for review shall contain the following:

(1) a statement of the basis for the jurisdiction of the court;

(2) the name of the party or person seeking review;

(3) the name of the government unit that made the order or other determination sought to be reviewed;

(4) reference to the order or other determination sought to be reviewed, including the date the order or other determination was entered;

(5) a general statement of the objections to the order or other determination, but the omission of an issue from the statement shall not be the basis for a finding of waiver if the court is able to address the issue based on the certified record;

(6) a short statement of the relief sought;

(7) a copy of the order or other determination to be reviewed, which shall be attached to the petition for review as an exhibit; and

(8) the certificate of compliance required by Pa.R.A.P. 127.

No notice to plead or verification is necessary.

Where there were other parties to the proceedings conducted by the government unit, and such parties are not named in the caption of the petition for review, the petition for review shall also contain a notice to participate, which shall provide substantially as follows:

> If you intend to participate in this proceeding in the (Supreme, Superior or Commonwealth, as appropriate) Court, you must serve and file a notice of intervention under Pa.R.A.P. 1531 of the Pennsylvania Rules of Appellate Procedure within 30 days.

(e) *Content of original jurisdiction petition for review*.—A petition for review addressed to an appellate court's original jurisdiction shall contain the following:

(1) a statement of the basis for the jurisdiction of the court;

(2) the name of the person or party seeking relief;

(3) the name of the government unit whose action or inaction is in issue and any other indispensable party;

(4) a general statement of the material facts upon which the cause of action is based;

(5) a short statement of the relief sought;

(6) a notice to plead and verification either by oath or affirmation or by verified statement; and

(7) the certificate of compliance required by Pa.R.A.P. 127.

(f) *Alternative objections*.—Objections to a determination of a government unit and the related relief sought may be stated in the alternative, and relief of several different types may be requested.

Official Note: The 2004 amendments to this rule clarify what must be included in a petition for review addressed to an appellate court's appellate jurisdiction and what must be included in a petition for review addressed to an appellate court's original jurisdiction. Where it is not readily apparent whether a "determination" (defined in Pa.R.A.P. 102 as "[a]ction or inaction by a government unit) is reviewable in the court's appellate or original jurisdiction, compliance with the requirements of paragraphs (d) and (e) is appropriate.

Paragraphs (a) and (b) reflect the provisions of Pa.R.A.P. 501, Pa.R.A.P. 503, Section 702 of the Administrative Agency Law, 2 Pa.C.S. §702 (Appeals), and Pa.R.C.P. 1094 (regarding parties defendant in mandamus actions).

Government units that are usually disinterested in appellate jurisdiction petitions for review of their determinations include:

* the Board of Claims,
* the Department of Education (with regard to teacher tenure appeals from local school districts pursuant to section 1132 of the Public School Code of 1949, 24 P. S. §111132),
* the Environmental Hearing Board,
* the State Charter School Appeal Board,
* the State Civil Service Commission, and
* the Workers' Compensation Appeal Board.

The provision for joinder of indispensable parties in original jurisdiction actions reflects the last sentence of section 761(c) of the Judicial Code, 42 Pa.C.S. §761(c), providing for the implementation of ancillary jurisdiction of the Commonwealth Court by general rule.

Paragraphs (d) and (e) reflect the differences in proceeding in a court's original and appellate jurisdiction, while preserving the need for sufficient specificity to permit the conversion of an appellate document to an original jurisdiction pleading and vice versa should such action be necessary to assure proper judicial disposition. See also the notes to Pa.R.A.P. 1501 and 1502.

OFFICIAL NOTE—2014

The 2014 amendments to Pa.R.A.P. 1513(d) relating to the general statement of objections in an appellate jurisdiction petition for review are intended to preclude a finding of waiver if the court is able, based on the certified record, to address an issue not within the issues stated in the petition for review but included in the statement of questions involved and argued in a brief. The amendment neither expands the scope of issues that may be addressed in an appellate jurisdiction petition for review beyond those permitted in Pa.R.A.P. 1551(a) nor affects Pa.R.A.P. 2116's requirement that "[n]o question will be considered unless it is stated in the statement of questions involved [in appellant's brief] or is fairly suggested thereby."

Editor's Note: Amended July 8, 2004, effective 60 days after adoption; amended December 2, 2014, effective in 30 days; amended January 5, 2018, effective January 6, 2018.

Rule 1514. | Filing and Service of the Petition for Review.

(a) *Filing with the prothonotary*. The petition for review, with proof of service required by Subdivision (c) of this rule, shall be filed with the prothonotary of the appellate court in person or by first class, express, or priority United States Postal Service mail.

If the petition for review is filed by first class, express, or priority United States Postal Service mail, the petition shall be deemed received by the prothonotary for the purposes of Rule 121(a) (filing) on the date deposited in the United States mail, as shown on a United States Postal Service Form 3817, Certificate of Mailing, or other similar United States Postal Service form from which the date of deposit can be verified. The certificate of mailing or other similar Postal Service form from which the date of deposit can be verified shall be cancelled by the Postal Service and shall show the docket number of the matter in the government unit, and shall be either enclosed with the petition or separately mailed to the prothonotary.

Upon actual receipt of the petition for review, the prothonotary shall immediately:

(1) stamp it with the date of actual receipt. That date, or the date of earlier deposit in the United States mail as prescribed in this subdivision, shall constitute the date of filing;

(2) assign a docket number to the petition for review; and

(3) give written notice of the docket number assignment in person or by first class mail to the government unit that made the determination sought to be reviewed, to the petitioner, and to the other persons named in the proof of service accompanying the petition.

(b) *Fee*. The petitioner, upon filing the petition for review, shall pay any fees therefor as set by law or general rule.

(c) *Service*. A copy of the petition for review shall be served by the petitioner in person or by certified mail on the government unit that made the determination sought to be reviewed. In matters involving the Commonwealth, the petitioner shall similarly serve a copy upon the Attorney General of Pennsylvania. Where there is more than one respondent, the petitioner shall separately serve each one. All other parties before the government unit that made the determination sought to be reviewed shall be served as prescribed by Rule 121(b) (service of all papers required).

(d) *Entry of appearance*. Upon the filing of the petition for review, the prothonotary shall note on the docket as counsel for the petitioner the name of counsel, if any, set forth in or endorsed upon the petition for review, and, as counsel for other parties, counsel, if any, named in the proof of service. The prothonotary shall, upon praecipe of any such counsel for other parties, filed within 30 days after filing of the petition, strike off or correct the record of appearances. Thereafter a counsel's appearance for a party may not be withdrawn without leave of court, unless another lawyer has entered or simultaneously enters an appearance for the party.

Official Note: See the Official Note to Rule 1112 (appeals by allowance) for an explanation of the procedure when Form 3817 or other similar United States Postal Service form from which the date of deposit can be verified is used.

The petition for review must be served on the government unit that made the determination in question. Rule 102 defines "government unit" as including "any court or other officer or agency of the unified judicial system." Thus, a petition for review of a trial court order must be served on the judge who issued the order.

Service on the Attorney General shall be made at: Strawberry Square, Harrisburg, PA 17120.

With respect to appearances by new counsel following the initial docketing of appearances pursuant to Subdivision (d) of this rule, please note the requirements of Rule 120.

Editor's Note: Rule amended May 16, 1979, effective October 1, 1979; amended February 27, 1980, effective March 15, 1980; amended December 16, 1983, effective January 1, 1984; amended July 7, 1997, effective September 5, 1997; amended March 15, 2004, effective 60 days after amended. Amendments adopted July 8, 2004, and will be effective 60 days after adoption; amended September 10, 2008, effective December 1, 2008.

EXPLANATORY COMMENT—1979

In order to make certain that parties before a government unit realize that they must file a notice of intervention under amended Rule 1531 if they are to participate in the appeal, a new requirement is added for notification in the petition for review papers alerting parties not named as respondents to the need for filing a notice of or application for intervention.

Rule 1515. | *(Rescinded)*.

Official Note: Rule 1515 formerly provided for an answer to a petition for review addressed to an appellate court's original jurisdiction. Answers to such petitions are now discussed in Rule 1516.

Editor's Note: Official note amended July, 8, 2004.

Rule 1516. | Other Pleadings Allowed.

(a) *Appellate jurisdiction petitions for review*. No answer or other pleading to an appellate jurisdiction petition for review is authorized, unless the petition for review is filed pursuant to the notes to Pa.R.A.P. 341 or 1311 (seeking review of a trial court or other government unit's refusal to certify an interlocutory order for immediate appeal), Pa.R.A.P. 1573 (review of orders finding an assertion of double jeopardy frivolous), Pa.R.A.P. 1762 (regarding release in criminal matters), Pa.R.A.P. 1770 (regarding placement in juvenile delinquency matters), Pa.R.A.P. 3321 (regarding appeals from decisions of the Legislative Reapportionment Commission) or Pa.R.A.P. 3331 (regarding review of special prosecutions and investigations). Where an answer is authorized, the time for filing an answer shall be as stated in Pa.R.A.P. 123(b), and the answer shall contain the certificate of compliance required by Pa.R.A.P. 127.

(b) *Original jurisdiction petitions for review*.—Where an action is commenced by filing a petition for review addressed to the appellate court's original jurisdiction, the pleadings are limited to the petition for review, an answer thereto, a reply if the answer contains new matter or a counterclaim, a counter reply if the reply to a counterclaim contains new matter, a preliminary objection, and an answer thereto. A pleading shall contain the certificate of compliance required by Pa.R.A.P. 127. Every pleading filed after an original jurisdiction petition for review shall be filed within 30 days after service of the preceding pleading, but no pleading need be filed unless the preceding pleading is endorsed with a notice to plead.

Official Note: The 2004, 2012 and 2013 amendments made clear that, with limited exceptions, no answer or other pleading to a petition for review addressed to an appellate court's appellate jurisdiction is proper. With regard to original jurisdiction proceedings, practice is patterned after Rules of Civil Procedure 1017(a) (Pleadings Allowed) and 1026 (Time for Filing. Notice to Plead). The ten additional days in which to file a subsequent pleading are in recognition of the time required for agency coordination where the Commonwealth is a party. See Pa.R.A.P. 1762(b)(2) regarding bail applications. See Pa.R.A.P. 1770 regarding placement in juvenile delinquency matters.

Editor's Note: Amendments adopted July 8, 2004, and will be effective 60 days after adoption; amended December 10, 2012, effective 60 days after amendment; amended June 4, 2013, effective July 4, 2013; amended January 5, 2018, effective January 6, 2018.

Rule 1517. | Applicable Rules of Pleading.

Unless otherwise prescribed by these rules, the practice and procedure under this chapter relating to pleadings in original jurisdiction petition for review practice shall be in accordance with the appropriate Pennsylvania Rules of Civil Procedure, so far as they may be applied.

Official Note: See Rule 1762(b)(2) regarding bail applications. See Rule 1770 regarding placement in juvenile delinquency matters. See also Rule 3331 regarding Review of Special Prosecutions or Investigations.

Editor's Note: Amendments adopted July 8, 2004, and will be effective 60 days after adoption; amended December 10, 2012, effective 60 days after amendment.

Rule 1531. | Intervention.

(a) *Appellate jurisdiction petition for review proceedings*. A party to a proceeding before a government unit that resulted in a quasijudicial order may intervene as of right in a proceeding under this chapter relating to such order by filing a notice of intervention (with proof of service on all parties to the matter) with the prothonotary of the appellate court within 30 days after notice of the filing of the petition for review. The notice of intervention may be in substantially the following form:

See Forms Index

After 30 days after notice of filing of an appellate petition for review, permission to intervene may be sought by application pursuant to Rule 123.

(b) *Original jurisdiction petition for review proceedings*. A person not named as a respondent in an original jurisdiction petition for review, who desires to intervene in a proceeding under this chapter, may seek leave to intervene by filing an application for leave to intervene (with proof of service on all parties to the matter) with the prothonotary of the court. The application shall contain a concise statement of the interest of the applicant and the grounds upon which intervention is sought.

Official Note: A nonparty may file a brief as of right under Rule 531 (participation by amicus curiae) and, therefore, intervention is not necessary in order to participate in the appellate court where the petition for review is filed. However, except as provided in Rule 521(b) (status of Attorney General) and Rule 522(b) (status of Court Administrator), the mere filing of a brief does not confer party status. Where, for example, a nonparty to a petition for review proceeding in the Commonwealth Court desires to be in a position to seek further review in the Supreme Court of Pennsylvania or the Supreme Court of the United States of an order of the Commonwealth Court disposing of the petition for review, the nonparty should intervene or seek leave to intervene in the Commonwealth Court at the outset, since under Rule 501 (any aggrieved party may appeal), party status is a prerequisite to the right to further review.

See Rule 3331 regarding Review of Special Prosecutions or Investigations.

Editor's Note: Amendments adopted July 8, 2004, and will be effective 60 days after adoption.

EXPLANATORY COMMENT—1979

The automatic status as parties in an Appellate Court in petition for review proceedings is limited to the petitioner and respondent. Other parties below, even if represented by counsel named in the proof of service of the petition, lose their status as intervenors unless they file in the Appellate Court a timely notice of intervention, thereby eliminating the expense of serving paperbooks on parties below who have no actual interest in the issues on appeal.

Rule 1532. | Special and Summary Relief.

(a) *Special Relief*. At any time after the filing of a petition for review, the court may, on application, order the seizure of property, dispose of seized property, issue a preliminary or special injunction, appoint a temporary receiver or grant other interim or special relief required in the interest of justice and consistent with the usages and principles of law.

(b) *Summary relief*. At any time after the filing of a petition for review in an appellate or original jurisdiction matter the court may on application enter judgment if the right of the applicant thereto is clear.

Official Note: Subdivision (a) provides examples of specific types of interim relief that may be sought using the procedures set forth in Rule 123 (application for relief). Thus, multiple forms of relief, including those in the alternative, may be combined in the same application, even though separate actions might otherwise be necessary under the Pennsylvania Rules of Civil Procedure. Compare Rule 106 (original jurisdiction matters); 42 Pa.C.S. §708(e) (single form of action).

Subdivision (b) authorizes immediate disposition of a petition for review, similar to the type of relief envisioned by the Pennsylvania Rules of Civil Procedure regarding judgment on the pleadings and peremptory and summary judgment. However, such relief may be requested before the pleadings are closed where the right of the applicant is clear.

See Rule 3331 regarding Review of Special Prosecutions or Investigations.

EXPLANATORY COMMENT—1979

A new rule makes clear that request for two or more types of interim or special relief may be sought in one petition for review proceeding notwithstanding the fact that separate actions might otherwise be necessary to obtain such relief in a Court of Common Pleas under the Pennsylvania Rules of Civil Procedure, and that summary relief before the pleadings are closed is available generally where the right of the applicant thereto is clear.

Editor's Note: Amendments adopted July 8, 2004, and will be effective 60 days after adoption.

Rule 1541. | Certification of the Record.

Upon notice from the appellate court of the filing of a petition for review addressed to the appellate jurisdiction of an appellate court, the government unit shall prepare and transmit the record as provided by Chapter 19 (preparation and transmission of record and related matters).

Official Note: Rule 102 defines "government unit" to include "any court or other officer or agency of the unified judicial system." Thus, if the order to be reviewed was filed by a trial court, that court shall certify the record. This occurs when the petition for review was filed pursuant to Rule 1762, 1770, 3321 or 3331, or the note to Rules 341 or 1311.

See Rule 3331 regarding Review of Special Prosecutions or Investigations.

Editor's Note: Amendments adopted July 8, 2004, and will be effective 60 days after adoption; Official Note amended December 10, 2012, effective 60 days after amendment.

Rule 1542. | Evidentiary Hearing.

In any matter addressed to the appellate court's original jurisdiction, where it appears that a genuine issue as to a material fact has been raised by the pleadings, depositions, answers to interrogatories, stipulations of fact, admissions on file and supporting verified statements, if any, the court on its own motion or on application of any party shall, after notice to the parties, hold an evidentiary hearing for the development of the record.

Official Note: In view of Rule 106 (original jurisdiction matters) and Rule 1532 (special and summary relief), motions for judgment on the pleadings, Pa.R.C.P. 1034, summary relief and summary judgment, Pa.R.C.P. 1035, will be available where a petition for review invoking the appellate court's original jurisdiction has been filed. The procedure under this rule is intended to be flexible, although subject to the control of the appellate court by either rule of court adopted pursuant to Rule 104(a)(3) (rules of court) or by order.

See Rule 3331 regarding Review of Special Prosecutions or Investigations.

Editor's Note: Amendments adopted July 8, 2004, and will be effective 60 days after adoption.

EXPLANATORY COMMENT—1976

This Rule is revised to make clear that unless and until otherwise provided by rule of court, motions for judgment on the pleadings and for summary judgment under Pa.R.C.P. 1034 and 1035 are available where a petition for review with notice to plead has been filed.

Rule 1543. | *(Rescinded)*

Note: See 42 Pa.C.S. §5104 (trial by jury). See Rule 3331 regarding Review of Special Prosecutions or Investigations.

Editor's Note: Amended December 11, 1978, effective December 30, 1978; amended July 8, 2004.

Rule 1551. | Scope of Review.

(a) *Appellate jurisdiction petitions for review*. Review of quasijudicial orders shall be conducted by the court on the record made before the government unit. No question shall be heard or considered by the court which was not raised before the government unit except:

(1) Questions involving the validity of a statute.

(2) Questions involving the jurisdiction of the government unit over the subject matter of the adjudication.

(3) Questions which the court is satisfied that the petitioner could not by the exercise of due diligence have raised before the government unit. If, upon hearing before the court, the court is satisfied that any such additional question within the scope of this paragraph should be so raised it shall remand the record to the government unit for further consideration of the additional question. The court may in any case remand the record to the government unit for further proceedings if the court deems them necessary.

(b) *Original jurisdiction petitions for review*. The court shall hear and decide original jurisdiction petitions for review in accordance with law. This chapter is not intended to

modify, enlarge or abridge the rights of any party to an original jurisdiction petition for review.

Official Note: Subdivision (a) is a generalization of former Pa.R.C.P. 8 and makes no change in substance except to provide that procedural issues not raised below are waived—unless excused under Paragraph (a)(3). Compare Rule 302 (requisites for reviewable issue).

Subdivision (b) is based on Section 10(c) of Article V of the Constitution of Pennsylvania, which prevents this chapter from enlarging the substantive rights of the petitioner or abridging the substantive rights of the government unit named in the petition. Under the new practice, the appellate judge should inquire: "Assuming that this case had been properly brought before me by a complaint in equity (or in mandamus, replevin, quo warranto, etc., or by two or more of such actions properly consolidated for hearing and disposition) containing the factual allegations of the petition for review, to what relief, if any, would the moving party have been entitled under the prior practice?" This rule makes clear that the moving party is entitled to the same relief, and no more, under the new practice, since only the procedural requirement for separately labeled papers has been eliminated.

For example, where a party joins both a challenge to the action of a government unit in the nature of an appeal and a challenge to the composition of the government unit in the nature of quo warranto, the latter challenge will come too late under the standards of *State Dental Council and Examining Board v. Pollock*, 457 Pa. 264, 318 A.2d 910 (1974). Similarly, where a petition for review in the nature of prohibition is filed in the Supreme Court to attack an unappealable order of a lower court, in a case where relief would not have been available on an application for a writ of prohibition under the standards of *Carpentertown Coal and Coke Co. v. Laird*, 360 Pa. 94, 61 A.2d 426 (1948) and subsequent cases, the change in the label of the papers to a petition for review will not affect the result, and the petition will be dismissed.

See Rule 3331 regarding Review of Special Prosecutions or Investigations.

Editor's Note: Amendments adopted July 8, 2004, and will be effective 60 days after adoption.

Rule 1561. | Disposition of Petition for Review.

(a) *Appellate jurisdiction petitions for review*. The court may affirm, modify, vacate, set aside or reverse any order brought before it for review, and may remand the matter and direct the entry of such appropriate order, or require such further proceedings as may be just under the circumstances.

(b) *Original jurisdiction petitions for review*. Where the petition for review raises questions that formerly were determinable in an action in equity, replevin, mandamus, quo warranto or for a declaratory judgment or upon a petition for a writ of certiorari or prohibition, or in another similar plenary action or proceeding, the court may grant the relief heretofore available in any such plenary action or proceeding.

(c) *Money Damages*. Money damages arising out of tort or contract claims may not be granted under this chapter (except on review of determinations of the Board of Claims or similar agencies), but relief granted under Subdivision (b) of this rule may include any damages to which the petitioner is entitled which are claimed in the petition, which are ancillary to the matter, and which may be granted by a court.

(d) *Review of detention*. Except as prescribed by Rule 1762(b)(2), which governs applications relating to bail when no appeal is pending, or by Rule 3331 (review of special prosecutions or investigations), review in the nature of criminal habeas corpus or post conviction relief may not be granted under this chapter.

Note: Subdivision (a) is based on 42 Pa.C.S. §706 (disposition of appeals).

Subdivision (b) is based on 42 Pa.C.S. §708(e) (single form of action) (which provides that 1 Pa.C.S. §1504 (statutory remedy preferred over common law) does not limit the jurisdiction of a court over a petition for review proceeding, but to the extent applicable shall limit the relief available) and 42 Pa.C.S. §5105(d)(2) (scope of appeal). Under 42 Pa.C.S. §102 (definitions), statutory references to "appeal" include proceedings on petition for review. The subdivision is intended to make clear that the petition for review is a generic pleading which will permit the court to consider simultaneously all aspects of the controversy.

Subdivision (c) is intended to make clear that the petition for review does not encompass trespass or assumpsit actions, but that an appeal may reach tort or contract matters adjudicated by a government unit as contemplated by Section 2(h) of the Judiciary Act Repealer Act (42 P.S. §20002(h)). As to ancillary statutory damages, see 42 Pa.C.S. §8303 (action for performance of a duty required by law).

Subdivision (d) is intended to make clear that the scope of this chapter is essentially civil in nature. The application of the petition for review to questions of release prior to sentence in criminal matters and in questions arising out of special prosecutions or investigations is merely a recognition of the technical need for a plenary filing to bring the question within the appellate jurisdiction of the appropriate court. See Rule 1762(b)(2) regarding bail applications.

Editor's Note: Note amended December 11, 1978, effective December 30, 1978; rule amended May 16, 1979, effective October 1, 1979; Amendments adopted July 8, 2004, and will be effective 60 days after adoption; amended May 15, 2007, effective immediately.

Review of Determinations of the Board of Finance and Revenue

Rule 1571. | Determinations of the Board of Finance and Revenue.

(a) *General Rule*.—Review of a determination of the Board of Finance and Revenue shall be governed by this chapter and ancillary provisions of these rules, except as otherwise prescribed by this rule.

(b) *Time for Petitioning for Review*.—A petition for review of a determination of the Board of Finance and Revenue shall be filed:

(1) Within 30 days after entry of an order of the Board which does not expressly state that it is interlocutory in nature.

(2) Within 30 days after entry of an order of the Board adopting a determination by the Department of Revenue or other government unit made at the direction of the Board respecting any matter pending before the Board.

(3) Where the Board is required by statute to act finally on any matter pending before it within a specified period after the matter is filed with the Board and has not done so, at any time between:

(i) the expiration of such specified period; and

(ii) 30 days after service of actual notice by the Board stating that it has failed to act within such period.

(c) *Form*.—The petition for review shall contain a statement of the basis for the jurisdiction of the court; the name of the party seeking review; a statement that the Board of Finance and Revenue made the determination sought to be reviewed; reference to the order or other determination sought to be reviewed; and a general statement of the objections to the order or other determination. The petition for review need not be verified and shall not contain or have endorsed upon it a notice to plead. A petition for review of a taxpayer or similar party shall name the "Commonwealth of Pennsylvania" as respondent and a petition for review filed by the Commonwealth of Pennsylvania shall name all real parties in interest before the Board as respondents. The petition for review shall contain the certificate of compliance required by Pa.R.A.P. 127.

(d) *Service*.—In the case of a petition for review by a taxpayer or similar party, a copy of the petition shall be served on the Board of Finance and Revenue and on the Attorney General by the petitioner in accordance with Pa.R.A.P. 1514(c). All other parties before the Board shall be served as prescribed by Pa.R.A.P. 121(b) (service of all papers required).

(e) *Answer*.—An answer may not be filed to a petition for review of a determination of the Board of Finance and Revenue. The Commonwealth may raise any question on review, although no cross petition for review has been filed by it, and may introduce any facts in support of its position if 20 days written notice is given to the petitioner prior to trial of the intention of raising such new questions or presenting new facts.

(f) *Record*.—No record shall be certified to the court by the Board of Finance and Revenue. After the filing of the petition for review, the parties shall take appropriate steps to prepare and file a stipulation of such facts as may be agreed to and to identify the issues of fact, if any, which remain to be tried. See Rule 1542 (evidentiary hearing).

(g) *Oral argument*.—Except as otherwise ordered by the court on its own motion or on application of any party, after the record is closed, the matter may be listed for argument before or submission to the court.

(h) *Scope of review*.—Pa.R.A.P. 1551(a) (appellate jurisdiction petitions for review) shall be applicable to review of a determination of the Board of Finance and Revenue except that:

(1) A question will be heard and considered by the court if it was raised at any stage of the proceedings below and thereafter preserved.

(2) To the extent provided by the applicable law the questions raised by the petition for review shall be determined on the record made before the court. See paragraph (f) of this rule.

(i) *Exceptions*.—Any party may file exceptions to an initial determination by the court under this rule within 30 days after the entry of the order to which exception is taken. Such timely exceptions shall have the effect, for the purposes of Pa.R.A.P. 1701(b)(3) (authority of a trial court or agency after appeal) of an order expressly granting reconsideration of the determination previously entered by the court. Issues not raised on exceptions are waived and cannot be raised on appeal.

Official Note: Paragraph (b) represents an exercise of the power conferred by 42 Pa.C.S. §5105(a) (right to appellate review) to define final orders by general rule. The following statutes expressly require the Board of Finance and Revenue to act within six months in certain cases:

Section 1103 of The Fiscal Code, Act of April 9, 1929 (P.L. 343), 72 P.S. § 1103.

Section 2005 (malt beverage tax) of The Tax Reform Code of 1971, Act of March 4, 1971 (P.L. 6), 72 P.S. § 9005.

The following statute requires the Board of Finance and Revenue to act within twelve months in certain tax refund matters:

Section 3003.5 of the Tax Reform Code of 1971, Act of March 4, 1971 (P.L. 6), 72 P.S. § 10003.5.

The following statutes are covered by Section 1103 of The Fiscal Code:

Sections 809 (various insurance taxes) and 1001 (miscellaneous settlements, for example, under Section 212 of The Insurance Department Act of 1921, Act of May 17, 1921 (P.L. 789), 40 P.S. § 50) of the Fiscal Code, Act of April 9, 1929 (P.L. 343), (72 P.S. §§ 809 and 1001).

Section 6 of the Co-operative Agricultural Association Corporate Net Income Tax Act, Act of May 23, 1945 (P.L. 893), 72 P.S. § 3420-21, *et seq*.

Sections 407 (corporate net income tax), 603 (capital stock— franchise tax), 702 (bank and trust company shares tax), 802 (title insurance companies shares tax), 904 (insurance premiums tax), 1102 (gross receipts tax), 1111C (realty transfer tax) and 1503 (mutual thrift institutions tax of the Tax Reform Code of 1971, Act of March 4, 1971 (P.L. 6), 72 P.S. §§7407, 7603, 7702, 7802, 7904 , 8102, 8111C, and 8503. 75 Pa.C.S. §9616(f) (motor carriers road tax).

The basis of jurisdiction of the court under this rule will ordinarily be 42 Pa.C.S. §763 (direct appeals from government agencies). Paragraph (c) is not intended to change the practice in connection with the review of orders of the Board of Finance and Revenue insofar as the amount of detail in the pleadings is concerned. What is required is that the petitioner raise every legal issue in the petition for review which the petitioner wishes the court to consider. The legal issues raised need only be specific enough to apprise the respondent of the legal issues being contested (e.g. "valuation," "manufacturing," "sale for resale," etc.). See generally *House of Pasta, Inc. v. Commonwealth*, 390 A.2d 341 (Pa. Cmwlth. 1978).

Paragraph (e) is based on Section 1104(e) of The Fiscal Code, which was suspended absolutely by these rules, and subsequently repealed.

Paragraph (f) is based on 2 Pa.C.S. §501(b)(1) (scope of subchapter) and 2 Pa.C.S. §701 (b)(1) (scope of subchapter), which exclude tax matters from the on the record review requirements of 2 Pa.C.S. §704 (disposition of appeal).

Paragraph (h) is based on Section 1104(d) of The Fiscal Code, which was suspended absolutely by these rules and subsequently repealed, and is intended as a continuation of the prior law, except, of course, that the separate specification of objections has been abolished by these rules.

Paragraph (i) is intended to make clear that the failure to file exceptions will result in waiver by a petitioner of any issues previously presented to the Commonwealth Court.

See also Pa.R.A.P. 1782 (security on review in tax matters).

Editor's Note: Adopted May 16, 1979, effective October 1, 1979; amended December 16, 1983, effective January 1, 1984; amended July 7, 1997, effective September 5, 1997; amendments adopted July 8, 2004, and will be effective 60 days after adoption; Amendments adopted July 8, 2004, and will be effective 60 days after adoption; amended January 5, 2018, effective January 6, 2018.

EXPLANATORY COMMENT—1979

Scattered provisions relating to review of determinations of the Board of Finance and Revenue are consolidation into a single comprehensive rule. Conforming amendments are made to Rule 1512(b), 1513(b) and (d), and 1514. A new requirement is added permitting an appeal to the Supreme Court only if exceptions have been filed.

Review of Determinations by a Court of Common Pleas that a Claim of Double Jeopardy is Frivolous

Rule 1573. | Review of Orders in Which the Court Finds an Assertion of Double Jeopardy Frivolous.

(a) *General rule*.—Any party seeking review of a frivolousness determination by a court of common pleas under Pennsylvania Rule of Criminal Procedure 587 shall file a petition for review in the appellate court having jurisdiction over the matter. Review of a frivolousness determination under Pennsylvania Rule of Criminal Procedure 587 shall be governed by this chapter and ancillary provisions of these rules, except as otherwise prescribed by this rule. The time for filing is provided for in Pa.R.A.P. 1512(a)(1).

(b) *Contents*.—The contents of the petition for review are not governed by Pa.R.A.P. 1513. Instead, the petition for review need not be set forth in numbered paragraphs in the manner of a pleading, and shall contain the following (which shall, insofar as practicable, be set forth in the order stated):

(1) A statement of the basis for the jurisdiction of the appellate court.

(2) The text of the order in question, and the date of its entry in the trial court. If the order is voluminous, it may, if more convenient, be appended to the petition.

(3) A concise statement of the case containing the facts necessary to an understanding of the frivolousness issue(s) presented.

(4) The question(s) presented, expressed in the terms and circumstances of the case but without unnecessary detail.

(5) A concise statement of the reasons why the trial court erred in its determination of frivolousness.

(6) There shall be appended to the petition a copy of any opinions relating to the order sought to be reviewed, including findings of fact and conclusions of law in support of the frivolousness determination, as well as a copy of any transcripts or other record documents necessary to the appellate court's review.

(7) There shall be appended to the petition the verbatim texts of the pertinent provisions of constitutional provisions, statutes, ordinances, regulations, or other similar enactments which the case involves.

(8) There shall be appended to the petition any briefs filed in the trial court in support of the motion to dismiss.

(9) The certificate of compliance required by Pa.R.A.P. 127.

(c) *Caption and parties*.—The parties in the trial court shall be named as parties in the appellate court. If there are multiple defendants but the order for which review is sought adjudicates the motion of only a single defendant, only that defendant may file a petition for review.

(d) *No supporting brief*.—All contentions in support of a petition shall be set forth in the body of the petition as prescribed by subparagraph (b)(v) of this rule. No separate brief in support of the petition for review will be received, and the prothonotary of the appellate court will refuse to file any petition for review to which is annexed or appended any brief other than the briefs filed in the trial court.

(e) *Essential requisites of petition*.—The failure of a petitioner to present with accuracy, brevity, and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration will be a sufficient reason for denying the petition.

(f) *Effect of filing petition*.—The filing of a petition for review shall not automatically stay the proceedings before the trial court. A petitioner may file an application for a stay in the trial or appellate court pending the determination of the petition for review, or the trial or appellate court may issue a stay sua sponte.

(g) *Answer to petition for review*.—If the Commonwealth does not intend to file an answer under this rule, it shall, within the time fixed by these rules for filing an answer, file a letter stating that it does not intend to file an answer to the petition for review. The failure to file an answer will not be construed as concurrence in the petition for review. The appellate court may, however, direct the Commonwealth to file an answer. An answer to a petition for review shall contain the certificate of compliance required by Pa.R.A.P. 127.

(h) Pa.R.A.P. 1531—1571 do not apply to petitions for review filed under this rule. Pa.R.A.P. 1514 does apply, except that no copy of the petition needs to be served upon the Attorney General.

(i) *Grant of petition for review and transmission of record*.—If the petition for review is granted, the prothonotary of the appellate court shall immediately give written notice of the entry of the order to the clerk of the trial court and to each party who has appeared in the appellate court. The grant of the petition for review shall operate as a stay of all trial court proceedings. The clerk of the trial court shall docket the notice in the same manner as a notice of appeal and shall mail that notice to all parties to the trial court proceeding. The certified record shall be transmitted and filed in accordance with Chapter 19 (preparation and transmission of the record and related matters). The times fixed by those provisions for transmitting the record shall run from the date of the entry of the order granting the petition for review. No party needs to file a separate notice of appeal.

(j) *Denial of petition for review*.—If the petition for review is denied, the prothonotary of the appellate court shall immediately give written notice of the order to the clerk of the trial court and to each party who has appeared in the appellate court.

Official Note: The trial court's determination and the procedure for determining a motion to dismiss on double jeopardy grounds is set forth in Pa.R.Crim.P. 587. If a trial court denies such a motion without expressly finding that the motion is frivolous, the order is immediately appealable by means of a notice of appeal under Pa.R.A.P. 313. If, however, the trial court finds the motion to be frivolous, appellate review can be secured only if the appellate court grants a petition for review. *See Commonwealth v. Orie*, 22 A.3d 1021 (Pa. 2011); *Commonwealth v. Brady*, 508 A.2d 286 (Pa. 1986). If the Superior Court does not grant the petition for review, the defendant may file a petition for allowance of appeal with the Supreme Court.

Where the petition for review of the determination of frivolousness is granted, the grant automatically initiates a separate appeal on the merits from the order denying the pretrial motion seeking dismissal of criminal charges on double jeopardy grounds.

A party may seek (or a court may *sua sponte* issue) a stay of the trial court proceedings pending review of the frivolousness determination. Otherwise, the trial court may proceed while the petition for review is pending. *See* Pa.R.A.P. 1701(d). Where the petition for review of the determination of frivolousness is granted, the grant automatically stays further proceedings in the trial courts.

Editor's Note: Adopted June 4, 2013, effective July 4, 2013; amended January 5, 2018, effective January 6, 2018.

Chapter 17
Effect of Appeals, Supersedeas and Stays

In General

Rule 1701. | Effect of Appeal Generally.

(a) *General Rule*.—Except as otherwise prescribed by these rules, after an appeal is taken or review of a quasijudicial order is sought, the trial court or other government unit may no longer proceed further in the matter.

(b) *Authority of a Trial Court or Agency After Appeal*.—After an appeal is taken or review of a quasijudicial order is sought, the trial court or other government unit may:

(1) Take such action as may be necessary to preserve the status quo, correct formal errors in papers relating to the matter, cause the record to be transcribed, approved, filed and transmitted, grant leave to appeal *in forma pauperis*, grant supersedeas, and take other action permitted or required by these rules or otherwise ancillary to the appeal or petition for review proceeding.

(2) Enforce any order entered in the matter, unless the effect of the order has been superseded as prescribed in this chapter.

(3) Grant reconsideration of the order which is the subject of the appeal or petition, if:

(i) an application for reconsideration of the order is filed in the trial court or other government unit within the time provided or prescribed by law; and

(ii) an order expressly granting reconsideration of such prior order is filed in the trial court or other government unit within the time prescribed by these rules for the filing of a notice of appeal, or petition for review of a quasijudicial order with respect to such prior order, or within any shorter time provided or prescribed by law for the granting of reconsideration.

A timely order granting reconsideration under this paragraph shall render inoperative any such notice of appeal or petition for review of a quasijudicial order theretofore or thereafter filed or docketed with respect to the prior order. The petitioning party shall and any party may file a praecipe with the prothonotary of any court in which such an inoperative notice or petition is filed or docketed and the prothonotary shall note on the docket that such notice or petition has been stricken under this rule. Where a timely order of reconsideration is entered under this paragraph, the time for filing a notice of appeal or petition for review begins to run anew after the entry of the decision on reconsideration, whether or not that decision amounts to a reaffirmation of the prior determination of the trial court or other government unit. No additional fees shall be required for the filing of the new notice of appeal or petition for review.

(4) Authorize the taking of depositions or the preservation of testimony where required in the interest of justice.

(5) Take any action directed or authorized on application by the Appellate Court.

(6) Proceed further in any matter in which a nonappealable interlocutory order has been entered, notwithstanding the filing of a notice of appeal or a petition for review of the order.

(c) *Limited to Matters in Dispute*.—Where only a particular item, claim or assessment adjudged in the matter is involved in an appeal, or in a petition for review proceeding relating to a quasijudicial order, the appeal or petition for review proceeding shall operate to prevent the trial court or other government unit from proceeding further with only such item, claim or assessment, unless otherwise ordered by the trial court or other government unit or by the Appellate Court or a judge thereof as necessary to preserve the rights of the appellant.

(d) *Certain Petitions for Review*.—The filing of a petition for review (except a petition relating to a quasijudicial order) shall not affect the power or authority of the government unit to proceed further in the matter but the government unit shall be subject to any orders entered by the Appellate Court or a judge thereof pursuant to this chapter.

Note: The following statutory provisions relate to supersedeas generally: 42 Pa.C.S. §702(c) (supersedeas) provides that except as otherwise prescribed by general rule, a petition for permission to appeal under that section shall not stay the proceedings before the lower court or other government unit, unless the lower court or other government unit or the Appellate Court or a judge thereof shall so order. See also Rule 1313 (effect of filing petition).

42 Pa.C.S. §5105(e) (supersedeas) provides that an appeal shall operate as a supersedeas to the extent and upon the conditions provided or prescribed by law, and that unless a supersedeas is entered no appeal from an order concerning the validity of a will or other instrument or the right to the possession of or to administer any real or personal property shall suspend the powers or prejudice the acts of the appointive judicial officer, personal representative or other person acting thereunder.

Subdivision (a) codifies a well established principle. See e.g., *Merrick Estate*, 432 Pa. 450, 247 A.2d 786 (1968); *Corace v. Balint*, 418 Pa. 262, 210 A.2d 882 (1965); *Gilbert v. Lebanon Val. St. Ry. Co.*, 303 Pa. 213, 154 Atl. 302 (1931); *Drabant v. Cure*, 274 Pa. 180, 118 Atl. 30 (1922); *Silver v. Edelstein*, 266 Pa. 531, 109 Atl. 679 (1920). Rule 5102 saves the provisions of Section 426 of The Pennsylvania Workmen's Compensation Act (77 P.S. §871), which permit a rehearing by the agency under certain circumstances during the pendency of an appeal.

Subdivision (b)(1) sets forth an obvious power of the lower court or agency under these rules, but is not intended to permit fundamental corrections in the record. See *Corabi v. Curtis Pub. Co.*, 437 Pa. 143, 150, 262 A.2d 665, 668 (1970).

Generally an appeal does not operate as a supersedeas of government agency action.

Subdivision (b)(3) is intended to handle the troublesome question of the effect of application for reconsideration on the appeal process. The rule (1) permits the trial court or other government unit to grant reconsideration if action is taken during the applicable appeal period, which is not intended to include the appeal period for cross appeals, or, during any shorter applicable reconsideration period under the practice below, and (2) eliminates the possibility that the power to grant reconsideration could be foreclosed by the taking of a "snap" appeal. The better procedure under this rule will be for a party seeking reconsideration to file an application for reconsideration below and a notice of appeal, etc. If the application lacks merit the trial court or other government unit may deny the application by the entry of an order to that effect, or by inaction. The prior appeal paper will remain in effect, and appeal will have been taken without the necessity to watch the calendar for the running of the appeal period. If the trial court or other government unit fails to enter an order "expressly granting reconsideration" (an order that "all proceedings shall stay" will not suffice) within the time prescribed by these rules for seeking review, Subdivision (a) becomes applicable and the power of the trial court or other government unit to act on the application for reconsideration is lost.

Subdivision (b)(3) provides that: "(W)here a timely order of reconsideration is entered under this paragraph, the time for filing a notice of appeal or petition for review begins to run anew after entry of the decision on reconsideration." Pursuant to Pa.R.C.P. 1930.2, effective July 1, 1994, where reconsideration from a domestic relations order has been timely granted, a reconsidered decision or an order directing additional testimony must be entered within 120 days of the entry of the order granting reconsideration or the motion shall be deemed denied. See Pa.R.C.P. 1930.2(c), (d) and (e). The date from which the appeal period will be measured following a reconsidered decision in a domestic relations matter is governed by Pa.R.C.P. 1930.2(d) and (e).

Under the 1996 amendments to the Rules of Criminal Procedure governing postsentence practice, see Pa.R.Crim.P. 720 and 721, reconsideration of a decision on a defendant's postsentence motion or on a Commonwealth motion to modify sentence must take place within the time limits set by those rules, and the judge may not vacate sentence or "grant reconsideration" pursuant to subdivision (b)(3) in order to extend the time limits for disposition of those motions. The amendments to Pa.R.Crim.P. 720 and new Pa.R.Crim.P. 721 resolve questions raised about the interplay between this subdivision and post-trial criminal practice. See, e.g., *Commonwealth v. Corson*, 444 A.2d 170 (Pa. Super. 1982).

Editor's Note: Note amended November 30, 1978, effective April 22, 1979; December 11, 1978, effective December 30, 1978; and May 16, 1979, effective October 1, 1979. Rule and note amended April 26, 1982, effective September 13, 1982. Further amended and effective September 15, 1983; June 28, 1985, effective July 20, 1985; and December 10, 1986, effective January 31, 1987. Note further amended August 22, 1997, effective January 1, 1998.

EXPLANATORY COMMENT—1979

The note is expanded to describe the effect of failure of a lower court or other government unit to grant reconsideration within the appeal period.

Rule 1702. | Stay Ancillary to Appeal.

(a) *General Rule*.—Applications for relief under this chapter will not be entertained by an Appellate Court or a judge thereof until after a notice of appeal has been filed in the lower court and docketed in the Appellate Court or a petition for review has been filed.

(b) *Proceedings on Petition for Allowance of or Permission to Appeal*.—Applications for relief under this chapter may be made without the prior filing of a petition for allowance of appeal or petition for permission to appeal, but the failure to effect timely filing of such a petition, or the denial of such a petition, shall automatically vacate any ancillary order entered under this chapter. In such a case the clerk of the court in which Stay or Injunction in Civil Matters the ancillary order was entered shall, on praecipe of any party to the matter, enter a formal order under this rule vacating such ancillary order.

(c) *Supreme Court Review of Appellate Court Supersedeas and Stay Determinations*.—No appeal, petition for allowance of appeal or petition for review need be filed in the Supreme Court in connection with a reapplication under Rule 3315 (review of stay orders of Appellate Courts).

Official Note: Based on former Superior Court Rule 53 and Commonwealth Court Rule 112A, which required the taking of an appeal prior to an application for supersedeas or other interlocutory order. Subdivision (b) is new and is added in recognition of the fact that the drafting of a petition for allowance of appeal or a petition for permission to appeal in the form required by these rules may not be possible prior to the time when an application for supersedeas may have to be made in the Appellate Court in order to avoid substantial harm.

Editor's Note: Rule amended May 16, 1979, effective October 1, 1979; amended May 31, 2013, effective immediately.

EXPLANATORY COMMENT—1979

The requirement is eliminated for a plenary appeal or petition in the Supreme Court to support further review in the Supreme Court or Superior Court or Commonwealth Court action on a request for stay of a Trial Court order.

EXPLANATORY NOTE—2005

Nothing in subdivision (d) of Pa.R.A.P. 1702 or in Pa.R.A.P. 3316 is intended to abrogate the requirement in *Commonwealth v. Morris*, 573 Pa. 157, 822 A.2d 684 (2003) ("*Morris II*") that any grant of a stay by the trial court while a Post Conviction Relief Act ("PCRA") petition is pending must comply with the PCRA, 42 Pa.C.S. §9545(c) (1), nor do these rules expand or diminish any inherent powers of the Supreme Court to grant a stay of execution. See *Morris II*; see also Pa.R.A.P. 3316 and Explanatory Comment.

Editor's Note: Adopted October 7, 2005, effective February 1, 2006.

Rule 1703. | Contents of Application for Stay.

In addition to the requirements set forth in Pa.R.A.P. 123 (Application for Relief), an application for stay pursuant to this chapter shall set forth the procedural posture of the case, including the result of any application for relief in any court below or federal court, the specific rule under which a stay or supersedeas is sought, grounds for relief, and, if expedited relief is sought, the nature of the emergency. The application shall also identify and set forth the procedural posture of all related proceedings. The application shall contain the certificate of compliance required by Pa.R.A.P. 127.

Editor's Note: Adopted March 15, 2004, effective 60 days after adoption; amended January 5, 2018, effective January 6, 2018.

Rule 1704. | Application in a Capital Case for a Stay of Execution or for Review of an Order Granting or Denying a Stay of Execution.

Prior notice of the intent to file an application in a capital case for a stay or review of an order granting or denying a stay of execution shall be provided to the Prothonotary of the Pennsylvania Supreme Court, if prior notice is practicable.

The application for stay or review shall set forth the following:

1. The date the warrant issued; the date and nature of the order that prompted the issuance of the warrant; and the date the execution is scheduled, if a date has been set;
2. Whether any direct or collateral challenges to the underlying conviction are pending, and, if so, in what court(s) or tribunal(s);
3. Whether any other applications for a stay of the pending execution have been filed, and, if so, in what court(s) or tribunal(s), when, and the status of the application(s);
4. The grounds for relief and the showing made to the trial court of entitlement to a stay under 42 Pa.C.S. § 9545(c), if applicable;
5. A statement certifying that emergency action is required and setting forth a description of the emergency.

All dockets, pleadings, and orders that are referred to in 1—5 above must be attached to the application. If any of the information provided in the application changes while the motion is pending, the party seeking the stay or review must file with the Pennsylvania Supreme Court written notice of the change within 24 hours.

No notice of appeal or petition for review needs to be filed in order to file an application under this rule.

Editor's Note: Adopted May 31, 2013, effective immediately.

Stay or Injunction in Civil Matters

Rule 1731. | Automatic Supersedeas of Orders For the Payment of Money.

(a) *General Rule*.—Except as provided by subdivision (b), an appeal from an order involving solely the payment of money shall, unless otherwise ordered pursuant to this chapter, operate as a supersedeas upon the filing with the clerk of the lower court of appropriate security in the amount of 120 percent of the amount found due by the lower court and remaining unpaid. Where the amount is payable over a period of time, the amount found due for the purposes of this rule shall be the aggregate amount payable within eighteen (18) months after entry of the order.

(b) *Domestic Relations Matters*.—An appeal from an order of child support, spousal support, alimony, alimony pendente lite, equitable distribution or counsel fees and costs shall operate as a supersedeas only upon application to and order of the trial court and the filing of security as required by subdivision (a).

The amount and terms of security shall be within the discretion of the trial court.

Editor's Note: Note amended December 11, 1978, effective December 30, 1978; rule amended May 16, 1979, effective October 1, 1979; further amended November 24, 1986, effective January 11, 1987; further amended December 30, 1987, effective January 16, 1988.

Rule 1732. | Application for Stay or Injunction Pending Appeal.

(a) *Application to trial Court*.—Application for a stay of an order of a trial court pending appeal, or for approval of or modification of the terms of any *supersedeas*, or for an order suspending, modifying, restoring, or granting an injunction during the pendency of an appeal, or for relief in the nature of peremptory mandamus, must ordinarily be made in the first instance to the trial court, except where a prior order under this chapter has been entered in the matter by the Appellate Court or a judge thereof.

(b) *Contents of Application for Stay*.—An application for stay of an order of a trial court pending appeal, or for approval of or modification of the terms of any *supersedeas*, or for an order suspending, modifying, restoring, or granting an injunction during the pendency of an appeal, or for relief in the nature of peremptory mandamus, may be made to the Appellate Court or to a judge thereof, but the application shall show that application to the trial court for the relief sought is not practicable, or that the trial court has denied an application, or has failed to afford the relief which the applicant requested, with the reasons given by the trial court for its action. The application shall also show the reasons for the relief requested bind the facts relied upon, and if the facts are subject to dispute the application shall be supported by sworn or verified statements or copies thereof. With the application shall be filed such parts of the record as are relevant. Where practicable, the application should be accompanied by the briefs, if any, used in the trial court. The application shall contain the certificate of compliance required by Pa.R.A.P. 127.

(c) *Number of Copies*.—Seven copies of applications under this rule in the Supreme Court or the Superior Court, and three copies of applications under this rule in the Commonwealth Court, shall be filed with the original.

Official Note: *See generally Pennsylvania Public Utility Commission v. Process Gas Consumers Group*, 467 A.2d 805 (Pa. 1983), for the criteria for the issuance of a stay pending appeal.

Editor's Note: Amended September 10, 2008, effective December 1, 2008; amended January 5, 2018, effective January 6, 2018; amended February 8, 2019, effective April 1, 2019.

Rule 1733. | Requirements for Supersedeas on Agreement or Application.

(a) *General Rule*.—An appeal from an order which is not subject to Rule 1731 (automatic supersedeas of orders for the payment of money) shall, unless otherwise prescribed in or ordered pursuant to this chapter, operate as a supersedeas only upon the filing with the clerk of the court below of appropriate security as prescribed in this rule. Either court may, upon its own motion or application of any party in interest, impose such terms and conditions as it deems just and will maintain the res or status quo pending final judgment or will facilitate the performance of the order if sustained.

(b) *Tangible Property*.—When the order determines the disposition of the property in controversy as in real actions, replevin, and actions to foreclose mortgages or when such property is in the custody of the sheriff, or when the proceeds of such property or appropriate security for its value is in the possession, custody or control of the court, the amount of the additional security shall be fixed by agreement of the parties, or by the court, at such sums only as will secure any damages for the use and detention of the property, interest, the costs of the matter and costs on appeal.

(c) *Other Cases*.—In all other cases the security shall be in such amount as the lower court in the first instances or the Appellate court or a judge thereof shall deem just and proper.

(d) *Public Officer*.—Where the effect of an order is to remove a public officer from office a supersedeas of the order shall not reinstate the officer unless the order of supersedeas shall expressly so provide.

Note: The court is granted wide discretion under this rule as to the terms and conditions to be imposed and it may require (1) the execution and deposit of a deed where the order appealed from directs the execution of the conveyance or other instrument, (2) the delivery of personal property for safe keeping pending appeal where the order appealed from directs the assignment or delivery of such property, or (3) other terms required in the interest of justice.

Editor's Note: Amended December 11, 1978, effective December 30, 1978.

Rule 1734. | Appropriate Security.

(a) *General Rule*.—For the purposes of this chapter any of the following, when deposited with the clerk, constitutes appropriate security, unless otherwise ordered pursuant to this chapter:

(1) Legal tender of the United States.

(2) Any of the following, if registered in the name of or to the order of the Commonwealth of Pennsylvania: (i) United States Treasury bills, (ii) certificates of deposit issued by a Federally insured bank, bank and trust company, savings bank, savings association, banking association or savings and loan association having an office within this Commonwealth, (iii) irrevocable letters of credit issued by a Federallyinsured bank, bank and trust company, savings bank, savings association, banking association or saving and loan associationhavinganofficewithinthisCommonwealth. The clerk may transfer or negotiate such bills or certificates for the purposes of this chapter.

(3) A bond conforming to the requirements of this rule executed by a surety company which has qualified with the clerk under Section 664 of The Insurance Company Law of 1921 (40 P.S. §835).

(4) A bond conforming to the requirements of this rule executed by a surety approved by the court as sufficient.

(b) *Terms of Bond*.—A supersedeas bond shall be conditioned for the satisfaction of the order if it is affirmed or if for any reason the appeal is dismissed, or for the satisfaction of any modification of the order and in either case costs, interest and any damages for delay that may finally be awarded.

(c) *Liability of Sureties*.—If security is given under this chapter in the form of a bond, stipulation or other undertaking in the nature of a bond, with one or more sureties, each surety submits himself to the jurisdiction of the lower court and irrevocably appoints the clerk of the lower court as his agent upon whom any papers affecting his liability on the bond or undertaking may be served. This liability may be enforced on application in the lower court without the necessity of an independent action. The application and such notice of the application as the lower court prescribes may be served on the clerk of the lower court, who shall forthwith mail copies to the sureties if their addresses are known.

Note: 42 Pa.C.S. §3561 (money paid into court) provides that all money paid into court shall be held in the custody of such officer, shall be invested in such manner, and shall be withdrawn from deposit, as shall be prescribed by general rules, and that any such investment, except as otherwise prescribed by or pursuant to general rules, shall be restricted to obligations of the United States or of the United States Treasury, or of the Commonwealth. Rule 1734(a)(2) provides an expanded form of investment as contemplated by the statute.

As to book entry treasury bills deposited in court, see 31 CFR §350.3 (a)(5).

Editor's Note: Note amended December 11, 1978, effective December 30, 1978; rule and note amended April 26, 1982, effective September 13, 1982 (120 days after publication in the *Pennsylvania Bulletin*); amended July 7, 1997, effective September 5, 1997.

Rule 1735. | Effect of Supersedeas on Execution or Distribution.

(a) *General Rule*.—The filing of appropriate security in the amount required by or pursuant to this chapter within 30 days from the entry of the order appealed from shall stay any execution theretofore entered. The filing of such appropriate security after the 30day period shall stay only executions or distributions thereafter issued or ordered.

(b) *Notation in Judgment Index*.—Upon the filing of appropriate security in the amount required by or pursuant to this chapter the clerk of the lower court shall note in the docket and in any separate judgment index: "appeal perfected; lien discharged." Upon return of the record by the Appellate Court to the lower court, in a matter where the order appealed from was affirmed in whole or in part, the clerk of the lower court shall thereupon enter an order, as of the date of receipt of the remanded record, against the appellant for the amount due upon the order as affirmed, with interest and costs as provided by law.

Editor's Note: Amended December 11, 1978, effective December 30, 1978.

2(a) *General Rule*.—No security shall be required of:

(1) The Commonwealth or any officer thereof, acting in his official capacity.

(2) Any political subdivision or any officer thereof, acting in his official capacity.

(3) A party acting in a representative capacity.

(4) A taxpayer appealing from a judgment entered in favor of the Commonwealth upon an account duly settled when security has already been given as required by law.

(5) An appellant who has already filed security in a lower court, conditioned as prescribed by these rules for the final outcome of the appeal.

(b) *Supersedeas Automatic*.—Unless otherwise ordered pursuant to this chapter the taking of an appeal by any party specified in Subdivision (a) of this rule shall operate as a supersedeas in favor of such party, which *supersedeas* shall continue through any proceedings in the United States Supreme Court.

Note: This rule is self-executing, and a party entitled to its benefits is not required to bring the exemption to the attention of the court under Rule 1732 (application for stay or injunction pending appeal). However, the appellee may apply under Rule 1732 for elimination or other modification of the automatic supersedeas or under Rule 1737 (objections to security) for an order requiring security as a condition to the continuance of the stay, or for relief under any other applicable provision of this chapter. The 1987 amendment eliminates the automatic supersedeas for political subdivisions on appeals from the common pleas court where that court has affirmed an arbitration award in a grievance or similar personnel matter.

The definition of "Appeal" in Pa.R.A.P. 102 does not reference proceedings in the United States Supreme Court. Rule 102 further defines "Determination" as "Action or inaction by a government unit which action or inaction is subject to judicial review by a court under Section 9 of Article V of the Constitution of Pennsylvania or otherwise...." While the word "otherwise" could be read broadly to include the United States Supreme Court, the more specific reference to the Pennsylvania Constitution as limiting the scope of the term suggests that the Federal Courts are not part of the definition when "court" is used in the Rules. In light of this ambiguity, the Rule has been amended to make clear that the automatic supersedeas in subsection (b) continues through any proceedings in the United States Supreme Court.

Editor's Note: Note amended December 11, 1978, effective December 30, 1978; note amended May 16, 1979, effective October 1, 1979; further amended December 30, 1987, effective January 16, 1988; amended September 20, 2011, effective immediately.

Rule 1737. | Modification of Terms of Supersedeas.

(a) The trial court or the appellate court, may at any time, upon application of any party and after notice and opportunity for hearing:

(1) Require security of a party otherwise exempt from the requirement of filing security upon cause shown;

(2) Strike off security improperly filed;

(3) Permit the substitution of surety and enter an exoneration of the former surety; or

(4) increase, decrease, eliminate, or otherwise alter the amount or type of any security that has been or is to be filed by a party, upon cause shown for the modification.

(b) The parties may at any time stipulate to the type or amount of security and, upon filing, such a written stipulation will act to set the terms of a supersedeas of the judgment to the same extent as would an order of the court.

Official Note: The amount of automatic super-sedeas of money judgments has been set at 120 percent of the verdict, and in most instances that amount will assure payment of a judgment and interest accrued during an appeal without imposing undue hardship on an appellant. See Pa.R.A.P. 1731. Nonetheless, there may be circumstances in which it would be appropriate for a court to modify the default approach to security, either in type, method, or time for posting, or in amount. Courts have the discretion to increase or decrease and to eliminate the requirement that security be posted, based upon the proofs offered by the parties. The parties by agreement may also determine to modify the amount or type of supersedeas, particularly given that Pa.R.A.P. 2771 provides for the premium paid for the cost of supersedeas bonds or other appellate bonds to be taxable as a cost on appeal.

A party may seek appellate review of an order resolving an application under this rule. See Pa.R.A.P. 1732 and Pa.R.A.P. 3315.

Editor's Note: Amended June 23, 1976, effective July 1, 1976; amended June 25, 2016; effective October 1, 2016.

Rule 1738. | Substitution of Security.

The clerk of the lower court, unless otherwise ordered pursuant to this chapter, shall permit an appellant to withdraw all or part of the security and substitute other appropriate security complying with the requirements of this chapter.

Note: Under this rule the appellant may, e.g., "roll over" certificates of deposit for the purpose of redeeming matured certificates, etc.

Rule 1739. | Order for Sale of Perishable Property.

When perishable property is the subject of the appeal, the lower court may make any order relating to its sale or disposition that shall be necessary or proper, and direct any funds realized to be paid into court to await the outcome of the appeal.

Note: 42 Pa.C.S. §3546 (relief from liability for loss of property if expenses not paid) provides that any officer enforcing orders of a tribunal shall be relieved from any liability for the loss, destruction, removal of or damage to any personal property, or for any injury to any real property, levied upon, seized or taken into possession by virtue of any process if the person lodging such process with the officer shall refuse to advance or secure upon demand the reasonable fees and expenses incident to the seizure, safekeeping and proper protection of such property.

Editor's Note: Note amended December 11, 1978, effective December 30, 1978.

Rule 1740. | Order for an Accounting.

Unless otherwise ordered pursuant to this chapter the taking of an appeal from an order directing an accounting shall operate as a supersedeas of the order.

Note: This rule is based on act of June 24, 1895 (P.L. 243, No. 150). Ordinarily this rule will be applicable only where an appeal has been permitted under Rule 312 (interlocutory appeals by permission). See note to Rule 311 (interlocutory appeals as of right).

Editor's Note: Adopted May 16, 1979, effective October 1, 1979.

EXPLANATORY COMMENT—1979

The present statutory provision (repealed by the Judiciary Act Repealer Act) granting an automatic supersedeas of the duty to account pending appeal on the issue of the duty to account, is incorporated into the rules, subject, of course, to modification on application in appropriate circumstances.

Rule 1751. | Form of Bond.

A bond under this chapter may be in substantially the following form:

See Forms Index

Official Note: Patterned after 20 Pa.C.S. §7111 (c)(2) (condition of bond).

Editor's Note: Form amended July 7, 1997, effective September 5, 1997.

Stay in Criminal Matters

Rule 1761. | Capital Cases.

The pendency of proceedings under Rule 1941 (review of sentence of death) shall stay execution of sentence of death.

Note: Based on 42 Pa.C.S. §9711(h) (review of death sentence).

Editor's Note: Note amended December 11, 1978, effective December 31, 1978; note amended May 16, 1979, effective October 1, 1979; note amended April 26, 1982, effective September 13, 1982, (120 days after publication in the *Pennsylvania Bulletin*).

Rule 1762. | Release in Criminal Matters.

(a) Applications relating to bail when an appeal is pending shall ordinarily first be presented to the lower court, and shall be governed by the Pennsylvania Rules of Criminal Procedure. If the lower court denies relief, a party may seek relief in the appellate court by filing an application, pursuant to Rule 123, ancillary to the pending appeal.

(b) Applications relating to bail when no appeal is pending:

(1) Applications relating to bail when no appeal is pending shall first be presented to the lower court, and shall be governed by the Pennsylvania Rules of Criminal Procedure.

(2) An order relating to bail shall be subject to review pursuant to Chapter 15 (judicial review of governmental determinations). Any answer shall be in accordance with Rule 1516 (other pleadings allowed), and no other pleading is authorized. Rule 1517 (applicable rules of pleading) and Rule 1531 (intervention) through 1551 (scope of review) shall not be applicable to a petition for review filed under this paragraph.

(c) *Content*. An application for relief under subdivision (a) or a petition for review under subdivision (b) shall set forth specifically and clearly the matters complained of and a description of any determinations made by the lower court. Any order and opinions relating to the bail determination shall be attached as appendices.

(d) *Service*. A copy of the application for relief or the petition for review and any answer thereto shall be served on the judge of the lower court. All parties in the lower court shall be served in accordance with Rule 121(b) (service of all papers required). The Attorney General of Pennsylvania need not be served in accordance with Rule 1514(c) (service), unless the Attorney General is a party in the lower court.

(e) *Entry of Bail*. Bail shall be entered in the lower court pursuant to the Pennsylvania Rules of Criminal Procedure.

(f) *Extradition matters*. Relief relating to bail in extradition matters shall be governed by the procedures prescribed by this rule.

(g) *Opinion of lower court*. Upon receipt of a copy of an application for relief under subdivision (a) or a petition for review under subdivision (b) that does not include an explanation for the bail determination, the judge who made the bail determination below shall forthwith file of record a brief statement of the reasons for the determination or where in the record such reasons may be found.

Note: Prior to Sentence, Rule 1702 (stay ancillary to appeal) is satisfied by the filing of a plenary petition for review of the order of the lower court granting or denying release. After sentence a separate plenary filing is no longer necessary because the application for release pending appeal may be made as a matter ancillary to the appeal from the order imposing sentence.

The reference in Subdivision (c) to the rulings complained of is not intended that the Appellate Court may ignore objective standards for release such as those established by Pa.R.Crim.P. 530.

Editor's Note: Note amended December 11, 1978, effective December 30, 1978; rule amended May 16, 1979, effective October 1, 1979; amended July 8, 2004, effective 60 days after adoption.

EXPLANATORY NOTE—2004

The 2004 amendments establish a simple dichotomy in procedures for seeking appellate review of lower court orders relating to bail: If an appeal is pending, an application for relief ancillary to the appeal is the proper method for invoking appellate court consideration. If no appeal is pending, the party seeking relief must file a petition for review.

Rule 1763. | Vacation of Supersedeas on Affirmance of Conviction.

Unless otherwise ordered pursuant to this chapter, upon the remand of the record in any matter in which the judgment of sentence was affirmed a defendant who has been released pending appeal shall appear in the lower court at such time as the defendant may be there called, and shall be committed by

that court until the defendant has complied with the original sentence, or any part thereof which had not been performed at the time the defendant was released pending appeal.

Note: This rule is based on the prior practice in the Superior Court and will simplify the wording of per curiam affirmance orders.

Editor's Note: Adopted June 23, 1976, effective July 1, 1976.

Rule 1764. | Other Stays in Criminal Matters.

Except as otherwise prescribed by the Pennsylvania Rules of Criminal Procedure, Rule 1731 (automatic supersedeas of orders for the payment of money) et seq. shall be applicable to criminal or quasi-criminal matters or orders relating thereto which are not within the scope of Rule 1761 (capital cases) through Rule 1763 (vacation of supersedeas on affirmance of conviction).

Editor's Note: Adopted June 23, 1976, effective July 1, 1976.

EXPLANATORY COMMENT—1976

This Rule makes clear that unless a provision of the Pennsylvania Rules of Criminal Procedure is applicable, the supersedeas provisions applicable in civil appeals are applicable in the absence of a specific provision of the Rules applicable to criminal or quasi-criminal matters.

Review of Dispositional Order for Out of Home Placement in Juvenile Delinquency Matters

Rule 1770. | Review of Out of Home Placement in Juvenile Delinquency Matters.

(a) *General rule*.—If a court under the Juvenile Act, 42 Pa.C.S. § 6301 et seq., enters an order after an adjudication of delinquency of a juvenile pursuant to Rules of Juvenile Court Procedure 409(A)(2) and 515, which places the juvenile in an out of home overnight placement in any agency or institution that shall provide care, treatment, supervision, or rehabilitation of the juvenile ("Out of Home Placement''), the juvenile may seek review of that order pursuant to a petition for review under Chapter 15 (judicial review of governmental determinations). The petition shall be filed within ten days of the said order.

(b) *Content*.—A petition for review under subdivision (a) shall contain the following:

(1) a specific description of any determinations made by the juvenile court;

(2) the matters complained of;

(3) a concise statement of the reasons why the juvenile court abused its discretion in ordering the Out of Home Placement;

(4) the proposed terms and conditions of an alternative disposition for the juvenile; and

(5) a request that the official court reporter for the juvenile court transcribe the notes of testimony as required by paragraph (g) of this Rule.

Any order(s) and opinion(s) relating to the Out of Home Placement and the transcript of the juvenile court's findings shall be attached as appendices. The petition shall be supported by a certificate of counsel to the effect that it is presented in good faith and not for delay. The petition shall contain the certificate of compliance required by Pa.R.A.P. 127.

(c) *Objection to specific agency or institution, or underlying adjudication of delinquency, is not permitted.*

(1) A petition for review under paragraph (a) shall not challenge the specific agency or specific institution that is the site of the Out of Home Placement and instead shall be limited to the Out of Home Placement itself.

(2) A petition for review under paragraph (a) shall not challenge the underlying adjudication of delinquency.

(d) *Answer*.—Any answer shall be filed within ten days of service of the petition, and no other pleading is authorized. Any answer shall contain the certificate of compliance required by Pa.R.A.P. 127. Pa.R.A.P. 1517 (applicable rules of pleading) and Rule 1531 (intervention) through 1551 (scope of review) shall not be applicable to a petition for review filed under paragraph (a).

(e) *Service*.—A copy of the petition for review and any answer thereto shall be served on the judge of the juvenile court and the official court reporter for the juvenile court. All parties in the juvenile court shall be served in accordance with Pa.R.A.P. 121(b) (service of all papers required). The Attorney General of Pennsylvania need not be served in accordance with Pa.R.A.P. 1514(c) (service), unless the Attorney General is a party in the juvenile court.

(f) *Opinion of juvenile court*.—Upon receipt of a copy of a petition for review under paragraph (a), if the judge who made the disposition of the Out of Home Placement did not state the reasons for such placement on the record at the time of disposition pursuant to Rule of Juvenile Court Procedure 512 (D), the judge shall file of record a brief statement of the reasons for the determination or where in the record such reasons may be found, within five days of service of the petition for review.

(g) *Transcription of Notes of Testimony*.—Upon receipt of a copy of a petition for review under paragraph (a), the court reporter shall transcribe the notes of testimony and deliver the transcript to the juvenile court within five business days. If the transcript is not prepared and delivered in a timely fashion, the juvenile court shall order the court reporter to transcribe the notes and deliver the notes to the juvenile court, and may impose sanctions for violation of such an order. If the juvenile is proceeding in forma pauperis, the juvenile shall not be charged for the cost of the transcript. Chapter 19 of the Rules of Appellate

Procedure shall not otherwise apply to petitions for review filed under this Rule.

(h) *Non-waiver of objection to placement*.—A failure to seek review under this rule of the Out of Home Placement shall not constitute a waiver of the juvenile's right to seek review of the placement in a notice of appeal filed by the juvenile from a disposition after an adjudication of delinquency.

Official Note: This Rule provides a mechanism for the expedited review of an order of Out of Home Placement entered pursuant to Rule of Juvenile Court Procedure 515. Rule of Juvenile Court Procedure 512(D) requires the judge who made the disposition of an Out of Home Placement to place the reasons for an Out of Home Placement on the record at the time of the disposition, and paragraph (f) of this Rule is only applicable in the exceptional circumstance where the judge who made the disposition of an Out of Home Placement fails to comply with Rule of Juvenile Court Procedure 512(D). The Juvenile Act, 42 Pa.C.S. § 6352, sets forth the considerations for a dispositional order following an adjudication of delinquency and the alternatives for disposition. The standard for review of a dispositional order is an abuse of discretion. See In the Interest of A.D., 771 A.2d 45 (Pa. Super. 2001) (en banc).

Editor's Note: Adopted December 10, 2012, effective 60 days after adoption; amended January 5, 2018, effective January 6, 2018.

Stay Pending Action on Petition for Review

Rule 1781. | Stay Pending Action on Petition for Review.

(a) *Application to government unit*.— Application for a stay or *supersedeas* of an order or other determination of any government unit pending review in an Appellate Court on petition for review shall ordinarily be made in the first instance to the government unit.

(b) *Contents of Application for Stay or Supersedeas*.—An application for stay or *supersedeas* of an order or other determination of a government unit, or for an order granting an injunction pending review, or for relief in the nature of peremptory mandamus, may be made to the Appellate Court or to a judge thereof, but the application shall show that application to the government unit for the relief sought is not practicable, or that application has been made to the government unit and denied, with the reasons given by it for the denial, or that the action of the government unit did not afford the relief which the applicant had requested. The application shall also show the reasons for the relief requested and the facts relied upon, and if the facts are subject to dispute the application shall be supported by sworn or verified statements or copies thereof. With the application shall be filed such parts of the record if any as are relevant to the relief sought. The application shall contain the certificate of compliance required by Pa.R.A.P. 127.

(c) *Notice and Action by Court*.—Upon such notice to the government unit as is required by Pa.R.A.P. 123 (applications for relief) the Appellate Court, or a judge thereof, may grant an order of stay or *supersedeas*, including the grant of an injunction pending review or relief in the nature of peremptory mandamus, upon such terms and conditions, including the filing of security, as the court or the judge thereof may prescribe. Where a statute requires that security be filed as a condition to obtaining a *supersedeas*, the court shall require adequate security.

Official Note: *See generally Pennsylvania Public Utility Commission v. Process Gas Consumers Group*, 467 A.2d 805 (Pa. 1983), for the criteria for the issuance of a stay pending appeal.

Editor's Note: Amended December 11, 1978, effective December 30, 1978; amended April 26, 1982; effective September 13, 1982 (120 days after publication in the *Pennsylvania Bulletin*); amended January 5, 2018, effective January 6, 2018; amended February 8, 2019, effective April 1, 2019.

Rule 1782. | Security on Review in Tax Matters.

(a) *General Rule*.—A petition for review of an order of the Board of Finance and Revenue in a tax matter shall, unless otherwise ordered pursuant to this chapter, operate as a supersedeas upon the filing with the Prothonotary of the Commonwealth Court of appropriate security in the amount of 120 percent of the amount of taxes and penalty found due by the Board and remaining unpaid.

(b) *Form of Bond*.—A bond under this rule may be in substantially the following form:

See Forms Index

Note: The requirement of a bond for costs only (as where the full amount of the tax found due below has already been paid) has been eliminated.

Editor's Note: Note amended December 11, 1978, effective December 30, 1978; rule amended April 26, 1982, effective September 13, 1982 (120 days after publication in the *Pennsylvania Bulletin*); form amended July 7, 1997, effective September 5, 1997.

Chapter 19
Preparation and Transmission of Record and Related Matters

Rule 1911. | Request for Transcript.

(a) *General Rule*.—The appellant shall request any transcript required under this chapter in the manner and make any necessary payment or deposit therefor in the amount and within the time prescribed by Rules 4001 *et seq.* of the Pennsylvania Rules of Judicial Administration.

(b) *Cross-appeals*.—Where a cross-appeal has been taken the cross-appellant shall also have a duty to pay for and cause the transcript to be filed and shall share the initial expense equally with all other appellants.

(c) *Form*.—The request for transcript may be endorsed on, incorporated into or attached to the notice of appeal or other document and shall be in substantially the following form:

See Forms Index

(d) *Effect of Failure to Comply*.—If the appellant fails to take the action required by these rules and the Pennsylvania Rules of Judicial Administration for the preparation of the transcript, the Appellate Court may take such action as it deems appropriate, which may include dismissal of the appeal.

Official Note: For the Uniform Rules Governing Court Reporting and Transcripts, see Pa.R.J.A. No. 4001—4016. Local rules should also be consulted as to deposit requirements, fees, and additional procedures.

Editor's Note: Adopted April 26, 1982, effective retroactive to July 15, 1981 (applicable to all matters commenced thereafter and matters pending, insofar as just and practicable); amended July 7, 1997, effective September 5, 1997; amended December 2, 2016, effective January 1, 2017.

Record on Appeal from Lower Court

Rule 1921. | Composition of Record on Appeal.

The original papers and exhibits filed in the lower court, copies of legal papers filed with the prothonotary by means of electronic filing, the transcript of proceedings, if any, and a certified copy of the docket entries prepared by the clerk of the lower court shall constitute the record on appeal in all cases.

Official Note: An appellate court may consider only the facts which have been duly certified in the record on appeal. *Commonwealth v. Young*, 456 Pa. 102, 115, 317 A.2d 258, 264 (1974). All involved in the appellate process have a duty to take steps necessary to assure that the appellate court has a complete record on appeal, so that the appellate court has the materials necessary to review the issues raised on appeal. Ultimate responsibility for a complete record rests with the party raising an issue that requires appellate court access to record materials. *See, e.g., Commonwealth v. Williams*, 552 Pa. 451, 460, 715 A.2d 1101, 1106 (1998) (addressing obligation of appellant to purchase transcript and ensure its transmission to the appellate court). Rule 1931 (c) and (f) afford a "safe harbor" from waiver of issues based on an incomplete record. Parties may rely on the list of documents transmitted to the appellate court and served on the parties. If the list shows that the record transmitted is incomplete, the parties have an obligation to supplement the record pursuant to Rule 1926 (correction or modification of the record) or other mechanisms in Chapter 19. If the list shows that the record transmitted is complete, but it is not, the omission shall not be a basis for the appellate court to find waiver. This principle is consistent with the Supreme Court's determination in *Commonwealth v. Brown*, __Pa.__, 52 A.3d 1139, 1145 n.4 (2012) that where the accuracy of a pertinent document is undisputed, the Court could consider that document if it was in the Reproduced Record, even though it was not in the record that had been transmitted to the Court. Further, if the appellate court determines that something in the original record or otherwise presented to the trial court is necessary to decide the case and is not included in the certified record, the appellate court may, upon notice to the parties, request it from the trial court *sua sponte* and supplement the certified record following receipt of the missing item. See Rule 1926 (correction or modification of the record).

Editor's Note: Amended August 13, 2008, effective immediately; amended May 9, 2013, effective to appeals and petitions for review filed 30 days after adoption.

Rule 1922. | Transcription of Notes of Testimony.

(a) *Request for Transcripts.*—An appellant may file a request for transcripts under Pennsylvania Rule of Judicial Administration 4007 prior to or concurrent with the notice of appeal. If a deposit is required, the appellant shall make the deposit at the time of the request for the transcript unless the appellant is requesting a waiver of the cost because of economic hardship. Unless another Rule of Appellate Procedure provides a shorter time, the court reporter shall provide the trial judge with the transcript within 14 days of the request for transcript. When the appellant receives notice under Rule of Judicial Administration 4007(D)(3) that the transcript has been prepared, the appellant has 14 days to pay the final balance in compliance with that rule.

(b) *Filing of the Transcript.*—When the transcript is delivered to the filing office and the parties under Rule of Judicial Administration 4007(D)(4), the transcript shall be entered on the docket.

(c) *Corrections to Transcript.*—If a transcript contains an error or is an incomplete representation of the proceedings, the omission or misstatement may be corrected by the following means:

(1) *By objection.* A party may file a written objection to the filed transcript. Any party may answer the objection. The trial court shall resolve the objections and then direct that the transcript as corrected be made a part of the record and transmitted to the appellate court.

(2) *By stipulation of the parties filed in the trial court.* If the trial court clerk has already certified the record, the parties shall file in the appellate court a copy of any stipulation filed pursuant to this rule, and the trial court shall direct that the transcript as corrected be made a part of the record and transmitted to the appellate court.

(3) By the trial court or, if the record has already been transmitted to the appellate court, by the appellate court or trial court on remand, with notice to all parties and an opportunity to respond.

(d) *Emergency Appeals*.—Where the exigency of the case is such as to impel immediate consideration in the Appellate Court, the Trial Judge shall take all action necessary to expedite the preparation and transmission of the record notwithstanding the usual procedures prescribed in this chapter or in the Rules of Judicial Administration.

***Official Note*:** Depending on the order issued by the trial court, a party may wish to seek appellate review of an order under paragraph (c) by application or in the merits brief. The 2017 amendments addressed changes in the Rules of Judicial Administration. In addition, the amendment eliminated time limits for objections to or requests for correction of the transcript. An objection to a transcript must be raised if, for example, a critical portion of the proceedings was not transcribed.

Editor's Note: Note amended December 11, 1978, effective December 30, 1978; amended February 27, 1980, effective March 15, 1980; rule amended April 26, 1982, effective retroactive to July 15, 1981 (applicable to all matters commenced thereafter and matters then pending, insofar as just and practicable); amended June 24, 2019, effective October 1, 2019.

EXPLANATORY COMMENT—1976

The time to object to the transcription of the notes of testimony is reduced from 15 to five days, so as to afford additional time to settle any differences. In order to expedite appeals, it is made clear that the lower court or the Appellate Court may order expedited preparation of the record for purposes of appeal.

Rule 1923. | Statement in Absence of Transcript.

If no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including his recollection. The statement shall be served on the appellee, who may serve objections or propose amendments thereto within 10 days after service. Thereupon the statement and any objections or proposed amendments shall be submitted to the lower court for settlement and approval and as settled and approved shall be included by the clerk of the lower court in the record on appeal.

Note: Based on the statute of 13 Edw. 1, c. 31, 1 Ruffhead 99 (see *Commonwealth v. Anderson*, 441 Pa. 483, 493, 272 A.2d 877, 882 (1971)), which is suspended by these rules insofar as applicable in this Commonwealth.

Rule 1924. | Agreed Statement of Record.

In lieu of the record on appeal as defined in Rule 1921 (composition of record on appeal), the parties may prepare and sign a statement of the case showing how the issues presented by the appeal arose and were decided in the lower court and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the issues presented. If the statement conforms to the truth, it, together with such additions as the lower court may consider necessary fully to present the issues raised by the appeal, shall be approved by the lower court and shall then be certified to the Appellate Court as the record on appeal and transmitted thereto by the clerk of the lower court within the time prescribed by Rule 1931 (transmission of the record). Copies of the agreed statement and the order from which the appeal is taken may be filed as the reproduced record.

Note: Based on former Supreme Court Rule 45, former Superior Court Rule 37, and former Commonwealth Court Rule 89.

Editor's Note: Amended December 11, 1978, effective December 30, 1978.

Rule 1925. | Opinion in Support of Order.

(a) *Opinion in support of order*.

(1) *General Rule*.—Except as otherwise prescribed by this rule, upon receipt of the notice of appeal, the judge who entered the order giving rise to the notice of appeal, if the reasons for the order do not already appear of record, shall within the period set forth in Pa.R.A.P. 1931(a)(1) file of record at least a brief opinion of the reasons for the order, or for the rulings or other errors complained of, or shall specify in writing the place in the record where such reasons may be found.

If the case appealed involves a ruling issued by a judge who was not the judge entering the order giving rise to the notice of appeal, the judge entering the order giving rise to the notice of appeal may request that the judge who made the earlier ruling provide an opinion to be filed in accordance with the standards above to explain the reasons for that ruling.

(2) *Children's fast track appeals*.—In a children's fast track appeal:

(i) The concise statement of errors complained of on appeal shall be filed and served with the notice of appeal.

(ii) Upon receipt of the notice of appeal and the concise statement of errors complained of on appeal required by Pa.R.A.P. 905(a)(2), the judge who entered the order giving rise to the notice of appeal, if the reasons for the order do not already appear of record, shall within 30 days file of record at least a brief opinion of the reasons for the order, or for the rulings or other errors complained of, which may, but need not, refer to the transcript of the proceedings.

(3) *Appeals arising under the Pennsylvania Code of Military Justice*.—In an appeal arising under the Pennsylvania Code of Military Justice, the concise statement of errors complained of on appeal shall be filed and served with the notice of appeal. *See* Pa.R.A.P. 4004(b).

(b) *Direction to File Statement of Errors Complained of on Appeal; Instructions to the Appellant and the Trial Court*.

If the judge entering the order giving rise to the notice of appeal ("judge") desires clarification of the errors complained of on appeal, the judge may enter an order directing the appellant to file of record in the trial court and serve on the judge a concise statement of the errors complained of on appeal ("Statement").

(1) *Filing and service*.—The appellant shall file of record the Statement and concurrently shall serve the judge. Filing of record shall be as provided in Pa.R.A.P. 121(a) and, if mail is used, shall be complete on mailing if the appellant obtains a United States Postal Service Form 3817, Certificate of Mailing, or other similar United States Postal Service form from which the date of deposit can be verified in compliance with the requirements set forth in Pa.R.A.P. 1112(c). Service on the judge shall be at the location specified in the order, and shall be either in person, by mail, or by any other means specified in the order. Service on parties shall be concurrent with filing and shall be by any means of service specified under Pa.R.A.P. 121(c).

(2) *Time for filing and service*.

(i) The judge shall allow the appellant at least 21 days from the date of the order's entry on the docket for the filing and service of the Statement. Upon application of the appellant and for good cause shown, the judge may enlarge the time period initially specified or permit an amended

or supplemental Statement to be filed. Good cause includes, but is not limited to, delay in the production of a transcript necessary to develop the Statement so long as the delay is not attributable to a lack of diligence in ordering or paying for such transcript by the party or counsel on appeal. In extraordinary circumstances, the judge may allow for the filing of a Statement or amended or supplemental Statement *nunc pro tunc.*

(ii) If a party has ordered but not received a transcript necessary to develop the Statement, that party may request an extension of the deadline to file the Statement until 21 days following the date of entry on the docket of the transcript in accordance with Pa.R.A.P. 1922(b). The party must attach the transcript purchase order to the motion for the extension. If the motion is filed at least five days before the Statement is due but the trial court does not rule on the motion prior to the original due date, the motion will be deemed to have been granted.

(3) *Contents of order.*—The judge's order directing the filing and service of a Statement shall specify:

(i) the number of days after the date of entry of the judge's order within which the appellant must file and serve the Statement;

(ii) that the Statement shall be filed of record;

(iii) that the Statement shall be served on the judge pursuant to paragraph (b)(1) and both the place the appellant can serve the Statement in person and the address to which the appellant can mail the Statement. In addition, the judge may provide an email, facsimile, or other alternative means for the appellant to serve the Statement on the judge; and

(iv) that any issue not properly included in the Statement timely filed and served pursuant to subdivision (b) shall be deemed waived.

(4) *Requirements; waiver.*

(i) The Statement shall set forth only those errors that the appellant intends to assert.

(ii) The Statement shall concisely identify each error that the appellant intends to assert with sufficient detail to identify the issue to be raised for the judge. The judge shall not require the citation to authorities or the record; however, appellant may choose to include pertinent authorities and record citations in the Statement.

(iii) The judge shall not require any party to file a brief, memorandum of law, or response as part of or in conjunction with the Statement.

(iv) The Statement should not be redundant or provide lengthy explanations as to any error. Where non-redundant, non-frivolous issues are set forth in an appropriately concise manner, the number of errors raised will not alone be grounds for finding waiver.

(v) Each error identified in the Statement will be deemed to include every subsidiary issue that was raised in the trial court; this provision does not in any way limit the obligation of a criminal appellant to delineate clearly the scope of claimed constitutional errors on appeal.

(vi) If the appellant in a civil case cannot readily discern the basis for the judge's decision, the appellant shall preface the Statement with an explanation as to why the Statement has identified the errors in only general terms. In such a case, the generality of the Statement will not be grounds for finding waiver.

(vii) Issues not included in the Statement and/or not raised in accordance with the provisions of this paragraph (b)(4) are waived.

(c) *Remand.*

(1) An appellate court may remand in either a civil or criminal case for a determination as to whether a Statement had been filed and/or served or timely filed and/or served.

(2) Upon application of the appellant and for good cause shown, an appellate court may remand in a civil case for the filing *nunc pro tunc* of a Statement or for amendment or supplementation of a timely filed and served Statement and for a concurrent supplemental opinion. If an appellant has a statutory or rule-based right to counsel, good cause shown includes a failure by counsel to file a Statement timely or at all.

(3) If an appellant represented by counsel in a criminal case was ordered to file a Statement and failed to do so or filed an untimely Statement, such that the appellate court is convinced that counsel has been *per se* ineffective, and the trial court did not file an opinion, the appellate court may remand for appointment of new counsel, the filing of a Statement *nunc pro tunc*, and the preparation and filing of an opinion by the judge.

(4) In a criminal case, counsel may file of record and serve on the judge a statement of intent to file an *Anders/Santiago* brief in lieu of filing a Statement. If, upon review of the *Anders/Santiago* brief, the appellate court believes that there are arguably meritorious issues for review, those issues will not be waived; instead, the appellate court may remand for the filing of a Statement, a supplemental opinion pursuant to Pa.R.A.P. 1925(a), or both. Upon remand,

the trial court may, but is not required to, replace appellant's counsel.

(d) *Opinions in Matters on Petition for Allowance of Appeal*.—Upon receipt of notice of the filing of a petition for allowance of appeal under Pa.R.A.P. 1112(c) (appeals by allowance), the appellate court that entered the order sought to be reviewed, if the reasons for the order do not already appear of record, shall forthwith file of record at least a brief statement, in the form of an opinion, of the reasons for the order.

Official Note: Paragraph (a): The 2007 amendments clarified that a judge whose order gave rise to the notice of appeal may ask a prior judge who made a ruling in question for the reasons for that judge's decision. In such cases, more than one judge may issue separate Pa.R.A.P. 1925(a) opinions for a single case. It may be particularly important for a judge to author a separate opinion if credibility was at issue in the pretrial ruling in question. *See, e.g*., *Commonwealth v.Yogel*, 453 A.2d 15, 16 (Pa. Super. 1982). At the same time, the basis for some pre-trial rulings will be clear from the order and/or opinion issued by the judge at the time the ruling was made, and there will then be no reason to seek a separate opinion from that judge under this rule. *See, e.g*., Pa.R.Crim.P. 581(I). Likewise, there will be times when the prior judge may explain the ruling to the judge whose order has given rise to the notice of appeal in sufficient detail that there will be only one opinion under Pa.R.A.P. 1925(a), even though there are multiple rulings at issue. The time period for transmission of the record is specified in Pa.R.A.P. 1931.

Paragraph (b): This paragraph permits the judge whose order gave rise to the notice of appeal ("judge") to ask for a statement of errors complained of on appeal ("Statement") if the record is inadequate and the judge needs to clarify the errors complained of. The term "errors" is meant to encourage appellants to use the Statement as an opportunity to winnow the issues, recognizing that they will ultimately need to be refined to a statement that will comply with the requirements of Pa.R.A.P. 2116. Nonetheless, the term "errors" is intended in this context to be expansive, and it encompasses all of the reasons the trial court should not have reached its decision or judgment, including, for example, those that may not have been decisions of the judge, such as challenges to jurisdiction.

Subparagraph (b)(1): This subparagraph maintains the requirement that the Statement be both filed of record in the trial court and served on the judge. Service on the judge may be accomplished by mail, by personal service, or by any other means set forth by the judge in the order. The date of mailing will be considered the date of filing only if counsel obtains a United States Postal Service form from which the date of mailing can be verified, as specified in Pa.R.A.P. 1112(c). Counsel is advised both when filing and when serving the trial judge to retain date-stamped copies of postal forms (or other proofs of timely service), in case questions of waiver arise later, to demonstrate that the Statement was timely filed or served on the judge. This subparagraph was amended in 2019 to permit the increasingly frequent preference of judges to receive electronic or facsimile copies of filings.

Subparagraph (b)(2): This subparagraph extends the time period for drafting the Statement from 14 days to at least 21 days, with the trial court permitted to enlarge the time period or to allow the filing of an amended or supplemental Statement upon good cause shown. In *Commonwealth v. Mitchell*, 902 A.2d 430, 444 (Pa. 2006), the Court expressly observed that a Statement filed "after several extensions of time" was timely. An enlargement of time upon timely application might be warranted if, for example, there was a serious delay in the transcription of the notes of testimony or in the delivery of the order to appellate counsel. The 2019 amendments to the rule provided the opportunity to obtain an extension of time to file the Statement until 21 days after the transcript is filed pursuant to Pa.R.A.P. 1922(b). The appellant may file a motion for an extension of time, which, if filed in accordance with the rule, will be deemed granted if not expressly denied before the Statement is due.

A trial court should also enlarge the time or allow for an amended or supplemental Statement when new counsel is retained or appointed. A supplemental Statement may also be appropriate when the ruling challenged was so nonspecific—*e.g*., "Motion Denied"—that counsel could not be sufficiently definite in the initial Statement.

In general, *nunc pro tunc* relief is allowed only when there has been a breakdown in the process constituting extraordinary circumstances. *See, e.g*., *In re Canvass of Absentee Ballots of Nov. 4, 2003 Gen. Election*, 843 A.2d 1223, 1234 (Pa. 2004) ("We have held that fraud or the wrongful or negligent act of a court official may be a proper reason for holding that a statutory appeal period does not run and that the wrong may be corrected by means of a petition filed *nunc pro tunc*.") Courts have also allowed *nunc pro tunc* relief when "non-negligent circumstances, either as they relate to appellant or his counsel" occasion delay. *McKeown v. Bailey*, 731 A.2d 628, 630 (Pa. Super. 1999). However, even when there is a breakdown in the process, the appellant must attempt to remedy it within a "very short duration" of time. *Id.*

Subparagraph (b)(3): This subparagraph specifies what the judge must advise appellants when ordering a Statement.

Subparagraph (b)(4): This subparagraph sets forth the parameters for the Statement and explains what constitutes waiver. It should help counsel to comply with the concisey etsufficiently detailed requirement and avoid waiver under either *Lineberger v. Wyeth*, 894 A.2d 141, 14849 (Pa. Super. 2006) or *Kanter v. Epstein*, 866 A.2d 394, 40003 (Pa. Super. 2004), allowance of appeal denied, 880 A.2d 1239 (Pa. 2005), cert. denied sub nom. *Spector Gadon & Rosen, P.C. v. Kanter*, 546 U.S. 1092 (2006). The paragraph explains that the Statement should be sufficiently specific to allow the judge to draft the opinion required under Pa.R.A.P. 1925(a), and it provides that the number of issues alone will not constitute waiver—so long as the issues set forth are non-redundant and non-frivolous. It allows appellants to rely on the fact that subsidiary issues will be deemed included if the overarching issue is identified and if all of the issues have been properly preserved in the trial court. This provision has been taken from the United States Supreme Court rules. See Sup. Ct. R. 14(1). This subparagraph does not in any way excuse the responsibility of an appellant who is raising claims of constitutional error to raise those claims with the requisite degree of specificity. This subparagraph also allows—but does not require—an appellant to state the authority upon which the appellant challenges the ruling in question and to identify the place in the record where the basis for the challenge may be found.

Neither the number of issues raised nor the length of the Statement alone is enough to find that a Statement is vague or non-concise enough to constitute waiver. *See Astorino v. New Jersey Transit Corp.*, 912 A.2d 308, 309 (Pa. Super. 2006). The more carefully the appellant frames the Statement, the more likely it will be that the judge will be able to articulate the rationale underlying the decision and provide a basis for counsel to determine the advisability of raising that issue on appeal. Thus, counsel should begin the winnowing process when preparing the Statement and should articulate specific errors with which the appellant takes issue and why. Nothing in the rule requires an appellant to articulate the arguments within a Statement. It is enough for an appellant—except where constitutional error must be raised with greater specificity—to have identified the rulings and issues in regard to which the trial court is alleged to have erred.

Paragraph (c): The appellate courts have the right under the Judicial Code to "affirm, modify, vacate, set aside or reverse any order brought before it for review, and may remand the matter and direct the entry of such appropriate order, or require such further proceedings to be had as may be just under the circumstances." 42 Pa.C.S. §706.

Subparagraph (c)(1): This subparagraph applies to both civil and criminal cases and allows an appellate court to seek additional information—whether by supplementation of the record or additional briefing—if it is not apparent whether an initial or supplemental Statement was filed and/or served or timely filed and/or served.

Subparagraph (c)(2): This subparagraph allows an appellate court to remand a civil case to allow an initial, amended, or supplemental Statement and/or a supplemental opinion. See also 42 Pa.C.S. §706. In 2019, the rule was amended to clarify that for those civil appellants who have a statutory or rules-based right to counsel (such as appellants in post-conviction relief, juvenile, parental termination, or civil commitment proceedings) good cause includes a failure of counsel to file a Statement or a timely Statement.

Subparagraph (c)(3): This subparagraph allows an appellate court to remand in criminal cases only when an appellant, who is represented by counsel, has completely failed to respond to an order to file a Statement or has failed to do so timely. It is thus narrower than subparagraph (c)(2). *See, e.g., Commonwealth v. Burton*, 973 A.2d 428, 431 (Pa. Super. 2009); *Commonwealth v. Halley*, 870 A.2d 795, 801 (Pa. 2005); *Commonwealth v. West*, 883 A.2d 654, 657 (Pa. Super. 2005). *Per se* ineffectiveness applies in all circumstances in which an appeal is completely foreclosed by counsel's actions, but not in circumstances in which the actions narrow or serve to foreclose the appeal in part. *Commonwealth v. Rosado*, 150 A.3d 425, 433-35 (Pa. 2016). *Pro se* appellants are excluded from this exception to the waiver doctrine as set forth in *Commonwealth v. Lord*, 719 A.2d 306 (Pa. 1998).

Direct appeal rights have typically been restored through a post-conviction relief process, but when the ineffectiveness is apparent and *per se*, the court in *West* recognized that the more effective way to resolve such *per se* ineffectiveness is to remand for the filing of a Statement and opinion. *See West*, 883 A.2d at 657; *see also Burton* (late filing of Statement is *per se* ineffective assistance of counsel). The procedure set forth in *West* is codified in subparagraph (c)(3). As the *West* court recognized, this rationale does not apply when waiver occurs due to the improper filing of a Statement. In such circumstances, relief may occur only through the post-conviction relief process and only upon demonstration by the appellant that, but for the deficiency of counsel, it was reasonably probable that the appeal would have been successful. An appellant must be able to identify *per se* ineffectiveness to secure a remand under this section, and any appellant who is able to demonstrate *per se* ineffectiveness is entitled to a remand. Accordingly, this subparagraph does not raise the concerns addressed in *Johnson v. Mississippi*, 486 U.S. 578, 58889 (1988) (observing that where a rule has

not been consistently or regularly applied, it is not—under federal law—an adequate and independent state ground for affirming petitioner's conviction.)

Subparagraph (c)(4): This subparagraph clarifies the special expectations and duties of a criminal lawyer. Even lawyers seeking to withdraw pursuant to the procedures set forth in *Anders v. California*, 386 U.S. 738 (1967) and *Commonwealth v. Santiago*, 978 A.2d 349 (Pa. 2009), are obligated to comply with all rules. However, because a lawyer will not file an *Anders/Santiago* brief without concluding that there are no non-frivolous issues to raise on appeal, this amendment allows a lawyer to file, in lieu of a Statement, a representation that no errors are asserted because the lawyer is (or intends to be) seeking to withdraw under *Anders/Santiago*. At that point, the appellate court will reverse or remand for a supplemental Statement and/or opinion if it finds potentially non-frivolous issues during its constitutionally required review of the record.

Note: Subdivisions (a) and (b) of this rule are based on former Supreme Court Rule 56 and eliminate the blanket requirement of the prior practice for a service of a statement of matters complained of. See also former Superior Court Rule 46 and former Commonwealth Court Rule 25. Subdivision (c) of this rule is intended to provide the Supreme Court and the parties with at least a brief informal memorandum of the reasons for the decision of the Appellate Court below. See *In re Harrison Square Inc.*, 470 Pa. 246, 368 A.2d 285 (1977).

Editor's Note: Amended May 16, 1979, effective October 1, 1979; further amended December 30, 1987, effective January 16, 1988; amended May 10, 2007, effective 60 days after adoption; amended January 13, 2009, effective as to all appeals filed 60 days or more after adoption; amended June 24, 2019, effective October 1, 2019.

Rule 1926. | Correction or Modification of the Record.

(a) If any difference arises as to whether the record truly discloses what occurred in the trial court, the difference shall be submitted to and settled by that court after notice to the parties and opportunity for objection, and the record made to conform to the truth.

(b) If anything material to a party is omitted from the record by error, breakdown in processes of the court, or accident or is misstated therein, the omission or misstatement may be corrected by the following means:

(1) by the trial court or the appellate court upon application or on its own initiative at any time; in the event of correction or modification by the trial court, that court shall direct that a supplemental record be certified and transmitted if necessary; or

(2) by the parties by stipulation filed in the trial court, in which case, if the trial court clerk has already certified the record, the parties shall file in the appellate court a copy of any stipulation filed pursuant to this rule, and the trial court clerk shall certify and transmit as a supplemental record the materials described in the stipulation.

(c) The trial court clerk shall transmit any supplemental record required by this rule within 14 days of the order or stipulation that requires it.

(d) All other questions as to the form and content of the record shall be presented to the appellate court.

Official Note: The stipulation described in this rule need not be approved by the trial court or the appellate court, but both courts retain the authority to strike any stipulation that does not correct an omission or misstatement in the record.

Editor's Note: Note amended December 11, 1978, effective December 30, 1978; amended May 9, 2013, effective to appeals and petitions for review filed 30 days after adoption.

Rule 1931. | Transmission of the Record.

(a) *Time for Transmission*.

(1) *General rule*.— Except as otherwise prescribed by this rule or if an extension has been granted pursuant to Pa.R.A.P. 1925(b)(2), the record on appeal, including the transcript and exhibits necessary for the determination of the appeal, shall be transmitted to the appellate court within 60 days after the filing of the notice of appeal. If an appeal has been allowed or if permission to appeal has been granted, the record shall be transmitted as provided by Pa.R.A.P. 1122 or by Pa.R.A.P. 1322, as the case may be. The appellate court may shorten or extend the time prescribed by this subparagraph for a class or classes of cases.

(2) *Children's fast track appeals*.—In a children's fast track appeal, the record on appeal, including the transcript and exhibits necessary for the determination of the appeal, shall be transmitted to the appellate court within 30 days after the filing of the notice of appeal. If an appeal has been allowed or if permission to appeal has been granted, the record shall be transmitted as provided by Pa.R.A.P. 1122 or by Pa.R.A.P. 1322, as the case may be.

(b) *Duty of trial Court*.—After a notice of appeal has been filed, the judge who entered the order appealed from shall comply with Pa.R.A.P. 1925, shall cause the official court reporter to comply with Pa.R.A.P. 1922 or shall otherwise settle a statement of the evidence or proceedings as prescribed by this chapter, and shall take any other action necessary to enable the clerk to assemble and transmit the record as prescribed by this rule.

(c) *Duty of clerk to transmit the record*.—When the record is complete for purposes of the appeal, the clerk of the trial court shall transmit it to the prothonotary of the appellate court. The clerk of the trial court shall number the documents comprising the record and shall transmit with the record a list of the documents correspondingly numbered and identified with sufficient specificity to allow the parties on appeal to identify each document and whether it is marked as confidential, so as to determine whether the record on appeal is complete. Any Confidential Information Forms and the "Unredacted Version'' of any pleadings, documents, or other legal papers where a "Redacted Version'' was also filed shall be separated either physically or electronically and transmitted to the appellate court. Whatever is confidential shall be labeled as such. If any case records or documents were sealed in the lower court, the list of documents comprising the record shall specifically identify such records or documents as having been sealed in the lower court. Documents of unusual bulk or weight and physical exhibits other than documents shall not be transmitted by the clerk unless he or she is directed to do so by a party or

by the prothonotary of the appellate court. A party must make advance arrangements with the clerk for the transportation and receipt of exhibits of unusual bulk or weight. Transmission of the record is effected when the clerk of the trial court mails or otherwise forwards the record to the prothonotary of the appellate court. The clerk of the trial court shall indicate, by endorsement on the face of the record or otherwise, the date upon which the record is transmitted to the appellate court.

(d) *Service of the list of record documents*.—The clerk of the trial court shall, at the time of the transmittal of the record to the appellate court, mail a copy of the list of record documents to all counsel of record, or if unrepresented by counsel, to the parties at the address they have provided to the clerk. The clerk shall note on the docket the giving of such notice.

(e) *Multiple appeals*.—Where more than one appeal is taken from the same order, it shall be sufficient to transmit a single record, without duplication.

(f) *Inconsistency between list of record documents and documents actually transmitted*.—If the clerk of the trial court fails to transmit to the appellate court all of the documents identified in the list of record documents, such failure shall be deemed a breakdown in processes of the court. Any omission shall be corrected promptly pursuant to Pa.R.A.P. 1926 and shall not be the basis for any penalty against a party.

Official Note: Pa.R.A.P. 1926 provides the means to resolve any disagreement between the parties as to what should be included in the record on appeal.

Editor's Note: Amended December 11, 1978, effective December 30, 1978; amended April 1, 2004, effective 60 days after adoption; amended May 10, 2007, effective 60 days after adoption; amended January 13, 2009, effective as to all appeals filed 60 days or more after adoption; amended May 9, 2013, effective to appeals and petitions for review filed 30 days after adoption; amended January 5, 2018, effective January 6, 2018; amended June 24, 2019, effective October 1, 2019.

EXPLANATORY COMMENT—1976

This provision makes clear that in multiple appeals only one original record need be transmitted.

EXPLANATORY COMMENT—2004

It is hoped that the 2004 amendment to Rule 1931 will alleviate the potential waiver problem which results when counsel is unable to ascertain whether the entire record in a particular case has been transmitted to the appellate court for review. The rule change is intended to assist counsel in his or her responsibility under the Rules of Appellate Procedure to provide a full and complete record for effective appellate review. See *Commonwealth v. Williams*, 552 Pa. 451, 715 A.2d 1101 (1998) ("The fundamental tool for appellate review is the official record of what happened at trial, and appellate courts are limited to considering only those facts that have been duly certified in the record on appeal."); *Commonwealth v. Wint*, 1999 Pa. Super. 81, 730 A.2d 965 (1999) ("Appellant has the responsibility to make sure that the record forwarded to an appellate court contains those documents necessary to allow a complete and judicious assessment of the issues raised on appeal."). In order to facilitate counsel's ability to monitor the contents of the original record which is transmitted from the trial court to the appellate court, new subdivision (d) requires that a copy of the list of record documents be mailed to all counsel of record, or to the parties themselves if unrepresented, and that the giving of such notice be noted on the record. Thereafter, in the event that counsel discovers that anything material to either party has been omitted from the certified record, such omission can be corrected pursuant to Pa.R.A.P. 1926.

Rule 1932. | Retention of Record in Lower Court.

(a) *Temporary Retention*.—Notwithstanding the provisions of Rule 1931 (transmission of the record), on praecipe of a party the clerk of the lower court shall temporarily retain the record for use by the parties in preparing appellate papers. In that event, the clerk of the lower court shall nevertheless cause the record to be filed within the time fixed or allowed for transmission of the record by transmitting to the Prothonotary of the Appellate Court a partial record in the form of a copy of the docket entries, accompanied by a certificate, reciting that the record, including the transcript or parts thereof designated for inclusion and all necessary exhibits, is complete for purposes of the appeal. The filing of a partial record under this rule shall constitute the filing of the record for the purposes of Rule 2185 (time for serving and filing briefs) and Rule 2186 (time for serving and filing reproduced record). Upon receipt of the brief of the appellee, or at such earlier time as the parties may agree or the court may order, the appellant shall request the clerk of the lower court to transmit the record.

(b) *Retention by Order of Court*.—

(1) The Appellate Court may provide by order that a certified copy of the docket entries shall be transmitted in lieu of the entire record, subject to the right of any party to request at any time during the pendency of the appeal that designated parts of the record be transmitted.

(2) If the record or any part thereof is required in the lower court for use there pending the appeal, the lower court may make an order to that effect, and the clerk of the lower court shall retain the record or parts thereof subject to the request of the Appellate Court, and shall transmit a copy of the order and of the docket entries together with such parts of the original record as the lower court shall allow and copies of such parts as the parties may designate.

(c) *Stipulation of Parties that Parts of the Record be Retained in the Lower Court*.—The parties may agree by written stipulation filed in the lower court that designated parts of the record shall be retained in the lower court unless thereafter the Appellate Court shall order or any party shall request their transmittal. The parts thus designated shall nevertheless be a part of the record on appeal for all purposes.

Rule 1933. | Record for Preliminary Hearing in Appellate Court.

If prior to the time the record is transmitted a party desires to make in the Appellate Court a motion for dismissal, an application for release, for a stay pending appeal, for

modification of security on appeal, or for any intermediate order, the clerk of the lower court at the request of the party shall transmit to the Appellate Court such parts of the original record as any party shall designate.

Rule 1934. | Filing of the Record.

Upon receipt of the record (or of papers authorized to be filed in lieu of the record under the provisions of these rules) by the Prothonotary of the Appellate Court after the appeal has been docketed, the prothonotary shall file the record in the Appellate Court. The Prothonotary of the Appellate Court shall immediately give notice to all parties and the Administrative Office of the date on which the record was filed and shall give notice to all parties of the date, if any, specially fixed by the prothonotary pursuant to Rule 2185(b) (notice of deferred briefing schedule) for the filing of the brief of the appellant.

Note: Based in part on former Commonwealth Court Rule 32A (second sentence).

Rule 1935. | Notices and Reports Concerning Delinquent Transmission of Record.

(a) *Notice to Trial Court Judge*.—The Prothonotary of the appropriate Appellate Court, within ten days after the date for filing the record in that court under Rule 1931, shall give written notice to the trial court judge of any delinquency in the transmission of the record. A copy of this notice should be directed to the President Judge of the judicial district.

(b) *Report to Supreme Court*—If the record is further delayed and satisfactory explanation of the delay is not given, the Appellate Court Prothonotary shall inform the Administrative Office, and where appropriate, the Court Administrator shall report any such case of neglect or refusal to comply with this chapter to the Supreme Court, which may consider and act on the matter as provided by Rule 506(b) of the Rules of Judicial Administration.

Note: It is intended that the prothonotaries of the Appellate Courts monitor appeals in which the record is not timely filed under Rule 1931, and bring to the attention of the Trial Court Judge any delinquency in such filing. Where the reminder from the prothonotary is unavailing, the matter is turned over to the Administrative Office for subsequent follow up.

The trial court has direct control over the official court reporter and staff, and it is appropriate, therefore, that notice of delinquency in filing the record on appeal be sent to the Trial Court Judge. See *Commonwealth v. Morgan*, 469 Pa. 35, 38 n.2, 364 A.2d 891, 892 n.2 (1976).

Editor's Note: Amended May 16, 1979, effective 120 days after June 2, 1979; October 10, 1979, effective October 20, 1979; March 26, 1981, effective April 20, 1981; further amended April 30, 1981, June 16, 1981.

Review of Death Sentences

Rule 1941. | Review of Sufficiency of the Evidence and the Propriety of the Penalty in Death Penalty Appeals.

(a) *Procedure in Trial Court*.—Upon the entry of a sentence subject to 42 Pa.C.S. §9711(h) (review of death sentence) the court shall direct the official court reporter and the clerk to proceed under this chapter as if a notice of appeal had been filed 20 days after the date of entry of the sentence of death, and the clerk shall immediately give written notice of the entry of the sentence to the Supreme Court Prothonotary's office. The clerk shall insert at the head of the list of documents required by Pa.R.A.P 1931(c) a statement to the effect that the papers are transmitted under this rule from a sentence of death.

(b) *Filing and Docketing in the Supreme Court*.—Upon receipt by the Prothonotary of the Supreme Court of the record of a matter subject to this rule, the prothonotary shall immediately:

1. Enter the matter upon the docket as an appeal, with the defendant indicated as the appellant and the Commonwealth indicated as the appellee.
2. File the record in the Supreme Court.
3. Give written notice of the docket number assignment in person or by first class mail to the clerk of the trial court.
4. Give notice to all parties of the docket number assignment and the date on which the record was filed in the Supreme Court, and give notice to all parties of the date, if any, specially fixed by the prothonotary pursuant to Pa.R.A.P. 2185(b) for the filing of the brief of the appellant.

(c) *Further Proceedings*.—Except as required by Pa.R.A.P. 2189 or by statute, a matter subject to this rule shall proceed after docketing in the same manner as other appeals in the Supreme Court.

Official Note: Formerly the Act of February 15, 1870 (P.L. 15, § 2) required the Appellate Court to review the sufficiency of the evidence in certain homicide cases regardless of the failure of the appellant to challenge the matter. See e.g., *Commonwealth v. Santiago*, 382 A.2d 1200, 1201 (Pa. 1978). Pa.R.A.P. 302 now provides otherwise with respect to homicide cases generally. However, under paragraph (c) of this rule the procedure for automatic review of capital cases provided by 42 Pa.C.S. §971 1(h) (review of death sentence) will permit an independent review of the sufficiency of the evidence in such cases. In capital cases, the Supreme Court has jurisdiction to hear a direct appeal and will automatically review (1) the sufficiency of the evidence "to sustain a conviction for first-degree murder in every case in which the death penalty has been imposed"; (2) the sufficiency of the evidence to support the finding of at least one aggravating circumstance set forth in 42 Pa.C.S. § 9711(d); and (3) the imposition of the sentence of death to ensure that it was not the product of passion, prejudice, or any other arbitrary factor. *Commonwealth v. Mitchell*, 902 A.2d 430, 444, 468 (Pa. 2006); 42 Pa.C.S. § 722(4); 42 Pa.C.S. § 9711(h)(1), (3). Any other issues from the proceedings that resulted in the sentence of death may be reviewed only if they have been preserved and if the defendant files a timely notice of appeal.

Likewise, although Pa.R.A.P. 702(b) vests jurisdiction in the Supreme Court over appeals from sentences imposed on a defendant for lesser offenses as a result of the same criminal episode or transaction where the offense is tried with the capital offense, the appeal from the lesser offenses is not automatic. Thus the right to appeal the judgment of sentence on a lesser offense will be lost unless all requisite steps are taken, including preservation of issues (such as by filing post-trial motions) and filing a timely notice of appeal.

See Pa.R.A.P. 2189 for provisions specific to the production of a reproduced record in cases involving the death penalty.

Editor's Note: Amended May 16, 1979, effective October 1, 1979; rule and note amended April 26, 1982, effective September 13, 1982 (120 days after publication in the *Pennsylvania Bulletin*), section (c) and note amended December 1, 1982, effective immediately; further amended March 22, 1989, effective immediately; further amended September 19, 2014, effective immediately; amended October 19, 2017, effective immediately.

EXPLANATORY COMMENT—1979

The clerk is required to "flag" capital cases by appropriate notation on the face of the record certification. The rule is revised to reflect the fact that the requirement of Rule 302 that an issue be raised below in order to be available on appeal may not be applicable in cases of automatic statutory review of death sentences.

Editor's Note: Amended December 1, 1982, effective March 22, 1989.

Record on Petition for Review of Orders of Government Units Other than Courts

Rule 1951. | Record Below in Proceedings on Petition for Review.

(a) *Composition of the Record*.—Where under the applicable law the questions raised by a petition for review may be determined by the court in whole or in part upon the record before the government unit, such record shall consist of:

(1) The order or other determination of the government unit sought to be reviewed.

(2) The findings or report on which such order or other determination is based.

(3) The pleadings, evidence and proceedings before the government unit.

(b) *Omissions from or Misstatements of the Record Below*.—If anything material to any party is omitted from the record or is misstated therein, the parties may at any time supply the omission or correct the misstatement by stipulation, or the court may at any time direct that the omission or misstatement be corrected and, if necessary, that a supplemental record be prepared and filed. Failure of the agency to transmit part of the record of agency proceedings to the appellate court shall not be the basis for a finding of waiver.

(c) *Reasons for Order*.—The government unit shall comply with the provisions of Rule 1925 (opinion in support of order) where the petition for review relates to a quasijudicial order.

Note: This rule and Rule 1952 (filing of record in response to petition for review) are also applicable when permission to appeal from an order of a government unit other than a court has been granted. See Rule 1322 (permission to appeal and transmission of record).

Editor's Note: Amended May 9, 2013, effective to appeals and petitions for review filed 30 days after adoption.

Rule 1952. | Filing of Record in Response to Petition for Review.

(a) *Time and Notice*.—Where under the applicable law the question raised by a petition for review may be determined in whole or in part upon the record before the government unit, the government unit shall file the record with the prothonotary of the court named in the petition for review within 40 days after service upon it of the petition. The court may shorten or extend the time prescribed in this paragraph. The prothonotary shall give notice to all parties of the date on which the record is filed.

(b) *Certificate of Record*.—The government unit shall certify the contents of the record and a list of all documents, transcripts of testimony, exhibits and other material comprising the record. The government unit shall (1) arrange the documents to be certified in chronological order, (2) number them and (3) affix to the right or bottom edge of the first page of each document a tab showing the number of that document. These shall be bound and shall contain a table of contents identifying each document in the record. If any documents or case records were maintained as confidential in the government unit, the list of documents that comprise the record shall specifically identify such documents or the entire record as having been maintained as confidential, and the government unit shall either physically or electronically separate such documents. The certificate shall be made by the head, chairman, deputy, or secretary of the government unit. The government unit may file the entire record or such parts thereof as the parties may designate by stipulation filed with the government unit. The original papers in the government unit or certified copies thereof may be filed. Instead of filing the record or designated parts thereof the government unit may file a certified list of all documents, transcripts of testimony, exhibits, and other material comprising the record, or a list of such parts thereof as the parties may designate, adequately describing each, and the filing of the certified list shall constitute filing of the record. If any documents or case records were maintained as confidential in the government unit, the list of documents that comprise the record shall specifically identify such documents or the entire record as having been maintained as confidential. The parties may stipulate that neither the record nor a certified list be filed with the court. The stipulation shall be filed with the prothonotary of the court and the date of its filing shall be deemed the date on which the record is filed. If a certified list is filed, or if the parties designate only parts of the record for filing or stipulate that neither the record nor a certified list be filed, the government unit shall retain the record or parts thereof. Upon request of the court or the request of a party, the record or any part thereof thus retained shall be transmitted to the court notwithstanding any prior stipulation. All

parts of the record retained by the government unit shall be a part of the record on review for all purposes.

(c) *Notice to counsel of contents of certified record*.—At the time of transmission of the record to the appellate court, the government unit shall send a copy of the list of the contents of the certified record to all counsel of record, or, if a party is unrepresented by counsel, to that party at the address provided to the government unit.

Official Note: The addition of paragraph (c) in 2012 requires government units other than courts to notify counsel of the contents of the certified record. This is an extension of the requirement in Pa.R.A.P. 1931 (transmission of the record) that trial courts give such notice.

Editor's Note: Amended May 16, 1979, effective October 1, 1979; further amended December 30, 1987, effective January 16, 1988; amended May 9, 2013, effective as to appeals and petitions for review filed 30 days after adoption; amended January 5, 2018, effective January 6, 2018.

EXPLANATORY COMMENT—1979

The requirement that a record certification fee be paid to the government unit below in a petition for review proceeding is eliminated.

Disposition without Reaching the Merits

Editor's Note: Rule 1971 rescinded May 16, 1979, effective October 1, 1979.

Rule 1972. | Dispositions on Motion.

(a) Except as otherwise prescribed by this rule, subject to Pa.R.A.P. 123, any party may move:

(1) To transfer the record of the matter to another court because the matter should have been commenced in, or the appeal should have been taken to, such other court. *See* Pa.R.A.P. 741.

(2) To transfer to another Appellate Court under Pa.R.A.P. 752.

(3) To dismiss for want of jurisdiction in the unified judicial system of this Commonwealth.

(4) To dismiss for mootness.

(5) To dismiss for failure to preserve the question below, or because the right to an appeal has been otherwise waived. *See* Pa.R.A.P. 302 and Pa.R.A.P. 1551(a).

(6) To continue generally or to quash because the appellant is a fugitive.

(7) To quash for any other reason appearing on the record.

Any two or more of the grounds specified in this rule may be joined in the same motion. Unless otherwise ordered by the Appellate Court, a motion under this rule shall not relieve any party of the duty of filing his or her briefs and reproduced records within the time otherwise prescribed therefor. The court may grant or refuse the motion, in whole or in part; may postpone consideration thereof until argument of the case on the merits; or may make such other order as justice may require.

(b) In a children's fast track appeal, a dispositive motion filed under subparagraphs (a)(1), (a)(2), (a)(5), (a)(6) or (a)(7) of this rule shall be filed within 10 days of the filing of the statement of errors complained of on appeal required by Pa.R.A.P. 905(a)(2), or within 10 days of the lower court's filing of a Pa.R.A.P. Pa.R.A.P. 1925(a)(2) opinion, whichever period expires last, unless the basis for seeking to quash the appeal appears on the record subsequent to the time limit provided herein, or except upon application and for good cause shown.

Official Note: Pa.R.A.P. 1933 makes clear the right of a moving party to obtain immediate transmission of as much of the record as may be necessary for the purposes of a motion under this rule. See Pa.R.A.P. 123(c).

Editor's Note: Note amended May 16, 1979, effective October 1, 1979; rule amended February 27, 1980, effective March 15, 1980; amended September 10, 2008, effective December 1, 2008; amended January 13, 2009, effective as to all appeals filed 60 days or more after adoption; amended April 1, 2015, effective May 1, 2015.

EXPLANATORY COMMENT—1976

A reference to general continuance or dismissal because the appellant is a fugitive is added.

Rule 1973. | Discontinuance.

(a) *General Rule*.—An appellant may discontinue an appeal or other matter as to all appellees as a matter of course until 14 days after the date on which the appellee's principal brief is due, or thereafter by leave of court upon application. A discontinuance may not be entered by appellant as to less than all appellees except by stipulation for discontinuance signed by all the parties, or by leave of court upon application. Discontinuance by one appellant shall not affect the right of any other appellant to continue the appeal.

(b) *Filing of Discontinuance*.—If an appeal has not been docketed, the appeal may be discontinued in the lower court. Otherwise all papers relating to the discontinuance shall be filed in the Appellate Court and the appellate prothonotary shall give written notice of the discontinuance in person or by first class mail to the prothonotary or clerk of the lower court or to the clerk of the government unit, to the persons named in the proof of service accompanying the appeal or other matter and to the Administrative Office. If an appeal has been docketed in the Appellate Court, the prothonotary or clerk of the lower court or the clerk of the government unit shall not accept a praecipe to discontinue the action until it has received notice from the Appellate Court Prothonotary of certification of counsel that all pending appeals in the action have been discontinued.

Official Note: When leave of court is required for discontinuance, the appellant must file an application for relief pursuant to Pa.R.A.P. 123. Prompt discontinuance of an appeal once there is a reason to do so promotes efficient use of judicial resources.

Editor's Note: Amended December 30, 1987, effective January 16, 1988; amended November 19, 2013, effective December 20, 2013.

EXPLANATORY COMMENT—1976

In discontinuances a requirement for notice to the Administrative Office is added.

Chapter 21
Briefs and Reproduced Record

In General

Rule 2101. | Conformance with Requirements.

Briefs and reproduced records shall conform in all material respects with the requirements of these rules as nearly as the circumstances of the particular case will admit, otherwise they may be suppressed, and, if the defects are in the brief or reproduced record of the appellant and are substantial, the appeal or other matter may be quashed or dismissed.

Note: Based on former Supreme Court Rule 39, former Superior Court Rule 31 and former Commonwealth Court Rule 85, and makes no change in substance.

Rule 2102. | Intervenors.

For purposes of briefing and argument, intervenors shall be subject to those provisions of these rules applicable to the party on whose side the intervenor is principally aligned. An intervenor may adopt by reference any part of the brief of another party.

Content of Briefs

Rule 2111. | Brief of the Appellant.

(a) *General Rule*.—The brief of the appellant, except as otherwise prescribed by these rules, shall consist of the following matters, separately and distinctly entitled and in the following order:

(1) Statement of Jurisdiction.

(2) Order or other determination in question.

(3) Statement of both the scope of review and the standard of review.

(4) Statement of the questions involved. (5) Statement of the case.

(6) Summary of argument.

(7) Statement of the reasons to allow an appeal to challenge the discretionary aspects of a sentence, if applicable.

(8) Argument for appellant.

(9) A short conclusion stating the precise relief sought.

(10) The opinions and pleadings specified in paragraphs (b) and (c) of this rule.

(11) In the Superior Court, a copy of the statement of errors complained of on appeal, filed with the trial court pursuant to Pa.R.A.P. 1925(b), or an averment that no order requiring a statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b) was entered.

(12) The certificates of compliance required by Pa.R.A.P. 127 and 2135(d).

(b) *Opinions Below*. There shall be appended to the brief a copy of any opinions delivered by any trial court, intermediate appellate court, or other government unit relating to the order or other determination under review, if pertinent to the questions involved. If an opinion has been reported, that fact and the appropriate citation shall also be set forth.

(c) *Pleadings*.—When pursuant to Pa.R.A.P. 2151(c) (original hearing cases) the parties are not required to reproduce the record, and the questions presented involve an is sue raised by the pleadings, a copy of the relevant pleadings in the case shall be appended to the brief.

(d) *Brief of the Appellant*.—In the Superior Court, there shall be appended to the brief of the appellant a copy of the statement of errors complained of on appeal, filed with the trial court pursuant to Pa.R.A.P. 1925(b). If the trial court has not entered an order directing the filing of such a statement, the brief shall contain an averment that no order to file a statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b) was entered by the trial court.

Editor's Note: Rule 3518 rescinded and Rule 2111(a) adopted January 14, 1999, effective immediately; amended March 20, 2003, effective immediately; amended October 15, 2004, effective 60 days thereafter; amended May 10, 2007, effective 60 days after adoption; amended June 5, 2008, effective 30 days after amendment; amended January 5, 2018, effective January 6, 2018.

Official Note: The 1999 amendment requires a statement of the scope and standard of review. " 'Scope of review' refers to 'the confines within which an appellate court must conduct its examination.' (Citation omitted.) In other words, it refers to the matters (or 'what') the appellate court is permitted to examine. In contrast, 'standard of review' refers to the manner in which (or 'how') that examination is conducted.'" *Morrison v. Commonwealth, Dept. of Public Welfare*, 646 A.2d 565, 570 (Pa. 1994). This amendment incorporates the prior practice of the Superior Court pursuant to Pa.R.A.P. 3518 which required such statements. Accordingly, Pa.R.A.P. 3518 has been rescinded as its requirement is now subsumed under paragraph (a)(2) of this Rule.

Pa.R.A.P. 2119(f) requires a separate statement of reasons that an appellate court should allow an appeal to challenge the discretionary aspects of a sentence. The 2008 amendments recognize that, while Pa.R.A.P. 2119(f) does not apply to all appeals, an appellant must include the reasons for allowance of appeal as a separate enumerated section immediately before the Argument section if he or she desires to challenge the discretionary aspects of a sentence.

EXPLANATORY COMMENT—1979

The verbatim text of the order or other determination under review is added as a principal element of appellant's brief, to be included between the statement of jurisdiction and the statement of questions involved. As a result of new Rule 2115, existing Rules 2115, 2116, 2117 and 2118 are appropriately renumbered, and conforming amendments are made to Rules 2152(a) and 2175(b).

EXPLANATORY COMMENT—2003

The 2003 amendment adding subdivision 10 to Rule 2111 is intended to replace Rule 3520 adopted by the Superior Court in 2001. The purpose of this amendment is to consolidate all requirements for briefs into Chapter 21

of the Appellate Rules. It is anticipated that following adoption of this Rule, the Superior Court will rescind Rule 3520.

Materials attached to appellant's brief pursuant to Pa.R.A.P. 2111(a) (9) and (10) shall not count against the page limitations set forth in Pa.R.A.P. 2135.

EXPLANATORY COMMENT—2004

The 2004 amendment simply reorders subdivision (a)(2) and (a) (3) in order to maintain consistency with Rule 2115, which requires that the text of the order or determination from which an appeal has been taken shall be set forth immediately following the statement of jurisdiction.

Rule 2112. | Brief of the Appellee.

The brief of the appellee, except as otherwise prescribed by these rules, need contain only a summary of argument and the complete argument for appellee and may also include counter-statements of any of the matters required in the appellant's brief as stated in Pa.R.A.P. 2111(a). of the questions involved and a counterstatement of the case. Unless the appellee does so, or the brief of the appellee otherwise challenges the matters set forth in the appellant's brief, it will be assumed the appellee is satisfied with them, or with such parts of them as remain unchallenged. The brief of the appellee shall contain the certificates of compliance required by Pa.R.A.P. 127 and 2135(d).

Official Note: *See* Pa.R.A.P. 2111 and 2114-2119.

Editor's Note: Amended December 11, 1978, effective December 30, 1978; amended May 1, 2013, effective 30 days after amendment; amended January 5, 2018, effective January 6, 2018.

Rule 2113. | Reply Brief.

(a) *General Rule*.—In accordance with Pa.R.A.P. 2185(a) (time for serving and filing briefs), the appellant may file a brief in reply to matters raised by appellee's brief or in any amicus curiae brief and not previously addressed in appellant's brief. If the appellee has cross appealed, the appellee may file a similarly limited reply brief. A reply brief shall contain the certificates of compliance required by Pa.R.A.P. 127 and 2135(d).

(b) *Response to Draft or Plan*.—A reply brief may be filed as prescribed in Pa.R.A.P. 2134 (drafts or plans).

(c) *Other briefs.*—No further briefs may be filed except with leave of court.

Official Note: An appellant now has a general right to file a reply brief. The scope of the reply brief is limited, however, in that such brief may only address matters raised by appellee and not previously addressed in appellant's brief. No subsequent brief may be filed unless authorized by the court.

The length of a reply brief is set by Pa.R.A.P. 2135 (length of briefs). The due date for a reply brief is found in Pa.R.A.P. 2185(a) (time for serving and filing briefs).

Where there are cross appeals, the deemed or designated appellee may file a similarly limited reply brief addressing issues in the cross appeal. See also Pa.R.A.P. 2136 (briefs in cases involving cross appeals.)

The 2011 amendment to paragraph (a) authorized an appellant to address in a reply brief matters raised in amicus curiae briefs. Before the 2011 amendment, the rule permitted the appellant to address in its reply brief only matters raised in the appellee's brief. The 2011 amendment did not change the requirement that the reply brief must not address matters previously addressed in the appellant's principal brief.

Editor's Note: Amended October 18, 2002, effective December 2, 2002; amended January 13, 2009, effective as to all appeals filed 60 days or more after adoption; amended October 3. 2011, effective in 30 days; amended January 5, 2018, effective January 6, 2018.

Rule 2114. | Statement of Jurisdiction.

The statement of jurisdiction shall contain a precise citation to the statutory provision, general rule or other authority believed to confer on the Appellate Court jurisdiction to review the order or other determination in question.

Note: Based on former Supreme Court Rule 51 and extends the rule to the Superior and Commonwealth Courts.

Rule 2115. | Order or Other Determination in Question.

(a) *General Rule*.—The text of the order or other determination from which an appeal has been taken or which is otherwise sought to be reviewed shall be set forth verbatim immediately following the statement of jurisdiction. See Rule 2111(b) (opinion below), however, for the placement of the text of any related opinions.

(b) *Failure to Act*.—If the matter relates to the failure of the trial court or other government unit to act, a statement of that fact and a brief citation of the statute or other authority under which it is claimed such action is required, will be sufficient.

Editor's Note: Adopted May 16, 1979, effective October 1, 1979.

Rule 2116. | Statement of Questions Involved.

(a) *General Rule*.—The statement of the questions involved must state concisely the issues to be resolved, expressed in the terms and circumstances of the case but without unnecessary detail. The statement be deemed to include every subsidiary question fairly comprised therein. No question will be considered unless it is stated in the statement of questions involved or is fairly suggested thereby. Each question shall be followed by an answer stating simply whether the court or government unit agreed, disagreed, did not answer, or did not address the question. If a qualified answer was given to the question, appellant shall indicate the nature of the qualification, or if the question was not answered or addressed and the record shows the reason for such failure, the reason shall be stated briefly in each instance without quoting the court or government unit below.

(b) *Discretionary Aspects of Sentence*.—An appellant who challenges the discretionary aspects of a sentence in a criminal matter shall include any questions relating to the discretionary aspects of the sentence imposed (but not the issue whether the Appellate Court should exercise its discretion to reach such question) in the statement required by paragraph (a). Failure to comply with this paragraph shall constitute a waiver of all issues relating to the discretionary aspects of sentence.

Official Note: *Paragraph (a)*— In conjunction with the 2013 amendments to Pa.R.A.P. 2135 (length of briefs) and 2140 (brief on remand or following grant of reargument or reconsideration) adopting an optional word limit in lieu of page limits, the 2013 amendment eliminated the page limit for the statement

of questions involved. The word count does, however, include the statement of questions, and a party should draft the statement of questions involved accordingly, with sufficient specificity to enable the reviewing court to readily identify the issues to be resolved while incorporating only those details that are relevant to disposition of the issues. Although the page limit on the statement of questions involved was eliminated in 2013, verbosity continues to be discouraged. The appellate courts strongly disfavor a statement that is not concise.

Paragraph (b)—The requirement set forth in Pa.R.A.P. 2116(b) is part of the procedure set forth by the Supreme Court to implement the standard set forth in 42 Pa.C.S. § 9781(b). Commonwealth v. Tuladziecki, 522 A.2d 17, 18 (Pa. 1987). See note to Pa.R.A.P. 902; note to Pa.R.A.P. 1115; and Pa.R.A.P. 2119(f) and the note thereto.

Editor's Note: Former Rule 2115, amended May 16, 1979, effective June 2, 1979; renumbered May 16, 1979, effective October 1, 1979; Amended July 11, 2008, effective 30 days after amendment; amended March 27, 2013, effective to all appeals and petitions for review filed 60 days after adoption; amended May 28, 2014, effective July 1, 2014.

Rule 2117. | Statement of the Case.

(a) *General Rule*.—The statement of the case shall contain, in the following order:

(1) A statement of the form of action, followed by a brief procedural history of the case.

(2) A brief statement of any prior determination of any court or other government unit in the same case or estate, and a reference to the place where it is reported, if any.

(3) The names of the judges or other officials whose determinations are to be reviewed.

(4) A closely condensed chronological statement, in narrative form, of all the facts which are necessary to be known in order to determine the points in controversy, with an appropriate reference in each instance to the place in the record where the evidence substantiating the fact relied on may be found. See Rule 2132 (references in briefs to the record).

(5) A brief statement of the order or other determination under review.

(b) *All Argument to be Excluded*.—The statement of the case shall not contain any argument. It is the responsibility of appellant to present in the statement of the case a balanced presentation of the history of the proceedings and the respective contentions of the parties.

(c) *Statement of Place of Raising or Preservation of Issues*.—Where under the applicable law an issue is not reviewable on appeal unless raised or preserved below, the statement of the case shall also specify:

(1) The stage of the proceedings in the court of first instance, and in any Appellate Court below, at which, and the manner in which, the questions sought to be reviewed were raised.

(2) The method of raising them (e.g., by a pleading, by a request to charge and exceptions, etc.).

(3) The way in which they were passed upon by the court.

(4) Such pertinent quotations of specific portions of the record, or summary thereof, with specific reference to the places in the record where the matter appears (e.g., ruling or exception thereto, etc.) as will show that the question was timely and properly raised below so as to preserve the question on appeal.

Where the portions of the record relied upon under this subdivision are voluminous, they shall be included in an appendix to the brief, which may, if more convenient, be separately presented.

(d) Appeals from cases submitted on stipulated facts. When the appeal is from an order on a case submitted on stipulated facts, the statement of the case may consist of the facts as stipulated by the parties.

Note: Based on former Supreme Court Rules 46 and 53, former Superior Court Rules 38 and 43 and former Commonwealth Court Rule 94. The misnomer "history of the case" has been abandoned in favor of the more accurate term "statement of the case," since the matter called for in Paragraph (a)(4) is not strictly a history of events, but a statement of facts, or of contentions as to facts.

Where the appeal raises issues of pleading, such as on appeal from an order on preliminary objections, the procedural history should detail the relevant sequence of pleadings.

The former flat prohibition against quotation from the testimony has been omitted in light of the second sentence of Subdivision (b), which is new.

Subdivision (c) is new. Rule 2119(e) (statement of place of raising or preservation of issues) requires that the argument contain a reference to the manner of raising or preservation of an issue in immediate connection with the argument relating thereto. See also Rule 302 (requisites for reviewable issue) and Rule 1551(a) (review of quasi judicial orders).

The 2004 amendment replaces references in subdivision (d) to appeals from a "case stated" because this procedure was abolished pursuant to Pa.R.C.P. 1038.2. In its place, the Supreme Court adopted Pa.R.C.P. 1038.1 providing for a "case submitted on stipulated facts." The statement of the case under subdivision (a)(4) of this rule may now only consist of those facts stipulated to by the parties.

Editor's Note: Former Rule 2116, renumbered and amended May 16, 1979, effective October 1, 1979; amended February 18, 2004, effective immediately.

Rule 2118. | Summary of Argument.

The summary of argument shall be a concise, but accurate, summary of the arguments presented in support of the issues in the statement of questions involved.

Official Note: In conjunction with 2013 amendments to Rules 2135 (length of briefs) and 2140 (brief on remand or following grant of reargument or reconsideration) adopting an optional word limit in lieu of page limits, the 2013 amendment eliminated the page limit for the summary of argument. Although the page limit on the summary of the argument was eliminated in 2013, verbosity continues to be discouraged. The appellate courts strongly disfavor a summary that is not concise.

Editor's Note: Former Rule 2117, renumbered May 16, 1979, effective October 1, 1979; amended March 27, 2013, effective to all appeals and petitions filed for review 60 days after adoption.

Rule 2119. | Argument.

(a) *General Rule*.—The argument shall be divided into as many parts as there are questions to be argued; and shall have at the head of each part—in distinctive type or in type distinctively displayed—the particular point treated therein, followed by such discussion and citation of authorities as are deemed pertinent.

(b) *Citations of Authorities*.—Citations of authorities must set forth the principle for which they are cited. Citations of uncodified statutes shall make reference to the book and page of the Laws of Pennsylvania (Pamphlet Laws) or other

official edition, and also to a standard digest, where the statutes may be found. Citation of provisions of the Pennsylvania Consolidated Statutes may be in the form: "1 Pa.C.S. §1928 (rule of strict and liberal construction)" and the official codifications of other jurisdictions may be cited similarly. Quotations from authorities or statutes shall also set forth the pages from which they are taken. Opinions of an Appellate Court of this or another jurisdiction shall be cited from the National Reporter System, if published therein.

(c) *Reference to Record*.—If reference is made to the pleadings, evidence, charge, opinion or order, or any other matter appearing in the record, the argument must set forth, in immediate connection therewith, or in a footnote thereto, a reference to the place in the record where the matter referred to appears (see Rule 2132) (references in briefs to the record).

(d) *Synopsis of Evidence*.—When the finding of, or the refusal to find, a fact is argued, the argument must contain a synopsis of all the evidence on the point, with a reference to the place in the record where the evidence may be found.

(e) *Statement of Place of Raising or Preservation of Issues*.—Where under the applicable law an issue is not reviewable on appeal unless raised or preserved below, the argument must set forth, in immediate connection therewith or in a footnote thereto, either a specific cross reference to the page or pages of the statement of the case which set forth the information relating thereto required pursuant to Rule 2117(c) (statement of place of raising or preservation of issues), or substantially the same information.

(f) *Discretionary Aspects of Sentence*.—An appellant who challenges the discretionary aspects of a sentence in a criminal matter shall set forth in a separate section of the brief a concise statement of the reasons relied upon for allowance of appeal with respect to the discretionary aspects of a sentence. The statement shall immediately precede the argument on the merits with respect to the discretionary aspects of the sentence.

Official Note: The 2014 amendment to paragraph (b) eliminated the requirement for parallel citation to the Pennsylvania State Reports, which is the official court reports of the Pennsylvania Supreme Court, the Pennsylvania Superior Court Reports, which had been the official court reports of the Pennsylvania Superior Court, and the Pennsylvania Commonwealth Court Reports, which had been the official court reports of the Commonwealth Court.

Where a challenge is raised to the appropriateness of the discretionary aspects of a sentence, the "petition for allowance of appeal'' specified in 42 Pa.C.S. § 9781(b) is deferred until the briefing stage, and the appeal is commenced by filing a notice of appeal pursuant to Chapter 9 rather than a petition for allowance of appeal pursuant to Chapter 11.

Editor's Note: Former Rule 2118, amended May 16, 1979, effective June 2, 1979; renumbered May 16, 1979, effective October 1, 1979; amended February 27, 1980, effective March 15, 1980; amended April 14, 2014, effective immediately; amended May 28, 2014, effective July 1, 2014; amended December 12, 2015; effective January 1, 2016.

Rule 2131. | References in Briefs to Parties.

Counsel will be expected in their briefs and oral arguments to keep to a minimum references to parties by such designations as "appellant" and "appellee." It promotes clarity to use the designations used in the court or other government unit below, or the actual names of the parties, or descriptive terms such as "the employee," "the injured person," "the taxpayer," "the electric company," "the bank," etc.

Rule 2132. | References in Briefs to the Record.

(a) *General Rule*.—Reference in the briefs to parts of the record appearing in a reproduced record filed with the brief of the appellant (see Rule 2154(b) (large records)) shall be to the pages in the reproduced record where those parts appear, e.g.: "(R. 26a)." If the record is reproduced after the briefs are served in advance type written or page proof form (see Rule 2185(c) (definitive copies)), the brief may also contain references to the pages of the parts of the original record, e.g., "(Tr. 279280; R. 26a27a)."

(b) *References to Unreproduced Record.* —If references are made in the briefs to parts of the original record not reproduced, the references shall be to the parts of the record involved, e.g., "(Answer, p. 7)," "(Motion for Summary Judgment p. 2)," "(Transcript p. 279280)," "(Notes of Testimony p. 2426)." Where the court or other government unit below has numbered the original record for purposes of certification to the Appellate Court, the references shall be to such certified record pages, e.g. "(Certified Record pp. 2667)." Intelligible abbreviations may be used. Any relevant reference in the briefs to unreproduced pleadings, evidence, rulings or charge shall be directly quoted, with the page reference to the original record.

Note: Based in part upon former Superior Court Rule 52 and former Commonwealth Court Rule 111B.

Editor's Note: Amended February 27, 1980, effective March 15, 1980. Further amended July 7, 1997, effective September 5, 1997.

Rule 2133. | Citations in Opinions Below.

Whenever an opinion or other determination of the court or other government unit below, required to be reproduced under these rules, refers to and relies upon some other published opinion or other determination, the place of publication of which is not stated, the brief of appellant shall set forth the place of publication thereof and of any dissenting opinion in the cited case; if not published, either party may reproduce a copy thereof, giving the name of the judge or other official who rendered the opinion or other determination and the date of its filing.

Note: Based on former Supreme Court Rule 50, former Superior Court Rule 41 and former Commonwealth Court Rule 92. The requirement of former Supreme Court Rule 50 that the appellant furnish copies of all unpublished opinions cited below has been omitted.

Rule 2134. | Drafts or Plans.

(a) *General Rule*.—All maps, plans and drawings used on appeal must conform to the provisions of this rule.

(b) *From the Record*.—When on the trial or hearing in the court or the government unit below, there is offered in evidence a draft or plan which would be of assistance to the Appellate Court to enable it to understand readily the dispute between the parties, a copy thereof shall be attached to the brief of the appellant, or filed therewith, folded the same size as the brief.

(c) *Prepared Specially for Argument*.—If a draft or plan is not contained in the record, but would be of assistance to the Appellate Court as prescribed in Subdivision (a) of this rule, a simple draft, plan or sketch, made by or for the appellant, folded to the same size as the brief, shall be attached to or filed with the brief of the appellant, marked so as to show it was not part of the record. Under like circumstances, the appellee may prepare and attach to or file with the brief for the appellee a draft, plan or sketch made by or for the appellee. Either party may point out, in his brief or reply brief, wherein he considers the one presented by his adversary not to be correct.

Note: Based on former Supreme Court Rule 40 and extends the provision to the Commonwealth Court. Former Superior Court Rule 32 was similar to Subdivision (b), but provided that the draft or plan was to be attached to the reproduced record. See also *Piper v. Queeney*, 282 Pa. 135, 147, 127 Atl. 474, 479 (1925).

Rule 2135. | Length of Briefs.

(a) Unless otherwise ordered by an appellate court:

(1) A principal brief shall not exceed 14,000 words and a reply brief shall not exceed 7,000 words, except as stated in subparagraphs (a)(2)—(4). A party shall file a certificate of compliance with the word count limit if the principal brief is longer than 30 pages or the reply brief is longer than 15 pages when prepared on a word processor or typewriter.

(2) In cross appeals under Pa.R.A.P. 2136, the first brief of the deemed or designated appellee and the second brief of the deemed or designated appellant shall not exceed 16,500 words. A party shall file a certificate of compliance if the brief is longer than 35 pages when produced on a word processor or typewriter.

(3) In capital direct appeals, the principal brief shall not exceed 17,500 words and a reply brief shall not exceed 8,500 words. A party shall file a certificate of compliance if the principal brief is longer than 38 pages or the reply brief is longer than 19 pages when prepared on a word processor or typewriter.

(4) In the first Capital Post-Conviction Relief Act appeal, the principal brief shall not exceed 22,500 words and a reply brief shall not exceed 11,250 words. A party shall file a certificate of compliance if the principal brief is longer than 49 pages or the reply brief is longer than 24 pages when prepared on a word processor or typewriter.

(b) *Supplementary matter*. Supplementary matters, such as, the cover of the brief and pages containing the table of contents, tables of citations, proof of service and any addendum containing opinions, signature blocks or any other similar supplementary matter provided for by these rules shall not count against the word count limitations set forth in paragraph (a) of this rule.

(c) *Size and physical characteristics*. Size and other physical characteristics of briefs shall comply with Pa.R.A.P. 124.

(d) *Certification of compliance*. Any brief in excess of the stated page limits shall include a certification that the brief complies with the word count limits. The certificate may be based on the word count of the word processing system used to prepare the brief.

Official Note: A principal brief is any party's initial brief and, in the case of a cross appeal, the appellant's second brief, which responds to the initial brief in the cross appeal. See the note to Pa.R.A.P. 2136. Reply briefs permitted by Pa.R.A.P. 2113 and any subsequent brief permitted by leave of court are subject to the word count limit or page limit set by this rule.

A party filing a certificate of compliance under this rule may rely on the word count of the word processing system used to prepare the brief.

It is important to note that each appellate court has the option of reducing the word count for a brief, either by general rule, see Chapter 33 (Business of the Supreme Court), Chapter 35 (Business of the Superior Court), and Chapter 37 (Business of the Commonwealth Court), or by order in a particular case.

Editor's Note: Amended May 16, 2003. Effective 60 days after adoption; amended March 27, 2013, effective to all appeals and petitions for review filed 60 days after adoption; amended December 30, 2014, effective 60 days after adoption.

Rule 2136. | Briefs in Cases Involving Cross Appeals.

(a) *Designation of parties in cross appeals*. If a cross appeal is filed, the plaintiff or moving party in the court or other government unit below shall be deemed the appellant for the purposes of this chapter and Chapter 23 (sessions and argument), unless the parties otherwise agree or the Appellate Court otherwise orders. Where the identity of the appellant for the purposes of the chapter and Chapter 23 is not readily apparent the Prothonotary of the Appellate Court shall designate the appellant for the purposes of those two chapters when giving notice under Rule 1934 (filing of the record).

(b) *Order of briefs*. The deemed or designated appellant shall file its principal brief on the merits of its appeal in accordance with the briefing schedule. The deemed or designated appellee shall then file a brief that addresses (i) the arguments advanced in the appellant's brief and (ii) the merits of the cross appeal. Thereafter, the appellant shall file its second brief, which shall (i) reply to issues raised in the appellee's brief and not previously addressed in appellant's principal brief and (ii) respond to the issues raised by appellee regarding the cross appeal. The appellee may then file a reply brief limited to issues raised by the

appellant that were not previously addressed by the appellee in its principal brief on the merits of the cross appeal.

[EXPLANATORY NOTE—1979]

For cross appeals, Rule 2136 provides both a method for determining which party shall file the first brief and a description of the subsequent briefs. Either party may initiate the process described in Subdivision (a) by notifying the prothonotary by letter that the prothonotary must designate the appellant, that is the party to file the first brief, or that the parties have agreed which party shall be the appellant.

With regard to the briefing process, when there are cross appeals, there may be up to four briefs: (1) the deemed or designated appellant's principal brief on the merits of the appeal; (2) the deemed or designated appellee's brief responding to appellant's arguments and presenting the merits of the cross appeal; (3) the appellant's second brief replying in support of the appeal and responding to the issues raised in the cross appeal; and (4) appellee's second brief in support of the cross appeal.

Thus, the deemed or designated appellee's first brief (Brief No. 2 as described above) functions as both a response to the arguments advanced by the appellant in the first appeal and the primary brief on the merits of the cross appeal. Similarly, the deemed or designated appellant's second brief (Brief No. 3 as described above) serves the dual purposes of responding to the merits of the arguments in the cross appeal and replying to arguments raised in opposition to the first appeal. See generally Rule 2111 (brief of the appellant), Rule 2112 (brief of the appellee), and Rule 2113(a) (regarding reply briefs).

Rule 2135 (length of briefs) establishes the length of the various briefs. Only appellee's second brief is considered a reply brief subject to the lesser page limits. There is no provision for a longer principal brief on the merits in cross appeal situations.

Rule 2185(a) (time for serving and filing briefs) provides that appellant's second brief shall be served within 30 days after service of the preceding brief. Appellee's second brief is due 14 days later.

Rule 2322 (cross and separate appeals) addresses oral argument in cross appeals.

Editor's Note: Amended October 18, 2002, effective December 2, 2002.

Rule 2137. | Briefs in Cases Involving Multiple Appellants or Appellees.

In cases involving more than one appellant or appellee, including cases consolidated for purposes of the appeal pursuant to Rule 513 (consolidation of multiple appeals), any number of either may join in a single brief, and any appellant or appellee may adopt by reference any part of the brief of another. Parties may similarly join in reply briefs.

Rule 2138. | Briefs in Cases Involving Appeals from Multiple Orders.

Appeals from multiple sentences imposed on a defendant arising out of a single criminal transaction or episode and tried together, and multiple orders affecting an appellant entered substantially concurrently in civil matters consolidated for trial, shall be treated as a single matter of purposes of briefing and argument on appeal.

Note: This rule governs cases where one party appeals multiple sentences or other orders. For example, where under Rule 702(b) (matters tried with capital offenses) an appeal from a robbery conviction is taken to the Supreme Court in conjunction with an appeal from a death sentence imposed for a homicide committed in connection with the robbery, only a single brief and reproduced record should be prepared in the Supreme Court covering all issues to be presented in the robbery and homicide appeals.

Where more than one party appellant is involved, the consolidation of briefing is governed by Rule 2137 (briefs in cases involving multiple appellants or appellees). Where one party appeals multiple orders, and several parties appeal the same or related orders both Rule 2137 and this rule will be applicable to the matters so that all appellants may file one combined brief as to all orders.

Editor's Note: Adopted April 26, 1982, effective September 13, 1982 (120 days after publication in the *Pennsylvania Bulletin*).

Rule 2139. | Briefs on Appeals from the Superior or Commonwealth Courts.

On appeals from the Superior Court or the Commonwealth Court, appellants may prepare new briefs in the Supreme Court according to these rules, setting forth also the order allowing the appeal, or may utilize the briefs, if available, used in the Appellate Court below (changing the cover, however), and adding thereto the order allowing the appeal, the opinion and dissenting opinions, if any, of the Appellate Court below (if reported, stating where) and such additional argument as may be desired. Appellee may also prepare a new brief, or may utilize the one used in the Appellate Court below, if available, with such additional argument as may be desired.

Note: Based on former Supreme Court Rule 49.

Editor's Note: Amended May 16, 1979, effective October 1, 1979; former Rule 2138 renumbered April 26, 1982, effective September 13, 1982 (120 days after publication in the Pennsylvania Bul- letin).

EXPLANATORY COMMENT—1976

Where Superior Court or Commonwealth Court briefs are recovered for use in the Supreme Court, the original text of this Rule required that the petition for allowance of appeal be added. Since under the new practice this latter document is itself a brief, its addition is inappropriate, and therefore this Rule substitutes the text of the order allowing the appeal (which will contain any limitations as to the questions as to which an appeal was allowed) for the text of the petition for allowance of appeal.

Rule 2140. | Brief on Remand or Following Grant of Reargument or Reconsideration.

Following remand, or if reargument, reconsideration, or rehearing is granted, the court shall establish a schedule for further proceedings. If the court does not require further briefing, it shall notify the parties. If further briefing is required, the court shall issue a briefing schedule that includes the order in which briefs shall be submitted, the type and length of brief to be submitted, whether a reproduced record is needed, and the number of copies to be filed.

Editor's Note: Adopted March 31, 1989, effective immediately; amended July 7, 1997, effective September 5, 1997; amended September 22, 2006, effective immediately; amended March 27, effective 60 days after adoption; amended September 6, 2013, effective October 7, 2013.

Content of Reproduced Record

Rule 2151. | Considerations of Matters on the Original Record without the Necessity of Reproduction.

(a) *General Rule*.—An Appellate Court may by rule of court applicable to all cases, or to classes of cases, or by order in specific cases under Subdivision (d) of this rule, dispense with the requirement of a reproduced record and permit appeals and other matters to be heard on the original record, with such copies of the record, or relevant parts thereof, as the court may require.

(b) *In Forma Pauperis*.—If leave to proceed in forma pauperis has been granted to a party, such party shall not be required to reproduce the record.

(c) *Original Hearing Cases*.—When under the applicable law the questions presented may be determined in whole or in part upon the record made before the Appellate Court, a party shall not be required to reproduce the record.

(d) *On Application to the Court*.—Any appellant may within 14 days after taking an appeal file an application to be excused from reproducing the record for the reason that the cost thereof is out of proportion to the amount involved, or for any other sufficient reason. Ordinarily leave to omit reproduction of the record will not be granted in any case where the amount collaterally involved in the appeal is not out of proportion to the reproduction costs.

Note: Based on former Supreme Court Rules 35D, 35E and 61(f), former Superior Court Rules 51 (last sentence) and 52, and former Commonwealth Court Rules 81, 110B and 111A. Subdivision (a) is new and is included in recognition of the developing trend toward sole reliance on the original record.

See Rule 2189 for procedure in cases involving the death penalty.

Editor's Note: Note amended and effective December 1, 1982.

Rule 2152. | Content and Effect of Reproduced Record.

(a) *General Rule*.—The reproduced record shall contain the following:

(1) The relevant docket entries and any relevant related matter (see Pa.R.A.P. 2153 (docket entries and related matter)).

(2) Any relevant portions of the pleadings, charge or findings (see Pa.R.A.P. 2175(b) (order and opinions) which provides for a cross reference note only to orders and opinions reproduced as part of the brief of appellant).

(3) Any other parts of the record to which the parties wish to direct the particular attention of the Appellate Court.

(4) The certificate of compliance required by Pa.R.A.P. 127.

(b) *Immaterial Formal Matters*.—Immaterial formal matters (captions subscriptions, acknowledgements, etc.) shall be omitted.

(c) *Effect of Reproduction of Record*.—The fact that parts of the record are not included in the reproduced record shall not prevent the parties or the Appellate Court from relying on such parts.

(d) "Confidential Information" and "Confidential Documents", as those terms are defined in the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania*, shall appear in the reproduced record in the same manner and format as they do in the original record.

Official Note: The general rule has long been that evidence which has no relation to or connection with the questions involved must not be reproduced. See former Supreme Court Rule 44, former Superior Court Rule 36 and former Commonwealth Court Rule 88. See also, e.g., *Shapiro v. Malarkey*, 122 A. 341, 342 (Pa. 1923); *Sims v. Pennsylvania R.R. Co.*, 123 A. 676, 679 (1924). See Pa.R.A.P. 2189 for procedure in cases involving the death penalty.

The *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* ("Public Access Policy") does not apply retroactively to pleadings, documents, or other legal papers filed prior to the effective date of the Public Access Policy. Reproduced records may therefore contain pleadings, documents, or legal papers that do not comply with the Public Access Policy if they were originally filed prior to the effective date of the Public Access Policy.

Editor's Note: Amended May 16, 1979, effective October 1, 1979; note amended and effective December 1, 1982; amended January 5, 2018, effective January 6, 2018; amended June 1, 2018, effective July 1, 2018.

Rule 2153. | Docket Entries and Related Matter.

(a) *General Rule*.—The relevant docket entries of the court or other tribunal below shall be set forth chronologically, in a single column, and shall consist of such parts of the docket entries as are necessary to indicate briefly but clearly:

(1) The character of the proceedings.

(2) The pleadings or papers upon which the case was tried or heard.

(3) The trial or hearing.

(4) The order or other determination to be reviewed.

(5) All latter proceedings appertaining to any of them.

(6) All other matters referred to in the statement of questions involved or in the argument.

The docket entries of the court or other tribunal below, so far as they amplify or do not relate to such matters, shall not be reproduced; but the appellee may call attention, at the beginning of his counterstatement of the case, to any omissions which he may deem important.

(b) *Related Proceedings*.—If the issue tried in the court or other tribunal below grows out of some other proceeding, in that or any other court or other tribunal, there shall be set forth at the beginning of the reproduced record:

(1) The relevant docket entries in the original case.

(2) The opinion directing the issue to be tried and any dissenting opinions (if reported, stating where).

(3) The directions, if any, sent to the lower court or other tribunal.

(4) The relevant docket entries therein.

(5) The issue framed or ordered to be framed and the pleadings or papers in the nature thereof.

Editor's Note: Official note rescinded July 7, 1997, effective September 5, 1997.

Rule 2154. | Designation of Contents of Reproduced Record.

(a) *General Rule*.—Except when the appellant has elected to proceed under Subdivision (b) of this rule, or as otherwise provided in Subdivision (c) of this rule, the appellant shall, not later than 30 days before the date fixed by or pursuant to Rule 2185 (time for serving and filing briefs) for the filing of his or her brief, serve and file a designation of the parts of the record which heor she intends to reproduce and a brief statement of issues which he or she intends to present for review. If the appellee deems it necessary to direct the particular attention of the court to parts of the record not designated by the appellant, the appellee shall, within ten days after receipt of the designations of the appellant, serve and file a designation of those parts. The appellant shall include in the reproduced record the parts thus designated. In designating parts of the record for reproduction, the parties shall have regard for the fact that the entire record is always available to the court for reference and examination and shall not engage in unnecessary designation.

(b) *Large Records*.—If the appellant shall so elect, or if the Appellate Court has prescribed by rule of court for classes of matters or by order in specific matters, preparation of the reproduced record may be deferred until after the briefs have been served. Where the appellant desires thus to defer preparation of the reproduced record, the appellant shall, not later than the date on which his or her designations would otherwise be due under Subdivision (a), serve and file notice that he or she intends to proceed under this subdivision. The provisions of Subdivision (a) shall then apply, except that the designations referred to therein shall be made by each party at the time his or her brief is served, and a statement of the issues presented shall be unnecessary.

(c) *Children's fast track appeals*.

(1) In a children's fast track appeal, the appellant shall not later than 23 days before the date fixed by or pursuant to Rule 2185 (time for serving and filing briefs) for the filing of his or her brief, serve and file a designation of the parts of the record which he or she intends to reproduce and a brief statement of issues which he or she intends to present for review. If the appellee deems it necessary to direct the particular attention of the court to parts of the record not designated by the appellant, the appellee shall, within 7 days after receipt of the designations of the appellant, serve and file a designation of those parts. The appellant shall include in the reproduced record the parts thus designated. In designating parts of the record for reproduction, the parties shall have regard for the fact that the entire record is always available to the court for reference and examination and shall not engage in unnecessary designation.

(2) In a children's fast track appeal, the provisions of Subdivision (b) shall not apply.

Note: Based in part upon former Supreme Court Rule 44, former Superior Court Rule 36 and former Commonwealth Court Rule 88. The prior statutory practice required the lower court or the Appellate Court to resolve disputes concerning the contents of the reproduced record prior to reproduction. The statutory practice was generally recognized as wholly unsatisfactory and has been abandoned in favor of deferral of the issue to the taxation of costs phase. The uncertainty of the ultimate result on the merits provides each party with a significant incentive to be reasonable, thus creating a self-policing procedure.

Of course, parties proceeding under either procedure may by agreement omit the formal designations and accelerate the preparation of a reproduced record containing the material which the parties have agreed should be reproduced.

See Rule 2189 for procedure in cases involving the death penalty.

Editor's Note: Note amended December 11, 1978, effective December 30, 1978; rule amended May 16, 1979, effective October 1, 1979; note amended and effective December 1, 1982; amended January 13, 2009, effective as to all appeals filed 60 days or more after adoption.

EXPLANATORY COMMENT—1979

The principal criticism of the new Appellate Rules has been the provisions for deferred preparation of the reproduced record, and the result procedure for the filing of advance copies of briefs (since the page citations to the reproduced record pages are not then available) followed by the later preparation and filing of definitive briefs with citations to the reproduced record pages. It has been argued that in the typical state court appeal the record is quite small, with the result that the pre1976 practice of reproducing the record in conjunction with the preparation of appellant's definitive brief is entirely appropriate and would ordinarily be followed if the rules did not imply a preference for the deferred method. The Committee has been persuaded by these comments, and the rules have been redrafted to imply that the deferred method is a secondary method particularly appropriate for longer records.

Editor's Note: Explanatory note amended July 7, 1997, effective September 5, 1997.

Rule 2155. | Allocation of Cost of Reproduced Record.

(a) *General Rule*.—Unless the parties otherwise agree the cost of reproducing the record shall initially be paid by the appellant, but if the appellant considers the parts of the record designated by the appellee for inclusion are unnecessary for a determination of the issues presented the appellant may so advise the appellee and the appellee shall advance the cost of including such parts. If the appellee fails to advance such costs within 10 days after written demand therefor, the appellant may proceed without reproduction of the parts of the record designated by appellee which the appellant considered to be unnecessary.

(b) *Allocation by Court*.—The cost of reproducing the record shall be taxed as costs in the case pursuant to Chapter 27 (fees and costs in Appellate Courts and on appeal), but if either party shall cause material to be included in the reproduced record unnecessarily, the Appellate Court may, on application filed within 10 days after the last brief is filed, in its order disposing of the appeal impose the cost of reproducing such parts on the designating party.

Note: This rule reflects the fact that the Appellate Judge to whom a case is assigned for preparation of an opinion will ordinarily be in the best position to determine whether an excessive amount of the record has been included in the reproduced record by a party.

See Rule 2189 for procedure in cases involving the death penalty.

Editor's Note: Amended December 11, 1978, effective December 30, 1978; amended May 16, 1979, effective October 1, 1979; note amended and effective December 1, 1982; amended September 10, 2008, effective December 1, 2008.

Rule 2156. | Supplemental Reproduced Record.

When, because of exceptional circumstances, the parties are not able to cooperate on the preparation of the reproduced record as a single document, the appellee may, in lieu of proceeding as otherwise provided in this chapter, prepare, serve, and file a supplemental reproduced record setting forth the portions of the record designated by the appellee. A supplemental reproduced record shall contain the certificate of compliance required by Pa.R.A.P. 127. "Confidential Information" and "Confidential Documents", as those terms are defined in the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania*, shall appear in the reproduced record in the same manner and format as they do in the original record.

Official Note: Former Supreme Court Rules 36, 38 and 57, former Superior Court Rules 28, 30, and 47 and former Commonwealth Court Rules 32A, 82, and 84 all inferentially recognized that a supplemental record might be prepared by the appellee, but the former rules were silent on the occasion for such a filing. The preparation of a single reproduced record has obvious advantages, especially where one party designates one portion of the testimony, and the other party designates immediately following testimony on the same subject. However, because of emergent circumstances or otherwise, agreement on the mechanics of a joint printing effort may collapse, without affording sufficient time for the filing and determination of an application for enforcement of the usual procedures. In that case an appellee may directly present the relevant portions of the record to the Appellate Court.

As the division of the reproduced record into two separate documents will ordinarily render the record less intelligible to the court and the parties, the preparation of a supplemental reproduced record is not favored and the Appellate Court may suppress a supplemental record which has been separately reproduced without good cause.

The *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* ("Public Access Policy") does not apply retroactively to pleadings, documents, or other legal papers filed prior to the effective date of the Public Access Policy. Supplemental reproduced records may therefore contain pleadings, documents, or legal papers that do not comply with the Public Access Policy if they were originally filed prior to the effective date of the Public Access Policy.

Editor's Note: Note amended September 10, 2008, effective December 1, 2008; amended January 5, 2018, effective January 6, 2018; amended June 1, 2018, effective July 1, 2018.

Form of Briefs and Reproduced Record

Rule 2171. | Method of Reproduction. Separate Brief and Record.

(a) *General Rule*.—Briefs and reproduced records may be reproduced by any duplicating or copying process which produces a clear black image on white paper. Briefs and records shall comply with the requirements of Pa.R.A.P. 124 and shall be firmly bound at the left margin.

(b) *Separate Brief and Record*.—In all cases the reproduced record may be bound separately, and must be if it and the brief together contain more than 100 pages or if the reproduced record contains "Confidential Information" or "Confidential Documents", as those terms are defined in the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* ("Public Access Policy"), in any pleadings, documents, or legal papers originally filed after the effective date of the Public Access Policy.

Official Note: See Rule 124 (form of papers; number of copies) for general provisions on quality, size and format of papers (including briefs and reproduced records) filed in Pennsylvania courts.

Editor's Note: Amended May 16, 2003. Effective 60 days after adoption; note amended September 10, 2008, effective December 1, 2008; amended January 5, 2018, effective January 6, 2018; amended June 1, 2018, effective July 1, 2018.

Rule 2172. | Covers.

(a) *Briefs and Petitions for Allowance of or Permission to Appeal*.—On the front cover of the brief there shall appear the following:

(1) the name of the Appellate Court in which the matter is to be heard;

(2) the docket number of the case in the Appellate Court;

(3) the caption, of the case in the Appellate Court, as prescribed by these rules;

(4) title of the filing, such as "Brief for Appellant" or "Brief for Respondent." If the reproduced record is bound with the brief, the title shall so indicate, for example, "Brief for Appellant and Reproduced Record," or "Brief for Appellee and Supplemental Reproduced Record," such as the case may be;

(5) designation of the order appealed from such as "Appeal from the Order of" the court from which the appeal is taken, with the docket number therein. On appeals from the Superior Court or the Commonwealth Court its docket number shall be given, followed by a statement as to whether it affirmed, reversed or modified the order of the court or tribunal of first instance, giving also the name of the latter and the docket number, if any, of the case therein;

(6) the names of counsel, giving the office address and telephone number of the one upon whom it is desired notices shall be served.

(b) *Children's fast track appeals*.—In a children's fast track appeal, the front cover shall include a statement advising the appellate court that the appeal is a children's fast track appeal.

(c) *Reproduced Record*.—If the reproduced record is bound separately, the cover thereof shall be the same as provided in Subdivision (a) of this rule, except that in place of the information set forth in Paragraph (a)(4) of this rule there shall appear "Reproduced Record" or "Supplemental Reproduced Record," as the case may be.

(d) *Repetition in Body of Document*.—Unless expressly required by these rules, none of the material set forth in Subdivisions (a) and (b) of this rule shall be repeated in the brief or reproduced record.

(e) *Cover Stock*.—The covers of all briefs and reproduced records must be so light in color as to permit writing in ink thereon to be easily read and so firm in texture that the ink will not run.

Note: Based on former Supreme Court Rules 35C and 36, former Superior Court Rules 27C and 28, and former Commonwealth Court Rule 82, without change in substance except that Paragraph (a)(4) is clarified by eliminating the "Appeal of . . ." heading, which would not conform to the caption on the notice of appeal, and Subdivision (d) is extended to the Commonwealth Court.

Editor's Note: Amended December 11, 1978, effective December 30, 1978; Rule 2172(a) amended April 26, 1982, effective September 13, 1982 (120 days after publication in the *Pennsylvania Bulletin*); amended September 10, 2008, effective December 1, 2008; amended January 13, 2009, effective as to all appeals filed 60 days or more after adoption.

Rule 2173. | Numbering of Pages.

Except as provided in Rule 2174 (tables of contents and citations), the pages of briefs, the reproduced record and any supplemental reproduced record shall be numbered separately in Arabic figures and not in Roman numerals: thus 1, 2, 3, etc., followed in the reproduced record by a small a, thus 1a, 2a, 3a, etc., and followed in any supplemental reproduced record by a small b, thus 1b, 2b, 3b, etc. Where the reproduced record is bound in more than one volume, there shall be one continuous paging, regardless of the division into volumes.

Note: Based on former Supreme Court Rules 37 (part) and 38 (first clause), former Superior Court Rules 29 (part) and 30 (first clause), and former Commonwealth Court Rules 83 (part) and 84, without change in substance.

Rule 2174. | Tables of Contents and Citations.

(a) *Tables of Contents*.—The briefs and the reproduced record shall each contain a full and complete table of contents, set forth either on the inside of the front cover or on the first and immediately succeeding pages. The table of contents of the reproduced record, in addition to the material otherwise specified in this chapter, shall include a reference to all reproduced exhibits, indicating what each is, and the names of witnesses, indicating where the examination, crossexamination and reexamination of each begin. Where the reproduced record is bound in more than one volume, there shall be but one table of contents which shall indicate in which volume each particular part of the record will be found. The combined table of contents ordinarily shall be set forth in full at the front of each volume, but where the combined table of contents is itself voluminous, a cross reference at the front of the second and subsequent volumes to the combined table of contents at the front of the first volume may be substituted for the text of the combined table of contents.

(b) *Tables of Citations*.—All briefs shall contain a table of citations therein, arranged alphabetically, which shall be set forth immediately following the table of contents.

(c) *Paging of Introductory Tables*.—The pages of the tables specified in this rule need not be numbered, but if numbered shall be numbered in Roman numerals: thus i, ii, iii, etc.

Note: Based on former Supreme Court Rule 37, former Superior Court Rule 29 and former Commonwealth Court Rule 83. The rule substitutes the term "table of contents" for the incorrect term "index," authorizes the optional practice of beginning the table of contents on the faceup page (rather than inside the front cover) and authorizes Roman numbering the introductory pages.

Editor's Note: Amended June 23, 1976, effective July 1, 1976.

EXPLANATORY COMMENT—1976

Where the reproduced record is so voluminous that the combined table of contents in the front of each volume is itself voluminous, a cross-reference at the front of the second and subsequent volumes may be substituted.

Rule 2175. | Sequence of Material in the Reproduced Record.

(a) *General Rule*.—The portions of the record which are reproduced pursuant to these rules shall appear in the following order—headed in each case by the title of the particular material in distinctive type or in type distinctively displayed:

(1) The relevant docket entries and related matters. See Rule 2153 (docket entries and related matters).

(2) The other parts of the record, arranged chronologically.

(b) *Orders and Opinions*.—The order or other determination and the opinions of the court or other tribunal in question below if reproduced as a part of the brief of the appellant in conformity with Rule 2111 (brief of the appellant) shall not be duplicated in the reproduced record, but in lieu thereof an appropriate cross reference note to the brief shall be set forth at the appropriate place in the reproduced record.

Note: A much simplified version of former Supreme Court Rule 41, former Superior Court Rule 33, and former Commonwealth Court Rule 86.

Editor's Note: Amended May 16, 1979, effective October 1, 1979.

Rule 2176. | Notes of Testimony and Other Papers.

(a) *Indication of Original Pagination*.—When material contained in the notes or transcript of testimony is set out in the reproduced record, the page of the original transcript at which such matter may be found shall be clearly indicated.

(b) *Indication of Omissions*.—Omissions in the text of papers or in the transcript shall be indicated by asterisks.

(c) *Questions and Answers*.—A question and its answer may be contained in a single paragraph.

(d) *Exhibits*.—Exhibits designated for inclusion in the reproduced record may be contained in a separate volume, or volumes, suitably noted in the table of contents of the reproduced record. See Rule 2174 (table of contents and citations).

Note: Where the original notes or transcript of testimony is photocopied the original pagination will be evident. Otherwise the original pagination may be shown in brackets or by other equivalent methods.

Filing and Service

Rule 2185. | Service and Filing of Briefs.

(a) *Time for serving and filing briefs*.

(1) *General rule*.— Except as otherwise provided by this rule, the appellant shall serve and file appellant's brief not later than the date fixed pursuant to Subdivision (b) of this rule, or within 40 days after the date on which the record is filed, if no other date is so fixed. The appellee shall serve and file appellee's brief within 30 days after service of appellant's brief and reproduced record if proceeding under Rule 2154(a) (general rule). A party may serve and file a reply brief permitted by these rules within 14 days after service of the preceding brief but, except for good cause shown, a reply brief must be served and filed so as to be received at least three days before argument. In cross appeals, the second brief of the deemed or designated appellant shall be served and filed within 30 days of service of the deemed or designated appellee's first brief. Except as prescribed by Rule 2187(b) (advance text of briefs), each brief shall be filed not later than the last day fixed by or pursuant to this rule for its service. Briefs shall be deemed filed on the date of mailing if first class, express, or priority United States Postal Service mail is utilized.

(2) *Children's fast track appeals*.

(i) In a children's fast track appeal, the appellant shall serve and file appellant's brief within 30 days after the date on which the record is filed, if no other date is so fixed. The appellee shall serve and file appellee's brief within 21 days after service of appellant's brief and reproduced record. A party may serve and file a reply brief permitted by these rules within 7 days after service of the preceding brief but, except for good cause shown, a reply brief must be served and filed so as to be received at least 3 days before argument. In cross appeals, the second brief of the deemed or designated appellant shall be served and filed within 21 days of service of the deemed or designated appellee's first brief. Briefs shall be deemed filed on the date of mailing if first class, express, or priority United States Postal Service mail is utilized.

(ii) In a children's fast track appeal, the provisions of Subdivisions (b) and (c) of this Rule shall not apply.

(b) *Notice of Deferred Briefing Schedule*.—When the record is filed the Prothonotary of the Appellate Court shall estimate the date on which the matter will be argued before or submitted to the court, having regard for the nature of the case and the status of the calendar of the court. If the prothonotary determines that the matter will probably not be reached by the Court for argument or submission within 30 days after the latest date on which the last brief could be filed under the usual briefing schedule established by these rules, the Prothonotary shall fix a specific calendar date as the last date for the filing of the brief of the appellant in the matter, and shall give notice thereof as required by these rules. The date so fixed by the Prothonotary shall be such that the latest date on which the last brief in the matter could be filed under these rules will fall approximately 30 days before the probable date of argument or submission of the matter.

(3) *Multiple briefs for appellants or appellees*.—If the time for filing a brief is established by reference to service of a preceding brief and more than one such preceding brief is filed, the deadline for filing the subsequent brief shall be calculated from the date on which the last timely filed preceding brief is served. If no such preceding brief is filed, the deadline for a subsequent brief shall be calculated from the date on which the preceding brief should have been filed.

(c) *Definitive Copies*.—If the record is being reproduced pursuant to Rule 2154(b) (large records) the brief served pursuant to Subdivision (a) of this rule may be typewritten or page proof copies of the brief, with appropriate references to pages of the parts of the original record involved. Within 14 days after the reproduced record is filed each party who served briefs in advance form under this subdivision shall serve and file definitive copies of his or her brief or briefs containing references to the pages of the reproduced record in place of or in addition to the initial references to the pages of the parts of the original record involved (see Rule 2132 (references in the briefs to the record)). No other changes may be made in the briefs as initially served, except that typographical errors may be corrected.

Official Note: The 2002 amendment recognizes that in cross appeals the deemed or designated appellant's second brief is more extensive than a reply brief and, therefore may require more than 14 days to prepare. See Rule 2136 (briefs in cases involving cross appeals).

The addition of paragraph (a)(3) clarified practice in an appeal in which there is more than one appellant or appellee and all appellants or all appellees do not file their briefs on the same date. For example, if there are two appellants and one files early or one is granted an extension of time to file, the two briefs for appellants will not be filed or served on the same date. Without paragraph (a)(3), it was not clear when the appellee's 30day period to file its brief began. The same issue can arise with respect to the appellant's time for filing its reply brief when there are two or more appellees. New paragraph (a)(3) clarified the point by starting the period on the date on which the latest, timely filed preceding brief is served.

Editor's Note: Amended October 18, 2002, effective December 2, 2002; amended and renamed September 10, 2008, effective December 1, 2008; amended January 13, 2009, effective as to all appeals filed 60 days or more after adoption; amended October 3, 2011, effective in 30 days.

Rule 2186. | Service and Filing of Reproduced Record.

(a) *General Rule*.—The reproduced record shall be served and filed not later than:

(1) the date of service of the appellant's brief; or

(2) 21 days from the date of service of the appellee's brief in advance form, if the record is being reproduced pursuant to Rule 2154(b) (large records).

Reproduced records shall be deemed filed on the date of mailing if first class, express, or priority United States Postal Service mail is utilized.

(b) *Supplemental Reproduced Record*.—Any supplemental reproduced record shall be served and filed with the brief of the appellee.

Official Note: Former Supreme Court Rule 57, former Superior Court Rule 47 and former Commonwealth Court Rule 32A provided that the appellant was to serve and file the reproduced record with his brief, which continues to be the rule under Paragraph (a)(1) of this rule. The delayed filing of the reproduced record results in the designation and reproduction of the minimum amount of the original record since the parties will then know exactly the portions of the original record mentioned in their briefs and may accordingly limit the amount of record reproduced.

Editor's Note: Amended May 16, 1979, effective October 1, 1979; amended July 7, 1997, effective September 5, 1997; amended and renamed September 10, 2008, effective December 1, 2008.

Rule 2187. | Number of Copies to be Served and Filed.

(a) *General Rule*.—Unless the appellate court directs otherwise, each party shall file:

(1) 25 copies of each definitive brief and reproduced record in the Supreme Court;

(2) 15 copies of each definitive brief and five copies of each reproduced record in the Commonwealth Court;

(3) 7 copies of each definitive brief and reproduced record in the Superior Court.

Each party shall serve 2 copies of its definitive brief and reproduced record on every other party separately represented.

(b) *Advance Text of Briefs*.—If the record is being reproduced pursuant to Rule 2154(b) (large records) two copies of each brief without definitive reproduced record pagination shall be served on each party separately represented. Proof of service showing compliance with this rule (but not including the advance text of the brief) shall be filed with the Prothonotary of the Appellate Court.

(c) *In Forma Pauperis*.—Unless the appellate court directs otherwise, a party who has been permitted to proceed *in forma pauperis* shall file:

(i) 15 copies of each definitive brief with the Supreme Court;

(ii) 15 copies of each definitive brief with the Commonwealth Court;

(iii) 7 copies of each definitive brief with the Superior Court.

Each party who has been permitted to proceed in forma pauperis shall serve one copy of each definitive brief on every other party separately represented.

EXPLANATORY NOTE

The principal criticism of the new Appellate Rules has been the provisions for deferred preparation of the reproduced record, and the resulting procedure for the filing of advance copies of briefs (since the page citations to the reproduced record pages are not then available) followed by the later preparation and filing of definitive briefs with citations to the reproduced record pages. It has been argued that in the typical state court appeal the record is quite small, with the result that the pre1976 practice of reproducing the record in conjunction with the preparation of appellant's definitive brief is entirely appropriate and would ordinarily be followed if the rules did not imply a preference for the deferred method. The Committee has been persuaded by these comments, and the rules have been redrafted to imply that the deferred method is a secondary method particularly appropriate for longer records.

At the request of the appellate prothonotaries, it will no longer be necessary to file advance copies (e.g., page proof) of the brief when service is made on the opposing party, but the requirement for the filing of a proof of such service is retained.

Counsel are advised to check with the Prothonotary of the Appellate Court before filing as the number of copies required may change from time to time without formal amendment of these rules.

Official Note: See Rule 2189 for procedure in cases involving the death penalty.

Editor's Note: Note added and effective December 1, 1982; rule amended and effective April 28, 1983; further amended December 10, 1986, effective January 31, 1987; amended July 7, 1997, effective September 5, 1997; amended June 26, 2007, effective immediately.

Prothonotary's Note: Pursuant to Pa.R.A.P. 2187(a), the number of copies of the reproduced record to be filed with the Supreme Court of Pennsylvania has been reduced from 25 to 10. The number of copies of briefs to be filed remains at 25.

Charles W. Johns, Prothonotary, January 1998.

Rule 2188. | Consequence of Failure to File Briefs and Reproduced Records.

If an appellant fails to file his designation of reproduced record, brief or any required reproduced record within the time prescribed by these rules, or within the time as extended, an appellee may move for dismissal of the matter. If an appellee fails to file his brief within the time prescribed by these rules, or within the time as extended, he will not be heard at oral argument except by permission of the court.

Note: Based on former Supreme Court Rules 30 (part) and 57 (part) and former Superior Court Rules 22 (part) and 47 (part) and extends these provisions to the Commonwealth Court. Each of the Appellate Courts has established a procedure for the non-prossing of cases where there has been a failure to comply with the applicable rules. Accordingly, counsel are advised to prepare briefs and reproduced records in accordance with all rules applicable thereto (Rules 2111 through 2176) and to comply strictly with Rule 2185 (time for serving and filing briefs) and Rule 2186 (time for serving and filing reproduced record) of these rules.

Editor's Note: Amended December 11, 1979, effective December 30, 1978; amended February 27, 1980, effective March 15, 1980; further amended December 30, 1987, effective January 16, 1988.

Rule 2189. | Reproduced Record in Cases Involving the Death Penalty.

(a) *Number of Copies*.—Any provisions of these rules to the contrary notwithstanding, in all cases involving the death penalty eight copies of the entire record shall be reproduced and filed with the Prothonotary of the Supreme Court, unless the Supreme Court shall by order in a particular case direct filing of a lesser number.

(b) *Costs of Reproduction*.—Appellant, or, in cases where appellant has been permitted to proceed *in forma pauperis*, the county where the prosecution was commenced, shall bear the cost of reproduction.

(c) *Prior Rules Superseded*.—To the extent that this rule conflicts with provisions of Rule 2151(a), (b) (relating to necessity of reproduction of records); Rule 2152 (relating to content of reproduced records); Rule 2154(a) (relating to designation of contents of reproduced records); Rule 2155 (allocating costs of reproduction of records); and Rule 2187(a), (prescribing numbers of copies of reproduced record to be filed), the same are superseded.

Note: The death penalty statute, 42 Pa.C.S. §9711 provides that the Supreme Court Prothonotary must send a copy of the lower court record to the Governor after the Supreme Court affirms a sentence of death. The statute does not state who is responsible for preparing the copy. This amendment provides for preparation of the Governor's copy of the record before the record is sent to the Supreme Court.

Editor's Note: Adopted December 1, 1982, effective immediately; further amended June 28, 1985, effective July 20, 1985.

Chapter 23
Sessions and Arguments

In General

Rule 2301. | Scope of Chapter.

The provisions of this chapter are subject to any inconsistent rules on the same subject set forth in:

(1) Chapter 33 (business of the Supreme Court) with respect to matters to be heard and determined in the Supreme Court.

(2) Chapter 35 (business of the Superior Court) with respect to matters to be heard and determined in the Superior Court.

(3) Chapter 37 (business of the Commonwealth Court) with respect to matters to be heard and determined in the Commonwealth Court.

Scheduling of Argument

Rule 2311. | Submission on Briefs.

(a) *General Rule*.—By agreement of the parties a case may be submitted for decision on the briefs, but the court may direct that the case be argued.

(b) *Post Conviction Relief Cases*.—All parties shall submit post conviction relief cases on the briefs unless otherwise directed by the court on its own motion or upon application.

Official Note: Based on former Supreme Court Rules 32 and 71 and former Superior Court Rules 24 and 64. Counsel are no longer required to be present at the time the case is submitted, where the court has not required that the case be argued.

Editor's Note: Amended July 7, 1997, effective September 5, 1997.

Rule 2312. | Notice of Arguments.

The prothonotary shall give written notice to all parties of the date and place at which oral argument has been scheduled.

Note: The effect of this rule is to commit the scheduling of a case to the discretion of the court. The rule supersedes all statutory preferences and requirements purporting to regulate the scheduling of the business of an Appellate Court.

Editor's Note: Note amended December 11, 1978, effective December 30, 1978.

Rule 2313. | Advancement or Continuance.

(a) *Advancement*.—Advancement of the argument of a case, or change from the normal place of argument, shall be allowed only on application. Ordinarily advancement will be granted to the earliest open date convenient to the court, allowing about the usual time contemplated by these rules for the service and filing of the briefs and any reproduced record, unless the objection shall set forth good cause why the case should not be advanced.

(b) *Continuance*.—Continuance of the argument of a case to a later argument list than that designated in the notice from the prothonotary shall be allowed only on application. The Appellate Court or a designated judge of the Appellate Court may grant a continuance upon application of less than all parties without notice to the other parties when exigent. A continuance shall be granted only for compelling and persuasive reasons.

Official Note: Rule 3305 provides that in the Supreme Court, the prothonotary may dispose of motions generally relating to calendar control. In the Superior Court, continuances are handled by the presiding judge of the panel. In the Commonwealth Court, continuances are handled by the President Judge or the duty judge. In each appellate court, the application is to be submitted to the prothonotary and not to an individual judge of the appellate court.

Editor's Note: Rule 2313 amended December 10, 1986, effective January 31, 1987; Official note amended July 7, 1997, effective September 5, 1997.

Rule 2314. | Non-Appearance of Parties.

If appellant or the moving party is not ready to proceed when a case is called for oral argument, the matter may be dismissed as of course. The Court in its discretion may hear a party who is ready ex parte; or the court may act in such manner as under the circumstances may be deemed to be appropriate.

Note: Based on former Supreme Court Rule 30, former Superior Court Rule 22 and former Commonwealth Court Rule 72, without change in substance. Where appellant is not ready to proceed at argument and has filed no brief, the appeal will be dismissed as of course. *In re Ray's Estate*, 281 Pa. 297, 126 Atl. 751 (1924). See Rule 2188 (consequence of failure to file briefs and reproduced records).

Editor's Note: Amended February 27, 1980, effective March 15, 1980.

Rule 2315. | Time for Argument; Argument Lists.

(a) *General Rule*.—Oral argument is not a matter of right and will be permitted only to the extent necessary to enable the Appellate Court to acquire an understanding of the issues presented. The presiding judge may terminate the argument for any party notwithstanding the fact that the maximum time for argument specified in the applicable provision of these rules has not been exhausted.

(b) *Assignment to Lists*.—Argument lists shall consist of the regular list and short list. All cases listed for argument shall be placed upon the regular list unless all the parties upon praecipe to the Prothonotary of the Appellate Court request the case to be placed upon the short list.

(c) *Short List*.—The time for argument of cases on the short list shall be limited to not more than 15 minutes for each side. On days when there are cases on both the short list and on the regular list those on the short list shall be heard first and in order of listing.

(d) *Regular List*.—The time for argument of cases on the regular list shall be limited to not more than 30 minutes for each side. When there are two or more appeals from the same order, and in joint appeals, even though they raise different or unrelated questions, counsel for all the appellants will be limited to a total of not more than 30 minutes for argument, and counsel for all the appellees to a total of not more than 30 minutes. The maximum time shall be divided between or among the appellants or between or among the appellees respectively as they may decide, subject to reduction as prescribed in Subdivision (a) of this rule.

Note: Based on former Supreme Court Rules 24 and 25, former Superior Court Rule 15, and former Commonwealth Court Rule 70. The Superior Court practice of handling all cases on the short list is continued in Rule 3513 (oral arguments).

The maximum time is intended as a limit for complex cases, and counsel should prepare for argument on the assumption that less than the maximum time for argument may be allowed by the presiding judge.

Editor's Note: Amended December 11, 1978, effective December 30, 1978.

Order and Content of Argument

Rule 2321. | Order and Content of Argument.

The appellant shall open, and if permitted by the court by way of rebuttal, may conclude the argument. Counsel should not read at length from briefs, records or authorities.

Note: Based in part on former Supreme Court Rule 31 (part), and former Superior Court Rule 23 (part). This rule is intended to make clear that the appellant does not have the right at the commencement of argument to reserve a portion of this argument until after the argument for appellee.

Rule 2322. | Cross and Separate Appeals.

A cross or separate appeal shall be argued with the initial appeal at a single argument, unless the court otherwise directs. If a case involves a cross appeal, the plaintiff or moving party in the action below shall be deemed the appellant for the purposes of these rules unless the parties otherwise agree or the court otherwise directs. If two or more parties support the same argument, care shall be taken to avoid duplication of argument. Where two or more appeals, not being crossappeals, are heard together, each appellant shall open the argument on his appeal, each appellee shall reply thereto, and (if permitted by the court by way of rebuttal) not more than two appellants will be heard in conclusion.

Note: Based in part on former Supreme Court Rule 31 and former Superior Court Rule 23. See Rule 2136 (briefs in cases involving cross appeals) for inclusion of designation of appellant for purposes of this chapter in notice given by the appellate prothonotary under Rule 1934 (filing of the record).

Editor's Note: Amended May 16, 1979, effective October 1, 1979.

Rule 2323. | Physical Exhibits.

Unless otherwise provided by an appellate court's internal operating procedures, if physical exhibits other than documents are to be used at the argument, counsel shall arrange to have them placed in the court room before the court convenes on the date of the argument. After the argument counsel shall cause the exhibits to be removed from the court room unless the court otherwise directs. If exhibits are not reclaimed by counsel within a reasonable time after notice given by the prothonotary, they shall be destroyed or otherwise disposed of as the prothonotary shall think best.

Official Note: For the internal operating procedure of the Supreme Court, see 210 Pa. Code § 63.3(D)(1)(h); for the internal operating procedure of the Superior Court, see 210 Pa. Code § 65.34(C).

Editor's Note: Amended August 18, 2020, effective immediately.

Chapter 25
Post-Submission Proceedings

In General

Rule 2501. | Post-Submission Communications.

(a) *General Rule*.—After the argument of a case has been concluded or the case has been submitted, no brief,

memorandum or letter relating to the case shall be presented or submitted, either directly or indirectly, to the court or any judge thereof, except upon application or when expressly allowed at bar at the time of the argument.

(b) *Change in Status of Authorities*.—If any case or other authority relied upon in the brief of a party is expressly reversed, modified, overruled or otherwise affected so as to materially affect its status as an authoritative statement of the law for which originally cited in the jurisdiction in which it was decided, enacted or promulgated, any counsel having knowledge thereof shall file a letter, which shall not contain any argument, transmitting a copy of the slip opinion or other document wherein the authority relief upon was affected.

Note: Subdivision (a) is based on former Supreme Court Rule 34, former Superior Court Rule 26, and former Commonwealth Court Rule 73, and makes no change in substance. Subdivision (b) is new. The term "authorities" as used therein includes statutes and regulations, as well as court decisions.

Editor's Note: Amended June 23, 1976, effective July 1, 1976.

Rule 2521. | Entry of Judgment or Other Order.

(a) *General Rule*. Subject to the provisions of Rule 108 (date of entry of orders), the notation of a judgment or other order of an appellate court in the docket constitutes entry of the judgment or other order. The prothonotary of the appellate court shall prepare, sign and enter the judgment following receipt of the opinion of the court unless the opinion is accompanied by an order signed by the court, or unless the opinion directs settlement of the form of the judgment, in which event the prothonotary shall prepare, sign and enter the judgment following settlement by the court. If a judgment is rendered without an opinion or an order signed by the court, the prothonotary shall prepare, sign and enter the judgment following instruction from the court. The prothonotary shall, on the date a judgment or other order is entered, send by first class mail to all parties a copy of the opinion, if any, or of the judgment or other order if no opinion was written, and notice of the date of entry of the judgment or other order.

(b) *Notice in Death Penalty Cases*. Pursuant to Pa.R.Crim.P. 900(B), in all death penalty cases upon the Supreme Court's affirmance of the judgment of a death sentence, the prothonotary shall include in the mailing required by subdivision (a) of this Rule the following information concerning the Post Conviction Relief Act and the procedures under Chapter 9 of the Rules of Criminal Procedure. For the purposes of this notice, the term "parties" in subdivision (a) shall include the defendant, the defendant's counsel, and the attorney for the Commonwealth.

(1) A petition for post-conviction collateral relief must be filed within one year of the date the judgment becomes final, except as otherwise provided by statute.

(2) As provided in 42 Pa.C.S. §9545(b)(3), a judgment becomes final at the conclusion of direct review, which includes 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.

(3) (a) If the defendant fails to file a petition within the oneyear limit, the action may be barred. See 42 Pa.C.S. §9545(b).

(b) Any issues that could have been raised in the post-conviction proceeding, but were not, may be waived. See 42 Pa.C.S. §9544(b).

(4) Pursuant to Rule 904 (Appointment of Counsel; In Forma Pauperis), the trial judge will appoint new counsel for the purpose of post-conviction collateral review, unless:

(a) the defendant has elected to proceed pro se or waive post-conviction collateral proceedings, and the judge finds, after a colloquy on the record, that the defendant is competent and the defendant's election is knowing, intelligent and voluntary;

(b) the defendant requests continued representation by original trial counsel or direct appeal counsel, and the judge finds, after a colloquy on the record, that the petitioner's election constitutes a knowing, intelligent and voluntary waiver of a claim that counsel was ineffective; or

(c) the judge finds, after a colloquy on the record, that the defendant has engaged counsel who has entered, or will promptly enter, an appearance for the collateral review proceedings.

Official Note: See Pa.R.Crim.P. 900(B), which also includes the identical requirement in death penalty cases that notice of the information concerning the statutory time limitations for filing petitions for post-conviction collateral relief and the right to counsel enumerated in subdivision (b) of this rule be sent by the prothonotary with the order or opinion sent pursuant to subdivision (a) of this rule. Because of the importance of this notice requirement to judges, attorneys and defendants, the requirement that the Supreme Court Prothonotary mail the aforesaid notice has been included in both the Rules of Criminal Procedure and the Rules of Appellate Procedure.

DISSENTING STATEMENT

Mr. Justice Zappala Decided: March 26, 2002

I dissent from that portion of the amendment that requires the Supreme Court Prothonotary to provide notice of relevant Post Conviction Relief Act provisions to the capital defendant himself, rather than solely to defense counsel, because I believe it creates an unnecessary administrative burden.

The amendment directs the Prothonotary to include such a notice in its mailing of the copy of our Court's opinion affirming the judgment of a death sentence. Currently, however, the Prothonotary only sends a copy of our opinion to the defendant's counsel. Amending the rule to require personal notice raises legitimate concerns over locating the defendant and effectuating service. Also, because copies of the opinion are sent by first class mail, there will be no way of ensuring that the death row inmate in fact received the notice.

I believe a better approach would be to require the Prothonotary to send the notice of PCRA rights to the defendant's counsel and charge counsel with the duty of furnishing such information to the defendant. Personal notice to the defendant, himself, would only be necessary in cases where the defendant is proceeding pro se. This approach would alleviate the administrative burden placed on the Prothonotary's Office while still ensuring that the defendant receives notice of his PCRA rights.

Mr. Justice Nigro joins in this dissenting statement.

Editor's Note: Amended Dec. 11, 1978, effective Dec. 30, 1978; amended March 26, 2002, effective July 1, 2002.

Application for Reargument

Rule 2541. | Form of Papers, Number of Copies.

All papers relating to applications for reargument shall be prepared in the manner prescribed by Rule 2171 (method of reproduction) through Rule 2174 (tables of contents and citations). An original and eight copies of each application for reargument shall be filed with the Supreme Court. An original and 23 copies of each application for reargument shall be filed with the Superior Court. An original and 11 copies of each application for reargument shall be filed with Commonwealth Court.

Note: This rule and the succeeding rules on reargument practice are patterned after the practice in Rules 1111 et seq. (petition for allowance of appeal).

Counsel are advised to check with the prothonotary of the Appellate Court before filing as the number of copies required may change from time to time without formal amendment of these rules.

Editor's Note: Amended January 22, 2001, effective July 1, 2001.

Rule 2542. | Time for Application for Reargument; Manner of Filing.

(a) *Time*.

(1) *General rule*.—Except as otherwise prescribed by this rule, an application for reargument shall be filed with the prothonotary within 14 days after entry of the judgment or other order involved.

(2) *Children's fast track appeals*.—In a children's fast track appeal, an application for reargument shall be filed with the prothonotary within 7 days after entry of the judgment or other order involved.

(b) *Manner of Filing*.—If the application for reargument is transmitted to the prothonotary of the appellate court by means of first class, express, or priority United States Postal Service mail, the application shall be deemed received by the prothonotary for the purposes of Rule 121(a) (filing) on the date deposited in the United States mail as shown on a United States Postal Service Form 3817 Certificate of Mailing or other similar United States Postal Service form from which the date of deposit can be verified. The certificate of mailing or similar Postal Service form from which the date of deposit can be verified shall be cancelled by the Postal Service, shall show the docket number of the matter in the court in which reargument is sought and shall be enclosed with the application or separately mailed to the prothonotary. Upon actual receipt of the application, the prothonotary shall immediately stamp it with the date of actual receipt. That date, or the date of earlier deposit in the United States mail as prescribed in this subdivision, shall constitute the date when application was sought, which date shall be shown on the docket.

Note: Former Supreme Court Rule 64, former Superior Court Rules 55 and 58 and former Commonwealth Court Rule 113A required the application for reargument to be filed within ten days of the entry of the order. Under Rule 105(b) (enlargement of time) the time for seeking reargument may be enlarged by order, but no order of the Superior Court or of the Commonwealth Court, other than an actual grant of reargument meeting the requirements of Rule 1701(b)(3) (authority of lower court or agency after appeal), will have the effect of postponing the finality of the order involved under Rule 1113 (time for petitioning for allowance of appeal).

The 1986 amendment provided that an application shall be deemed received on the date deposited in the United States mail as shown on a United States Postal Service Form 3817 Certificate of Mailing.

The 2008 amendment provides that an application shall be deemed received on the date deposited in the United States mail as shown on a United States Postal Service Form 3817 Certificate of Mailing or other similar United States Postal Service form from which the date of deposit can be verified.

Editor's Note: Note amended December 11, 1978, effective December 30, 1978. Rule 2542 further amended December 10, 1986, effective January 31, 1987; amended January 13, 2009, effective as to all appeals filed 60 days or more after adoption.

Rule 2543. | Considerations Governing Allowance of Reargument.

Reargument before an Appellate Court is not a matter of right, but of sound judicial discretion, and reargument will be allowed only when there are compelling reasons therefor. An application for reargument is not permitted from a final order of an intermediate appellate court under: (1) the Pennsylvania Election Code; or (2) the Local Government Unit Debt Act or any similar statute relating to the authorization of public debt.

Official Note: The following, while neither controlling nor fully measuring the discretion of the court, indicate the character of the reasons which will be considered:

(1) Where the decision is by a panel of the court and it appears that the decision may be inconsistent with a decision of a different panel of the same court on the same subject.

(2) Where the court has overlooked or misapprehended a fact of record material to the outcome of the case.

(3) Where the court has overlooked or misapprehended (as by misquotation of text or misstatement of result) a controlling or directly relevant authority.

(4) Where a controlling or directly relevant authority relied upon by the court has been expressly reversed, modified, overruled or otherwise materially affected during the pendency of the matter sub judice, and no notice thereof was given to the court pursuant to Rule 2501(b) (change in status of authorities).

The 1997 amendment clarifies that applications for reargument are not to be filed in matters arising under the Pennsylvania Election Code, the Act of June 3, 1937, P.L. 1333, 25 P.S. §§26003591, or the Local Government Unit Debt Act, 53 Pa.C.S. §§80018271. Matters involving elections and authorization of public debt require expeditious treatment. See, e.g., Rule 1113(c).

Editor's Note: Amended July 7, 1997, effective September 5, 1997.

Rule 2544. | Contents of Application for Reargument.

(a) *General Rule*.—The application for reargument need not be set forth in numbered paragraphs in the manner of a pleading, and shall contain the following (which shall, insofar as practicable, be set forth in the order stated):

(1) A reference to the order in question, or the portions thereof sought to be reargued, and the date of its entry into the Appellate Court. If the order is voluminous, it may, if more convenient, be appended to the application.

(2) A specification with particularity of the points of law or fact supposed to have been overlooked or misapprehended by the court.

(3) A concise statement of the reasons relied upon for allowance of reargument. See Pa.R.A.P. 2543 (considerations governing allowance of reargument).

(4) There shall be appended to the application a copy of any opinions delivered relating to the order with respect to which reargument is sought, and, if reference thereto is necessary to ascertain the grounds of the application for reargument, slip opinions in related cases. If whatever is required by this paragraph to be appended to the application is voluminous, it may, if more convenient, be separately presented.

(b) *No Supporting Brief*.—All contentions in support of an application for reargument shall be set forth in the body of the application as prescribed by paragraph (a) (3) of this rule. No separate brief in support of an application for reargument will be received, and the Prothonotary of the Appellate Court will refuse to file any application for reargument to which is annexed or appended any supporting brief.

(c) *Length*.—Except by permission of the court, an application for reargument shall not exceed 3,000 words, exclusive of pages containing table of contents, table of citations and any addendum containing opinions, etc., or any other similar supplementary matter provided for by this rule.

(d) *Certificate of compliance*.

(1) *Word count.*—An application for reargument that does not exceed 8 pages when produced on a word processor or typewriter shall be deemed to meet the limitation in paragraph (c) of this rule. In all other cases, the attorney or unrepresented filing party shall include a certification that the application for reargument complies with the word count limits. The certificate may be based on the word count of the word processing system used to prepare the application for reargument.

(2) *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania.*—An application for reargument shall contain the certificate of compliance required by Pa.R.A.P. 127.

(e) *Essential Requisites of Application*. —The failure of an applicant to present with accuracy, brevity, and clearness whatever is essential to a ready and adequate understanding of the points requiring reconsideration will be a sufficient reason for denying the application.

(f) *Multiple Applicants*.—Where permitted by Pa.R.A.P. 512 (joint appeals) a single application for reargument may be filed.

Editor's Note: Amended December 11, 1978, effective December 30, 1978; amended September 22, 2006, effective immediately; amended March 27, 2013, effective to all appeals and petitions for review filed 60 days after adoption; amended January 5, 2018, effective January 6, 2018; amended June 1, 2018, effective July 1, 2018.

Rule 2545. | Answer to Application for Reargument.

(a) *General rule*.—Except as otherwise prescribed by this rule, within 14 days after service of an application for reargument, an adverse party may file an answer. The answer shall be deemed filed on the date of mailing if first class, express, or priority United States Postal Service mail is utilized. The answer need not be set forth in numbered paragraphs in the manner of a pleading. The answer shall set forth any procedural, substantive or other argument or ground why the court should not grant reargument. The answer shall contain the certificate of compliance required by Pa.R.A.P. 127. No separate motion to dismiss an application for reargument will be received. A party entitled to file an answer under this rule who does not intend to do so shall, within the time fixed by these rules for filing an answer, file a letter stating that an answer to the application for reargument will not be filed. The failure to file an answer will not be construed as concurrence in the request for reargument.

(b) *Children's fast track appeals*.—In a children's fast track appeal, within 7 days after service of an application for reargument, an adverse party may file an answer. The answer shall be deemed filed on the date of mailing if first class, express, or priority United States Postal Service mail is utilized. The answer need not be set forth in numbered paragraphs in the manner of a pleading. The answer shall set forth any procedural, substantive or other argument or ground why the court should not grant reargument. The answer shall contain the certificate of compliance required by Pa.R.A.P. 127. No separate motion to dismiss an application for reargument will be received. A party entitled to file an answer under this rule who does not intend to do so shall, within the time fixed by these rules for filing an answer, file a letter stating that an answer to the application for reargument will not be filed. The failure to file an answer will not be construed as concurrence in the request for reargument.

Editor's Note: Amended December 11, 1978, effective December 30, 1978; amended May 16, 1979, effective October 1, 1979; amended February 27, 1980, effective March 15, 1980; second paragraph of note rescinded April 26, 1982, effective September 13, 1982 (120 days after publication in the *Pennsylvania Bulletin*). Note rescinded December 10, 1986. Rule amended December 10, 1986, effective January 31, 1987; amended September 10, 2008, effective December 1, 2008; amended January 13, 2009, effective as to all appeals filed 60 days or more after adoption; amended January 5, 2018, effective January 6, 2018.

Rule 2546. | Transmission of Papers to and Action by the Court.

(a) *Transmission of Papers*.— Upon receipt of the application for reargument and any answers in opposition, such papers shall be distributed by the prothonotary to the court for its consideration.

(b) *Action by Court*.— If an application for reargument is granted the court may restore the matter to the calendar for reargument, make final disposition of the matter without further oral argument or take such other action as may be deemed appropriate under the circumstances of the particular case. Reargument may be allowed limited to one or more of the issues presented in the application, in which case the order allowing the reargument shall specify the issue or issues which will be considered by the court.

Official Note: See Rule 2140 regarding the filing and content of briefs following the grant of reargument or reconsideration.

Where there is a deemed denial of an application for reargument, a party seeking a further appeal must follow subdivision (d) of Rule 301 and praecipe for entry of the deemed denial on the docket, if the prothonotary has failed to do so.

Editor's Note: Amended May 16, 1979, effective October 1, 1979; further amended December 30, 1987, effective January 16, 1988; official note adopted July 7, 1997, effective September 5, 1997.

Rule 2547. | Subsequent and Untimely Applications.

Second or subsequent applications for reargument, and applications for reargument which are out of time under these rules, will not be received.

Remand of Record

Rule 2571. | Content of Remanded Record.

(a) *General Rule*.—The record, as remanded to the lower court or other tribunal, shall consist of the record as certified to the Appellate Court and, unless the Appellate Court shall otherwise order, a certified copy of:

(1) The judgment of the Appellate Court.

(2) The opinion of the Appellate Court, if one has been filed.

(3) Any direction as to costs or damages entered in the Appellate Court pursuant to Chapter 27 (fees and costs in Appellate Courts and on appeal).

(4) Any papers filed in the Appellate Court evidencing denial of review of the judgment by the Supreme Court of Pennsylvania or the Supreme Court of the United States.

(5) In a criminal matter, a copy of the docket entry under Rule 2572(e) (docket entry of remand).

(b) *Briefs*—The Prothonotary of an Appellate Court shall not forward any brief in a matter to the lower court either prior to or in connection with the remand of the record. The lower court on remand may direct any party to the appeal to file of record in the lower court and serve on the Trial Judge a copy of any brief filed in the appeal.

(c) *Writs Abolished*.—The procedendo, the venire for new trial, and other similar writs of remittitur are abolished.

Note: Paragraph (a)(2) of this rule is based upon former Supreme Court Rule 68, former Superior Court Rule 59 and former Commonwealth Court Rule 115B. Rule 2591(b) (enforcement of Appellate Court orders) authorizes the entry of specific enforcement orders when necessary or appropriate.

Editor's Note: Note amended December 11, 1978, effective December 30, 1978; amended February 27, 1980, effective March 15, 1980; amended September 10, 2008, effective December 1, 2008.

EXPLANATORY COMMENT—1976

In order that the 120 day retrial provision of Pa.R.Crim.P. 600 may be applied, and at the request of the Criminal Procedural Rules Committee, these rules have been added to require that the date of remand of the record from the Appellate Court be noted on the appellate docket and a notation of that date by physically incorporated into the remanded record. The time for retrial could then run from the date of remand.

The Appellate Court no longer will routinely provide the lower Court with copies of the paperbooks, but the lower court may require that they be furnished to the court on remand.

Rule 2572. | Time for Remand of Record.

(a) *General Rule*.—Except as provided in paragraphs (b) or (c), the record shall be remanded after the entry of the judgment or other final order of the appellate court possessed of the record.

(1) *Supreme Court orders*.—The time for the remand of the record following orders of the Supreme Court shall be

(i) Seven days after expiration of the time for filing an appeal or petition for writ of *certiorari* to the United States Supreme Court in cases in which the death penalty has been imposed, and

(ii) 14 days in all other cases.

(2) *Intermediate Appellate Court orders*.—The record shall be remanded to the court or other government unit from which it was certified at the expiration of 30 days after the entry of the judgment or other final order of the appellate court possessed of the record.

(b) *Effect of pending post-decision applications on remand.*— Remand is stayed until disposition of: (1) an application for reargument; (2) any other application affecting the order; or (3) a petition for allowance of appeal from the order. The court possessed of the record shall remand 30 days after either the entry of a final order or the disposition of all post-decision applications, whichever is later.

(c) *Stay of remand pending United States Supreme Court Review*.—Upon application, the Supreme Court of Pennsylvania may stay remand of the record pending review in the Supreme Court of the United States. The Supreme Court Prothonotary shall notify the court having possession of the record of the application and of disposition of the application. The stay shall not exceed 90 days unless the period is extended for cause shown. If a stay is granted and the Clerk of the Supreme Court of the United States notifies the Supreme Court of Pennsylvania that the party that obtained the stay has filed a jurisdictional statement or a petition for a writ of *certiorari*, the stay shall continue until final disposition by the Supreme Court of the United States. Upon the filing in the Supreme Court of Pennsylvania of a copy of an order of the Supreme Court of the United States dismissing the appeal or denying the petition for a writ of *certiorari*, the record shall be remanded immediately.

(d) *Security*.—Appropriate security in an adequate amount may be required as a condition to the grant or continuance of a stay of remand of the record.

(e) *Docket entry of remand*.—The prothonotary of the appellate court shall note on the docket the date on which the record is remanded and give written notice to all parties of the date of remand.

Official Note: This rule keeps the movement of the record to a minimum and decreases the risks associated with the physical movement of the record. The 2017 amendment clarifies that an application for stay of the remand of the record pending United States Supreme Court review should be filed in the Pennsylvania Supreme Court.

Editor's Note: Note amended December 11, 1978, effective December 30, 1978; further amended June 28, 1985, effective July 20, 1985; official note amended January 13, 2009, effective as to all appeals filed 60 days or more after adoption; amended January 29, 2013, effective March 1, 2013; amended February 14, 2017, effective April 1, 2017.

Rule 2573. | Direct Remand to Court of First Instance.

Unless otherwise ordered by the Appellate Court in which the matter is finally determined, whenever the final order in the matter does not contain any direction for further proceedings in an intermediate court in which the matter was previously pending, the Prothonotary of the Appellate Court shall remand the record directly to:

(1) The lower court specified in the final order of the Appellate Court, if a direction for further proceedings in such lower court is contained in such final order.

(2) The court of first instance whose order or other determination was affirmed or otherwise permitted to remain unaffected by such final order.

The Prothonotary of the Appellate Court shall give written notice in person or by first class mail to the clerk of each intermediate court below through which the record would otherwise be remanded and to each party of the direct remand pursuant to this rule.

Note: The term "intermediate court" as used in this rule includes not only the Superior and the Commonwealth Courts, but also the courts of common pleas, e.g. in matters where the Court of Common Pleas reviews on the record an order of the Philadelphia Municipal Court.

Editor's Note: Note amended December 11, 1978, effective December 30, 1978.

Rule 2591. | Proceedings on Remand.

(a) *General Rule*.—On remand of the record the court or other government unit below shall proceed in accordance with the judgment or other order of the Appellate Court and, except as otherwise provided in such order, Rule 1701(a) (effect of appeals generally) shall no longer be applicable to the matter.

(b) *Enforcement of Appellate Court Orders*.—At any time, upon its own motion or upon application, an Appellate Court may issue any appropriate order requiring obedience to or otherwise enforcing its judgment or other order.

Note: 42 Pa.C.S. §707 (lien of judgments for money) provides that any judgment or other order of the Supreme Court, the Superior Court or the Commonwealth Court for the payment of money shall not be a lien upon real property in any county until it is entered of record in the office of the Clerk of the Court of Common Pleas of the county where the property is situated, or in the office of the Clerk of the branch of the Court of Common Pleas embracing such county, in the same manner as a judgment transferred from the Court of Common Pleas of another county.

42 Pa.C.S. §5105(f) (effect of reversal or modification) provides that the reversal or modification of any order of a court in a matter in which the court has jurisdiction of the sale, mortgage, exchange or conveyance of real or personal property shall not divest any estate or interest acquired thereunder by a person not a party to the appeal. See also 20 Pa.C.S. §793 (effect of appeal), which is expressly saved from repeal by Section 2(i) of the Judiciary Act Repealer Act (42 P.S. §20002(i)).

Editor's Note: Note added December 11, 1978, effective December 30, 1978.

Chapter 27 Fees and Costs in Appellate Courts and on Appeal

Fees

Rule 2701. | Payment of Fees Required.

(a) *General Rule*.—A person upon filing any paper shall pay any fee therefor prescribed by law.

(b) *Appeals by Allowance or Permission, Petitions for Review*.—The fee for filing a petition for allowance of appeal, a petition for permission to appeal or a petition for review shall, except as otherwise required by statute, be the same as the fee payable under Rule 907 (docketing of appeal). Where a petition for allowance of appeal or a petition for permission to appeal has been filed under these rules and is granted, no additional fee, except as otherwise required by statute, shall be payable upon docketing the appeal in the Appellate Court.

(c) *Temporary Fee for Filing Notice of Appeal*.—Until otherwise provided by law, the clerk upon filing a notice of appeal under Rule 905 (filing of notice of appeal) shall

be entitled to receive an amount equal to the fee otherwise payable, if any, upon the filing of a writ issued out of the Supreme Court of Pennsylvania evidencing the fact that an appeal has been taken to the Supreme Court.

Note: Former Supreme Court Rule 70 (first sentence), former Superior Court Rule 61 and former Commonwealth Court Rule 117 (first sentence) literally required the payment of the fee in advance of filing. In view of the filing by mail procedures instituted by these rules, a limited opportunity is afforded to permit the prompt correction of the failure to include a check with the letter of transmittal or the failure to draw the check in the correct amount.

A party who intends to proceed in forma pauperis should transmit a copy of his application under Rule 552 (application to lower court for leave to appeal in forma pauperis) to the appellate prothonotary so that Rule 554(b) (appeal taken before application acted on) will operate to defer the requirement for fees in the Appellate Court.

The fees in Appellate Courts are temporarily continued by Section 24(a) of the Judiciary Act of 1976, act of July 9, 1976 (P.L. 586, No. 142), by reference to the former provisions of law, which were as follows: The fees of the Commonwealth Court were prescribed by

204 Pa. Code §155.203. The docketing fee in the Supreme and Superior Court was fixed at $12 by the act of May 19, 1897 (P.L. 67, No. 53), §3 (12 P.S. §1135), and the fee for issuing writs for the enforcement of the duty to file the records in such courts and the fee for filing a petition for allowance of appeal from the Superior Court was fixed by §18 (second and third sentences) of the act (12 P.S. §1156) at §3.

Editor's Note: Note amended December 11, 1978, effective December 30, 1978, rule amended May 16, 1979, effective October 1, 1979.

EXPLANATORY COMMENT—1979

Language implying that the clerk or prothonotary of a court as a matter of course may extend credit for a filing fee is deleted. Such credit may be extended in extraordinary circumstances, however, as was the practice prior to 1976.

Rule 2702. | Multiple Parties.

Where a joint notice of appeal is filed in the lower court, or docketed in the Appellate Court, or a joint petition for allowance of appeal is filed under Rule 512 (joint appeals), or a joint petition for review is filed under Rule 512 or otherwise, or a joint petition for permission to appeal is filed under Rule 1312(e) (multiple petitioners), or any other filing under these rules is effected jointly as permitted by these rules, only one fee is payable, regardless of the number of parties to the filing.

Note: This rule abolishes the number of appellants times number of appellees practice heretofore followed in the computation of appellate filing fees.

Rule 2703. | Erroneously Filed Cases.

Upon a transfer under Rule 751 (transfer of erroneously filed cases) the appellant, petitioner or plaintiff shall pay as costs of transfer to the clerk of the transferee court within seven days after service of an invoice therefor the filing fee for the appeal or other matter in that court.

Costs

Rule 2741. | Parties Entitled to Costs.

Except as otherwise provided by law:

(1) If an appeal or other matter is dismissed, costs shall be taxed against the appellant or other moving party in the Appellate Court unless otherwise agreed by the parties or ordered by the court.

(2) If an order is affirmed, costs shall be taxed against the appellant unless otherwise ordered.

(3) If an order is reversed, modified or vacated with a direction for a new trial, costs shall be taxed against the appellee, unless otherwise ordered, or unless the appellee causes the matter to be retired below within one year after the remand of the record, in which event the liability for costs shall follow the final judgment on such retrial unless otherwise ordered.

(4) If an order is reversed, without a direction for a new trial, costs shall be taxed against the appellee unless otherwise ordered, or unless the lower court shall determine that the matter is not finally closed between the parties, and the appellee shall bring a new action against the appellant within 30 days after such determination, in which event the liability for costs shall follow the final judgment in such second or other matter relating to the same cause of action.

(5) If an order is affirmed or reversed in part, or is vacated, costs shall be allowed only as ordered by the court.

Note: 42 Pa.C.S. §1726 (establishment of taxable costs) authorizes general rules prescribing the standards governing the imposition and taxation of costs, including the items which constitute taxable costs, the litigants who shall bear such costs, and the discretion vested in the courts to modify the amount and responsibility for costs in specific matters; and provides that all system and related personnel shall be bound by such general rules and that in prescribing such rules the governing authority shall be guided by the following considerations, among others:

(1) Attorney's fees are not an item of taxable costs except to the extent authorized by 42 Pa.C.S. §2503 (relating to right of participants to receive counsel fees).

(2) The prevailing party should recover his costs from the unsuccessful litigant except where the:

(i) Costs relate to the existence, possession or disposition of a fund and the costs should be borne by the fund.

(ii) Question involved is a public question or where the applicable law is uncertain and the purpose of the litigants is primarily to clarify the law.

(iii) Application of the rule would work substantial injustice.

(3) The imposition of actual costs or a multiple thereof may be used as a penalty for violation of general rules or rules of court.

The references in the rule to the appellant and appellee are intended to include their privies and successors in interest. Former Supreme Court Rule 70 placed the costs on appellant, unless otherwise ordered by the court, where a judgment of non pros was entered.

Editor's Note: Note amended December 11, 1978, effective December 30, 1978. Note further amended May 11, 1993, effective immediately.

Rule 2742. | Costs of Briefs and Reproduced Records.

The cost of printing or otherwise producing necessary copies of briefs and reproduced records, including copies of the original record reproduced under Rule 2151(a) (consideration of matters on the original record without the necessity of reproduction) shall be taxable, except as otherwise ordered pursuant to Rule 2155 (allocation of cost of reproduced record) at rates not higher than those generally charged for such work in this Commonwealth.

Note: See note to Rule 2741 (parties entitled to costs). In the event of a dispute as to the level of rates generally charged for printing or other reproduction, the issue will be resolved by the lower court under Rule 2761 (insertion of costs in remanded record and taxation of costs).

Editor's Note: Amended December 11, 1978, effective December 30, 1978; amended May 16, 1979, effective October 1, 1979; renamed September 10, 2008, effective December 1, 2008.

Other Taxable Costs

Rule 2743. | Other Taxable Costs.

(a) *General Rule*.—Except as otherwise provided by law, taxable costs on appeal shall include:

(1) Fees in the Appellate Court paid in the matter pursuant to Rule 2701 (payment of fees required).

(2) In cases in which an evidentiary record is made before the Appellate Court, other than by the filing of a stipulation of facts, the cost of the original transcript as determined in the same manner as the costs of transcripts in the courts of common pleas are determined.

(3) Costs authorized by or pursuant to this chapter.

(b) *Exceptions*.—The filing fees in the transferor court in a matter transferred under Rule 751 (transfer of erroneously filed cases) and the additional filing fee in a matter transferred under Rule 905A (filing of notice of appeal) shall not be taxable.

Note: See note to Rule 2741 (parties entitled to costs). Subdivision (a)(2) is based on former Commonwealth Court Rule 117.

Editor's Note: Amended December 11, 1978, effective December 30, 1978; amended February 27, 1980, effective March 15, 1980, Rule 2743(b) amended April 26, 1982, effective May 15, 1982 (upon publication in the *Pennsylvania Bulletin*).

Rule 2744. | Further Costs. Counsel Fees. Damages for Delay.

In addition to other costs allowable by general rule or Act of Assembly, an Appellate Court may award as further costs damages as may be just, including

(1) a reasonable counsel fee and

(2) damages for delay at the rate of six percent per annum in addition to legal interest, if it determines that an appeal is frivolous or taken solely for delay or that the conduct of the participant against whom costs are to be imposed is dilatory, obdurate or vexatious. The Appellate Court may remand the case to the Trial Court to determine the amount of damages authorized by this rule.

Note: See 42 Pa.C.S. §1726(1) and (3) relating to establishment of taxable costs and 42 Pa.C.S. §2503(6), (7) and (9) relating to the right of participants to receive counsel fees.

Some concern was expressed that the rule should contain an exception for criminal cases in which the defendant may have a constitutional right to appeal, whether frivolous or not. It is felt that such right will be taken into consideration, when appropriate, and that such a blanket exception should not be written into the rule.

Editor's Note: Amended December 11, 1978, effective December 30, 1978; further amended June 28, 1985, effective July 20, 1985.

Rule 2751. | Applications for Further Costs and Damages.

An application for further costs and damages must be made before the record is remanded, unless the Appellate Court, for cause shown, shall otherwise direct. Such an application must set forth specifically the reasons why it should be granted, and shall be accompanied by the opinion of the court and the briefs used therein. An application for further costs and damages shall contain the certificate of compliance required by Pa.R.A.P. 127.

Official Note: Based on former Supreme Court Rule 65 and former Superior Court Rule 56, and makes no change in substance.

Editor's Note: Amended January 5, 2018, effective January 6, 2018.

Rule 2761. | Insertion of Costs in Remanded Record and Taxation of Costs.

Where specific costs are awarded in an Appellate Court under Rule 2155 (allocation of costs of reproduced record) or Rule 2744 (damages for delay) or otherwise, the Prothonotary of the Appellate Court shall prepare and certify an itemized statement of any such costs taxed in the Appellate Court for inclusion in the remanded record. If the record has been remanded before final determination of such costs, the statement, or any amendment thereof, may be added to the remanded record at any time upon request to the Prothonotary of the Appellate Court. Unless otherwise ordered, all other costs on appeal, including any costs awarded by the Appellate Court under Rule 2155 or Rule 2744 in terms of a fraction or percentage of any amount which has not yet been taxed of record, shall be taxed in the lower court.

Editor's Note: Adopted May 16, 1979, effective October 1, 1979.

Rule 2762. | Procedure for Collection of Costs in Appellate Courts and on Appeal.

(a) *General Rule*.—Costs on appeal from a lower court shall be collected in the same manner as costs taxed in such court are collected.

(b) *Commonwealth Court*.—Costs in the Commonwealth Court which are not collectable under Subdivision (a) of

this rule shall be entered by the Prothonotary of the Commonwealth Court as a judgment against the party liable therefor and shall be collected in the same manner as other judgments of the Commonwealth Court are enforced.

Note: The right to costs in the Commonwealth Court under Subdivision (b) is lost unless a bill of costs is filed within the time prescribed by Rule 3751 (taxation of costs).

Editor's Note: Amended December 11, 1978, effective December 30, 1978, rule title amended and note added April 26, 1982, effective September 13, 1982 (120 days after publication in the *Pennsylvania Bulletin*).

Rule 2771. | Costs on Appeal Taxable in the Lower Court.

Costs incurred in the preparation and transmission of the record, the costs of the notes of testimony or other transcript, if necessary to a determination of the appeal, the premiums paid for cost of supersedeas bonds or other bonds to preserve rights pending appeal, and the fee for filing the notice of appeal, shall be taxed in the lower court as costs of the appeal in favor of the party entitled to costs under this chapter.

ARTICLE III
MISCELLANEOUS PROVISIONS

Chapter 31
Business of the Courts Generally

In General

Rule 3101. | Appellate Courts Always Open.

An Appellate Court shall be deemed always open for the purpose of filing any proper paper, of issuing and returning process and of making applications and orders.

Note: Based on 42 Pa.C.S. §324 (sessions and terms of courts) which provides that each court shall always be open for the transaction of judicial business and the court or any judge shall have the same power in vacation to issue injunctions, grant stays and enter other orders as they may have while the court is in session.

Editor's Note: Note amended December 11, 1978, effective December 30, 1978.

Rule 3102. | Quorum and Action.

(a) *Quorum*. A majority of the Supreme Court and, except as otherwise prescribed in this rule, a panel of three judges of any other appellate court shall be a quorum of the court.

(b) *Absence from panel*. If less than three members of a panel attend a session of the panel, another judge or judges shall be designated to complete the panel if reasonably possible, and if it is not reasonably possible to do so the presiding judge with the consent of the parties present may direct that the matter be heard and determined by a panel of two judges. If the two judges who so heard the matter are unable to agree upon the disposition thereof, the president judge of the court may direct either that the matter be submitted on the briefs to a third judge, or that the matter be reargued before a full panel.

(c) *Commonwealth Court evidentiary hearing and election matters*. A single judge of the Commonwealth shall be a quorum of the Court for the purposes of hearing and determining:

(1) Any matter which under the applicable law may be determined in whole or in part upon the record made before the court.

(2) Any election matter.

(3) Any enforcement proceeding under Rule 3761 (relating to enforcement proceedings).

Editor's Note: Amended January 28, 2002, effective immediately; amended September 10, 2008, effective December 1, 2008.

Rule 3103. | Court En Banc.

(a) *Composition*.

(1) *Superior Court*. The court en banc shall consist of no more than nine active members of the court.

(2) *Commonwealth Court*. The court en banc shall consist of seven active members of the court.

Insofar as practicable, the President Judge shall assign members of the court to en banc panels in such a fashion that each member sits substantially the same number of times with each other member.

(b) *Precedent*.—An opinion of the court en banc is binding on any subsequent panel of the Appellate Court in which the decision was rendered.

Note: Based on 42 Pa.C.S. §326(d) (Court en banc), which provides that the composition of a court en banc shall be specified by general rules.

Editor's Note: Adopted May 11, 1981, effective May 30, 1981 (upon publication in the *Pennsylvania Bulletin*); amended June 13, 1984, effective July 1, 1984.

Rule 3111. | Prothonotary.

Each Appellate Court shall appoint a Clerk of the Court, who shall be known as the "Prothonotary of (the respective) Court of Pennsylvania." The prothonotary shall serve at the pleasure of the court.

Rule 3112. | Office of the Prothonotary.

There shall be an office of the prothonotary of each Appellate Court, which shall be known as the "Office of the Prothonotary of (the respective) Court of Pennsylvania," which shall be the office of the prothonotary of the court, and which shall be maintained at such place or places as may be specified by rule of court. It shall be supervised by the prothonotary of the court who shall, either personally, by deputy, by other duly authorized personnel of the system, or by duly authorized agent, exercise the power and perform the duties by law vested in and imposed upon the prothonotary or the office of the prothonotary of the court.

Rule 3113. | Docket and Records.

The prothonotary shall keep, in conformity with law, a docket of matters pending and decided in the court, and such other records as may be required by law or necessary for the operation of the court.

Rule 3114. | Original Papers.

No original record or paper shall be taken from its appropriate place among the records or files of an Appellate Court, without a written order from a judge of the court, or from the prothonotary or other authorized officer, and the giving of a written receipt therefor. If such order is given, the officer permitting the record or paper to be removed shall see that it is returned immediately on the expiration of the time specified in the order, or within one day after it is taken out, if no time is specified therein.

Note: Based on former Supreme Court Rule 69, former Superior Court Rule 60 and former Commonwealth Court Rule 116, and makes no change in substance.

Rule 3115. | Inactive Matters.

(a) *General Rule*.—The prothonotary shall list for general call at the first session held after September 1 of each year all matters which appear to be inactive for an unreasonable period of time and shall give notice thereof to the parties as provided by Rule 1901(c) of the Pennsylvania Rules of Judicial Administration (prompt disposition of matters; termination of inactive cases). If no action is taken or no written objection is docketed in the matter prior to the commencement of the general call, the prothonotary shall strike the matter from the list and enter an order as of course marking the matter "Terminated Under Pa.R.J.A. 1901." If no good cause for continuing a matter is shown at the general call, an appropriate order shall be entered quashing or non-prossing for want of prosecution or marking the matter "Terminated Under Pa.R.J.A. 1901." Thereafter the record shall be remanded as prescribed by these rules.

(b) *Proceedings in Lower Court*.—A termination under this rule terminates proceedings in the Appellate Court, but does not affect the status of the matter in the lower court, except that the period during which the matter was inactive in the Appellate Court may be considered by the lower court in making its own determination in the matter under Rule 1901 of the Pennsylvania Rules of Judicial Administration.

Note: Based on Pa.R.J.A. 1901 and former Commonwealth Court Rule 3.

Editor's Note: Amended December 11, 1978, effective December 30, 1978.

Attorneys and Counselors

Rule 3121. | Practice of Law by Staff; Qualifications.

A. Neither the prothonotary, deputy prothonotary, chief clerk, nor any person employed in the Office of the Prothonotary, nor any personal staff employed by an appellate court or by any judge thereof, shall practice before any court or tribunal of this Commonwealth. Nor shall any such person otherwise practice law. Such a person may act *pro se*, and may perform routine legal work incident to the management of the personal affairs of the person or a member of the person's family, as long as the work is performed without compensation and does not involve the entry of an appearance on behalf of the family member in a court or other tribunal. Such limited practice is also subject to the disclosure of employment within the Unified Judicial System to the parties and the court in which the employee represents himself or herself.

This rule does not apply to *pro bono* activities, provided that they are performed without compensation; do not involve the entry of an appearance before any court or tribunal; do not involve a matter of public controversy, an issue likely to come before the person's court, or litigation against federal, state or local government; and are undertaken after written approval of the Justice or Judge for whom the person is employed and the Chief Justice, or the President Judge of the Superior Court or Commonwealth Court, depending on which court employs the person.

B. Staff attorneys must either be members of the Bar of Pennsylvania, or must have received without exception an earned Bachelor of Laws or Juris Doctor degree from a law school that was an accredited law school at the time the staff attorney matriculated or graduated.

Official Note: Based on former Supreme Court Rule 6, former Superior Court Rule 4 and former Commonwealth Court Rule 60. See also 42 Pa.C.S. § 2502 (certain persons not to appear as counsel). The term "personal staff" includes, for example, a staff attorney, law clerk, administrative assistant, secretary or tipstaff. See 42 Pa.C.S. § 102 (defining "personal staff").

Editor's Note: Note amended December 11, 1978, effective December 30, 1978; Rule and *Official Note* amended August 21, 2013, effective immediately.

Rule 3122. | Oral Agreements.

Oral agreements between attorneys will not be considered or recognized by an Appellate Court if disputed unless made in open court concerning a matter then under consideration.

Note: Based on former Supreme Court Rule 18, former Superior Court Rule 8 and former Commonwealth Court Rule 61, and makes no change in substance except to omit reference to written notice to attorneys, which is now covered by Rule 121 (filing and service).

Paperbooks

Rule 3191. | Distribution of Briefs.

The following entities shall be entitled to receive distribution of briefs filed in an Appellate Court:

(1) The State Library (two copies).

(2) The Jenkins Law Library of Philadelphia.

(3) The Allegheny County Law Library.

(4) The University of Pennsylvania Law Library.

(5) The Dickinson Law School Library.

(6) The University of Pittsburgh Law Library.

(7) The Harvard Law School.

(8) The Duquesne University Law Library.

(9) The Temple Law School Library.

(10) The Villanova University Law School Library.

(11) The Delaware Law School of Widener College Law Library.

(12) *The Legal Intelligencer*.

(13) The West Publishing Company.

Note: Based on former Supreme Court Rule 59 and former Superior Court Rule 49. The whole subject of the distribution of briefs to the court and others is an administrative matter, but the existence of the rule will continue for free distribution of the Pennsylvania Consolidated Statutes, the

Pennsylvania Code, the *Pennsylvania Bulletin* and local government codes to the entities named in the rule by reason of 1 Pa.C.S. §501 (publication and distribution), 45 Pa.C.S. §730(3) (pricing and distribution of published documents) and act of May 29, 1935 (P.L. 244, No. 102), §2.1 (b)(4) (46 P.S. §431.2a(b) (4)).

Editor's Note: Amended May 16, 1979, effective October 1, 1979; amended and renamed September 10, 2008, effective December 1, 2008.

Chapter 33
Business of the Supreme Court

In General

Rule 3301. | Office of the Prothonotary.

The prothonotary shall maintain offices in the cities of Philadelphia, Pittsburgh and Harrisburg. All matters within the jurisdiction of the court may be initially filed in any such office. The prothonotary may direct the parties to file documents in a specified office. A document thereafter filed in an improper office shall be transferred to the proper office as if pursuant to Rule 751 (transfer of erroneously filed cases). See also Rule 2703 (erroneously filed cases).

Note: The amendments to this chapter abolish the division of the Commonwealth into Eastern, Middle and Western Districts and the related January, May and March Term system. The present offices will continue to exist and will be available for filings. The distribution of cases among the offices will be an administrative matter. If the prothonotary determines to warehouse a case file in Philadelphia, for example, the prothonotary may direct the lower court to send the record and related papers to, and the parties to file their briefs in, Philadelphia. The references in the rule to Rules 751 and 2703 are intended by analogy to permit the prothonotary to enforce this requirement by non-recoverable costs in an amount equal to the filing fee for an appeal. Similarly, the scheduling of the location of oral argument will be an administrative decision, taken after consideration of such factors as the length of the lists in the respective cities, the age of the case, the preferences of the parties, etc.

Former Rule 3304 (form of papers) is now covered by Rule 124(a) (size and other physical characteristics).

Editor's Note: Former rule rescinded and new rule adopted May 16, 1979, effective October 1, 1979; Note amended May 24, 1979, effective October 15, 1979; rule amended February 27, 1980, effective March 15, 1980.

Rule 3302. | Seal of the Supreme Court.

The seal of the Supreme Court shall be in the following form:

See Forms Index

Note: 42 Pa.C.S. §322 (seal) provides that each court of this Commonwealth shall have a seal engraved with the name of the court and such other inscription as may be specified by general rule or rule of court, and that a facsimile or preprinted seal may be used for all purposes in lieu of the original seal.

Editor's Note: Former rule rescinded and new rule adopted May 16, 1979, effective October 1, 1979.

Rule 3304. | Hybrid Representation.

Where a litigant is represented by an attorney before the court and the litigant submits for filing a petition, motion, brief or any other type of pleading in the matter, it shall not be docketed but forwarded to counsel of record.

Official Note: The present rule is premised on *Commonwealth v. Ellis*, 534 Pa. 176, 626 A.2d 1137 (1993) and is to be distinguished from litigants who are pro se in litigation.

Explanatory Note: Original Rule 3304 was rescinded May 24, 1979, effective 120 days after June 16, 1979. The original rule, which contained the Supreme Court "short paper" requirement, was rescinded as supplied by the revised and expanded Rule 124.

Editor's Note: Promulgated June 22, 1995, effective immediately.

Rule 3305. | Administrative Motions.

The prothonotary, in the first instance, is authorized to dispose of motions relating to the preparation, printing and filing of appendix and briefs and those motions generally relating to calendar control, along with the authority to recommend the appropriate sanction for the violation of any applicable rule or order.

Directive—It is expected that members of the bar will adhere to the rules of appellate procedure. Accordingly, to insure compliance with the rules, the court hereby promulgates the following directive.

Pursuant to Rule 3305, Pa.R.A.P., upon the failure to comply with the rules of appellate procedure, the court may impose sanction(s) which may include but are not limited to:

1.) Striking the brief or pleading;

2.) Loss of oral argument;

3.) Fine(s);

4.) Quashing the appeal, petition or motion;

5.) If the attorney is court appointed, removal from the case, denial of fees for services performed and/or denial of further court appointments;

6.) If retained counsel, advising the client of the violation;

7.) Referral to the disciplinary board;

8.) Payment of opposing party's reasonable attorney's fees and/or court costs.

Editor's Note: Promulgated September 25, 1992, effective immediately. Directive promulgated August 28, 1998, effective immediately.

Rule 3306. | Procedures for Taxation of Costs.

(a) The prevailing party to an appeal in the Supreme Court may file a verified bill of costs pursuant to Chapter 27 of the Rules of Appellate Procedure within 14 days after entry of the judgment or other final order. An opposing party may file objections within 14 days of service of the bill of costs.

(b) If objections are filed, the prevailing party may file a reply within seven days of service. Thereafter, the prothonotary shall enter an order taxing costs.

(c) The action of the prothonotary may be reviewed by the court if the party seeking review files an application within seven days after entry of the order.

Note: The taxation of costs is not applicable to the granting or denial of Petitions for Allowance of Appeal under Chapter 11 of the Rules of Appellate Procedure. *Henmon v. Jewell L. Osterholm, M.D., et.al.* Miscellaneous Docket 1992. The taxing of costs is to be guided by Rules 27412743.

Editor's Note: Promulgated May 11, 1993, effective immediately.

Original Matters

Rule 3307. | Applications for Leave to File Original Process.

(a) *Scope*.—This rule applies only to matters within the original jurisdiction of the Supreme Court under 42 Pa.C.S. §721 (original jurisdiction) which are not in the nature of mandamus or prohibition ancillary to matters within the appellate jurisdiction of the Supreme Court. Applications for relief pursuant to or ancillary to the appellate jurisdiction of the Supreme Court, including relief which may be obtained in the Supreme Court by petition for review, are governed by Article I (preliminary provisions) and Article II (appellate procedure) and may be filed without an application under this rule. See also Rule 3309 (applications for extraordinary relief).

(b) *General Rule*.—The initial pleading in any original action or proceeding shall be prefaced by an application for leave to file such pleading, showing service upon all parties to such action or proceeding. The matter will be docketed when the application for leave to file is filed with the Prothonotary of the Supreme Court. The application shall be deemed filed on the date received by the prothonotary unless it was on an earlier date deposited in the United States mail and sent by first class, express, or priority United States Postal Service mail as shown on a United States Postal Service Form 3817 Certificate of Mailing or other similar United States Postal Service form from which the date of deposit can be verified. The certificate of mailing or similar Postal Service form from which the date of deposit can be verified shall be cancelled by the Postal Service, shall show the docket number of the matter if known and shall be either enclosed with the application or separately mailed to the prothonotary. Appearances shall be filed as in other original actions. An adverse party may file an answer no later than 14 days after service of the application. The answer shall be deemed filed on the date of mailing if first class, express, or priority United States Postal Service mail is utilized. An adverse party who does not intend to file an answer to the application shall, within the time fixed by these rules for the filing of an answer, file a letter stating that an answer to the application will not be filed. Upon receipt of the answer to the application, or a letter stating that no answer will be filed, from each party entitled to file such, the application, pleadings and answer to the application, if any, shall be distributed by the Prothonotary to the Supreme Court for its consideration.

(c) *Disposition of Application*.—The Supreme Court may thereafter grant or deny the application or set it down for argument. Additional pleadings may be filed, and subsequent proceedings had, as the Supreme Court may direct. If the application is denied, the matter shall be transferred to the appropriate court by the prothonotary in the same manner and with the same effect as matters are transferred under Rule 751 (transfer of erroneously filed cases).

Note: Based on U.S. Supreme Court Rule 9. Presumably this rule will seldom be invoked, since questions concerning the scope of the original jurisdiction of the Supreme Court may usually be avoided by filing the action in a lower court which clearly has subject matter jurisdiction, and immediately thereafter making application for transfer to the Supreme Court under Rule 3309 (applications for extraordinary relief).

Editor's Note: Amended December 11, 1978, effective December 30, 1978; Rule 3307(a) amended April 26, 1982, effective September 13, 1982 (120 days after publication in the *Pennsylvania Bulletin*). Further amended December 30, 1987, effective January 16, 1988; amended September 10, 2008, effective December 1, 2008.

King's Bench Matters

Rule 3309. | Applications for Extraordinary Relief.

(a) *General Rule*.—An application for relief under 42 Pa.C.S. §726 (extraordinary jurisdiction), or under the powers reserved by the first sentence of Section 1 of the Schedule to the Judiciary Article, shall show service upon all persons who may be affected thereby, or their representatives, and upon the clerk of any court in which the subject matter of the application may be pending. The application shall be deemed filed on the date received by the prothonotary unless it was on an earlier date deposited in the United States mail and sent by first class, express, or priority United States Postal Service mail as shown on a United States Postal Service Form 3817 Certificate of Mailing or other similar United States Postal Service form from which the date of deposit can be verified. The certificate of mailing or similar Postal Service form from which the date of deposit can be verified shall be cancelled by the Postal Service, shall show the docket number of the matter if known and shall be either enclosed with the application or separately mailed to the prothonotary. Appearances shall be governed by Rule 1112 (entry of appearance) unless no appearances have been entered below, in which case appearances shall be filed as in original actions.

(b) *Answer*.—An adverse party may file an answer no later than fourteen days after service of the application. The answer shall be deemed filed on the date of mailing if first class, express, or priority United States Postal Service mail is utilized. An adverse party who does not intend to file an answer to the application shall, within the time fixed by these rules for the filing of an answer, file a letter stating that an answer will not be filed.

(c) *Distribution and Disposition*.—Upon receipt of the answer, or a letter stating that no answer will be filed, from each party entitled to file such, the application and answer, if any, shall be distributed by the Prothonotary to the Supreme Court for its consideration. The Supreme Court may thereafter grant or deny the application or set it down for argument.

(d) *Stays and Supersedeas*.—Where action is taken under this rule which has the effect of transferring jurisdiction of a matter to the Supreme Court, unless otherwise ordered by the Supreme Court such action shall be deemed the taking of an appeal as of right for the purposes of Chapter 17 (effect of appeals; supersedeas and stays), except that the lower court shall not have the power to grant reconsideration.

Note: Based on 42 Pa.C.S. §502 (general powers of Supreme Court), 42 Pa.C.S. §726 (extraordinary jurisdiction) and the first sentence of Section I of the Schedule to the Judiciary Article, which preserves inviolate the December 31, 1968 powers of the Supreme Court (principally the socalled King's Bench powers) in the following language: "The Supreme Court shall exercise all the powers and, until otherwise provided by law, jurisdiction now vested in the present Supreme Court...." Former Supreme Court Rule 68 1/2 (416 Pa. xxv) contained a 30day time limit for seeking review and the failure of Rule 3309 to set forth a specific time limit shall not be construed to enlarge the time permitted by law for the seeking of appellate review.

Former Rules 3311, 3312 and 3313 (concerning appeals and argument lists generally) were rescinded May 16, 1979, effective October 1, 1979.

Editor's Note: Amended December 11, 1978, effective December 30, 1978; amended May 16, 1979, effective October 1, 1979; further amended December 30, 1987, effective January 16, 1988; amended September 10, 2008, effective December 1, 2008.

EXPLANATORY COMMENT—1979

The stay and supersedeas procedure in the Supreme Court is clarified in King's Bench matters and in cases where the Superior Court or the Commonwealth Court (in its appellate capacity) has acted on a stay or supersedeas application.

Supersedeas and Stays

Rule 3315. | Review of Stay Orders of Appellate Courts.

Where the Superior Court or the Commonwealth Court in the exercise of its appellate jurisdiction has entered an order under Chapter 17 (effect of appeals; supersedeas and stays), such order may be further reviewed by any justice of the Supreme Court in the manner prescribed by Chapter 17 with respect to appellate review of supersedeas and stay determinations of lower courts.

Note: After a party has applied for a stay, etc., in the trial court, and a further application has been acted on by the Superior Court or the Commonwealth Court, or by a judge thereof, a further application may be made under this rule to the Supreme Court or to a justice thereof. Under the prior practice a petition for allowance of appeal was required in the Supreme Court under Rule 1702(b) in order to maintain the validity of the Supreme Court actions on the stay, etc. Rule 1702(c) (Supreme Court review of Appellate Court supersedeas and stay determinations) now provides that no appeal or petition need be filed to support jurisdiction under this rule. However, this rule does not invite routine reapplications in the Supreme Court, but only clarifies the procedure when the court exercises its inherent supervisory powers in cases of egregious error below. See 42 Pa.C.S. §726 (extraordinary jurisdiction).

Editor's Note: Adopted May 16, 1979, effective October 1, 1979.

Rule 3316. | Review of Stay of Execution Orders in Capital Cases.

When a trial court has entered an order granting or denying a stay of execution in a capital case, such order may be reviewed by the Supreme Court in the manner prescribed in Pa.R.A.P. 1704. 1702(d).

EXPLANATORY COMMENT—2005

The promulgation of new Rule 3316 addresses a gap in the Rules of Appellate Procedure such that there was no immediate vehicle for review of stays of execution orders granted or denied ancillary to Post Conviction Relief Act ("PCRA") petitions in capital cases. See *Commonwealth v. Morris*, 565 Pa. 1, 771 A.2d 721 (2001) ("*Morris I*"). The new Rule permits an immediate appeal from an order granting or denying a stay pending a determination of the underlying PCRA petition. The new Rule also permits immediate review of a grant of a stay of execution without the filing of an appeal in situations in which the trial court grants a stay of execution but denies the PCRA petition.

There may be cases in which the PCRA court denies a stay of execution at the same time that it denies a timely PCRA petition. In such cases, the petitioner may take an immediate appeal from the denial of the stay of execution, even before the petitioner files an appeal from the denial of the PCRA petition. The PCRA court lacks jurisdiction to grant a stay of execution in connection with an untimely PCRA petition. See *Morris I*. However, the improper grant of a stay in connection with an untimely PCRA petition is also immediately reviewable under this Rule. See Pa.R.Crim.P. 909(A)(2).

Pa.R.Crim.P. 909(A)(2) only applies to properly granted stays of execution. Once a stay is properly granted, it is not reviewable until the conclusion of the PCRA proceedings, including appellate review. However, the Commonwealth may seek review under Rule 3316 to determine whether the PCRA court properly granted the stay.

The standard of review for stay applications under 42 Pa.C.S. §9545(c) is a heightened standard, since there is a greater potential that second and subsequent PCRA applications have been filed merely for purposes of delaying the execution of sentence. See *Morris I and Commonwealth v. Morris*, 573 Pa. 157, 822 A.2d 684 (2003) ("*Morris II*"). Stays of execution in capital cases, however, are routinely granted in timely filed, first PCRA petitions.

Nothing in this Rule or subdivision (d) of Rule 1702 is intended to abrogate the requirement in *Morris II* that any grant of a stay by the trial court while a PCRA petition is pending must comply with the PCRA, 42 Pa.C.S. §9545(c)(1), nor do these rules expand or diminish any inherent powers of the Supreme Court to grant a stay of execution. See *Morris II*.

Editor's Note: Adopted October 7, 2005, effective February 1, 2006; amended May 31, 2013, effective immediately.

Appeals from Legislative Reapportionment Commission

Rule 3321. | Appeals from Legislative Reapportionment Commission.

Unless otherwise ordered, appeals under Section 17(d) of Article 11 of the Constitution of Pennsylvania shall be governed by Chapter 15 (judicial review of governmental determinations).

Review of Special Prosecutions or Investigations

Rule 3331. | Review of Special Prosecutions or Investigations.

(a) *General Rule*.—Within the time specified in Rule 1512(b)(3) (special provisions), any of the following orders shall be subject to review pursuant to Chapter 15 (judicial review of governmental determinations):

(1) An order relating to the supersession of a district attorney by an Attorney General or by a court or to the appointment, supervision, administration or operation of a special prosecutor.

(2) An order relating to the convening or discharge of an investigating grand jury or otherwise affecting its existence.

(3) An order entered in connection with the supervision, administration or operation of an investigating grand jury or otherwise directly affecting an investigating grand jury or any investigation conducted by it.

(4) An order enforcing or refusing to enforce a subpoena issued by or otherwise affecting the existence or operation of any investigating committee of the General Assembly.

(5) An order of the type specified in Paragraphs (1) through (4) of this subdivision which contains a statement by the lower court pursuant to 42 Pa.C.S. §702(b) (interlocutory appeals by permission). Chapter 13 (interlocutory appeals by permission) shall not be applicable to such an order.

The petition shall conform to Rule 123(a) (contents of application for relief) and any answer to the petition shall conform to Rule 1516(a) (general rule). A party entitled to file an answer under this rule who does not intend to do so shall, within the time fixed by these rules for the filing of an answer, file a letter stating that an answer to the petition for review will not be filed. Rule 1517 (applicable rules of pleading) through Rule 1551 (scope of review) shall not be applicable to a petition for review filed under this rule. Seven copies of any papers filed under this rule shall be filed with the original. Rule 3309 (applications for extraordinary relief) shall not be applicable to an order reviewable under this rule.

(b) *Briefs and Record*.—The petitioner may file and serve a brief in support of the petition for review with the petition for review. Any other party may file and serve an answer and supporting brief within 14 days of service of the petition. Each party shall append to the petition or answer as much of the record below as the party desires to bring to the attention of the court. The Supreme Court on its own initiative may direct that the lower court comply with Rule 1925 (opinion in sup- port of order) or that the record be otherwise corrected or supplemented.

(c) *Distribution and Disposition*.—Upon receipt of the last paper that a party is entitled to file under this rule, the papers filed under this rule shall be distributed by the Prothonotary to the Supreme Court for its consideration. The Supreme Court may thereafter dispose of the petition or set it down for argument.

(d) *Interlocutory Matters*.—The interlocutory or final nature of an order shall not be affected by this rule and unless independent grounds appear for the review of an interlocutory order the interlocutory nature of the order will be a sufficient reason for denying the petition. The denial of a petition shall be deemed a disposition on the merits unless otherwise ordered or unless the petition expressly seeks permission to appeal from an interlocutory order and asserts no other basis of jurisdiction on appeal.

(e) *Remand of Record*.—Unless otherwise ordered:

(1) A certified copy of the judgment of the Supreme Court and the opinion of the court, if one has been filed, shall be transmitted to the lower court forthwith upon entry, notwithstanding the pendency of any application for reargument or other proceeding affecting the judgment. This transmission shall be in lieu of the remand of the record.

(2) Such transmission shall operate to vacate any order theretofore entered pursuant to Chapter 17 (effect of appeals; supersedeas and stays).

Official Note: This rule is intended to provide a simple and expeditious method for Supreme Court supervision of special prosecutions and investigations, e.g., orders of the supervising Judge of an investigating grand jury, findings of contempt (whether civil or criminal) by witnesses called before such a grand jury, etc. Rule 702(c) (supervision of special prosecutions or investigations) and 42 Pa.C.S. §722(5) (direct appeals from courts of common pleas) vest jurisdiction over such matters in the Supreme Court. However, this rule is not applicable to review of investigating grand jury issues that collaterally arise in a plenary criminal prosecution initiated by complaint, information or indictment. Rule 1512(b)(3) (special provisions) requires that review be sought within 10 days. Essentially the procedure is analogous to the review of a bail order under Rule 1762 (release in criminal matters). There is no delay for certification of the record, oral argument is ordinarily not available, and the matter is ready for final disposition by the Supreme Court immediately upon the completion of the briefing schedule. The term "investigating grand jury" in Subdivision (a) includes a "multicounty investigating grand jury" convened under the act of November 22, 1978 (P.L. 1148, No. 271), known as the "Investigating Grand Jury Act" 42 Pa.C.S. §4544 (convening multicounty investigating grand jury).

The "independent grounds" referred to in Subdivision (d) include grounds for relief in the nature of mandamus, prohibition, etc. and cases where the order is reviewable under the standards of 42 Pa.C.S. §702(b) (interlocutory appeals by permission). Failure to petition for review under this rule from an interlocutory order will ordinarily not constitute a waiver of objections to the order since except as prescribed by Rule 311(g)(1)(ii) (waiver of objections), there is no requirement under these rules that a party seek available interlocutory relief.

Under Rule 1702(a) (stay ancillary to appeal) the Supreme Court or a justice thereof will not entertain an application for relief under Rule 1781 (stay pending action on petition for review) in connection with a special prosecution or investigation order until a petition for review has been filed under this rule.

Editor's Note: Adopted December 29, 1977, effective in 30 days: Note amended November 30, 1978, effective April 22, 1979 (120 days after publication in the *Pennsylvania Bulletin*). Note amended December 11, 1978, effective December 30, 1978; Rule and Note amended May 16, 1979, effective October 1, 1979; Rule and Note amended February 27, 1980, effective March 15, 1980; Note amended April 26, 1982, effective September 13, 1982 (120 days after publication in the *Pennsylvania Bulletin*); amended July 7, 1997, effective September 5, 1997; amended July 8, 2004, effective 60 days after adoption; amended June 13, 2013, effective immediately.

EXPLANATORY COMMENT—1979

The scope of the special prosecution and investigation appeal procedure is expanded to include matters within the jurisdiction of an investigating committee of the General Assembly and investigations conducted by the Pennsylvania Crime Commission.

Petitions for Certification of Questions of Pennsylvania Law

Rule 3341. | Petitions for Certification of Questions of Pennsylvania Law.

(a) *General Rule*.—On the motion of a party or sua sponte, any of the following courts may file a petition for certification with the Prothonotary of the Supreme Court:

(1) The United States Supreme Court; or

(2) Any United States Court of Appeals.

(b) *Content of the Petition for Certification*.—A petition for certification need not be set forth in numbered paragraphs in the manner of a pleading, and shall contain the following (which shall, insofar as practicable, be set forth in the order stated):

(1) A brief statement of the nature and stage of the proceedings in the petitioning court;

(2) A brief statement of the material facts of the case;

(3) A statement of the question or questions of Pennsylvania law to be determined;

(4) A statement of the particular reasons why the Supreme Court should accept certification; and

(5) A recommendation about which party should be designated Appellant and which Appellee in subsequent pleadings filed with the Supreme Court.

There shall be appended to the petition for certification copies of any papers filed by the parties regarding certification, e.g., a motion for certification, a response thereto, a stipulation of facts, etc.

(c) *Standards*.—The Supreme Court shall not accept certification unless all facts material to the question of law to be determined are undisputed, and the question of law is one that the petitioning court has not previously decided. The Supreme Court may accept certification of a question of Pennsylvania law only where there are special and important reasons therefor, including, but not limited to, any of the following:

(1) The question of law is one of first impression and is of such substantial public importance as to require prompt and definitive resolution by the Supreme Court;

(2) The question of law is one with respect to which there are conflicting decisions in other courts; or

(3) The question of law concerns an unsettled issue of the constitutionality, construction, or application of a statute of this Commonwealth.

Editor's Note: Adopted May 31, 2013, effective immediately.

Chapter 35
Business of the Superior Court

In General

Rule 3501. | Amendments to Chapter.

This chapter may be added to or otherwise amended by order of the Supreme Court, or by order of the Superior Court pursuant to Rule 104 (rules of court).

The Superior Court

Rule 3502. | Office of the Prothonotary.

The prothonotary shall maintain offices in the cities of Philadelphia, Pittsburgh and Harrisburg. The prothonotary may direct the parties to file documents in a specified office. A document thereafter filed in an improper office shall be transferred to the proper office as if pursuant to Rule 751 (transfer of erroneously filed cases). See also Rule 2703 (erroneously filed cases).

Note: The amendments to this chapter abolish the division of the Commonwealth into Philadelphia, Harrisburg and Pittsburgh Districts and the related October, March and April Term system. The present offices will continue to exist and will be available for filings. The distribution of cases among the offices will be an administrative matter. See note to Rule 3301 (office of the prothonotary).

Editor's Note: Former rule rescinded and new rule adopted May 16, 1979, effective October 1, 1979; amended February 27, 1980, effective March 15, 1980.

Rule 3503. | Seal of the Superior Court.

The seal of the Superior Court shall be in the following form:

See Forms Index

Note: See note to Rule 3302 (seal of the Supreme Court).

Editor's Note: Former rule rescinded and new rule adopted May 16, 1979, effective October 1, 1979.

EXPLANATORY COMMENT—1979

The legal significance of Superior Court districts and terms are abolished, without affecting the existing requirement for maintenance of prothonotary's offices in Philadelphia, Pittsburgh and Harrisburg.

Rules specifying the official forms of seals of the Supreme, Superior and Commonwealth Courts are added.

Appeals and Argument Lists

Rules 3511 and 3512. | Rescinded May 16, 1979, effective October 1, 1979.

Rule 3513. | Oral Arguments.

In all appeals, appellant and appellee shall each be allowed 15 minutes to present his argument. Where there are two or more appeals from the same order raising different or unrelated questions and in joint appeals under Rule 512 (joint appeals), counsel addressing the court for each side shall be allowed ten minutes to present his argument. The total time allowed any side shall not exceed 30 minutes.

Note: Based on former Superior Court Rule 15 (part) and makes no change in substance.

Rule 3514. | Weekly List.

No case on the weekly list shall be continued when reached, except by leave of the court upon cause shown. Engagement of counsel in the lower courts will not be recognized as a reason for the continuance or postponement of a case, except when they are actually engaged in a trial which has been commenced in a previous week and is unfinished.

Note: Based on former Superior Court Rule 18.

Rule 3515. | Daily List.

The list shall be made up each day at three o'clock for the following day, and cases on that list must be argued or non-prossed when called.

Note: Former Superior Court Rule 19 renumbered.

Rule 3516. | Passing Regular Turn.

When it is desired, for any reason whatever, that a case be passed at its regular turn on the list, the Prothonotary of the Superior Court must be notified before the case is put on the daily list. Engagement of counsel in other courts, or agreements of parties, is no ground of exception to this requirement. The rule is for the conduct of the business of the court, and is not subject to variation by counsel for any cause.

Note: Based on former Superior Court Rule 20 and makes no change in substance.

Rule 3517. | Docketing Statement.

Whenever a notice of appeal to the Superior Court is filed, the prothonotary shall send a docketing statement form which shall be completed and returned within 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.

Editor's Note: Amended June 5, 2001, effective September 1, 2001.

Rule 3518. | Statement of the Scope and Standard of Review.

(a) *Brief of the Appellant* — The brief of the appellant shall include, in addition to those matters enumerated in Rule 2111, a statement of the scope and standard of review for each contention. The statement shall be separately and distinctly entitled and set forth following the statement of jurisdiction.

(b) *Brief of the Appellee* — The brief of the appellee may, but need not, contain a statement of the scope and standard of review for each contention as described in Subdivision (a). Unless the appellee includes such a statement, or otherwise challenges the appellant's statement of the scope and standard of review, it will be assumed that the appellee is satisfied with the appellant's statement of the scope and standard of review.

Comment: For a discussion of the distinction between scope of review and standard of review, see *James P. v. Children and Youth Services of Delaware County*, 332 Pa. Super. 486, 481 A.2d 892 (1984) (Hoffman, J., concurring), *rev'd* 511 Pa. 590, 515 A.2d 883 (1986).

Editor's Note: Rule 3518 promulgated July 28, 1993, effective date September 1, 1993.

Rule 3519. | Requests for Publication.

(a) *Briefs of the Parties*.

The brief of the appellant or the appellee may include, in addition to those matters enumerated in Rule 2111, a request for the publication of the Superior Court's disposition with respect to the issues on appeal. The request shall be separately and distinctly entitled and shall set forth the reasons why publication as an opinion is being sought. Such reasons may include (1) that the Court of Common Pleas has decided a question of substance not previously determined by the Superior Court or the Supreme Court; (2) the Court of Common Pleas has rendered a decision in conflict with the decision of another Court of Common Pleas on the same question; or (3) the question involves an issue of substantial public importance.

(b) After an unpublished memorandum decision has been filed, the panel may sua sponte, or on the motion of any party to the appeal, or on request by the trial judge, convert the memorandum to a published opinion. In the case of a motion of any party to the appeal or a request from the trial judge, such motion or request must be filed with the Prothonotary within 14 days after the entry of the judgment or other order involved. The decision to publish is solely within the discretion of the panel.

Editor's Note: Effective July 2, 2001; approved September 24, 2003, effective November 24, 2003.

Rule 3520. | Rescinded.

Editor's Note: Effective June 5, 2003.

Rule 3521. | Oral Argument; Submission on Briefs.

In all cases other than post-conviction hearing cases, upon receipt of the appellant's brief, the Prothonotary shall send a reply letter to the appellant asking whether oral argument is requested. If appellant responds in a timely fashion that appellant requests oral argument, the case will be listed for argument. If appellant fails to respond in a timely fashion, the case will be submitted on the briefs, unless otherwise directed by the court on its own motion or upon application.

Editor's Note: Adopted June 6, 2002, effective immediately.

Chapter 37
Business of the Commonwealth Court

In General

Rule 3701. | Amendments to Chapter.

This chapter may be added to or otherwise amended by order of the Supreme Court, or by order of the Commonwealth Court pursuant to Rule 104 (Rules of Court).

The Commonwealth Court

Rule 3702. | Office of the Prothonotary.

All business of the Commonwealth Court, except as otherwise provided by law, by these rules or by order of court, shall be administered through the Office of the hief Clerk maintained by the court at the seat of government in the City of Harrisburg. All matters within the jurisdiction of the court may be filed in the Office of the Chief Clerk. Writs or other process issuing out of the court shall exit from the Office of the Chief Clerk and shall be returnable there.

Note: Based on former Commonwealth Court Rule 2 and makes no change in substance.

Editor's Note: Amended May 14, 2013.

Rule 3703. | Regular Sessions.

Regular sessions of the court, including regular sessions to hear cases listed for argument, shall be held at the seat of government in the City of Harrisburg and in the cities of Philadelphia and Pittsburgh as fixed by court calendars adopted from time to time.

Note: Former Commonwealth Court Rule 10 renumbered.

Rule 3704. | Special Sessions.

(a) *General Rule*.—A special session of the court may also be held in any judicial district of the Commonwealth whenever the court deems such a session to be in the interests of justice because of the convenience of parties or witnesses or both or for any other reason.

(b) *Application*.—An application for such a special session shall state in detail the reasons therefor and shall contain a certification pursuant to 42 Pa.C.S. §563(b) (other sessions) of the availability, without cost to the Commonwealth, of suitable courtroom and related facilities, a court reporter and necessary personnel.

Note: Based on former Commonwealth Court Rule 11 and makes no change in substance.

Editor's Note: Amended December 11, 1978, effective December 30, 1978.

Rule 3705. | Seal of the Commonwealth Court.

The seal of the Commonwealth Court shall be in the following form:

See Forms Index

Note: See note to Rule 3302 (seal of the Supreme Court).

Editor's Note: Adopted May 16, 1979, effective October 1, 1979.

Original Matters

Rule 3709. | Designation of Legal Aid Sources.

Whenever a matter not subject to Chapter 15 (judicial review of governmental determinations) is brought before the Commonwealth Court within its original jurisdiction, the following names and related information shall be included in the notice to defend set forth in the complaint pursuant to Pa.R.C.P. 1018.1:

MidPenn Legal Services
213-A North Front Street
Harrisburg, Pennsylvania 17101
(717) 232-0581
and
Dauphin County Lawyer Referral Service
Dauphin County Bar Association
213 North Front Street
Harrisburg, Pennsylvania 17101
(717) 232-7536

Note: Based on former Commonwealth Court Rule 119A and makes no change in substance.

Editor's Note: Amended May 14, 2013.

Listing of Cases for Argument

Rule 3711. | All Cases to be Heard on Fixed Date.

Cases shall be listed for argument on a fixed date during the regular sessions of the court.

Note: Former Commonwealth Court Rule 30 renumbered.

Rule 3712. | Method of Listing of Cases.

Subject to the time limitations and conditions of Pa.R.A.P. 3713 (argument en banc or before a panel) where applicable:

(1) Each appeal from a Court of Common Pleas, each other matter which under the applicable law is required to be determined by the court upon the record before the government unit below, and each matter subject to Pa.R.A.P. 1542 (oral argument and evidentiary hearing) in which no order for an evidentiary hearing has been entered, shall be listed for argument by the Chief Clerk on

a specified date, of which notice shall be given by the Chief Clerk to the parties.

(2) An election case shall be argued before the judges to whom it is assigned immediately after the record is closed and briefs shall be submitted to the court at or before argument as directed.

(3) An appeal or petition for review (except a matter subject to Paragraphs (1) or (2) of this rule) which under the applicable law may be determined in whole or in part upon the record made before the court, shall be listed for argument by the Chief Clerk on a specified date upon order of the judge to whom the case was assigned or upon praecipe of either party certifying that it is at issue for argument, and notice shall be given by the Chief Clerk to the parties of the date fixed.

(4) A matter, except a matter subject to Pa.R.A.P. 1542, commenced in the court within its original jurisdiction when at issue for argument on preliminary matters or after the record has been made shall be listed by the Chief Clerk for argument upon the order of the President Judge or the judge before whom the record has been made.

Note: Based upon former Commonwealth Court Rule 31A to D.

Editor's Note: Amended May 14, 2013.

Rule 3713. | Argument En Banc or Before a Panel.

On the initiative of the court, or at the request of either party and approved by the assigned judge, argument after the record has been made may be heard by the court en banc or by a panel of at least three judges.

Note: Based on former Commonwealth Court Rule 31E and makes no change in substance.

Rule 3714. | Listing of Cases and Briefing Schedules.

(a) *Matters Heard Solely on Certified Record*.—An appeal from a Court of Common Pleas and each other matter which under the applicable law is required to be determined by the court upon the record before the government unit below shall be eligible for listing for argument after the record has been filed. When all briefs and reproduced records have been filed, the Chief Clerk shall list the case for oral argument on a specified date and shall give at least ten days written notice by first class mail to all parties of the date scheduled for the argument. The court may direct any matter to be submitted on briefs without oral argument.

(b) *Original Jurisdiction Matters*.—A matter commenced in whole or in part within the original jurisdiction of the court including matters under Pa.R.A.P. 1571 (determinations of the Board of Finance and Revenue) when at issue for argument on preliminary matters or after the record has been made shall be listed for oral argument after the court establishes a briefing schedule.

(c) A party may submit a written request for an extension of time to file briefs or the reproduced record, which the chief clerk may grant, if the requested extension is: (1) for thirty days or less; (2) the first one sought; and (3) unopposed by all other parties. If any of the three enumerated criteria do not exist, the party must submit its extension request by formal application. The prothonotary, chief clerk or deputy prothonotary may act on the formal application.

Official Note: Under Rule 105 the court may reduce or enlarge any of the time periods specified in the rule. Preliminary matters referred to in Subdivision (b) include preliminary objections, motions for judgment on the pleadings, motions for summary judgment, and motions to quash.

Editor's Note: Amended December 11, 1978, effective December 30, 1978; amended April 26, 1982, effective September 13, 1982 (120 days after publication in the *Pennsylvania Bulletin*); further amended December 10, 1986, effective January 31, 1987; amended May 14, 2013; amended June 16, 2015.

Rule 3715. | Distribution of Briefs.

The chief Clerk shall distribute to each judge who is to hear an argument, whether en banc or before a panel, at least five days before the argument date, copies of all briefs and reproduced records that have been filed by the parties.

Note: Based on former Commonwealth Court Rule 33 and makes no change in substance.

Editor's Note: Amended May 14, 2013.

Rule 3716. | Citing Judicial Opinions in Filings.

(a) A reported opinion of the Commonwealth Court *en banc* or three-judge panel may be cited as binding precedent.

(b) An unreported panel decision of this Court issued after January 15, 2008, may be cited for its persuasive value, but not as binding precedent.

(c) Any unreported opinion of this Court may be cited and relied upon when it is relevant under the doctrine of law of the case, res judicata or collateral estoppel.

(d) A reported single judge opinion in an election law matter filed after October 1, 2013, may be cited as binding precedent only in an election law matter.

(e) All other single judge opinions of this Court, even if reported, shall be cited only for persuasive value and not as binding precedent.

Official Note: A special election panel is one designated by the president judge to hear election law matters on an expedited basis. Decisions by such panels are made by only the members of the panel without the participation of judges who are not part of the panel. See Internal Operating Procedure § 112(b) (Courts *En Banc* and Panels; Composition), § 258 (Decision; Election Law Appeals), § 416 (Reporting of Unreported Opinions).

Editor's Note: Amended June 16, 2015.

Argument before Court En Banc or a Panel

Rule 3721. | Composition of Court.

Argument of cases shall be heard by the court en banc or by a panel as determined by the court in its discretion. The President Judge shall, insofar as practicable, assign the members of the court to panels in such fashion that each member sits substantially the same number of times with each other member.

Note: The first sentence of the rule is based on former Commonwealth Court Rule 41.

Editor's Note: Note amended December 11, 1978, effective December 30, 1978.

Rule 3722. | Presiding Judge of Panels.

The President Judge or his designee shall preside over any panel.

Editor's Note: Amended December 11, 1978, effective December 30, 1978.

Rule 3723. | Application for Reargument En Banc.

In cases argued before a single judge, as in petitions for review of determinations of government units which are determined in whole or in part upon the record made before the court, or in cases argued before a panel of judges, the court, at any time on its own initiative before its order becomes final, or upon application for reargument pursuant to these rules, may allow reargument before the court en banc. Such action will be taken only for compelling and persuasive reasons.

Note: Based on former Commonwealth Court Rule 43. The time for applying for reargument is increased from 10 to 14 days. See Rule 2542(a)(1) (time for application for reargument).

Editor's Note: Official note amended January 13, 2009, effective as to all appeals filed 60 days or more after adoption.

Evidentiary Hearings

Rule 3731. | Assignment of Judge.

Each matter which under the applicable law may be determined in whole or in part upon the record made before the court, and each election case shall be assigned by the President Judge to a judge, who shall be responsible for all matters in the case until such time as it is concluded by him or is at issue for argument.

Note: Based on former Commonwealth Court Rule 50 and makes no change in substance. See also 42 Pa.C.S. §564 (evidentiary hearings) which provides that in any matter which requires the taking of testimony, the President Judge of the Commonwealth Court may assign a Judge of the Court, or another judge temporarily assigned to the court pursuant to 42 Pa.C.S. §4121 (assignment of judges), to sit and receive evidence, and to perform such other duties as may be prescribed by rule or order of court.

Editor's Note: Note amended December 11, 1978, effective December 30, 1978.

Rule 3732. | Setting of Hearing.

Unless an evidentiary hearing is set by the President Judge or by the assigned judge, such a hearing shall be held only after a praecipe therefor has been filed by any party. If the President Judge has not set the time and place for an evidentiary hearing, the assigned judge shall fix the time and place for hearing of each case assigned to him, subject to the approval of the President Judge as to space and staff limitations.

Note: Former Commonwealth Court Rule 51 renumbered.

Rule 3733. | Rotation of Assignments.

Insofar as is practicable in view of the pending case loads of individual judges, and the duties and responsibilities of the President Judge, assignments shall be made on a rotating basis to and among the judges of the court.

Note: Former Commonwealth Court Rule 52 renumbered.

Rule 3734. | Record in Evidentiary Hearing Cases.

In matters which under the applicable law may be determined in whole or in part upon the record made before the court, the record made before the court as transcribed and filed, together with the pleadings and other documents filed incident to the matter (including any record certified pursuant to Chapter 19 (preparation and transmission of the record and related matters)), shall comprise the record in the court and need not be reproduced for purposes of argument, except as prescribed in Rule 2111 (c) (pleadings).

Note: Based on former Commonwealth Court Rule 81 and makes no change in substance.

Rule 3735. | Jury Trials.

Upon notice from the Commonwealth Court that a matter in that court is to be tried by jury, the Court of Common Pleas of a county in which the matter is to be tried shall provide courtroom facilities and a jury. The matter shall be tried as a Commonwealth Court case at such time as the President Judge of the designated Court of Common Pleas and the President Judge of the Commonwealth Court shall agree.

Note: The judge who presides over the trial of such a Commonwealth Court case will be a judge assigned under Rule 3731 (assignment of judge), who may be either a judge of the Commonwealth Court or another judge (whether or not of the judicial district which provides the jury) temporarily assigned to the Commonwealth Court pursuant to Rule 701 of the Pennsylvania Rules of Judicial Administration (assignment of Judges to Courts). See also note to Rule 3731 (assignment of judge).

Editor's Note: Amended March 21, 1978, effective April 1, 1978; amended December 11, 1978, effective December 30, 1978.

Post Decision

Rule 3740. | Request to Report Unreported Opinion.

Within 30 days after an opinion has been filed as unreported, any person may file an application to report the opinion. Except as noted in the next sentence, grant of the application requires an affirmative majority vote of the commissioned judges. Grant of an application to report an opinion of a single judge or an opinion of a special election panel requires an affirmative two-thirds vote of the commissioned judges.

Official Note: A decision may be reported when it:

(1) establishes a new rule of law;

(2) applies an existing rule of law to facts significantly different than those stated in prior decisions;

(3) modifies or criticizes an existing rule of law;

(4) resolves an apparent conflict of authority;

(5) involves a legal issue of continuing public interest; or

(6) constitutes a significant, non-duplicative contribution to law because it contains:

(i) an historical review of the law,

(ii) a review of legislative history,

(iii) a review of conflicting decisions among the courts of other jurisdictions.

See also IOP § 412.

Editor's Note: Approved June 16, 2015, effective immediately.

Rule 3751. | Taxation of Costs.

A party who desires costs to be taxed under Pa.R.A.P. 2762(b) (procedure for collection of costs on appeal) shall state them in an itemized and verified bill of costs which such party shall file with the Chief Clerk within 14 days after entry of the judgment or other final order.

Note: As to taxation of costs generally see Chapter 27 (fees and costs in Appellate Courts and on appeal).

Editor's Note: Adopted April 26, 1982, effective September 13, 1982 (120 days after publication in the *Pennsylvania Bulletin*); amended May 14, 2013.

Rule 3761. | Enforcement Proceedings.

(a) *Petition*. When a government unit seeks to enforce an order issued under a statute which it administers, it may initiate the proceedings by filing a petition to enforce.

(b) *Service*. The petitioner shall serve the petition and order in the manner prescribed by the Pennsylvania Rules of Civil Procedure for service of original process and shall file the return or certificate of service prescribed by the same rules.

(c) *Hearing and Notice*. Upon the filing of a petition to enforce, the court will issue an order setting a date for a hearing and a date by which the respondent must answer the petition. The petitioner shall serve the court's order upon the respondent in the manner prescribed by Pa.R.A.P. 121 and 122.

(d) *Relief*. Following the hearing, the court will enter such orders as may be appropriate.

(e) *Discovery*. Discovery shall be allowed only upon leave of court.

Official Note: Pa.R.A.P. 3761 implements *Pennsylvania Human Relations Commission v. School District of Philadelphia*, 557 Pa. 126, 132, 732 A.2d 578, 581 (1999), in which the Court held that "just as enforcement proceedings are not originally commenced in Commonwealth Court, they are also in the appellate, rather than the original, jurisdiction of the court. It then follows that the rules of appellate procedure, rather than the rules of civil procedure, govern enforcement proceedings in Commonwealth Court." This analysis was confirmed in *Department of Environmental Protection v. Township of Cromwell*, 613 Pa. 1, 32 A.3d 639 (2012). Petitions for enforcement are not within any other provisions of the Rules of Appellate Procedure. Thus absent Pa.R.A.P., 3761, there would be no clear method of presenting enforcement actions to the Commonwealth Court.

Editor's Note: Adopted January 28, 2002, effective immediately; amended May 14, 2013; amended June 16, 2015, effective immediately.

Chapter 38
Appeals Pursuant to Section 3206 of The Abortion Control Act

Superior Court

Rule 3801. | Right To Appeal.

An expedited confidential appeal to the Superior Court shall be available to any applicant under 18 Pa.C.S. §3206 to whom a Court of Common Pleas has refused an order authorizing an abortion.

Editor's Note: Adopted March 18, 1994 and shall govern appeals by applicants to whom a Court of Common Pleas has refused an order authorizing an abortion pursuant to §3206 of the Abortion Control Act, 18 Pa.C.S. §3206.

Rule 3802. | Filing, Service and Content of Notice of Expedited Confidential Appeal Pursuant to the Abortion Control Act, 18 Pa.C.S. §3206.

Notice of Appeal shall be filed with the clerk of the Court of Common Pleas and immediately served on the Trial Judge and Court Reporter. The notice of appeal shall be in substantially the following form:

See Forms Index

Editor's Note: Adopted March 18, 1994.

Rule 3803. | Transmission of Notice of Appeal to Superior Court.

The Clerk of the Court of Common Pleas in which a script. Chapter 19 of the Rules of Appellate Procedure shall not otherwise apply to appeals under this Chapter.

Editor's Note: Adopted March 18, 1994.

Rule 3805. | Transcription of Notes of Testimony.

The Clerk of the Court of Common Pleas in which an appeal has been filed, shall on or before the close of business on the second business day following the filing of the appeal, transmit by overnight delivery to the appropriate office of the Prothonotary of the Superior Court, the sealed record including the lower court's written findings and conclusions, if not included in the transcript, and any other material made a part of the record in the lower court. The Clerk of the Court of Common Pleas shall enclose a cover memorandum clearly identifying the record as a confidential record filed pursuant to §3206 of the Abortion Control Act.

Editor's Note: Adopted March 18, 1994.

Rule 3806. | Appellant's Brief.

The appellant may file, in the office of the Superior Court Prothonotary, on or before the second business day after the notice of expedited confidential appeal has been filed, copies of a written memorandum containing a discussion of the matters complained of on appeal.

Editor's Note: Adopted March 18, 1994.

Rule 3807. | Oral Argument.

The Superior Court will consider any request for oral argument and if granted, will notify all interested parties of the time, place and manner of argument.

Editor's Note: Adopted March 18, 1994.

Supreme Court

Rule 3811. | Petition for Review.

Within 30 days of the entry of an order of the Superior Court denying an application for an abortion under 18 Pa.C.S. §3206, an applicant may file a confidential petition for review consistent with Pa.R.A.P. 123 relating to applications for relief to the Pennsylvania Supreme Court. The petition for review need not be set forth in numbered paragraphs, and shall set forth the matters complained of and a short discussion of the issues. An original and eight copies of the petition for review shall be filed with the Prothonotary of the Supreme Court. No supporting brief shall be filed unless invited by the Supreme Court. A petition for review shall be exempt from filing fees.

Editor's Note: Adopted March 18, 1994.

Rule 3812. | Transmission of the Record to the Supreme Court.

Upon receipt of the petition for review, the Prothonotary of the Supreme Court shall immediately notify the Prothonotary of the Superior Court and request the original record. Within one business day of the request for the original record, the Prothonotary of the Superior Court shall deliver to the Prothonotary of the Supreme Court the original record and the opinion of the Superior Court.

Editor's Note: Adopted March 18, 1994.

Rule 3813. | Oral Argument.

There is no right to oral argument before an Appellate Court. The Supreme Court will consider any request for oral argument set forth in a petition for review and, if granted, will notify interested parties of the time, place and manner of oral argument.

Editor's Note: Adopted March 18, 1994.

Rule 3814. | Reconsideration.

A petition for reconsideration of the Supreme Court's Order may be filed within seven days of the date of the Court's Order. Petitioner shall file with the Prothonotary of the Supreme Court an original and eight copies of a petition for reconsideration.

Editor's Note: Adopted March 18, 1994.

Rule 3901. | Confidentiality.

All petitions, exhibits, reports, notes of testimony, and all other papers filed in an appellate court pertaining to any proceeding under the Adoption Act, 23 Pa.C.S. §2101, et seq., shall not be disclosed to a nonparty by the appellate court without an order of the appellate court upon cause shown.

Note: See Rule 15.7 pertaining to confidentiality of Adoption Act matters in the Orphans' Court.

Editor's Note: Promulgated March 3, 1999, effectively immediately.

CHAPTER 40
APPEALS ARISING UNDER THE PENNSYLVANIA CODE OF MILITARY JUSTICE

Rule 4001. | Scope of Chapter.

This Chapter shall apply to all appeals from a court-martial as permitted by the Pennsylvania Code of Military Justice, 51 Pa.C.S. § 5100 et seq. The other chapters of the Pennsylvania Rules of Appellate Procedure shall also be applicable, provided such application is not inconsistent with the Pennsylvania Code of Military Justice or preempted by the rules contained in this Chapter.

Official Note: The Pennsylvania Code of Military Justice ("Code"), 51 Pa.C.S. § 5100 et seq., provides for a right of appeal to the Superior Court from certain final judgments of courts-martial and specific interlocutory orders or rulings. This right of appeal under the Code is applicable only to proceedings involving "state military forces" or members of the Pennsylvania National Guard not in a status subjecting them to the exclusive jurisdiction of the United States.

Rule 4002. | Manner of Taking Appeal.

An appeal shall be taken by filing, in person or by first class, express, or priority United States Postal Service mail, a notice of appeal with the State Judge Advocate for the respective branch of service in which the court-martial has been convened.

If the notice of appeal is filed by first class, express, or priority United States Postal Service mail, the notice shall be deemed received by the State Judge Advocate for the purposes of filing on the date deposited in the United States mail, shown on a United States Postal Service Form 3817, Certificate of Mailing, or other similar United States Postal Service form from which the date of deposit can be verified. The certificate of mailing or other similar Postal Service form from which the date of deposit can be verified shall be cancelled by the Postal Service and shall show the docket number of the matter in the government unit, and shall be either enclosed with the petition or separately mailed to the State Judge Advocate.

Rule 4003. | Time for Appeal.

The notice of appeal required by Pa.R.A.P. 4002 shall be filed within the following time periods:

(a) A notice of appeal of a judgment of court-martial shall be filed within 30 days upon finality of judgment and issuance to the accused of a written advisement of the right to appeal the judgment to the Superior Court.

(b) A notice of interlocutory appeal shall be filed within three days of the date of the order or ruling being appealed.

Official Note: The judgment of court-martial in paragraph (a) becomes final upon the exhaustion or waiver of the administrative review process provided in Chapter 59 of the Code.

Rule 4004. | Content and Service of Notice of Appeal.

(a) Form. The notice of appeal shall be substantially in the following form:

See Forms Index

(b) Statement of errors complained of on appeal. A concise statement of errors complained of on appeal in conformance with the following requirements shall be appended to the notice of appeal:

(1) The statement shall set forth only those orders, rulings, and errors that the appellant intends to challenge.

(2) The statement shall concisely identify each order, ruling, or error that the appellant intends to challenge in sufficient detail to identify all pertinent issues for the authority that rendered those orders or rulings.

(3) Issues not included in the statement are waived.

(c) Additional content for notice of interlocutory appeal.

(1) The notice of interlocutory appeal shall be accompanied by a request for transcript when the relevant proceedings have not been otherwise transcribed. The State Judge Advocate shall arrange for the necessary transcription and inclusion into the record.

(2) When the Commonwealth appeals from an interlocutory order or ruling, the notice of appeal shall include a statement that the appeal is not taken for the purpose of delay and, if the order or ruling appealed is one which excludes evidence, that the evidence excluded is substantial proof of a fact material in the proceeding.

(d) Service. A copy of the notice of appeal shall be served on all parties and the convening authority. If the appeal is from an interlocutory order or ruling, then a copy of the notice of appeal shall also be served on the presiding military judge.

Official Note: The requirements of subparagraph (c)(2) are set forth in 51 Pa.C.S. § 5919(c). Pursuant to 51 Pa.C.S. § 5719(c), a copy of the record of proceedings, including a verbatim transcript of proceedings and testimony, of any general or special court-martial resulting in conviction shall be given to the accused as soon as it is authenticated. This requirement obviates the need to include a request for transcript with a notice of appeal of a final judgment of conviction. However, this statutory provision does not extend to interlocutory matters. Therefore, a notice of appeal of an interlocutory order or ruling must include a request for transcript, as required by Pa.R.A.P. 4004(c)(1).

Rule 4005. | Filing of Notice of Appeal.

Three copies of the notice of appeal shall be filed with the State Judge Advocate, who immediately shall:

(a) stamp it with the date of receipt. That date, or the date of earlier deposit in the United States mail as prescribed by Pa.R.A.P. 4002, shall constitute the date of filing of the appeal;

(b) transmit a copy of the notice of appeal and the filing fee to the Prothonotary of the Superior Court; and

(c) transmit a copy of the notice of appeal to the authority responsible for rendering the complained of error.

Rule 4006. | Opinion in Support of Order or Ruling.

The authority that entered the order or made the ruling giving rise to the notice of appeal shall file of record with the State Judge Advocate either:

(a) a brief opinion of the reasons for the order or ruling or other errors complained of; or

(b) specify in writing the place in the record where such reasons may be found.

If the case appealed involves an order or ruling issued by an authority who was not the authority entering the order or making the ruling giving rise to the notice of appeal, the authority entering the order or making the ruling giving rise to the notice of appeal may request that the authority who entered the earlier order or made the earlier ruling provide an opinion to be filed to explain the reasons for that order or ruling.

Rule 4007. | Record on Appeal.

(a) Responsible office. The State Judge Advocate shall be responsible for the assembly and transmission of the record on appeal.

(b) Composition of the record. The record shall consist of:

(1) The authenticated record of the court-martial, including a verbatim transcript of the proceeding and testimony, the pleadings, and evidence.

(2) The order or ruling of the authority to be reviewed.

(3) The findings or report on which such order or ruling is based.

(4) Submissions, recommendations, reviews, and orders or rulings arising from post-trial administrative review and action.

(5) A copy of the written advisement of right to appeal.

(6) Any opinion of the reasons for the order or for the rulings or other errors complained of.

(c) Certification and organization of record. The State Judge Advocate shall certify the contents of the record, which shall be organized with the documents arranged in chronological order, numbered, and affixed to the right or bottom edge of the first page of each document a tab showing the number of that document. Thereafter, the entirety shall be bound and shall contain a table of contents identifying each document in the record.

(d) Time and notice. The State Judge Advocate shall file the record with the Prothonotary of the Superior Court within 60 days after the filing date of the notice of appeal. The Superior Court may shorten or extend the time prescribed in this paragraph. Upon filing, the State Judge Advocate shall mail a copy of the list of record documents to all counsel and to any unrepresented party.

(e) Omissions from or misstatements of the record below. If anything material to any party is omitted from the record or is misstated therein, the parties may at any time supply the omission or correct the misstatement by stipulation, or the Superior Court may at any time direct that the omission or misstatement be corrected and, if necessary, that a supplemental record be prepared and filed.

Chapter 51
Provisions of Law Saved and Abrogated

Rule 5101. | Statutes and Other Authorities Suspended or Abrogated.

(a) The Statute of 13 Edw. 1, c.31 (3 Binney 606) (1 Ruffhead 99) is hereby suspended absolutely insofar as it is in force in this Commonwealth as supplied by Rule 1923 of these rules.

(b)

(1) The practice and procedure provided in all former statutes governing appellate procedure within the scope of these rules, which have been repealed effective June 27, 1978 or June 27, 1979 by the Judiciary Act Repealer Act (JARA), act of April 28, 1978 (P.L. 202, No. 53), and which are now part of the common law of this Commonwealth by virtue of Section 3(b) of JARA (42 P.S. §20003(b)) are hereby abolished and shall not continue as part of the common law of this Commonwealth.

(2) With respect to all statutes relating to practice and procedure, repeal of which will become effective June 27, 1980 as provided by Section 4(b) of JARA (42 P.S. §20004(b)), these rules are a general rule within the meaning of Section 3(b) of JARA and the practice and procedure provided in those statutes, so far as relates to appellate procedure within the scope of these rules, shall not continue as part of the common law of this Commonwealth.

(c) These rules are intended to provide a complete and exclusive procedure relating to appellate practice and procedure and:

(1) Except as provided in Rule 5102 (statutes saved from suspension), all statutes relating to practice and procedure finally enacted prior to January 1, 1981 are hereby suspended to the extent inconsistent with these rules.

(2) All local rules of court relating to appellate practice and procedure are hereby abrogated, except where these rules expressly authorize the adoption of a local rule of court supplementary to a provision of these rules applicable to appeals generally.

Editor's Note: Former rule rescinded and new rule adopted July 7, 1997, effective September 5, 1997.

Rule 5102. | Statutes Saved from Suspension.

(a) *Judicial Code Unaffected*.—No provision of these rules shall be construed to suspend any provision of Title 42 of the Pennsylvania Consolidated Statutes (relating to

judiciary and judicial procedure) enacted prior to May 1, 1978.

(b) *Other Statutes*.—These rules shall not be deemed to suspend or affect:

(1) Act of May 25, 1878 (P.L. 156, No. 202) (12 P.S. §21) repealed by the Judiciary Act Repealer Act effective June 27, 1979.

Note: Relates to investment of cash on deposit with court in approved security upon application of party prima facie entitled thereto.

Editor's Note: Rule 5102(b)(1) rescinded as obsolete, by order of February 27, 1980, effective March 15, 1980.

(2) Section 426 of the act of June 2, 1915 (P.L. 736, No. 338), known as The Pennsylvania Workmen's Compensation Act (77 P.S. §871).

Note: Relates to power of Workmen's Compensation Appeal Board to reopen case while appeal is pending.

(3) Act of June 3, 1937 (P.L. 1333, No. 320) known as the Pennsylvania Election Code (25 P.S. §2600 et seq.).

(4) Section 9 of the act of October 27, 1955 (P.L. 744, No. 222), known as the Pennsylvania Human Relations Act (42 P.S. §959).

Note: Relates to automatic supersedeas of orders of the Human Relations Commission.

Editor's Note: Rule 5102(b)(5) rescinded July 7, 1997, effective September 5, 1997.

Note: Relates to automatic supersedeas of orders in public assistance matters.

(6) 15 Pa.C.S. §137 (Court to pass upon rejection of documents by Department of State).

(7) Rescinded. 20 Pa.C.S. §746 (money paid into court), repealed by the Judiciary Act Repealer Act effective June 27, 1980.

Official Note: Rule 5102(b)(7) rescinded as obsolete effective June 27, 1980.

Editor's Note: Chapter 51 amended December 11, 1978, effective December 30, 1978; amended May 16, 1979, effective October 1, 1979; amended February 27, 1980, effective March 15, 1980; amended July 7, 1997, effective September 5, 1997.

Forms
for
Pennsylvania Rules of Appellate Procedure

See Rule 122

I hereby certify that I am this day serving the foregoing document upon the persons and in the manner indicated below, which service satisfies the requirements of Pa.R.A.P. 121:

Service by first class mail addressed as follows:
Name, Telephone number
Mailing address
(Party represented)
(Party represented)
(Party represented)

Service in person as follows:
Name, Telephone number
Street address
Mailing address (if different)

Acceptance of service endorsed by the following:
Name, Telephone number
Mailing address
(Party represented)
(Party represented)

Service by commercial carrier as follows:
Name of commercial carrier
Addressee's name, Telephone number
Street address
Mailing Address (if different)

Service by e-mail at following:

Email address, with agreement of:
Name, Telephone number
Mailing address
(Party represented)

Service by facsimile at following:

Fax number with the agreement of:
Name, Telephone number
Mailing address
(Party represented)

Date: _____
(S) _____
Name, Telephone number

(Attorney Registration No. 00000)
Mailing address
(Party represented)

See Rule 561

_____ (Insert name of applicant) states under penalties provided by 18 Pa.C.S. §4904 (unsworn falsification to authorities) that:

1. I am the _____(plaintiff or defendant) in the above action and because of my financial condition am unable to pay the following fees and costs:

_____

(state with any particularity the relief requested, e.g., appellate filing fees, costs of reproducing records or briefs, or filing of supersedeas security if irreparable harm would result if not waived.)

2. My responses to the questions below relating to my ability to pay the fees and costs of prosecuting an appeal are true and correct.

(a) Are you presently employed?

(1) If the answer is yes, state the amount of your salary or wages per month and give the name of your employer.

(2) If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received.

(b) Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, pensions, annuities, social security benefits, support payments or other source?

If the answer is yes, describe each source of income, and state the amount received from each during the past twelve months.

(c) Do you own any cash or checking or savings accounts?

If the answer is yes, state the total amount of the items owned.

(d) Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

If the answer is yes, describe the property and state its approximate value and the amount of any encumbrance.

(e) List the persons, if any, who are dependent upon you for support and state your relationship to those persons.

(f) List all your debts and obligations.

3. I understand that a false statement or answer to any question in this verified statement will subject me to the penalties provided by law (misdemeanor of the second degree).

_____

Signature of Applicant

See Rule 904

COURT OF COMMON PLEAS OF
_____COUNTY

A.B., Plaintiff _____: Docket or File No.
_____:
v. _____:
_____:
C.D., Defendant _____: Offense Tracking No.

NOTICE OF APPEAL

Notice is hereby given that C.D., defendant above named, hereby appeals to the (Supreme) (Superior) (Commonwealth) Court of Pennsylvania from the order entered in this matter on the _____day of _____, 20 _____. This order has been reduced to judgment and entered in the docket as evidenced by the attached copy of the docket entry.

(S) _____

_____
(Address and telephone number)

See Rule 1112

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PS Form **3817**, April 2007 PSN 7530-02-000-9065

See Rule 1531

(Caption)
NOTICE OF INTERVENTION

Notice is hereby given that A.B., a party below, hereby intervenes in this matter.
(S) _____
_____
(Address and telephone number)

See Rule 1751

[CAPTION]

Appellant, having appealed from an order of the Court of Common Pleas of _____ County [or "of the _____ Judicial District"], entered in this matter on the _____ day of _____, 20 _____, and having procured the execution of this instrument for the purpose of complying with the Pennsylvania Rules of Appellate Procedure, the undersigned surety acknowledges itself bound and indebted to the Commonwealth of Pennsylvania, for the use of the persons or parties entitled thereto, in the sum of _____ dollars ($_____), to be paid as required by law.

Upon conclusion of this matter, if the appellant satisfies the above identified order or any court order modifying or affirming that order and pays all costs, interest and damages for delay that may be awarded, this obligation shall be void; otherwise, it shall remain in force.

Date: _____ _____
(Name of Surety)

By _____
(Name and Title of Authorized Signatory)

See Rule 1782

[CAPTION]

Petitioner, having sought review of an order of the Board of Finance and Revenue entered (or deemed entered) in this matter on the _____ day of _____, 20 _____, and having procured the execution of this instrument for the purpose of complying with the Pennsylvania Rules of Appellate Procedure, the undersigned surety acknowledges itself bound and indebted to the Commonwealth of Pennsylvania in the amount of $(_____), which is 120% of the sum of $ _____(taxes found due) and $(_____) (penalty found due), the amount of taxes and penalty found due by the Board and remaining unpaid in this matter, to be paid as required by law.

Upon conclusion of this matter, if the petitioner satisfies the above identified order or any court order modifying or affirming that order and pays all costs, interest and any damages for delay that may be awarded, this obligation shall be void; otherwise it shall remain in full force.

Date: _____ _____
(Name of Surety)

By _____
(Name and Title of Authorized Signatory)

See Rule 1911

[CAPTION]

A (notice of appeal) (petition for review) (other appellate paper, as appropriate) having been filed in this matter, the official court reporter is hereby requested to produce, certify, and file the transcript in this matter in conformity with Rule 1922 of the Pennsylvania Rules of Appellate Procedure.

_____

(Signature)

See Rule 3302

See Rule 3503

See Rule 3705

See Rule 3802

IN THE COURT OF COMMON PLEAS
OF _____COUNTY, _____DIVISION

IN RE: Petition of Trial Court
Docket No. _____ Docket No. _____
(initials of applicant)
[ ] a minor _____ Date Petition filed in trial court
[ ] am incapacitated person _____ _____
_____, 20_____

NOTICE OF EXPEDIATED CONFIDENTIAL APPEAL PURSUANT TO THE ABORTION CONTROL ACT

Notice is hereby given that _____(initials), appellant above designated, appeals to the Superior Court of Pennsylvania from:

❑ The order entered in this matter on the _____day of _____, 20_____.
(i) which order has been entered on the docket entry, or
(ii) a copy of which is attached, or

❑ The court's failure to grant the order requested by the petitioner within three business days from the date of the application as specified in 18 Pa.C.S. §3206(f).

The petitioner/appellant hereby:

❑ requests
❑ does not request that oral argument be heard before the panel of judges which this appeal is assigned for decision.

The matters complained of on appeal are:

_____
_____
_____

Written notice of this appeal has been given to:

_____ and _____
(trial judge) (court reporter)

Petitioner or authorized representative.

_____

Name, address, and telephone number of person to whom confidential documents, information, and notices may be sent.

_____
(Name)

_____
(Address)

_____
(Telephone Number)

See Rule 4004

PENNSYLVANIA NATIONAL GUARD COURT-MARTIAL

Commonwealth

v.

Docket No. _____

_____, _____ [rank], Defendant

NOTICE OF APPEAL

Notice is hereby given that [party name] appeals to the Superior Court of Pennsylvania from the final judgment of court-martial/interlocutory order or ruling in this matter, dated _____ , _____ 20 ___ and rendered by _____ .

The State Judge Advocate in this matter is _____ , having an address of _____ .

/s/ _____

Appellate Procedure Index

Topical Index

References are to Rule Numbers