Making Magic On Appeal

Bench Bar 2023

Materials

(1) Pa.R.A.P. 341; 311; 312; 313; 1311; 1312; 1314

(2) *Commonwealth v. Young*, 265 A.3d 462 (Pa. 2021)

(3) Pa.R.A.P. 1926; 2154, 2152, 2156; Appellate Court Procedural Rules Committee Recommendation 152, Publication Report[1]; Pa.R.A.P. 1925

(4) Pa.R.A.P. 302

(5) Internal Operating Procedures of the Supreme Court; Internal Operating Procedures of the Superior Court; Internal Operating Procedures of the Commonwealth Court

(6) Pa.R.A.P. 2111-2135

(7) Professor Brian Wolfman, "Some Thoughts on Reply Briefs" (draft)

(8) Pa.R.A.P. 1114; 1115; 1116

[1] Full Recommendation available at: *https://www.pacourts.us/storage/rules/Rec%20152%20Proposed%20Amendment%20Of%20Pa%20R%20A%20P%20102%201926%201931%201951%201952%202132%20And%202151%20-%20011347.pdf*;)

Purdon's Pennsylvania Statutes and Consolidated Statutes
Pennsylvania Rules of Appellate Procedure (Refs & Annos)
Article I. Preliminary Provisions
Chapter 3. Orders from Which Appeals May be Taken
Final Orders

Pa.R.A.P., Rule 341

Rule 341. Final Orders; Generally

Effective: July 1, 2021
Currentness

(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:

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

(2) (Rescinded);

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

(4) is an order pursuant to paragraph (f) 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) An application for a determination of finality under paragraph (c) must be filed 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) 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.

(3) 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.

(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.

(f) Post Conviction Relief Act orders.

(1) An order granting, denying, dismissing, or otherwise finally disposing of a petition for post-conviction collateral relief shall constitute a final order for purposes of appeal.

(2) An order granting sentencing relief, but denying, dismissing, or otherwise disposing of all other claims within a petition for post-conviction collateral relief, shall constitute a final order for purposes of appeal.

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 under Pa.R.A.P. 341 are 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. *Malanchuk v. Tsimura*, 137 A.3d 1283, 1288 (Pa. 2016) ("[C]omplete consolidation (or merger or fusion of actions) does not occur absent a complete identity of parties and claims; separate actions lacking such overlap retain their separate identities and require distinct judgments"); *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).

Paragraph (f)--Post Conviction Relief Act Orders--A failure to timely file an appeal pursuant to paragraph (f)(2) shall constitute a waiver of all objections to such an order.

Credits

Adopted March 12, 1992, effective July 6, 1992. Amended May 6, 1992, effective July 6, 1992; July 7, 1997, effective in 60 days; Oct. 13, 2006, effective 60 days after adoption; April 16, 2013, effective 30 days after adoption; May 28, 2014, effective July 1, 2014; Dec. 14, 2015, effective April 1, 2016; Jan. 7, 2020, effective Aug. 1, 2020; March 9, 2021, effective July 1, 2021.

Notes of Decisions (524)

Rules App. Proc., Rule 341, 42 Pa.C.S.A., PA ST RAP Rule 341
Current with amendments received through April 15, 2023. Some rules may be more current; see credits for details.

Purdon's Pennsylvania Statutes and Consolidated Statutes
Pennsylvania Rules of Appellate Procedure (Refs & Annos)
Article I. Preliminary Provisions
Chapter 3. Orders from Which Appeals May be Taken
Interlocutory Appeals

Pa.R.A.P., Rule 311

Rule 311. Interlocutory Appeals as of Right

Effective: January 1, 2023
Currentness

(a) General Rule. An appeal may be taken as of right and without reference to Pa.R.A.P. 341(c) from the following types of orders:

(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 subdivision (g)(1), 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 subdivision (b)(1) or subdivision (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 subdivision (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 subdivision (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 subdivision (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 subdivisions (a)(2) or (a)(4) of this rule.

Comment: 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.

Subdivision (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.

Subdivision (a)(3)--Change of venire is authorized by 42 Pa.C.S. § 8702. Pa.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.

Subdivision (a)(4)--This subdivision does not apply to an order granting or denying an application filed with a trial court under Pa.R.A.P. 1732(a) (stays or injunctions pending appeal). Any further relief may

be sought directly from the appellate court under Pa.R.A.P. 1732(b). *See In re Passarelli Trust*, 231 A.3d 969 (Pa. Super. 2020).

Subdivision (a)(5) 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.

Subdivision (a)(6)--*See Commonwealth v. Wardlaw*, 249 A.3d 937 (Pa. 2021) (holding that an order declaring a mistrial only is not "an order in a criminal proceeding awarding a new trial").

Subdivision (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. See Pa.R.A.P. 341(f) for appeals of Post Conviction Relief Act orders.

Subdivision (b) is based in part on the Act of March 5, 1925, P.L. 23. 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 subdivision (b)(1), a plaintiff is given a qualified option to gamble that the venue of the matter or personal or *in rem* jurisdiction will be sustained on appeal because it can be overridden by petition for and grant of permission to appeal under Pa.R.A.P. 312. Subdivision (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 subdivision (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 subdivision (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. Subdivision (b) does not cover orders that do not sustain jurisdiction because they are, of course, final orders appealable under Pa.R.A.P. 341.

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

However, the subdivision 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.

Pursuant to subdivision (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).

Pursuant to subdivision (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 driver's license; and an order of the Workers' Compensation Appeal Board reinstating compensation benefits and remanding to a referee for computation of benefits.

Subdivision (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).

Subdivision (g)(1)(iii) 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.

Subdivision (h)--*See* note to Pa.R.A.P. 1701(a).

Credits

Adopted Nov. 5, 1975, effective July 1, 1976. Amended Nov. 30, 1978, effective 120 days after Dec. 23, 1978; May 16, 1979, effective April 22, 1979; Feb. 27, 1980, effective March 15, 1980; April 26, 1982, effective 120 days after May 15, 1982; Dec. 16, 1983, effective Jan. 1, 1984; June 28, 1985, effective July 20, 1985; Dec. 30, 1987, effective Jan. 16, 1988; March 31, 1989, effective July 1, 1989; March 12, 1992, effective July 6, 1992; May 6, 1992, effective July 6, 1992; April 10, 1996, effective April 27, 1997; April 26, 2001, imd. effective; June 29, 2005, effective 60 days after adoption; Oct. 14, 2009, effective in 30 days [Nov. 13, 2009]; Dec. 29, 2011, effective 45 days after adoption; Dec. 14, 2015, effective April 1, 2016; March 9, 2021, effective July 1, 2021; Sept. 8, 2022, effective Jan. 1, 2023.

Notes of Decisions (542)

Rules App. Proc., Rule 311, 42 Pa.C.S.A., PA ST RAP Rule 311
Current with amendments received through April 15, 2023. Some rules may be more current; see credits for details.

End of Document

Purdon's Pennsylvania Statutes and Consolidated Statutes
Pennsylvania Rules of Appellate Procedure (Refs & Annos)
Article I. Preliminary Provisions
Chapter 3. Orders from Which Appeals May be Taken
Interlocutory Appeals

Pa.R.A.P., Rule 312

Rule 312. Interlocutory Appeals by Permission

Effective: January 1, 2023
Currentness

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

Comment: This rule does not apply to an order granting or denying an application filed with the trial court under Pa.R.A.P. 1732(a) (stays or injunctions pending appeal). Any further relief may be sought directly from the appellate court under Pa.R.A.P. 1732(b). *See In re Passarelli Trust*, 231 A.3d 969 (Pa. Super. 2020).

Credits
Adopted Nov. 5, 1975, effective July 1, 1976. Amended Sept. 8, 2022, effective Jan. 1, 2023.

Notes of Decisions (39)

Rules App. Proc., Rule 312, 42 Pa.C.S.A., PA ST RAP Rule 312
Current with amendments received through April 15, 2023. Some rules may be more current; see credits for details.

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Purdon's Pennsylvania Statutes and Consolidated Statutes
Pennsylvania Rules of Appellate Procedure (Refs & Annos)
Article I. Preliminary Provisions
Chapter 3. Orders from Which Appeals May be Taken
Interlocutory Appeals

Pa.R.A.P., Rule 313

Rule 313. Collateral Orders

Currentness

(a) General rule.--An appeal may be taken as of right from a collateral order of a trial court or other government unit.

(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.

Note: If an order meets the definition of a collateral order, it is appealed by filing a notice of appeal or petition for review.

Pa.R.A.P. 313 is a codification of existing case law with respect to collateral orders. *See* *Pugar v. Greco*, 394 A.2d 542, 545 (Pa. 1978) (quoting *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541 (1949)).

Pennsylvania appellate courts have found a number of classes of orders to fit the collateral order definition. Collateral order cases are collected and discussed in Darlington, McKeon, Schuckers and Brown, Pennsylvania Appellate Practice 2015-2016 Edition, §§ 313:1-313:201 Examples include an order denying a petition to permit the payment of death taxes, *Hankin v. Hankin*, 487 A.2d 1363 (Pa. Super. 1985), and an order denying a petition for removal of an executor, *Re: Estate of Georgiana*, 458 A.2d 989 (Pa. Super. 1983), *aff'd*, 475 A.2d 744 (Pa. 1984), and an order denying a pre-trial motion to dismiss on double jeopardy grounds if the trial court does not also make a finding that the motion to dismiss is frivolous. *See* *Commonwealth v. Brady*, 508 A.2d 286, 289-91 (Pa. 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); *Commonwealth v. Orie*, 22 A.3d 1021 (Pa. 2011). An order denying a pre-trial motion to dismiss on double jeopardy grounds that also finds that the motion to dismiss is frivolous is not appealable as of right as a collateral order, but may be appealable by permission under Pa.R.A.P. 1311(a)(3).

Credits

Adopted March 12, 1992, effective July 6, 1992; May 6, 1992, effective July 6, 1992. Amended July 7, 1997, effective in 60 days; June 4, 2013, effective July 4, 2013; Jan. 7, 2020, effective Aug. 1, 2020.

Notes of Decisions (434)

Rules App. Proc., Rule 313, 42 Pa.C.S.A., PA ST RAP Rule 313
Current with amendments received through April 15, 2023. Some rules may be more current; see credits for details.

End of Document

Purdon's Pennsylvania Statutes and Consolidated Statutes
Pennsylvania Rules of Appellate Procedure (Refs & Annos)
Article II. Appellate Procedure
Chapter 13. Interlocutory Appeals by Permission

Pa.R.A.P., Rule 1311
Formerly cited as PA ST RAP Rule 1573

Rule 1311. Interlocutory Appeals by Permission

Currentness

Formerly cited as PA ST RAP Rule 1573

(a) General rule.--An appeal may be taken by permission from an interlocutory order:

(1) certified under 42 Pa.C.S. § 702(b) or for which certification pursuant to 42 Pa.C.S. § 702(b) was denied; *see* Pa.R.A.P. 312;

(2) for which certification pursuant to Pa.R.A.P. 341(c) was denied; or

(3) that determined that a defendant's motion to dismiss on the basis of double jeopardy is frivolous.

(b) Petition for permission to appeal.--Permission to appeal from an interlocutory order listed in paragraph (a) 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 or the date of deemed denial in the trial court or other government unit with proof of service on all other parties to the matter in the trial court or other government unit and on the government unit or clerk of the trial court, who shall file the petition of record in such trial court. An application for an amendment of an interlocutory order to set forth expressly either the statement specified in 42 Pa.C.S. § 702(b) or the one in Pa.R.A.P. 341(c) shall be filed with the trial 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 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 trial court or other government unit, and shall be either enclosed with the petition or separately mailed to the prothonotary. The petitioner must file the original and one copy. 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 paragraph, 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 notice of the docket number assignment to the government unit or clerk of the trial 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 acceptance for 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. Unless that party is entitled by law to be represented by counsel on a petition for permission to appeal, 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. If entry of appearance in the trial court extends through appeals, counsel's appearance for a party may not be withdrawn without leave of court. Leave of court to withdraw is also required for any other counsel who have not filed a *praecipe* to correct appearance within the first 30 days after the petition is docketed, unless another lawyer has entered or simultaneously enters an appearance for the party.

Note: Pa.R.A.P. 1311 originally implemented only 42 Pa.C.S. § 702(b) (interlocutory appeals by permission). The accompanying note provided that an order refusing to certify an order as meeting the requirements of 42 Pa.C.S. § 702(b) was reviewed by filing of a petition for review under Chapter 15. The rule was amended in 2020 to expand the use of a petition for permission to appeal to requests for review of interlocutory orders that were not certified for immediate review pursuant to 42 Pa.C.S. § 702(b) or Pa.R.A.P. 341(c) and of interlocutory orders that found a criminal defendant's claim that further proceedings would cause the defendant to be placed in double jeopardy to be frivolous.

See the Official Note to Pa.R.A.P. 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 Rules of Criminal Procedure require counsel appointed by the trial court to continue representation through direct appeal. Pa.R.Crim.P. 120(A)(4) and Pa.R.Crim.P. 122(B)(2). Similarly, the Rules of Criminal Procedure require counsel appointed in post-conviction proceedings to continue representation throughout the proceedings, including any appeal from the disposition of the petition for post-conviction collateral relief. Pa.R.Crim.P. 904(F)(2) and Pa.R.Crim.P. 904(H)(2)(b). The same is true when counsel enters an appearance on behalf of a juvenile in a delinquency matter or on behalf of a child or other party in a dependency matter. Pa.R.J.C.P. 150(B), 151, Pa.R.J.C.P. 1150(B), 1151(B), (E). It would be rare for counsel in such cases to consider withdrawing by *praecipe*, but the 2020 amendment to the rule avoids any possibility of confusion by clarifying that withdrawal by *praecipe* is available only in matters that do not otherwise require court permission to withdraw.

With respect to appearances by new counsel following the initial docketing of appearances pursuant to paragraph (d) of this rule, please note the requirements of Pa.R.A.P. 120.

Credits

Adopted Nov. 5, 1975, effective July 1, 1976. Amended Dec. 11, 1978, effective Dec. 30, 1978; Dec. 16, 1983, effective Jan. 1, 1984; March 12, 1992, effective July 6, 1992; May 6, 1992, effective July 6, 1992; July 7, 1997,

effective in 60 days; April 26, 2001, imd. effective; March 15, 2004, effective May 14, 2004; Sept. 10, 2008, effective Dec. 1, 2008; Jan. 7, 2020, effective May 1, 2020; Jan. 7, 2020, effective Aug. 1, 2020.

Notes of Decisions (69)

Rules App. Proc., Rule 1311, 42 Pa.C.S.A., PA ST RAP Rule 1311
Current with amendments received through April 15, 2023. Some rules may be more current; see credits for details.

End of Document

Pa.R.A.P., Rule 1312

Rule 1312. Content of the Petition for Permission to Appeal

Currentness

(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, the text of any order ruling on any subsequent request for certification, and the date of their entry in the trial court or other government unit. If the order(s) are 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 basis for the order of the trial court or other government unit.

(4) The proposed 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 permission to appeal is granted.

(5) A concise statement of the reasons for an immediate appeal:

(i) For a petition for permission to appeal an order certified pursuant to 42 Pa.C.S. § 702(b), a statement of the reasons why the order involves a controlling question of law as to which there is a substantial ground for difference of opinion and that an appeal from the order may materially advance the ultimate termination of the matter;

(ii) For a petition for permission to appeal an order for which certification pursuant to 42 Pa.C.S. § 702(b) was denied or deemed denied, a statement of reasons why the order involves a controlling question of law as to which there is substantial ground for difference of opinion, that an appeal from the order may materially advance the ultimate termination of the matter, and why the refusal of certification was an abuse of the trial court's or other government unit's discretion that is so egregious as to justify prerogative appellate correction;

(iii) For a petition for permission to appeal an order for which certification pursuant to Pa.R.A.P. 341(c) was denied or deemed denied, the petition must contain a statement of reasons why an immediate appeal would facilitate resolution of the entire case and why the refusal of certification was an abuse of the trial court's or other government unit's discretion that is so egregious as to justify prerogative appellate correction;

(iv) For a petition for permission to appeal pursuant to Pa.R.A.P. 1311(a)(3), the petition must set forth why the claim of double jeopardy is colorable.

(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 multiple petitioners may file a single petition for permission to appeal.

Credits

Adopted Nov. 5, 1975, effective July 1, 1976. Amended June 23, 1976, effective July 1, 1976; Dec. 11, 1978, effective Dec. 30, 1978; Jan. 5, 2018, effective Jan. 6, 2018; Jan. 7, 2020, effective Aug. 1, 2020.

Notes of Decisions (1)

Rules App. Proc., Rule 1312, 42 Pa.C.S.A., PA ST RAP Rule 1312
Current with amendments received through April 15, 2023. Some rules may be more current; see credits for details.

End of Document

Purdon's Pennsylvania Statutes and Consolidated Statutes
Pennsylvania Rules of Appellate Procedure (Refs & Annos)
Article II. Appellate Procedure
Chapter 13. Interlocutory Appeals by Permission

Pa.R.A.P., Rule 1314

Rule 1314. Answer to the Petition for Permission to Appeal

Currentness

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.

Credits

Adopted Nov. 5, 1975, effective July 1, 1976. Amended June 23, 1976, effective July 1, 1976; Sept. 10, 2008, effective Dec. 1, 2008; Jan. 5, 2018, effective Jan. 6, 2018.

Editors' Notes

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.

See Comment following Pa.R.A.P., Rule 1116.

Rules App. Proc., Rule 1314, 42 Pa.C.S.A., PA ST RAP Rule 1314
Current with amendments received through April 15, 2023. Some rules may be more current; see credits for details.

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265 A.3d 462
Supreme Court of Pennsylvania.

COMMONWEALTH of Pennsylvania, Appellant
v.
Brendan Patrick YOUNG, Appellee
Commonwealth of Pennsylvania, Appellant
v.
Daniel Casey, Appellee

No. 19 MAP 2021, No. 20 MAP 2021
|
Argued: September 21, 2021
|
Decided: December 22, 2021

Synopsis

Background: Defendant and codefendant were both charged under three separate dockets with crimes arising out of hazing ritual at state university that ultimately led to death of minor student pledging fraternity. The Court of Common Pleas, Centre County, Criminal Division, Nos. CP-14-CR-0001389-2017, CP-14-CR-0000784-2018 & CP-14-CR-0001540-2018, Brian K. Marshall, J., granted defendant's motion to suppress evidence. In separate order, the Court of Common Pleas, Nos. CP-14-CR-0001377-2017, CP-14-CR-0000781-2018 & CP-14-CR-0001536-2018, granted codefendant's motion to suppress. Commonwealth filed single notices of interlocutory appeal from orders for both defendant and codefendant that listed all three docket numbers assigned to charges against them. In separate opinions, the Superior Court, Nos. 2088 MDA 2018 and 2089 MDA 2018, Bowes, J., quashed appeals, 242 A.3d 388 and 241 A.3d 472. Commonwealth's petition for review was granted.

Holdings: The Supreme Court, Nos. 19 MAP 2021 and No. 20 MAP 2021, Dougherty, J., held that:

Commonwealth's filing of single notices of interlocutory appeal from orders granting defendant's and codefendant's motions to suppress, which notices identified three separate docket numbers assigned to both, did not comply with rule requiring separate notices of appeal from order resolving issues arising from more than one docket, and

quashal of appeals was not mandatory due to Commonwealth's violation of rule requiring separate notices of appeal from orders resolving issues arising from multiple dockets, overruling *Commonwealth v. Walker*, 646 Pa. 456, 185 A.3d 969.

Reversed and remanded.

Mundy, J., filed concurring opinion.

Saylor, J., filed opinion concurring in part and dissenting in part in which Donohue, J., joined.

Donohue, J., filed opinion concurring in part and dissenting in part.

Wecht, J., filed opinion concurring in part and dissenting in part.

Procedural Posture(s): Appellate Review; Pre-Trial Hearing Motion.

***464** Appeal from the Order of the Superior Court at No. 2088 MDA 2018 dated November 2, 2020, Quashing the Order of the Centre County Court of Common Pleas, Criminal Division at Nos. CP-14-CR-0001389-2017, CP-14-CR-0000784-2018 & CP-14-CR-0001540-2018 dated November 21, 2018. Brian K. Marshall, Judge

Appeal from the Order of the Superior Court at No. 2089 MDA 2018 dated October 28, 2020, Quashing the Order of the Centre County Court of Common Pleas, Criminal Division, at Nos. CP-14-CR-0001377-2017, CP-14-CR-0000781-2018 & CP-14-CR-0001536-2018 dated November 21, 2018.

Attorneys and Law Firms

Hugh J. Burns Jr., Esq., Kelly M. Sekula, Esq., Joshua D. Shapiro, Esq., PA Office of Attorney General, for Appellant.

Joseph E. McGettigan III, Esq., McAndrews Law Offices, P.C., John Francis X. Reilly, Esq., for Appellee.

BAER, C.J., SAYLOR, TODD, DONOHUE, DOUGHERTY, WECHT, MUNDY, JJ.

OPINION

JUSTICE DOUGHERTY [1]

This appeal arises from the prosecution of two defendants in connection with alleged hazing rituals at Penn State University in 2016 and 2017 that led to the death of a student. The prosecutions proceeded at multiple docket numbers for each defendant and although the common pleas court consolidated the docket numbers for trial, the docket numbers were not consolidated for all purposes. Defense suppression motions were granted in part and the Commonwealth filed two interlocutory appeals, one for each defendant. The notice of appeal for each defendant contained all docket numbers pertaining to that defendant. The Superior Court determined separate notices of appeal should have been filed for each docket number and quashed the appeals pursuant to this Court's ruling in *Commonwealth v. Walker*, 646 Pa. 456, 185 A.3d 969, 976 (2018) (when " 'one or more orders resolves issues arising on more than one docket or relating to more than one judgment, separate notices of appeals must be filed' "), *quoting* Pa.R.A.P. 341, Official Note. In doing so, the panel expressly denied the Commonwealth's request for leave to correct the procedural defect by filing separate notices of appeal at each docket number.

We granted review to examine whether the intermediate court correctly applied the holding in *Walker* considering the Commonwealth's position the matter is more properly controlled by our subsequent decision in *Always Busy Consulting, LLC v. Babford & Co., Inc.*, —— Pa. ——, 247 A.3d 1033, 1043 (2021) ("*ABC*") ("filing a single notice of appeal from a single order entered at the lead docket number ***465** for consolidated civil matters where all record information necessary to adjudication of the appeal exists, and which involves identical parties, claims and issues, does not run afoul of *Walker*, Rule 341, or its Official Note"). We conclude the exception to the *Walker* rule enunciated in *ABC* is not broad enough to encompass the present matter. Nevertheless, we remand to the Superior Court to determine, in its discretion, whether the Commonwealth should be granted relief through application of the safe harbor provision of Pa.R.A.P. 902 ("any step other than the timely filing of a notice of appeal ... is subject to such action as the appellate court deems appropriate, which may include ... remand of the matter to the lower court so that the omitted procedural step may be taken.").

I. Factual and procedural history

On the evening of February 2, 2017, the 19-year-old victim, Timothy Piazza ("decedent"), was summoned to a fraternity house for pledging activities, which included rituals involving alcohol consumption. Decedent became extremely intoxicated and ultimately fell down the basement stairs. By mid-morning the following day, he had been carried upstairs to a sofa and was unresponsive. Fraternity members called 911 around 10:45 a.m. According to the Commonwealth, after calling for assistance, appellees Brendan Patrick Young and Daniel Casey, who were officers of the fraternity, attempted to hide evidence of what occurred at the fraternity house during the relevant time. Decedent was transported to the hospital, where he was pronounced dead. A medical examination revealed internal bleeding, brain swelling, a skull fracture, and a shattered spleen. Decedent's abdominal cavity contained substantial amounts of clotted blood, and according to medical personnel, had decedent received timely treatment, he could have survived.

The Commonwealth charged appellees with various offenses including involuntary manslaughter, recklessly endangering another person, evidence tampering, hazing, and furnishing alcohol to minors. Many of the charges were related to the hazing activities described above, though some were related to hazing actions that allegedly occurred in the fall of 2016. [2] After a preliminary hearing, only some of the charges were held for trial, and the case against each defendant was assigned a docket number. The Commonwealth refiled the dismissed charges and referred the prosecution to the Office of Attorney General due to a conflict of interest. After another preliminary hearing, some of the refiled charges were held for trial, while others were again dismissed. The newly held charges were given distinct docket numbers for each defendant. When the Commonwealth again refiled previously dismissed

charges, a third preliminary hearing occurred. Again, some of the refiled charges were held for trial, while the remainder were dismissed. Those newly ***466** held charges were also given docket numbers distinct from those previously assigned. Consequently, the proceedings against each defendant included three separate docket numbers, which were consolidated for trial. [3]

Before the third set of charges was filed, appellees each filed an omnibus pre-trial motion listing the docket numbers assigned after the first two preliminary hearings. They later filed supplemental pretrial motions relative to the dockets created after the third preliminary hearing, and sought, *inter alia*, suppression of evidence obtained from their cell phones. In October 2018, the common pleas court held a hearing on the motions as supplemented and ultimately granted the defendants' motions to suppress cell phone evidence on the basis the search warrant was overbroad. *See Commonwealth v. Casey & Young*, Nos. CP-14-CR-1377-2017, *et al.*, Opinion and Order at 35 (C.P. Centre Cty., Nov. 21, 2018). The court's opinion and order reflected a double caption at the top, one for each defendant in which all three docket numbers were listed for that defendant. *See id.* at 1. [4]

The Commonwealth filed two notices of appeal, one for each defendant under Rule of Appellate Procedure 311(d) which allows the Commonwealth to appeal from an interlocutory order if the Commonwealth certifies that the order substantially hinders or terminates the prosecution. Each notice of appeal contained the three docket numbers specific to the defendant in question. [5]

The Superior Court issued a rule to show cause for each appeal directing the Commonwealth to explain why the appeal should not be quashed pursuant to the bright-line rule of *Walker*. In its response, the Commonwealth sought to distinguish *Walker* from the present matter primarily by noting *Walker* involved one notice of appeal for a single suppression order applicable to four separate defendants at four separate docket numbers, whereas in the instant case each notice of appeal applies to a single defendant and includes all three docket numbers for that defendant. The Commonwealth also argued *Walker* is distinguishable from the instant matter because here, even though the case against ***467** each defendant involved three docket **numbers**, each criminal case comprised a single docket; the additional numbers existed only because of multiple preliminary hearings. The Commonwealth argued that requiring a separate notice of appeal for each docket **number** would be unduly formalistic and exceed *Walker's* scope. In the alternative, the Commonwealth requested leave to correct the purported procedural defect by filing new, duplicate notices of appeal at each docket number. The Superior Court discharged the rules to show cause and deferred the question to the merits panel.

In nearly identical unpublished opinions, the merits panel quashed the appeals. *See Commonwealth v. Casey*, No. 2089 MDA 2018, 2020 WL 6306055 (Pa. Super. Oct. 28, 2020) (unpublished memorandum); *Commonwealth v. Young*, No. 2088 MDA 2018, 2020 WL 6392766 (Pa. Super. Nov. 2, 2020) (unpublished memorandum). The panel rejected the Commonwealth's position that *Walker* requires separate notices of appeal only in the context of separate dockets, as opposed to separate docket numbers, noting *Walker* did not differentiate between a docket and a docket number. The panel indicated subsequent case law did not limit the holding of *Walker* to cases involving multiple defendants. [6]

The panel also reasoned the multiple cases filed against each defendant were not treated as a single case for that defendant but remained distinct through the proceedings; indeed, the trial court had mandated that every paper filed relative to each defendant be filed at all docket numbers. The panel held that although one individual is the defendant at each group of three docket numbers, and the suppression issue at those docket numbers is identical, a separate notice of appeal is still required at each docket number lest the Commonwealth be permitted to unilaterally consolidate the appeals, which *Walker* held would be improper because consolidation lies within the discretion of the appellate court. *See Walker*, 185 A.3d at 976, *citing* Pa.R.A.P. 513. [7] Finally, the panel rejected the Commonwealth's request to amend the notices of appeal, ostensibly because the Commonwealth "fail[ed] to articulate how amendment can remedy its failure to timely file separate notices of ***468** appeal at the other two docket numbers at

issue." *Casey*, 2020 WL 6306055 at *4; *Young*, 2020 WL 6392766 at *4.

We granted review to consider whether the Superior Court "err[ed] in extending *Commonwealth v. Walker* to require dismissal where the notice of appeal showed multiple docket numbers but there was only one case and one docket, with one defendant, one suppression ruling, and one set of facts and issues[.]" *Commonwealth v. Young & Casey,* —— Pa. ——, 251 A.3d 774 (2021) (*per curiam*). As this is a question of law, our review is plenary. *Malanchuk v. Tsimura*, 635 Pa. 488, 137 A.3d 1283, 1286 (2016).

II. Pertinent precedent

Preliminarily, we recognize there were two defendants below, and the issue now before us is whether the Commonwealth was required to file three notices of appeal to Superior Court for each defendant. We also recognize that reference to multiple defendants and six docket numbers would only tend to confuse matters. Accordingly, while our analysis will apply to the Commonwealth and each defendant individually, our discussion will be developed as if there were only one defendant against whom the Commonwealth was proceeding at three docket numbers.

In *Walker*, the police stopped a car after receiving a report of a robbery at an apartment building with a description of the vehicle and individuals involved. Four persons were inside the car, which was searched pursuant to a warrant obtained post-stop. The search yielded items believed to be taken during the robbery, and after being charged, the four defendants moved to suppress the items recovered. The trial court issued one opinion and order granting all four suppression motions on the basis the police lacked reasonable suspicion to stop the vehicle, and the Commonwealth lodged an interlocutory appeal per Pa.R.A.P. 311(d). Unlike the present case, the Commonwealth only filed a single notice of appeal for all defendants, listing the four docket numbers, and the Superior Court quashed the appeal.

In reviewing the propriety of that quashal, this Court began by reviewing decisional precedent relating to appeals from final orders under Rule 341(a), noting the Commonwealth had not presented any compelling argument as to why the rules governing multiple appeals should not apply to appeals from interlocutory orders under Rule 311(d). We noted that although filing a single notice of appeal from multiple final orders is disfavored, our courts have at times opted not to quash such appeals where the issues raised in those multiple final orders are substantially identical, the appellee raised no objection to the single notice, and the time to file an appeal had expired so that substantive appellate review would otherwise be denied. *See Walker*, 185 A.3d at 974-75 (*discussing*, *inter alia*, *Gen. Elec. Corp. v. Aetna Cas. & Sur. Co.*, 437 Pa. 463, 263 A.2d 448 (1970)). The *Walker* Court emphasized, however, that in 2013, the Note to Rule 341(a) was amended to clarify that " 'separate notices of appeal[ ] must be filed' " where one or more orders resolve issues arising on more than one docket. *Id.* at 976, *quoting* Pa.R.A.P. 341(a), Note. The Court stated this amendment represented a "bright line requirement for future cases[,]" *id.*, but did not "apply the mandate of the Official Note [to Rule 341]" to the *Walker* litigants, in part because it was "contrary to decades of case law" from Pennsylvania courts in which failure to file multiple notices of appeal was disapproved, but the appeals themselves were nevertheless rarely quashed. *Id.* at 977. Thus, the rule announced in *Walker* was prospective only, but going forward, it sometimes engendered ***469** conflicting decisions in the lower courts.

For example, in several unreported decisions, the intermediate court deemed the practices of filing one notice of appeal at each docket number, italicizing or otherwise highlighting that docket number, and additionally listing in the notice of appeal all other docket numbers affected by the order, as complying with Rule 341 and *Walker*. *See e.g.*, *Commonwealth v. Williams*, 1173 WDA 2019, 2019 WL 3384926 at *1 n.3 (Pa. Super. July 26, 2019) (unpublished opinion). However, as previously noted, *see* n.5 *supra*, a three-judge panel later interpreted *Walker* as instructing that a notice of appeal which included multiple docket numbers could not be accepted. *See Commonwealth v. Creese*, 216 A.3d 1142, 1144 (Pa. Super. 2019) ("[A] notice of appeal may contain only one docket number."). The Superior Court sitting *en banc* later expressly overruled *Creese* in *Johnson*.

In *Johnson*, the *en banc* panel recognized its own ruling in *Walker*, which was affirmed by this Court, stemmed from the dual observations that: (1) in a situation where two codefendants attempt to appeal their individual judgments of sentence via a single notice of appeal, *see In re C.M.K.*, 932 A.2d 111 (Pa. Super. 2007), the filing of a single notice of appeal presents difficulties because the two defendants may have been convicted based on distinct conduct and different evidence; and (2) analogous problems may arise where the Commonwealth files one appeal from an order granting suppression to multiple defendants, because the defendants' privacy rights and standing to challenge the lawfulness of the search may differ, and the result of the appeal may impact whether they should be tried jointly. *See Johnson,* 236 A.3d at 1145-46 (discussing *Commonwealth v. Walker*, 2299 EDA 2015, 2016 WL 5845208 at *3 (Pa. Super. Sept. 30, 2016) (unpublished memorandum)). The *Johnson* court noted these types of difficulties do not arise where a single defendant appeals from a judgment of sentence following trial on multiple dockets. Nevertheless, the court indicated *Walker* still requires the filing of multiple notices of appeal. *See id.* at 1146. However, it approved the practice of including all docket numbers on each notice of appeal, as nothing in *Walker* or the rules of appellate procedure precluded it. *See id.* at 1148; *see also id.* ("The fact that the notices contained all four lower court numbers is of no consequence.").

The same day the Superior Court decided *Johnson*, it also decided *Commonwealth v. Larkin*, 235 A.3d 350 (Pa. Super. 2020) (*en banc*), *alloc. denied*, —— Pa. ——, 251 A.3d 773 (2021) (*per curiam*). In *Larkin*, a post-conviction petitioner filed a single *pro se* notice of appeal listing both of his criminal docket numbers, which technically violated the *Walker* rule. Nevertheless, the panel credited Larkin's argument that a breakdown in the operation of the court had occurred when the trial court advised Larkin he had 30 days "to file **an** appeal," which led Larkin to believe he only had to file a single notice of appeal. *Id.* at 354 (emphasis in original; internal citation and quotation omitted). Thus, as in other cases where the intermediate court had discerned a similar breakdown, the *Larkin* panel declined to quash the appeal.[8] *See id.* at 353, *citing*, *inter alia*, ***470** *Commonwealth v. Stansbury*, 219 A.3d 157, 160 (Pa. Super. 2019) (appellate courts often decline to quash appeal when defect results from appellant acting in accordance with misinformation relayed by trial court), *alloc. denied*, —— Pa. ——, 235 A.3d 1073 (Pa. 2020) (*per curiam*).

The following year, this Court decided *ABC*, which involved a contractual dispute where an arbitrator awarded damages in favor of Babford & Co. ("Babford"), and against Always Busy Consulting, LLC ("Always Busy"). Always Busy filed a petition to vacate or modify the award and Babford filed a petition to confirm it. The petitions were given distinct docket numbers, but were consolidated by joint motion of the parties, with the court designating one of the docket numbers as the lead. Ultimately, the court denied the petition to vacate and granted the petition to confirm.

Before judgment was entered, Always Busy filed one notice of appeal at the lead docket number, but it listed both docket numbers. Judgment was subsequently entered at the lead docket number, and the Superior Court issued a rule to show cause why the appeal should not be quashed pursuant to *Walker*, as the single notice of appeal pertained to two docket numbers. Always Busy responded by attempting to file a second notice of appeal at the other docket number, but the common pleas prothonotary rejected it based on the local practice of filing notices of appeal involving consolidated cases only at the lead docket number. Thereafter, the Superior Court held it was " 'constrained by the strict holding of *Walker*," and "reluctantly quash[ed] the appeal.' " *ABC*, 247 A.3d at 1037, *quoting Always Busy Consulting v. Babford & Co.*, Nos. 330 WDA 2019, 387 WDA 2019, 2019 WL 4233816 at *4 (Pa. Super. Sept. 9, 2019) (unpublished memorandum).

We granted review to determine whether *Walker's* bright-line separate-notice-of-appeal-for-each-docket-number rule was intended to apply to situations like the one presented in *ABC*. We quoted the rationale of *Walker* as follows:

> [The] practice [of filing a single notice of appeal for multiple cases] utilized in this circumstance by the Commonwealth will

> often result in unintended consequences, as the appellate court, in deciding the single appeal, must "go behind" the notice of appeal to determine if the same facts and issues apply to all of the appellees. As the Superior Court in this case observed, the suppression order at issue here may affect one or more of the [a]ppellees differently from the rest, including, for example, the remaining evidence (if any) against each [a]ppellee that may be used at trial (which, in turn, may implicate whether all or some of the [a]ppellees should be tried in a single joint trial). The legal issues relating to suppression, *e.g.*, the standing of each defendant to challenge the search and seizure, may also differ from one [a]ppellee to the next.

ABC, 247 A.3d at 1043, *quoting* *Walker*, 185 A.3d at 977.

We then determined the types of concerns *Walker* addressed were not present in *ABC* because the two cases were consolidated, there was a "complete identity of parties and claims[,]" and a single order ***471** disposed of the entire litigation, "which involved two sides of the same coin, *i.e.*, competing petitions to vacate or confirm the same arbitration award." *Id.* at 1042-43. Thus, we held *Walker* did not control as its application under the circumstances would "elevate[ ] form over substance." *Id.* at 1043. In terms of a rule going forward, we held:

> [F]iling a single notice of appeal from a single order entered at the lead docket number for consolidated civil matters where all record information necessary to adjudication of the appeal exists, and which involves identical parties, claims and issues, does not run afoul of *Walker*, Rule 341, or its Official Note.

Id.

Finally, we expressly referred the issue to our Appellate Procedural Rules Committee to consider corresponding adjustments to the Note to Rule 341. *See id.* at 1043 n.12. [9]

III. Arguments of the parties

The Commonwealth argues the present circumstances — where it filed one notice of appeal reflecting multiple docket numbers that were consolidated for trial — largely duplicate those of *ABC*. It observes the sentence in the Note to Rule 341 on which *Walker* relied and which requires separate notices of appeal where there are separate "dockets" or "judgments," specifically mentioned *C.M.K.* and *Malanchuk*, which are distinguishable from the instant case. [10] The Commonwealth maintains *C.M.K.* involved two criminal defendants attempting to jointly appeal their separate judgments of sentence, and *Malanchuk* involved the appeal of two civil defendants, only one of whom was awarded summary judgment in full. Thus, the Commonwealth argues, the teaching of those decisions is that separate notices of appeal are required "where, in substance, there are different cases, with different parties, facts and issues." Commonwealth's Brief at 17. The Commonwealth maintains the Note's reference to more than one "docket" or "judgment" should be understood to mean more than one "case" — and where there is a complete identity of parties and claims, as in *ABC*, there is only one case. The Commonwealth insists the instant "appeal does not involve separate cases but only separate docket numbers." *Id.*

The Commonwealth further highlights that the Note to Rule 341 uses the term "docket," not "docket number." It suggests a docket consists of a record of all the ***472** information relating to a particular

case, *see id.* at 18, *quoting* Pa.R.Crim.P. 113, Comment ("The list of docket entries is a running record of all information related to any action in a criminal case in the court of common pleas ..."), and it analogizes the "docket" here to a library book with three call numbers. Thus, the Commonwealth maintains the three docket numbers for each defendant are simply three identifiers for a single case [11] because the charges at all three numbers were based on a single criminal episode and, as such, were subject to this Court's compulsory joinder rule. *See id.* at 18-19, *citing*, *inter alia*, *Commonwealth v. Geyer*, 546 Pa. 586, 687 A.2d 815, 816 (1996). Given this scenario, the Commonwealth insists requiring separate notices of appeal "elevates form over substance" as it did in *ABC*. *Id.* at 19.

In related fashion, the Commonwealth criticizes the intermediate court's suggestion the multiple docket numbers indicate there were multiple cases because the trial court's consolidation order required all papers to be filed at all dockets. The Commonwealth argues this aspect of the case actually shows the three docket numbers represented the same case, because the various docket numbers involved the same defendant and same suppression issue. The Commonwealth posits the Superior Court recognized this fact when it observed that each defendant was the same defendant "at the three docket numbers, and the suppression issue at each docket number is identical." *Id.* at 22 (internal citation and quotation omitted). Going one step further, the Commonwealth posits that requiring three notices of appeal for each defendant would do the very thing *Walker* sought to avoid, *i.e.*, forcing the appellate court to "go behind" the notices of appeal to determine whether the cases can be considered together. *Id.*

The Commonwealth next argues the Superior Court's extension of *Walker* "conflicts with Pa.R.A.P. 902." *Id.* at 20. [12] The Commonwealth observes, "this Court has consistently rejected rigid construction of its procedural rules that would frustrate a fair and just result, where, as here, there is no prejudice and no substantial impediment to appellate review." *Id.* at 21. The Commonwealth relies on several pre-*Walker* decisions to support its position. *Id.* at 21-22, *citing, e.g., Womer v. Hilliker*, 589 Pa. 256, 908 A.2d 269, 276 (2006) ("[W]e expect that litigants will adhere to procedural rules as they are written, and take a dim view of litigants who flout them. That said, we have always understood that procedural rules are not ends in themselves, and that the rigid application of our rules ***473** does not always serve the interests of fairness and justice.") (citations omitted); *Smith v. Pennsylvania Board of Probation and Parole*, 546 Pa. 115, 683 A.2d 278, 282 (1996) ("being mindful of the danger of placing form over substance, our courts have, when faced with compelling situations, been willing to take into account the particular facts of a case and have, in the interest of fairness, adopted an interpretation of the rules allowing the appeals to proceed ... our rules are not intended to be so rigidly applied as to result in manifest injustice where there has been substantial compliance and no prejudice") (citation omitted); *Pomerantz v. Goldstein*, 479 Pa. 175, 387 A.2d 1280, 1281 (1978) ("Procedural rules are not ends in themselves, but means whereby justice, as expressed in legal principles, is administered. They are not to be exalted to the status of substantive objectives ... [and] should never be used to deny ultimate justice[.]") (citations and quotation marks omitted).

While insisting *Walker* does not apply to the present circumstances, in cases where it arguably does apply, the Commonwealth requests, "this Court should clarify that appellate courts have discretion to allow non-jurisdictional defects in filing a notice of appeal to be corrected." *Id.* at 23 n. 2. To support its position, the Commonwealth relies on this Court's pre-*Walker* decision in *Commonwealth v. Williams*, 630 Pa. 169, 106 A.3d 583 (2014), which, according to the Commonwealth, held quashal is just one, least-favored option for the appellate court faced with a defective notice. *Id.*, *quoting Williams*, 106 A.3d at 587-88 ("[i]n the event of a defective notice of appeal, Rule 902 encourages, though it does not require, appellate courts to remand the matter to the lower court so that the procedural defect may be remedied[;]" Rule 902 "creates a preference for correcting procedurally defective, albeit timely, notices of appeal so that appellate courts may reach the merits of timely appeals").

Appellees counter that *ABC* is distinguishable, and the rule of *Walker* should control. [13] Appellees acknowledge the *Walker* rule can be relaxed in cases involving a breakdown in court operations, as occurred in *ABC*, but assert there was no breakdown here. Appellees view the *ABC* exception to *Walker* as

applicable only where consolidation was granted upon joint motion of both parties, with a lead docket number designated, and a " 'complete identity of parties and claims, such that a single order disposed of the litigation which involved two sides of the same coin[.]' " Appellee's Brief at 14, *quoting ABC*, 247 A.3d at 1043. [14]

Moreover, appellees dispute the Commonwealth's contention the three docket numbers were subject to compulsory joinder. ***474** They argue the charges were not based on a single criminal episode — some charges were based on alleged hazing activities in 2016 with one set of victims, and others were based on conduct occurring in 2017 with a different set of victims. [15] Appellees assert this means the *Walker* rule should apply *a fortiori*, because in *Walker* there was only one alleged criminal episode. *See id.* at 20-23. They suggest this circumstance could affect substantive appellate review because an appellate court could "determine that a warrant had sufficient probable cause for seizures limited to one criminal episode but not to a different criminal episode." *Id.* at 23. Appellees argue that could happen in the present matter because the affidavit of probable cause supporting the search warrant was limited to the events of February 2-3, 2017; consequently, appellees maintain the warrant lacked probable cause entirely for the docket numbers relating to the charges arising from their conduct in 2016, and the warrant is overbroad as it relates to the 2017 charges. *See id.* at 23-24. [16]

IV. Analysis

Upon review, we find the exception to the *Walker* rule enunciated in *ABC* is not broad enough to encompass the present matter. The *Walker* Court interpreted Rule 341(a) as setting forth "a bright-line mandatory instruction to practitioners to file separate notices of appeal" for each docket. *Walker*, 185 A.3d at 976-77. [17] In *ABC*, we reaffirmed the general rule, and emphasized parties are not permitted unilaterally to consolidate matters for appellate review by filing a single notice of appeal from an order arising on multiple dockets. We observed "consolidation is a determination that must be made by the appellate court, at its discretion, absent a stipulation by all parties to the several appeals." *ABC*, 247 A.3d at 1042, *quoting Walker*, 185 A.3d at 976 (internal citation and quotation omitted). As can be seen from the caption to the Superior Court's memorandum opinions, the Commonwealth's decision to file a single notice of appeal led to a single docket number at the ***475** appellate level, thus achieving an effective consolidation at that level inconsistent with the general rule of *Walker* and *ABC*. However, in *ABC*, this Court ultimately found quashal improper because:

> [C]onsolidation of the dockets was sought and granted in the common pleas court, and there existed complete identity of parties and claims, such that a single order disposed of the litigation which involved two sides of the same coin, *i.e.*, competing petitions to vacate or confirm the same arbitration award.

247 A.3d at 1043. Thus, we held:

> [F]iling a single notice of appeal from a single order entered at the lead docket number for consolidated civil matters where all record information necessary to adjudication of the appeal exists, and which involves identical parties, claims and issues, does not run afoul of *Walker*, Rule 341, or its Official Note.

Id.

Here, regardless of whether there is identity of parties and claims, the docket numbers were not different "sides of the same coin" — that is, different ways of litigating the exact same dispute, as in *ABC* — and there was no lead docket number. To the contrary, each docket number encompassed a different set of criminal

charges, and each such charge, by its nature, involved different victims, different occasions, or different conduct toward the same victim. Moreover, *ABC's* exception to the *Walker* rule is, by its terms, limited to civil cases, which may better lend themselves to multiple docket numbers representing "two sides of the same coin."

There is some merit in the Commonwealth's contention that this result tends to "elevate form over substance" to a certain degree. A different result would likely obtain if all the ultimately-bound-over charges had been filed initially and then been bound over after the first preliminary hearing — in which case there would have been a single docket number for each defendant encompassing all charges. However, as the cases and charges actually progressed over time, quashal was seemingly required by Rules of Appellate Procedure 341(a) and 311(d) as interpreted in *Walker*.

But, there is another rule with a role to play in matters like this one: Pa.R.A.P. 902 (manner of taking appeal). As noted above, the Commonwealth requests that, should this Court conclude *Walker* applies to the unique facts of this case, we should clarify that, under Rule 902, appellate courts have discretion to remand a timely-filed notice of appeal to the lower court to remedy a non-jurisdictional defect. Rule 902 provides: "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 subject to 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**." Pa.R.A.P. 902 (emphasis added). The Note to the rule indicates this sentence was revised in 1986 to reflect 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 possibility where counsel fails to take the necessary steps to correct the defect.

Id., Note.

Here, in response to the Superior Court's rule to show cause why the appeal ***476** should not be quashed in light of *Walker*, the Commonwealth responded and requested, in relevant part, "an opportunity to amend the notice of appeal to include a separate notice for each lower court number to comply with *Walker*[,]" maintaining "[a]ny error related to the notice of appeal would constitute a formatting error rather than a failure to provide notice as the single notice of appeal apprised all parties of the order being appealed from and should not create a jurisdictional bar to review." Commonwealth's Response to Directive to Show Cause, 3/4/2019, at 7. Presently, and below, as noted by the Superior Court, the Commonwealth candidly admits it submitted only one notice of appeal with respect to each defendant listing the three docket numbers associated with that defendant, and explains "[i]n each case the [filing] clerk made two photocopies of the notice of appeal and filed three identical notices, one under each of the three docket numbers, for each defendant." Commonwealth's Brief at 10. There is no dispute the Commonwealth's notices of appeal were timely filed. *See* Pa.R.A.P. 903 (notice of appeal to be filed within thirty days after entry of order from which appeal is taken). The only question is whether its error in including three docket numbers on each defendant's notice of appeal — each of which was then photocopied by the clerk and filed under each of the three docket numbers — **requires** quashal. We conclude it does not.

Notably, we did not consider the interplay between Rules 341(a) and 902 in *Walker* or *ABC* because neither the lower courts nor the parties raised it. [18] But other courts have written to it. As noted *supra*, in *Larkin*, Judge Stabile authored a thoughtful concurring opinion that focused on Rule 902 and observed "the harsh quashal required due to a technical noncompliance with Pa.R.A.P. 341(a) and *Walker*, is not necessary, as our court rules provide a remedy to address this

variety of rule noncompliance." *Larkin,* 235 A.3d at 356 (Stabile, J., concurring). Judge Stabile elaborated:

> So long as a litigant timely perfects an appeal, Rule 902 allows an appellate court to take any appropriate action, including remand, to allow a party to correct any procedural misstep in a notice of appeal, excluding of course any defect relating to timeliness. ... A single notice of appeal referencing more than one docket number in violation of *Walker* presents a procedural misstep that easily can be remedied. A single appeal notice containing more than one court docket easily can be segregated into separate notices for each docket while the filing date of the original notice of appeal is preserved.

Id. at 357 (citation omitted).

Moreover, as Judge Stabile astutely observed in *Larkin*, and as argued by the ***477** Commonwealth in its brief, a remedy other than quashal is supported by our own precedent. In *Williams*, this Court considered whether the Philadelphia Clerk of Courts should have accepted a defective, but timely filed, notice of appeal. *Williams*, 106 A.3d at 586. The notice of appeal was defective "because it was missing two docket numbers and/or because the Clerk's office preferred a separate notice for each of the three docket numbers contained therein." *Id.* at 585. We held quashal is just one option in such circumstances, explaining "[i]n the event of a defective notice of appeal, Rule 902 encourages, though it does not require, appellate courts to remand the matter to the lower court so that the procedural defect may be remedied." *Id.* at 587-88. Pointing to the 1986 amendments and the accompanying note, we acknowledged Rule 902's "preference for correcting procedurally defective, albeit timely, notices of appeal so that appellate courts may reach the merits of timely appeals." *Id.* at 588. Ultimately, we held the defective but timely notice of appeal preserved the Commonwealth's appeal.

Here, we agree with the Commonwealth that "there would have been no prejudice" to the defendants had the Superior Court granted its prompt and clear request for remand to correct the procedural defect once it was identified. Commonwealth's Brief at 23 n.2. Further, the Commonwealth convincingly argues that nothing practical is achieved by the reflexive quashal of appeals for easily corrected, non-jurisdictional defects. Indeed, Rule 902 is designed specifically to eliminate such quashals as it "eliminates the 'trap' of failure to perfect an appeal" by making timely notices of appeal "self-perfecting." Pa.R.A.P. 902, Note.

We realize permitting parties to rectify non-jurisdictional procedural missteps relating to notices of appeal will, for all practical purposes, largely blunt the bright-line rule the *Walker* Court sought to impose with respect to Rule 341(a). However, as we also expressly noted in *Walker*, "[p]rocedural rules should be construed to give effect to all their provisions, and a single rule should not be read in a vacuum, especially where there is a relationship between different rules." *Walker*, 185 A.3d at 976 (citations omitted).

Now that Rule 902 is squarely before us, we take it on its terms, notwithstanding any effect its application here may have on the bright-line rule of *Walker*. In doing so, we conclude the relationship between Rules 341(a) and 902 is clear. Rule 341 requires that when a single order resolves issues arising on more than one docket, separate notices of appeal must be filed from that order at each docket; but, where a timely appeal is erroneously filed at only one docket, Rule 902 permits the appellate court, in its discretion, to allow correction of the error, where appropriate. [19] Accordingly, as there were two timely-filed notices of appeal in this case, one for each defendant, that listed additional docket numbers for each defendant, we reverse the Superior Court's order quashing the appeals and, pursuant to Rule 902, we remand to that court to reconsider the Commonwealth's request to remediate its ***478** error, "so that the omitted procedural step may be taken." Pa.R.A.P. 902. [20]

Reversed and remanded.

Chief Justice Baer and Justices Todd and Mundy join the opinion.

Justice Mundy files a concurring opinion.

Justice Saylor files a concurring and dissenting opinion in which Justice Donohue joins.

Justice Donohue files a concurring and dissenting opinion.

Justice Wecht files a concurring and dissenting opinion.

JUSTICE MUNDY, concurring

I join in the Majority's holding that the exception to *Commonwealth v. Walker,* 646 Pa. 456, 185 A.3d 969 (2018), announced in *Always Busy Consulting, LLC v. Bradford & Co.,* —— Pa. ——, 247 A.3d 1033 (2018), does not apply in the instant matter. Nevertheless, while the instant matter does not fit within the narrow exception of *Always Busy Consulting*, it demonstrates yet another problem with the practical application of the bright-line-rule announced in *Walker*. Here, the Majority posits that the filing by the Commonwealth of a single notice of appeal for each above-captioned defendant, resulted in effectively consolidating the three lower court dockets into one Superior Court docket number for each defendant. However, the procedural history of this case demonstrates that the multiple dockets for each defendant had already been consolidated for trial. [1]

***479** This Court held in *Walker*, "where a single order resolves issues arising on more than one docket, separate notices of appeal must be filed for each case." *Id.* 185 A.3d at 971. [2] In *Walker*, four co-defendants each filed separate suppression motions at their respective docket numbers, raising related issues. The trial court heard the motions at the same time and issued a single order under the four docket numbers. The Commonwealth then filed a single notice of appeal related to four separate defendants, "effectively, and improperly, consolidating the appeals...for argument and joint resolution, without either the approval of the Superior Court or the agreement of the [a]ppellees." *Id* at 977.

By contrast, in this case, charges were filed on three separate occasions against Young and Casey. At the conclusion of each of the three separate preliminary hearings, charges were bound over for trial and each separate set of charges resulted in a new docket number. Upon motion of the Commonwealth, the dockets were consolidated for trial. As the majority notes, a lead docket number was not assigned, rather the defendants were directed by the trial court to include all three docket numbers on any filings. In accordance, each defendant filed one omnibus pretrial motion that included all three docket numbers. A hearing was held, and the court entered a single order granting the defendants' motion to suppress cell phone evidence. The order captioned each defendant separately and listed all three docket numbers for each defendant under their respective names. Thereafter, prior to proceeding to trial on the consolidated dockets, the Commonwealth filed two interlocutory notices of appeal. Each notice of appeal pertained to one defendant's suppression order, listing each of the defendant's three docket numbers on their respective notices of appeal as the trial court had instructed.

Under the Majority's interpretation of *Walker*, the Commonwealth was required to deviate from the procedure imposed by the trial court of including all three docket numbers on each defendant's respective filings, and instead file six separate notices of appeal. In turn, the Superior Court would docket six different appeals to resolve two interlocutory appeals in advance of trial. This illustrates my continued frustration over a *Walker* rule that pits form over substance to the detriment of practitioners. [3] In my view, the *Walker* rule should not serve to sever one defendant's consolidated case into multiple separate appeals.

***480** Nevertheless, while the bright-line-rule in *Walker* continues to remain precedential, I concur in the result, and join in the Majority's holding to remand for determination of whether under Pennsylvania Rule of Appellate Procedure 902, the Commonwealth should be permitted to correct the non-jurisdictional defect to its timely filed notices of appeal.

JUSTICE SAYLOR, concurring and dissenting

I support the majority's holding that the exception embodied in *Always Busy Consulting, LLC v. Bradford*

& Co., —— Pa. ——, 247 A.3d 1033 (2021), to the policy of dismissal announced in *Commonwealth v. Walker*, 646 Pa. 456, 185 A.3d 969 (2018), is inapplicable, as well as the associated reasoning. I respectfully dissent, however, with respect to the determination that Rule of Appellate Procedure 902 applies to effectively eviscerate *Walker*.

The majority cites *Commonwealth v. Williams*, 630 Pa. 169, 106 A.3d 583 (2014), as evidencing this Court's previous reliance on Rule of Appellate Procedure 902 to alleviate the harsh effect of a quashal where a litigant has failed to file separate notices of appeal. *See* Majority Opinion at 476–77. *Walker*, however post-dated Williams. Thus, the *Walker* Court was well aware that there was a long line of prior decisions, such as *Williams*, favoring remedial measures over quashal. *See Walker*, 646 Pa. at 468-69, 185 A.3d at 976-77. This is why, when the *Walker* Court departed from those cases by mandating quashal, it provided for only prospective enforcement of the rule. *See id*. at 469, 185 A.3d at 977.

Indeed, were *Walker*'s quashal requirement to be subordinated to the discretionary, safe-harbor approach of Rule 902, the decision's vestige would remain only in cases in which a litigant neglected to reference Rule 902. This, however, is contrary to *Walker*'s unqualified pronouncement that the failure to file separate notices of appeal, when a single order resolves issues arising on more than one lower court docket, "will result in quashal of the appeal." *Id*. at 470, 185 A.3d at 977. Along these lines, it is difficult to conceive why the Court would have pronounced a bright-line rule in the first instance if it were to be subject to an exception stripping it of the prescribed effect.

I personally see little difference between the discretionary latitude that was available under the common law -- which was explicitly rejected in *Walker* -- and that which is available under Rule 902. For this reason and otherwise, it seems to me to be incongruous to differentiate Rule 902 from the common-law approach for the purpose of obviating *Walker* but nevertheless to accept the Commonwealth's generic (*i.e.*, non-rule-based) overture to the Superior Court seeking latitude to amend as sufficient to implicate Rule 902 as such. *See* Majority Opinion at 476 n.18.

Justice Donohue joins this concurring and dissenting opinion.

JUSTICE DONOHUE, concurring and dissenting

I join Justice Saylor's astute concurring and dissenting opinion. I agree that the *Always Busy Consulting* [1] exception to the rule announced in *Commonwealth v. Walker*, 646 Pa. 456, 185 A.3d 969 (Pa. 2018), does not apply to the case before us and that the Majority's elevation of Pennsylvania Rule of Appellate Procedure 902 [2] and ***481** its remedial capabilities fails to recognize that this Court deliberately departed from the discretionary nature of Rule 902 remedies when creating the clear rule announced in *Walker*.

I write separately to express my concern that the Commonwealth waived the issue for this Court's consideration by failing to raise it in the Superior Court. As recognized by the Majority, the Superior Court issued a directive to the Commonwealth to show cause why the appeals in these cases should not be quashed for failure to comply with the rule in *Walker*. *See* Majority Op. at 476 n.18. In its response to this directive, the Commonwealth not only failed to advocate for the application of Rule 902 as an ameliorative approach to avoid quashal of these appeals, it failed even to mention the rule. *Id.* To the contrary, the Commonwealth raised the potential application of Rule 902 for the first time in this Court. The Majority minimizes the Commonwealth's failure to identify Rule 902 in its response to the rule to show cause, pronouncing that the Commonwealth's generalized request for leave to fix any perceived errors "plainly invoked the remedial, ameliorative and equitable relief measures" afforded by Rule 902. *Id.* Even the most generous reading of the Commonwealth's response cannot support this interpretation. Not so much as an allusion to Rule 902 is discernable in that filing, as nothing in the Commonwealth's argument remotely suggested that it was requesting rule-based relief. If the Commonwealth had been remotely aware of Rule 902 and sought its application, it would have cited to it or to cases applying it in conjunction with its bald request for

a reprieve. This is not an insignificant failure by the Commonwealth because its failure to argue the application of Rule 902 deprived the Superior Court panels in these cases of the opportunity to address it, which deprived this Court of the insight of these panels of the Superior Court on the issue.

It is firmly entrenched that for an issue to be reviewable by this Court, it must have been "preserved at all stages in the lower courts." *See, e.g.*, *Commonwealth v. Hays*, 655 Pa. 690, 218 A.3d 1260, 1265 (2019); *see also* Pa.R.A.P. 302(a). Reduced to their essence, the rules of waiver, whether common law or ruled based, require litigants to raise their claim at the first opportunity. *See, e.g.*, *Campbell v. Com., Dep't of Transp., Bureau of Driver Licensing,* 86 A.3d 344, 349 (Pa. Cmwlth. 2014) ("While a party has a duty to preserve an issue at every stage of a proceeding, he or she also must comply with the general rule to raise an issue at the earliest opportunity."). *Cf. Goodheart v. Casey*, 523 Pa. 188, 565 A.2d 757, 763 (1989) ("The case law in this Commonwealth is clear and of long standing; it requires a party seeking recusal or disqualification to raise the objection at the earliest possible moment, or that party will suffer the consequence of being time barred."). *See also* Pa.R.A.P. 302 Note (quoting *Commonwealth v. Piper*, 458 Pa. 307, 328 A.2d 845, 847 (1974) ("Issues not raised in the court below are waived and cannot be raised for the first time on appeal to this Court.")). Because the Commonwealth did not raise this claim at the first opportunity, it has ***482** waived the issue in these cases and no relief can be afforded.

Moreover, it is pertinent to note that Rule 902 has never been applied to the type of defective appeals we addressed in *Walker*. In 1970, this Court in *General Electric Credit Corp. v. Aetna Casualty and Surety Co.*, 437 Pa. 463, 263 A.2d 448 (1970), designed a three-part test to decide whether quashal was warranted where a single notice of appeal was filed in response to multiple final orders. *Id.* at 453. In 1986, Rule 902 was amended to permit an appellate court to remand a matter to the lower court "so that the omitted procedural step may be taken." Pa.R.A.P. 902. Neither the courts nor litigants, however, turned their focus from the *General Electric* test to the ameliorative effects permitted by Rule 902. Instead, both this Court and our intermediate appellate courts continued to apply the *General Electric* test, with no consideration of Rule 902. *See, e.g.*, *K.H. v. J.R.*, 573 Pa. 481, 826 A.2d 863, 870 (2003); *In the Interest of P.S.*, 158 A.3d 643, 648 (Pa. Super. 2017); *Praskac v. Unemployment Comp. Bd. of Review*, 683 A.2d 329, 332–33 (Pa. Commw. 1996). This approach continued in connection with our decision in *Walker*, as the Commonwealth (without any mention of, or advocacy with respect to, Rule 902) argued for a favorable application of the *General Electric* test. In rejecting the continued application of the *General Electric* test, which we found to be inconsistent, this Court established a bright-line rule to replace it. [3]

Finally, I agree with the sentiment expressed by Justice Wecht that the application of the majority's holding to the Commonwealth in this appeal is abjectly unfair given that the defendants in this very case were held to the *Walker* standard, with the result that their earlier appeals were quashed. If this Court is determined to set aside this recent precedent, at the very least the decision should be prospective only, so that the parties before us receive equal treatment under the law.

JUSTICE WECHT, concurring and dissenting

In both cases here, the Commonwealth filed a single notice of appeal from an order that resolved issues arising under more than one docket. As the Majority explains, each of the docket numbers related to a distinct set of criminal charges, and thus involved either different victims, different instances of alleged criminality, or distinct conduct toward the same victim. Given those circumstances, I agree with the Majority that the various dockets did not "merge" within the meaning of *Always Busy Consulting, LLC v. Bradford Co.*, —— Pa. ——, 247 A.3d 1033 (2021) (hereinafter "*ABC*"). [1] Instead, the cases before us ***483** today present the same concerns that motivated the bright-line rule that we announced in *Commonwealth v. Walker*, 646 Pa. 456, 185 A.3d 969 (2018): when "one or more orders resolves issues arising on more than one docket or relating to more than one judgment, separate notices of appeals must be filed." *Id.* at 976. Therefore, I concur with the Majority that "the exception to the *Walker* rule enunciated in *ABC* is not broad enough to encompass the present matter" and that "quashal was seemingly required by Rules of Appellate Procedure

341(a) and 311(d) as interpreted in *Walker."* Maj. Op. at 474, 475.

The Commonwealth asserts that *Walker's* quashal mandate was misguided and inconsistent with Pennsylvania Rule of Appellate Procedure 902, which provides "that 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." Pa.R.A.P. 902. Rule 902 instructs appellate courts to take any other action that the 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." *Id.* [2] Like the Majority, I agree with the Commonwealth that, per the plain language of Rule 902, appellate courts first should afford appellants that have filed defective notices of appeal under *Walker* an opportunity to cure those defects. Only after the appellant fails to do so should *Walker*'s remedy of quashal be on the table.

The Majority would apply Rule 902, "notwithstanding any effect its application here may have on the bright-line rule of *Walker*." Maj. Op. at 477. The Majority observes that application of the single notice of appeal requirement often elevates form over substance. In addition to *Walker*'s tension with Rule 902's instruction, the Majority astutely explains, *Walker*'s quashal mandate also conflicts with our decision in *Commonwealth v. Williams*, 630 Pa. 169, 106 A.3d 583, 588 (2014) (holding that Rule 902 demonstrates a "preference for correcting procedurally defective, albeit timely, notices of appeal so that appellate courts may reach the merits of timely appeals."). The Majority's criticisms are well-founded.

While I joined this Court's decision in *Walker*, my observations of its application over the past three years have led me to reconsider my embrace of that precedent to the extent that it commands quashal unequivocally. The quashal mandate has deprived too many litigants of their right to an appeal because of technical defects, defects as to which our rules allow correction prior to any direct resort to quashal. *Walker*'s unwavering command of dismissal seems unwarranted in light of the plain language of Rule 902. For these reasons, I agree with the Majority that, consistently with *Walker*, Rule 341 requires an appellant to file separate notices of appeal when a single order resolves issues arising under more than one docket; "but, where a timely appeal is erroneously filed at only one docket, Rule 902 permits the appellate court, in its discretion, to allow for correction of the error, where appropriate." Maj. Op. at 477.

***484** I part ways with the Majority inasmuch as I would not apply Rule 902's safe harbor here. It would be inequitable to afford the Commonwealth the grace that has been received by no other appellant whose appeals have been quashed for the same *Walker* violation, including Messrs. Young and Casey themselves. [3]

In *Walker*, we chose to overlook the Commonwealth's noncompliance, holding that our rule would apply only prospectively. To that end, we observed that requiring quashal for the failure to file multiple notices "was contrary to decades of case law from this Court and the intermediate appellate courts that, while disapproving of the practice of failing to file multiple appeals, seldom quashed appeals as a result." *Walker,* 185 A.3d at 977. We deemed it critical that Rule 341's official Note was unclear as to whether multiple notices of appeal were required and as to the consequence of failure to comply with the bright-line instruction. *See id.* Given that ambiguity, and given the novelty of our holding, it would have been unfair to hold that the Commonwealth's noncompliance required quashal.

Here, there has been no amendment to the appellate rules that is inconsistent with existing practice under *Walker*. Rather, the Commonwealth asks that we overrule *Walker*, at least insofar as it relates to the consequence of an appellant's failure to file multiple notices. This is not a circumstance in which the Commonwealth was unable to anticipate that its failure to comply with *Walker* would compel quashal. In each of the cases before us here, the Commonwealth filed the notice of appeal on December 21, 2018. We decided *Walker* on June 1, 2018. The Commonwealth had ample notice of *Walker*'s clear holding that "the proper practice under Rule 341(a) is to file separate appeals from an order that resolves issues arising on more than one docket." *Id.* If there was doubt as to whether *Walker*'s bright-line rule applied, the Commonwealth should have erred on the side of caution. It failed to do so.

And the present circumstances are unlike those at issue in *ABC*. While *ABC* carved out an exception to *Walke*r, it was not the exception alone that warranted reversal of the Superior Court's order quashing the appeal there. In that case, the appellant attempted to comply with the multiple notice of appeal requirement, but the attempt was thwarted. *ABC*, 247 A.3d at 1042 (emphasizing that "the prothonotary apparently relied on custom to require a single notice of appeal in consolidated cases, notwithstanding the conflicting directive of *Walker*, and *ABC* was thus misinformed by the court regarding the applicable law. We conclude this was a breakdown in court operations that ordinarily would preclude quashal.") No such breakdown in court operations occurred in this case. The Commonwealth's notices of appeal did not evince any attempt to conform with *Walker*'s bright-line rule. Nor does this case present an exception to *Walker*. As the Majority recognizes, the Commonwealth simply failed to comply with the bright-line mandate.

In both *Walker* and *ABC*, fairness militated against quashal. There is nothing unfair about upholding the Superior Court's order in this case. Indeed, to afford the Commonwealth a do-over here would be particularly troubling considering that the Superior Court quashed Young's and Casey's appeals for the same reason that it quashed the Commonwealth's appeals challenging the trial court's order, which had granted in part and denied in part Young's and Casey's pretrial motions. Like the Commonwealth, Young and Casey ***485** filed a single notice of appeal from the trial court's ruling on their pre-trial motions. The Superior Court applied *Walker* to quash their application for permission to appeal from the trial court's order on the theory that they had filed a single application listing three docket numbers. *See Commonwealth v. Casey*, 218 A.3d 429 (Pa. Super. 2019). When Young and Casey petitioned this Court for review, requesting that we excuse their noncompliance, we declined to do so. *See Commonwealth v. Casey*, No. 10 MM 2020.

The only ostensible difference between the Superior Court's order quashing the Commonwealth's appeal and its order quashing Young's and Casey's appeals is that, because of the former order, the Commonwealth may not be able to secure a conviction, raising the possibility that the Commonwealth's challenge to the trial court's suppression rulings will evade post-verdict appellate review.[4] However, our laws and rules must apply soberly, and without contemplation of consequence. This Court should not distort law and rules in order to give the Commonwealth a break or to assist it in securing a conviction. If Young and Casey are required to suffer *Walker*'s harsh mandate, it is only fair that we hold the Commonwealth to the same standard.

In sum, while I agree with the Majority that, properly applied, Rule 902 provides appellants an opportunity to cure any *Walker* defects, it would be unduly one-sided to apply that principle here. Instead, I would do so prospectively. The Commonwealth was required to file multiple notices of appeal. Pursuant to *Walker*, the failure to do so mandated dismissal of the appeal. This Court decided *Walker* more than six months before the Commonwealth filed the notices. Nothing prevented the Commonwealth from complying with our clear holding. It simply failed to follow the law. I discern no reason to excuse the Commonwealth's noncompliance when countless other appellants, including Young and Casey themselves, have suffered *Walker*'s consequence. For those reasons, I would affirm the Superior Court's order quashing the Commonwealth's appeals.

All Citations

265 A.3d 462

Footnotes

1 The matter was reassigned to this author.

2 Other individuals were charged as well. The common pleas court initially granted the Commonwealth's motion to consolidate all matters for trial. *See Commonwealth v. Bonatucci et al.*, Nos. CP-14-CR-1379-2017, *et al.*, Opinion and Order, at 5-6 (C.P. Centre Cty. Oct. 18, 2018). In response to a defense motion, however, the court amended that decision by directing that, although appellees should be tried jointly, their trial should be severed from that of the other defendants. *See id.* Opinion and Order, at 6-7 (C.P. Centre Oct. 25, 2018). The prosecution of the other individuals is not material to this appeal, and further references to the defendants herein pertain solely to appellees. Additionally, in consolidating appellees' cases for trial, and severing them from the other cases, the court did not designate a lead docket number, but directed that all papers filed at any docket number also be filed at every docket number consolidated with it. *See id.* at 7.

3 Young's docket numbers are: CP-14-CR-1389-2017, CP-14-CR-0784-2018, and CP-14-CR-1540-2018. Casey's are: CP-14-CR-1377-2017, CP-14-CR-0781-2018, and CP-14-CR-1536-2018.

4 In deciding the motions, the common pleas court rejected the defendants' challenges to the constitutionality of the anti-hazing statute. The court certified that issue for interlocutory appeal, but the intermediate court quashed the appeal based on *Walker*, *see* *Commonwealth v. Casey*, 218 A.3d 429, 431 (Pa. Super. 2019), and this Court denied the defendants' petition for review. *See Commonwealth v. Casey*, No. 10 MM 2020, Order (Pa. June 2, 2020) (*per curiam*). Nothing in this Court's order foreclosed their ability to litigate a preserved challenge to the constitutionality of the statute in an appeal from a final order if they are ultimately convicted of hazing.

5 At each of the three docket numbers for each defendant, the record contains a notice of appeal bearing all three docket numbers, suggesting separate notices of appeal were filed at each docket number; however, the notices of appeal at two of the docket numbers are simply photocopies of one original notice of appeal. The Superior Court noted the copies contained yellow highlighting specifying the docket to which they were filed, and the panel "appreciate[ed] the Commonwealth's candor" in admitting in its response to the rule to show cause that it styled the notice of appeal as a single document referencing the three docket numbers at which it sought to appeal. *See* *Commonwealth v. Casey*, No. 2089 MDA 2018, 2020 WL 6306055 at *2, n.4 (Pa. Super. Oct. 28, 2020) (unpublished memorandum); *Commonwealth v. Young*, No. 2088 MDA 2018, 2020 WL 6392766 at *2, n.4 (Pa. Super. Nov. 2, 2020) (unpublished memorandum).

6 The panel noted it had initially stayed the Commonwealth's appeal in the present case pending *en banc* consideration of *Commonwealth v. Johnson*, 236 A.3d 1141 (Pa. Super. 2020) (*en banc*), *alloc. denied*, —— Pa. ——, 242 A.3d 304 (2020) (*per curiam*), which addressed whether the inclusion of multiple docket numbers on separate notices of appeal for a single defendant mandated quashal under *Walker*. *See* *Young*, 2020 WL 6392766 at *1 & n.2. In *Johnson*, the *en banc* court determined such procedural practice was not grounds for quashal under *Walker*. *Johnson*, 236 A.3d at 1148 (*en banc*) (overruling *Commonwealth v. Creese*, 216 A.3d 1142, 1144 (Pa. Super. 2019) ("notice of appeal may contain only one docket number")). The panel ultimately determined *Johnson* had no bearing on the instant matter because the Commonwealth here did not file separate notices of appeal but filed a single notice of appeal for each defendant containing multiple docket numbers.

The panel additionally noted this Court had recently granted allocatur to determine *Walker's* applicability to a civil matter in which a single notice of appeal was filed at the lead docket number for two consolidated cases, but the appeal had not yet been decided. *Young*, 2020 WL 6392766

at *3 n.6, *citing* *Always Busy Consulting, LLC v. Babford & Co., Inc.*, —— Pa. ——, 235 A.3d 271 (2020) (*per curiam*).

7 "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." Pa.R.A.P. 513.

8 Notably, Judge Stabile authored a fully joining concurring opinion, joined by Judges Dubow, King, and McCaffery, highlighting that "the harsh quashal required due to technical non-compliance with Pa.R.A.P. 341(a) and *Walker* is not necessary" pursuant to Pa.R.A.P. 902, which "allows an appellate court to take any appropriate action, including remand, to allow a party to correct any procedural misstep in a notice of appeal, excluding of course any defect relating to timeliness. ... A single notice of appeal referencing more than one docket number in violation of *Walker* presents a procedural misstep that easily can be remedied. A single appeal notice containing more than one court docket easily can be segregated into separate notices for each docket while the filing date of the original notice of appeal is preserved." *Larkin*, 235 A.3d at 356-57 (Stabile, J., concurring) (citation omitted).

9 Justice Mundy authored a concurring opinion reiterating her position in *Walker*, *i.e.*, that the merits of an appeal should be reached despite procedural error where circumstances permit. *See ABC*, 247 A.3d at 1043-44 (Mundy, J., concurring).

Justice Donohue dissented in part, opining the Court's ruling would add confusion compared to the simplicity of the *Walker* rule. She expressed, as well, that the majority's rationale for creating an exception to *Walker* was reminiscent of the analysis in *General Electric*, which had "morphed into different criteria in a variety of applications in our intermediate appellate courts." *Id.* at 1045 (Donohue, J., dissenting). She concurred in the result, however, based on her agreement there had been a breakdown in court operations. *See id.*

10 The Note to Rule 341 provides in pertinent part: "Where ... 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. *Malanchuk v. Tsimura*, 635 Pa. 488, 137 A.3d 1283, 1288 (2016) ('[C]omplete consolidation (or merger or fusion of actions) does not occur absent a complete identity of parties and claims; separate actions lacking such overlap retain their separate identities and require distinct judgments'); *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 on two persons' judgments of sentence)." Note, Pa.R.A.P. 341.

11 In its argument by analogy, the Commonwealth maintains that in a library, a "call number" is "not the book," and in a court, "a docket number is not the docket[.]" Commonwealth's Brief at 19.

12 Rule 902 provides:

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 is subject to 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.

Pa.R.A.P. 902. Per the simplification achieved by the rule, the appellant need only file two documents in the trial court — the notice of appeal and the proof of service. The clerk of the trial court transmits one copy of these papers to the appellate court prothonotary, who notes the appellate docket number on the notice of appeal and may then use photocopies of the marked-up notice to advise the parties, the lower court, and the Administrative Office of the fact of docketing. *See id.*, Note.

13 Appellees' briefs are identical in all material respects, although their pagination differs in some instances due to spacing. Page numbers herein refer to Casey's brief.

14 In *ABC*, we considered the breakdown in court operations as a threshold issue, after which we proceeded to determine whether to recognize an exception to the *Walker* rule. *See ABC*, 247 A.3d at 1042. In retrospect, and in the present context, we read *ABC* as embodying alternative holdings, each sufficient to compel the result reached. *See generally Malanchuk*, 137 A.3d at 1286 n.5, *citing Commonwealth v. Markman*, 591 Pa. 249, 916 A.2d 586, 606 (2007) ("[w]here a decision rests on two or more grounds equally valid, none may be relegated to the inferior status of obiter dictum"). This reading is consistent with sound logic, as a breakdown that causes a litigant not to comply with *Walker* is reason enough not to quash the appeal, as recognized by our intermediate court. *See, e.g.*, *Larkin*, 235 A.3d at 354 (indicating the requirements of *Walker* may be overlooked where a breakdown occurs in the court system, and the defendant is misinformed or misled regarding his or her appellate rights).

15 Appellees assert the alleged 2016 conduct is the subject of docket numbers CP-14-CR-1540-2018 (Young) and CP-14-CR-1536-2018 (Casey). *See id.* at 20. In reply, the Commonwealth does not dispute that the charges stemmed from actions that were temporally distinct, but contends all charges relate to "ongoing criminal activity" and, as such, "may amount to one case." Commonwealth's Reply Brief at 2; *see also id.* at 2-3 (citing cases involving compulsory joinder — for purposes of precluding separate prosecutions under 18 Pa.C.S. § 110 — where multiple actions were part of a single criminal episode).

Our review of the record confirms that some of the charges against each defendant relate to events in 2016 and others to the February 2017 hazing rituals. This is reflected in the charging documents for each defendant as well as a summary of charges the Commonwealth filed as an exhibit to its motion for consolidation.

16 Appellees also suggest that if this Court grants relief to the Commonwealth, it should simultaneously "revive" their interlocutory appeal challenging the constitutionality of the anti-hazing statute. Appellee's Brief at 29. As noted, however, *see supra* n.4, this Court denied appellees' petition for review prior to granting allowance of appeal in the present matter. Significantly, appellees do not direct us to any authority that would permit us to "revive" their former appeal under these circumstances.

17 We realize the Commonwealth in *Walker* appealed under Rule 311(d) rather than Rule 341(a). However, the *Walker* Court deemed the commentary to Rule 341(a) to be applicable to Rule 311(d) because the Commonwealth had failed to offer any compelling reason why the two rules should operate differently. *See* 185 A.3d at 976 n.3. Here again, the Commonwealth has offered no suggestion regarding why the rules should operate differently, and *Walker's* application of the Rule 341(a) commentary to Rule 311(d) remains binding precedent in the context of this appeal.

18 The Commonwealth clearly preserved the Rule 902-based claim it now presents to this Court. Although the Commonwealth did not expressly cite the rule in its answer to the rule to show

cause, its request for leave to correct any formatting error in its notices of appeal plainly invoked the remedial, ameliorative and equitable relief measures prescribed in Rule 902. *Compare* Commonwealth's Response to Directive to Show Cause, 3/4/2019, at 7 ("the Commonwealth requests an opportunity to amend the notice of appeal ... to comply with *Walker*") *with* Pa.R.A.P. 902 (promoting "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"). *See also, e.g.*, *Commonwealth v. Rogers,* —— Pa. ——, 250 A.3d 1209, 1224 (2021) (declining to find waiver where claim "was readily understandable from context"); Pa.R.A.P. 1925(b)(4)(ii) (explaining that a litigant's statement of matters complained of on appeal does "not require citation to authorities or the record").

19 Thus, although we reaffirm *Walker*'s pronouncement that "the proper practice under Rule 341(a) is to file separate appeals from an order that resolves issues arising on more than one docket[,]" we expressly overrule those statements in the opinion indicating "[t]he failure to do so **requires** the appellate court to quash the appeal." *Walker*, 185 A.3d at 977 (emphasis added); *see id*. ("The failure [to file separate notices of appeal] **will** result in quashal of the appeal.") (emphasis added). We also refer this matter once again to the Appellate Procedural Rules Committee for consideration of corresponding adjustments to the Notes to the relevant rules.

20 Justice Saylor observes our determination "effectively eviscerate[s] *Walker*[,]" Concurring and Dissenting Opinion (Saylor, J.) at 480, and opines our reliance on *Williams* to support the application of Rule 902 is misplaced because *Walker* "post-dated *Williams*," and "the *Walker* Court was well aware that there was a long line of prior decisions, such as *Williams*, favoring remedial measure over quashal." *Id.* Respectfully, the cases discussed in *Walker* all relied on the three-part test announced in *Gen. Elec. Credit Corp. v. Aetna Cas. And Surety Co.*, 437 Pa. 463, 263 A.2d. 448 (1970), which was, before Rule 902 was adopted five years later, the mechanism crafted "to decide whether quashal was warranted where a single notice of appeal was filed in response to multiple final orders." *Walker*, 185 A.3d at 974. While *Walker* unquestionably rejected the *General Electric* line of cases, it just as surely did not decide the impact of Rule 902. We are not bound in perpetuity to turn a blind eye to the plain terms of Rule 902 — a rule adopted by this Court — for the sake of a harsh, bright-line quashal requirement we considered appropriate when interpreting a different rule. Justice Donohue asserts that post-*General Electric*, "both this Court and our intermediate appellate courts continued to apply the *General Electric* test, with no consideration of Rule 902." Concurring and Dissenting Opinion (Donohue, J.) at 482. However, as noted, *supra*, this Court applied Rule 902 in *Williams*, which is a post-*General Electric* decision.

Notably, Justice Wecht observes *Walker's* "quashal mandate has deprived too many litigants of their right to an appeal because of technical defects," which "seems unwarranted in light of the plain language of Rule 902." Concurring and Dissenting Opinion (Wecht, J.) at 483. Nevertheless, Justice Wecht would not apply Rule 902's safe harbor provision here, as it would, in his view, be inequitable to permit the Commonwealth to receive its benefit, when appellees' requests for permission to file interlocutory appeals were denied by the Superior Court under *Walker*. However, appellees' earlier claims challenge the constitutionality of the hazing statute; if those claims are properly preserved going forward, and appellees are convicted of hazing under the statute, the challenge has not been irrevocably lost. *See* n.4, *supra*.

1 Despite consolidation the Majority notes without further explanation, "[t]he prosecutions proceeded at multiple docket numbers for each defendant and although the common pleas court consolidated the docket numbers for trial, the docket numbers were not consolidated for all purposes." Majority Opinion at 464. A review of the trial court's opinion and order reveals the

Commonwealth had filed a motion to consolidate six defendants' cases, and all docket numbers for trial, which the trial court granted with the caveat that any defendant could file a severance motion following the trial court's disposition of the omnibus pre-trial motions. Trial Court Opinion and Order, 10/18/18 at 5. The trial court further noted the defendants' objections to consolidation were on the basis that some evidence admitted pertaining to one defendant should not be permitted against another defendant. *Id.* at 3.

2 I dissented from this prospective holding in *Walker*, noting "[i]n the interests of justice and judicial economy, I favor continuing the practice of addressing the merit of an appeal, despite a procedural error, where the circumstances permit." *Walker*, 185 A.3d at 978 (Pa. 2018) (Mundy, J., concurring and dissenting).

3 In fact, as a matter of substance, separate notices were effectively filed at each docket number when a photocopy was made for each certified record with the applicable docket number highlighted. This practice, is seemingly consistent with the Superior Court in *Commonwealth v. Johnson*, 236 A.3d 1141 (Pa. Super. 2020) (en banc), and arguably complies with *Walker*.

1 *Always Busy Consulting, LLC v. Bradford & Co.,* —— Pa. ——, 247 A.3d 1033 (2021).

2 Pa.R.A.P. 902, entitled "Manner of Taking Appeal," provides in full as follows:

> 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 subject to 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.

Pa.R.A.P. 902

3 In response, the Majority observes that *Williams* post-dates *General Electric*. Maj. Op. at 478 n.20. The Majority's chronology is correct, but it misses my point that following the amendment of Rule 902, the courts continued to invoke *General Electric* when considering appeals that involved the kind of defect at issue therein. *Williams* addressed a different circumstance; namely, a single notice of appeal taken from a single order. At issue was whether filing the notice of appeal within the thirty-day period served to perfect the appeal, although it was subsequently deemed to be defective. *See Commonwealth v. Williams*, 630 Pa. 169, 106 A.3d 583, 586 (2014). *Williams* did not involve a single order that resolved issues on more than one docket, as was the case in *Walker* and is the case here.

1 *ABC*, 247 A.3d at 1043 (holding that "filing a single notice of appeal from a single order entered at the lead docket number for consolidated civil matters where all record information necessary to adjudication of the appeal exists, and which involves identical parties, claims and issues, does not run afoul of *Walker* ...."); *see also* Maj. Op. at 475 (explaining that *Walker* "seemingly" requires quashal here because, although the charges listed under multiple docket numbers have been consolidated for trial, "each docket number encompassed a different set of criminal charges, and each such charge, by its nature, involved different victims, different occasions, or different conduct toward the same victim," and, thus, the docket numbers were not "different ways of litigating the exact same dispute").

2 *See also* Pa.R.A.P 902, Note ("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.").

3 *See infra*.

4 *See generally Commonwealth v. Gibbons*, 567 Pa. 24, 784 A.2d 776 (2001) (explaining that double jeopardy bars a Commonwealth appeal from a verdict of acquittal).

Pa.R.A.P., Rule 1926

Rule 1926. Correction or Modification of the Record

Currentness

(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.

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.

Credits

Adopted Nov. 5, 1975, effective July 1, 1976. Amended Dec. 11, 1978, effective Dec. 30, 1978; May 9, 2013, effective to appeals and petitions for review filed 30 days after adoption.

Notes of Decisions (12)

Rules App. Proc., Rule 1926, 42 Pa.C.S.A., PA ST RAP Rule 1926
Current with amendments received through April 15, 2023. Some rules may be more current; see credits for details.

End of Document

Purdon's Pennsylvania Statutes and Consolidated Statutes
Pennsylvania Rules of Appellate Procedure (Refs & Annos)
Article II. Appellate Procedure
Chapter 21. Briefs and Reproduced Record
Content of Reproduced Record

Pa.R.A.P., Rule 2154

Rule 2154. Designation of Contents of Reproduced Record

Currentness

(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 (service and filing of 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 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 (service 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.

Credits

Adopted Nov. 5, 1975, effective July 1, 1976. Amended Dec. 11, 1978, effective Dec. 30, 1978; May 16, 1979, effective 120 days after June 2, 1979; Dec. 1, 1982, imd. effective; July 7, 1997, effective in 60 days; Jan. 13, 2009, effective as to appeals filed 60 days or more after adoption.

Editors' Notes

EXPLANATORY COMMENT--1979

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 pre-1976 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.

Notes of Decisions (13)

Rules App. Proc., Rule 2154, 42 Pa.C.S.A., PA ST RAP Rule 2154
Current with amendments received through April 15, 2023. Some rules may be more current; see credits for details.

Purdon's Pennsylvania Statutes and Consolidated Statutes
Pennsylvania Rules of Appellate Procedure (Refs & Annos)
Article II. Appellate Procedure
Chapter 21. Briefs and Reproduced Record
Content of Reproduced Record

Pa.R.A.P., Rule 2152

Rule 2152. Content and Effect of Reproduced Record

Currentness

(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, acknowledgments, 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.

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 (Pa. 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.

Credits

Adopted Nov. 5, 1975, effective July 1, 1976. Amended May 16, 1979, effective 120 days after June 2, 1979; Dec. 1, 1982, imd. effective; Jan. 5, 2018, effective Jan. 6, 2018; June 1, 2018, effective July 1, 2018.

Notes of Decisions (11)

Rules App. Proc., Rule 2152, 42 Pa.C.S.A., PA ST RAP Rule 2152
Current with amendments received through April 15, 2023. Some rules may be more current; see credits for details.

End of Document

Pa.R.A.P., Rule 2156

Rule 2156. Supplemental Reproduced Record

Currentness

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.

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.

Credits

Adopted Nov. 5, 1975, effective July 1, 1976. Amended Sept. 10, 2008, effective Dec. 1, 2008; Jan. 5, 2018, effective Jan. 6, 2018; June 1, 2018, effective July 1, 2018.

Notes of Decisions (2)

Rules App. Proc., Rule 2156, 42 Pa.C.S.A., PA ST RAP Rule 2156
Current with amendments received through April 15, 2023. Some rules may be more current; see credits for details.

End of Document

SUPREME COURT OF PENNSYLVANIA
APPELLATE COURT PROCEDURAL RULES COMMITTEE

NOTICE OF PROPOSED RULEMAKING

Proposed Amendment of Pa.R.A.P. 102, 1926, 1931, 1951, 1952, 2132, and 2151

The Appellate Court Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Pa.R.A.P. 102, 1926, 1931, 1951, 1952, 2132, and 2151 for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any reports, notes, or comments in the proposal have been inserted by the Committee for the convenience of those using the rules. They will neither constitute a part of the rules nor be officially adopted by the Supreme Court.

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

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

Karla M. Shultz, Counsel
Appellate Court Procedural Rules Committee
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
PO Box 62635
Harrisburg, PA 17106-2635
FAX: 717-231-9551
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All communications in reference to the proposal should be received by **May 28, 2021.** E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

By the Appellate Court Procedural Rules Committee,

Patricia A. McCullough
Chair

PUBLICATION REPORT

The Appellate Court Procedural Rules Committee is considering proposing the amendment of Pennsylvania Rules of Appellate Procedure 102, 1926, 1931, 1951, 1952, 2132, and 2151 to facilitate reference to the certified record transmitted to the appellate court using PACFile. This alternative form of reference to the record is intended to allow a party to forgo the necessity of preparing and filing a reproduced record.

The Committee was asked to consider whether there was a need for a separate reproduced record when an appellate court may have access to a digital version of the original record via PACFile. Preliminarily, the Committee observed that the reproduced record, when properly prepared, allows the parties to organize materials, is easier to use than the original record, and is often smaller in volume than the original record. However, there are instances where the reproduced record is packed with irrelevant materials and essentially replicates the original record, or fails to include the pertinent documents necessary to effectuate appellate review. The obvious benefits of removing the reproduced record requirement is greater overall efficiency by eliminating duplicative materials being transmitted, together with savings in time and costs. Accordingly, the Committee favored eliminating the reproduced record when there is a digital version of the original record transmitted through PACFile.

Two attributes of a sufficient substitute are the location of documents and the reference to documents. Concerns with using a digital original record include the overall volume of material that is included, but might not be relevant to the issue on appeal. The size of the record can be challenging for users to locate information through perusal. There must also be a unique reference to each location so that parties and the court can cite to the same record. The Committee concluded that a substitute for the reproduced record needs to be paginated to permit quick location of specified documents and a universal reference for that location.

Currently, there is no requirement that the digital original record be paginated. The record is often transmitted to the appellate courts in parts and by different departments of the trial court or other government unit. Thus, the Committee proposes to amend Pa.R.A.P. 1931(c) to require that the entire record be consecutively paginated, converted into the fewest number of PDF files as practicable, and that the "PDF files shall be text searchable and paginated so that the page numbers displayed by the PDF reader exactly match the pagination of the certified record." To improve readability of the rule, paragraph (c) is further delineated into subparagraphs (1)-(6). The Committee specifically invites comments from affected stakeholders on this aspect of the proposal.

Included within Pa.R.A.P. 1931 is proposed new paragraph (g). The paragraph is part of another, larger proposal concerning rules implementing PACFile in the appellate

courts being contemporaneously published for comment. Paragraph (g) is included in this proposal to provide additional context for the reader.

The Committee also proposes the definitions of "original record," "certified record," and "record on appeal." These terms have been used inconsistently and, at times, interchangeably. The definitions are intended to enhance uniformity. Further, the rules are revised to clarify that the certified record is transmitted by the trial court or other government to the appellate court; it is not filed.

With pagination of the certified record transmitted via PACFile, the Committee proposes amendment of Pa.R.A.P. 2132 (Reference to the Record in Briefs). Paragraphs (a) and (b) have been revised as new paragraphs (a) - (c). Paragraph (d) is new and permits the appellate court to require parallel references to both the reproduced record and the certified record. This paragraph is intended to accommodate current practice of appellate court jurists who may rely solely on the certified record rather than the reproduced record. The paragraph also permits the parties to provide parallel references.

The Committee proposes amending Pa.R.A.P. 2151 by restating the substance of paragraphs (a)-(d) and adding new paragraph (e). The new paragraph will relieve a party of the requirement of filing a reproduced record when the certified record has been transmitted using PACFile in accordance with Pa.R.A.P. 1931. The proffered reasons for seeking relief from filing a reproduced record have been removed from paragraph (d) and placed in the Official Note. Added to that commentary is the ability to seek relief pursuant to paragraph (d) if a party is directed to file a reproduced record.

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

Pa.R.A.P., Rule 1925

Rule 1925. Opinion in Support of Order

Effective: April 1, 2022
Currentness

(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 the 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 or service *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 or serve a Statement timely or at all.

(3) If an appellant represented by counsel in a criminal case was ordered to file and serve a Statement and either failed to do so, or untimely filed or served a 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 or service of a Statement *nunc pro tunc*, and the preparation and filing of an opinion by the judge.

(4) If counsel intends to seek to withdraw in a criminal case pursuant to *Anders/Santiago* or if counsel intends to seek to withdraw in a post-conviction relief appeal pursuant to *Turner/Finley*, counsel shall file of record and serve on the judge a statement of intent to withdraw in lieu of filing a Statement. If the appellate court believes there are arguably meritorious issues for review, those issues will not be waived; instead, the appellate court shall remand for the filing and service of a Statement pursuant to Pa.R.A.P. 1925(b), 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 an 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.

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. 193.

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 non-specific--*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 concise-yet-sufficiently-detailed requirement and avoid waiver under either *Lineberger v. Wyeth*, 894 A.2d 141, 148-49 (Pa. Super. 2006) or *Kanter v. Epstein*, 866 A.2d 394, 400-03 (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 rule-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 and serve 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, 588-89 (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): *See Anders v. California*, 386 U.S. 738 (1967) and *Commonwealth v. Santiago*, 978 A.2d 349 (Pa. 2009); *Commonwealth v. Turner*, 544 A.2d 927 (Pa. 1988) and *Commonwealth v. Finley*, 550 A.2d 213 (Pa. Super. 1988). These procedures do not relieve counsel of the obligation to comply with all other rules.

Credits

Adopted Nov. 5, 1975, effective July 1, 1976. Amended May 16, 1979, effective 120 days after June 2, 1979; Dec. 30, 1987, effective Jan. 16, 1988; May 10, 2007, effective 60 days after adoption; Jan. 13, 2009, effective as to appeals filed 60 days or more after adoption; Nov. 15, 2013, effective in 30 days; March 18, 2014, effective April 18, 2014; June 24, 2019, effective Oct. 1, 2019; Dec. 17, 2021, effective April 1, 2022.

Notes of Decisions (772)

Rules App. Proc., Rule 1925, 42 Pa.C.S.A., PA ST RAP Rule 1925
Current with amendments received through April 15, 2023. Some rules may be more current; see credits for details.

End of Document

Pa.R.A.P., Rule 302

Rule 302. Requisites for Reviewable Issue

Effective: October 7, 2020
Currentness

(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.

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.

Credits

Adopted Nov. 5, 1975, effective July 1, 1976. Amended June 23, 1976, effective July 1, 1976; Feb. 27, 1980, effective March 15, 1980; Oct. 7, 2020, imd. effective.

Notes of Decisions (669)

Rules App. Proc., Rule 302, 42 Pa.C.S.A., PA ST RAP Rule 302
Current with amendments received through April 15, 2023. Some rules may be more current; see credits for details.

End of Document

CHAPTER 63. INTERNAL OPERATING PROCEDURES OF THE SUPREME COURT

Sec.

Source

The provisions of this Chapter 63 adopted October 1, 1994, effective October 1, 1994, 24 Pa.B. 5552, unless otherwise noted.

§ 63.1. Introduction.

The Internal Operating Procedures are intended to implement Article V of the Constitution of Pennsylvania, statutory provisions, the Pennsylvania Rules of Appellate Procedure and the customs and traditions of this Court. No substantive or procedural rights are created, nor are any such rights diminished.

Source

The provisions of this § 63.1 amended January 9, 2013, effective in 30 days, 43 Pa.B. 514. Immediately preceding text appears at serial page (358471).

§ 63.2. Preamble.

A. In the discharge of judicial duties, every Justice is responsible to the Court.

B. In its discharge of judicial functions, the Court is the responsibility of every Justice.

C. All Justices bear an equal responsibility for the proper disposition of every matter before the Court.

D. The assignment of a given matter to a single Justice is solely for the efficiency of the Court, and neither enhances the power of the assigned Justice nor diminishes the duty of the remaining Justices as to its proper disposition.

In furtherance of the duties expressed in the preamble, the following procedures, which may be amended without notice as circumstances require, have been adopted by the Court:

Source

The provisions of this § 63.2 amended January 9, 2013, effective in 30 days, 43 Pa.B. 514. Immediately preceding text appears at serial page (358471).

§ 63.3. Decisional Procedures: Argued and Submitted Cases.

A. *Argued Cases.*

1. *Argument Session Schedule.* Unless otherwise ordered by the Court, argument sessions shall be scheduled for one-week periods during the months of March, April, May, September, October and December. Daily arguments shall begin at 9:30 a.m. unless otherwise designated.

2. *Listing of Cases.* The following cases shall be listed for oral argument upon completion of the briefing schedule or as soon as practicable:

a. Direct appeals from a judgment of sentence of death (''capital direct appeals'').

b. Cases in which allowance of appeal (''allocatur'') has been granted, unless the Court has ordered that the appeal be submitted on the briefs.

c. All other cases that have been designated by the Court as suitable for oral argument, including but not limited to non-capital direct appeals and Post Conviction Relief Act (''PCRA'') appeals.

3. *Assignments.* Each day following oral argument the Court shall meet in conference to discuss the cases argued that day. The Chief Justice shall preside at the conference, lead the Court's discussion, and call for a tentative vote on the decision of each case. The Justices shall vote in an inverse order of seniority.

Argued cases, except for non-capital direct appeals, shall be assigned at conference by the senior Justice in the majority position in such a manner as to achieve equal distribution of assignments and to avoid delay in deciding cases. If it appears that due to illness of a Justice or for some other reason this purpose is not being served, the Chief Justice may, as a matter of his or her discretion, alter the assignment order.

An argued non-capital direct appeal will be assigned to the Justice who prepared the disposition memorandum, unless after conference vote his or her position is not aligned with that of the majority, in which case the assignment shall be made by the senior member of the majority.

If a Justice to whom a case has been assigned subsequently decides to change his or her position on the proper decision of the case and ceases to be aligned with the conference majority view, he or she shall provide a draft opinion or proposed order along with an explanation of the change of position.

B. *Submitted Cases.*

When the Court has determined, either upon motion of the parties in advance of oral argument or sua sponte, that a case shall be decided on the submitted briefs, the Prothonotary shall direct the case to the Court for disposition upon completion of the briefing schedule or as soon as practicable. PCRA appeals shall be submitted on the briefs unless otherwise directed by the Court on its own motion or upon application, in accordance with Pa.R.A.P. 2311(b).

The Chief Justice will assign submitted cases in a rotation schedule by seniority, except for non-capital direct appeals, which shall be assigned to the Justice who authored the disposition memorandum. Capital PCRA appeals shall be assigned in a separate rotation, to ensure an even distribution of responsibility in those appeals. If it appears that there is an unequal distribution of cases or a delay in deciding cases, the Chief Justice may, as a matter of his or her discretion, alter the assignment order.

C. *Per Curiam Orders.*

1. A per curiam order may be issued

a. when the Court's decision:

(1) does not establish a new rule of law;

(2) does not alter, modify, criticize or clarify an existing rule of law;

(3) does not apply an established rule of law to a novel fact situation;

(4) does not constitute the only binding precedent on a particular point of law;

(5) does not involve a legal issue of continuing public interest; or

b. whenever the Court decides such an order is appropriate.

2. A per curiam order reversing an order of the lower court must cite to controlling legal authority or provide a full explanation of the reasons for reversal.

3. In cases involving discretionary appeals, the Court may enter a per curiam order dismissing the appeal as improvidently granted.

4. A Justice may request that a per curiam order record that he or she voted for a different disposition.

5. A per curiam order shall indicate if a Justice did not participate in the consideration or decision of the matter.

6. *Reconsideration Applications.*

a. *Assignment.* The Prothonotary shall assign applications for reconsideration to the Justice who authored the per curiam order.

b. *Circulation and Disposition.* The assigned Justice shall circulate to all members of the Court a recommended disposition within fourteen (14) days of the assignment or within seven (7) days of the date of assignment in Children's Fast Track appeals.* A Justice who disagrees with the recommended disposition shall circulate a counter-recommendation within fourteen (14) days of the original recommendation or seven (7) days in Children's Fast Track appeals. A vote of the majority is required to grant reconsideration. In any case in which reconsideration is denied, a Justice may

request that the order record that he or she voted to grant reconsideration. The order shall indicate if a Justice did not participate in the consideration or decision of the matter.

* "Children's Fast Track appeal" is defined in Pa.R.A.P. 102. A "Children's Fast Track case" is any case involving an order regarding 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. § § 5321 et seq.; 23 Pa.C.S. § § 5102 et seq.

D. *Oral Argument.*

1. *Guidelines for Oral Argument.*

a. No fixed amount of time is reserved for each argument. Oral argument is at the discretion of the Court and proceeds to the extent necessary to answer any questions the Justices may have on the issue(s).

b. Since the Court does not use a clock or light system, counsel should be alert to indications from the Chief Justice that the Court is satisfied that all questions have been addressed.

c. The Court does not ordinarily permit rebuttal. Counsel are advised not to request rebuttal. However, when necessary and appropriate, the Court may in its discretion request to hear further from counsel.

d. The Court is familiar with the cases to be heard at oral argument. Accordingly, counsel should avoid a recitation of the facts and procedural history and focus on the issue(s) to be argued.

e. The Court recognizes that oral argument is only one part of appellate advocacy. Counsel for the appellant should be selective in the issues to be argued and may rely on their briefs for the remainder of the issues. Nothing is waived by this process. The appellee's counsel should generally respond only to the issues argued by the appellant's counsel.

f. In cases involving multiple parties represented by separate counsel, counsel should strive to avoid repetitive presentations.

g. If a party's counsel fails to appear for argument, opposing counsel may be asked to submit the case on the briefs.

h. Counsel are advised not to use graphs and charts on easels. Instead, copies of such matters should be provided to the court crier for distribution to the Court. Counsel must also provide advance copies to opposing counsel.

2. *Requests by Amicus Curiae.* In cases where amicus curiae has filed a brief, requests by amicus to present oral argument shall be made by application and will be granted only in extraordinary circumstances. Applications to present oral argument are assigned to the Chief Justice, who will circulate a recommendation to the Court. A vote of the majority is required to grant the request.

Source

The provisions of this § 63.3 amended September 2, 2005, 35 Pa.B. 5092; amended January 9, 2013, effective in 30 days, 43 Pa.B. 514. Immediately preceding text appears at serial pages (358471) to (358472) and (357247).

§ 63.4. Opinions.

A. *Circulation Schedule; Voting; Hold; Reassignment.*

1. *Preparation of Opinions.* Preparation of opinions and responses to circulating opinions shall be given the highest priority.

a. *Majority.* The assigned Justice shall, absent extraordinary circumstances, circulate a proposed majority opinion to all members of the Court within ninety (90) days of the assignment in single-issue cases and serial capital PCRA appeals, within one hundred and twenty (120) days in multiple-issue cases, within one hundred and fifty (150) days in capital direct appeals, within one hundred and eighty (180) days in first capital PCRA appeals, or within forty-five (45) days of the assignment of a Children's Fast Track appeal. The Court should make every effort to decide cases by clear majority disposition.

b. *Concurrences and Dissents.* Justices who are aligned as to the result should collaborate as much as possible to achieve a unified position in responsive opinions. Concurrences and dissents shall be circulated to all members of the Court within forty (40) days of the date of the first scheduled vote on the proposed majority opinion in single-issue cases and serial capital PCRA appeals, within sixty (60) days in multiple-issue cases, within seventy-five (75) days in capital direct appeals, and within ninety (90) days in first capital PCRA cases. Matters may also be held for additional review by a Justice during these time periods. In Children's Fast Track appeals, concurrences and dissents shall be circulated to all members of the Court within twenty (20) days of the date of the first scheduled vote on the proposed majority opinion.

Due dates for responsive opinions are calculated from the date of the first scheduled vote on the *original* proposed majority opinion, regardless of whether the case is moved to a subsequent vote list by the circulation of a responsive opinion. Generally, the first scheduled vote date will remain the threshold date in the calculation, unless the proposed majority opinion is withdrawn or the substantive analysis and/or resolution is substantially altered via a revised opinion. In such instances, the time period is calculated from the date of the first scheduled vote on the revised majority opinion. A majority author's mere defense of an already-existing analysis through revisions in the nature of rejoinder does not alter the time period for response.

2. *Monthly Vote Lists.* Circulating proposed opinions are voted upon each month according to the schedule provided by the Chief Justice for use in that calendar year. Each monthly vote list shall be circulated by the Chief Justice the first Monday of the month, or, if that date is a holiday, on the first Tuesday of the month; the dates to circulate the vote lists may be adjusted. The cases listed shall include all proposed majority opinions, per curiam opinions and dispositive per curiam orders in appeal cases submitted for the Court's consideration as of ten (10) days prior to the circulation of the vote list. Responsive opinions to majority opinions on a vote list shall be circulated by 5:00 p.m. on the Friday before the vote list is circulated; responsive opinions circulated after that time shall move the case to the next vote list. Responsive opinions to majority opinions not already on a vote list shall be placed on the next available vote list following their circulation to the Court.

3. *Entry of Votes.* Votes on listed cases shall be entered according to the schedule provided by the Chief Justice. Generally speaking, votes are due on the fifth business day following circulation of the vote list. However, that time frame is adjusted to account for holidays, court sessions and other anticipated conflicts. The vote schedule for the calendar year distributed to the Court by the Chief Justice specifies the vote day for each month. Within two (2) business days following entry of the votes, the Chief Justice will circulate to all Justices a disposition, listing the votes for each case. Within two (2) days after circulation of the disposition, the Chief Justice must be advised of any correction. On the next business day (the fifth business day following the entry of votes) the Chief Justice shall circulate to the Court and to the Prothonotary a confidential list of all cases ready to be filed together with the votes of the Justices. No case will appear on the confidential list unless all votes are recorded. The Prothonotary will docket opinions consistent with the information received.

a. Permissible votes include ''join majority opinion''; ''join majority opinion/author concurring opinion''; ''author revised majority opinion''; ''author concurring opinion''; ''author revised

concurring opinion''; ''hold for concurring opinion''; ''join concurring opinion''; ''author dissenting opinion''; ''author revised dissenting opinion''; ''hold for dissenting opinion''; ''join dissenting opinion''; ''author concurring/dissenting opinion''; ''hold for concurring/dissenting opinion''; ''join concurring/dissenting opinion''; ''hold for further review''; ''do not participate''; or ''other.'' A Justice may also ''concur in the result'' or ''dissent without opinion,'' but these options should not be employed if the vote is dispositive.

b. *Telephone Conferences and Administrative Agenda.* After receipt of the monthly vote list, any Justice may request that any case be held for telephone conference by making such request in writing or electronically to the Chief Justice with notice to all other Justices. The list will also indicate a date certain on which a telephone conference will be held for any cases so designated. At the request of any Justice, and upon approval by the Chief Justice, cases may be held for discussion to take place at the next scheduled administrative agenda.

c. *Holds.* Upon entry of any hold vote, the period required for response shall correspond to the time periods allowed for circulation of concurrences and dissents. A Justice may request additional leeway upon circulation of an internal letter explaining the reasons for the delay and estimating the time for completion of the review or responsive opinion. If the review or responsive opinion is not completed by the designated time, additional status information shall be provided every twenty (20) days thereafter, except when the matter has been placed on hold for another pending case; in that event, the matter shall be resolved upon the resolution of the pending case. Once a matter has been voted upon and the time period initially allowed for circulation of concurrences and dissents has passed, holds upon subsequent listings are strongly discouraged. Held opinions are to be resolved expeditiously. In a Children's Fast Track appeal, in no event shall circulation of a responsive opinion occur beyond thirty (30) days from the date the vote was initially due.

Upon appropriate notice to a ''holding'' Justice and an opportunity to respond, the Chief Justice in his or her discretion may direct the filing of an opinion with a ''holding'' Justice noted as not participating in the decision of the matter, dissenting without opinion, concurring in the result, or with an opinion to follow, as the case may be. In Children's Fast Track appeals, if, within thirty (30) days of the date votes are due on majority opinions no dissent or concurrence has been placed in circulation, the case will be filed, and the dissenting or concurring Justice will be noted as not having participated in the decision of the matter.

d. *Reassignment.* When a concurrence or dissent garners a majority of votes, the author of the proposed majority opinion may withdraw the opinion to revise to accommodate the new majority, or the case shall be reassigned to the author of the concurrence or dissent. Upon reassignment, and absent extraordinary circumstances, the new majority opinion shall be circulated within thirty (30) days in single-issue cases and serial capital PCRA appeals, sixty (60) days in multiple-issue cases, seventy-five (75) days in capital direct appeals, ninety (90) days in first capital PCRA appeals, and, in Children's Fast Track appeals, within fifteen (15) days.

Notwithstanding any contrary procedures set forth above, Justices shall give priority in both circulation of and voting on proposed opinions in Children's Fast Track appeals.

B. *Labeling of Opinions.*

1. *Majority Opinion.* An opinion will be labeled ''Opinion'' when a majority joins the rationale and result of the opinion. Majority opinions shall list the composition of the Court hearing the appeal, and shall indicate when a Justice did not participate in the consideration or decision of the matter. Proposed majority opinions that involve multiple, complex issues which the authoring Justice believes may garner disparate votes should be divided into sections. If there is a split in votes in an opinion that has been divided into sections, the authoring Justice will be responsible for preparing a short introductory statement summarizing the resulting votes.

2. *Concurrences and Dissents.* An opinion is a ‘‘concurring opinion’’ when the Justice agrees with the result of the proposed majority opinion. A Justice who agrees with the result of the proposed majority opinion, but does not agree with the rationale supporting the proposed majority opinion, in whole or in part, may write a separate ‘‘concurring opinion.’’ An opinion is a ‘‘dissenting opinion’’ when the Justice disagrees with the result of the proposed majority opinion.

As a general rule, an opinion is a ‘‘concurring and dissenting opinion’’ when there is more than one issue and the Justice agrees with the majority’s disposition of some but not all issues, and is in disagreement with the mandate. There may be occasions, however, in which a Justice may agree with the outcome but may disagree with a principle enunciated by a majority of the Court which will govern the outcome of other cases. In such instances, Justices are not strictly bound to concur outright; rather, they retain the discretion to label responses as concurring and dissenting.

Alternatively, a Justice may choose to ‘‘concur in the result’’ or ‘‘dissent’’ without writing a separate opinion, although both options are strongly disfavored if the vote is dispositive.

3. *Other designations.* An opinion shall be designated as the ‘‘Opinion Announcing the Judgment of the Court’’ when it reflects only the mandate, and not the rationale, of a majority of Justices. When the votes are equally divided, any resulting opinions shall be designated as the ‘‘Opinion in Support of Affirmance’’ or ‘‘Opinion in Support of Reversal,’’ as the case may be. In all such opinions, the name of any Justice not participating in the consideration or decision of the matter shall be noted.

C. *Reconsideration Applications.*

1. *Assignment.* The Prothonotary shall assign applications for reconsideration to the author of the majority opinion or the opinion announcing the judgment of the Court. If the appeal was resolved by an equally divided Court, the petition shall be assigned to the author of the opinion in support of affirmance.

2. *Circulation and Disposition.* The assigned Justice shall circulate to all members of the Court a recommended disposition within fourteen (14) days of the assignment or within seven (7) days of the assignment in Children’s Fast Track appeals. A Justice who disagrees with the recommended disposition shall circulate a counter-recommendation within fourteen (14) days of the original recommendation or seven (7) days in Children’s Fast Track appeals. A vote of the majority is required to grant reconsideration. In any case in which reconsideration has been denied, a Justice may request that the order record that he or she voted to grant reconsideration. All orders shall indicate if a Justice did not participate in the consideration or decision of the matter.

Source

The provisions of this § 63.4 amended through September 27, 1995; amended April 29, 2005, 35 Pa.B. 2854; amended May 18, 2011, 41 Pa.B. 2837; amended January 9, 2013, effective in 30 days, 43 Pa.B. 514; amended October 4, 2018, effective immediately, 48 Pa.B. 6652. Immediately preceding text appears at serial pages (365784) to (365788).

§ 63.5. Non-Capital Direct Appeals.

A. *Assignment.* All non-capital direct appeals shall be reviewed by the Court to determine their suitability for oral argument. As soon as all briefs have been received, the non-capital direct appeal will be assigned by the Prothonotary to a Justice on a rotating basis by seniority for preparation of a disposition memorandum, which will contain a short recitation of the facts, a brief discussion of the issues, and a recommendation as to whether the case should be (1) listed for oral argument; (2) submitted on the briefs; (3) resolved by affirmance on the opinion of the court below, including

when necessary a brief statement of matters not covered by that opinion; or (4) resolved by per curiam order.

A per curiam order may be issued

1. when the Court's decision:

a. does not establish a new rule of law;

b. does not alter, modify, criticize or clarify an existing rule of law;

c. does not apply an established rule of law to a novel fact situation;

d. does not constitute the only binding precedent on a particular point of law;

e. does not involve a legal issue of continuing public interest; or

2. whenever the Court decides such an order is appropriate.

A per curiam order reversing an order of the lower court must cite to controlling legal authority or provide a full explanation of the reasons for reversal.

B. *Circulation and Disposition*: Each disposition memorandum shall be circulated to the Court within sixty (60) days of assignment. It shall then be placed on a supplemental list for consideration and vote at the same time as opinions. Disposition Memoranda must be circulated to the Court at least ten (10) days prior to circulation of the vote list to be placed on that vote list. A hold for the purpose of preparing a counter-recommendation shall not exceed thirty (30) days; only by vote of the majority may a hold be extended beyond thirty (30) days, but in no event shall a hold exceed ninety (90) days.

The case shall thereafter be resolved in accordance with the vote of the majority. If no clear majority emerges, the case will be listed for oral argument. A Justice may request that the order record that he or she voted for a different disposition. All orders resolving a non-capital direct appeal shall indicate if a Justice did not participate in the consideration or decision of the matter.

C. *Reconsideration Applications.*

1. *Assignment.* The Prothonotary shall direct the application for reconsideration to the Justice who prepared and filed the order.

2. *Circulation and Disposition.* The assigned Justice shall circulate to all members of the Court a recommended disposition within fourteen (14) days of the assignment. A Justice who disagrees with the recommended disposition shall circulate a counter-recommendation within fourteen (14) days of the original recommendation. A vote of the majority is required to grant reconsideration. In any case in which reconsideration has been denied, a Justice may request that the order record that he or she voted to grant reconsideration. All orders shall indicate if a Justice did not participate in the consideration or decision of the matter.

Source

The provisions of this § 63.5 adopted January 9, 2013, effective in 30 days, 43 Pa.B. 514.

§ 63.6. Allowance of Appeal.

A. *Assignment*. The Prothonotary shall initially screen petitions for allowance of appeal for compliance with the applicable appellate rules. Untimely petitions may be refused for filing by the Prothonotary without further action of the Court.

Petitions for allowance of appeal shall be assigned to individual Justices by the Prothonotary on a rotating basis by seniority for preparation of an allowance of appeal report. Petitions from the same district presenting the same question shall be consolidated; petitions from different districts that present the same question may be consolidated at the discretion of the Court.

B. *Circulation and Disposition.* Allowance of appeal reports shall be circulated within ninety (90) days of the receipt of such an assignment. The proposed disposition date shall not be greater than sixty (60) days from the date of circulation. Holds may be placed on petitions for allowance of appeal only upon written notice to the members of the Court as to the reasons for the hold, e.g., the existence of another petition from another district presenting the same question. No hold may be placed on a petition without the existence of a terminus, e.g., the issuance of an opinion on a petition presenting the same question. Where a hold results from the existence of another petition presenting the same issue, the parties shall be notified of the hold and the case that will determine the issue. A hold for the purpose of preparing a counter-report shall not exceed thirty (30) days; only by vote of the majority may a hold be extended beyond thirty (30) days, but in no event shall a hold for such purpose exceed ninety (90) days.

Notwithstanding any contrary procedures set forth above, allowance of appeal reports in Children's Fast Track appeals are to be circulated within thirty (30) days of the receipt of the assignment, and the proposed disposition date shall not be greater than thirty (30) days from the date of circulation. A hold for purposes of preparing a counter-report in a Children's Fast Track appeal shall not exceed fifteen (15) days; only by vote of the majority may a hold be extended beyond fifteen (15) days, but in no event shall a hold exceed forty-five (45) days.

Upon the affirmative vote of three or more Justices, allowance of appeal will be granted and the case will be listed for oral argument, unless the order indicates that the matter will be submitted on the briefs. An order granting a petition for allowance of appeal shall specify the issues upon which allowance of appeal was granted.

A per curiam order granting allowance of appeal and reversing an order of the lower court must cite to controlling legal authority or provide a full explanation of the reasons for reversal.

A Justice may request that the order resolving the petition for allowance of appeal record that he or she voted for a different disposition. All orders shall indicate if a Justice did not participate in the consideration or decision of the matter.

C. *Reconsideration Applications.*

1. *Assignment.* The Prothonotary shall direct applications for reconsideration to the Justice who authored the allowance of appeal report.

2. *Circulation and Disposition.* The assigned Justice shall circulate to the Court a recommended disposition within fourteen (14) days of the date of the assignment, or within seven (7) days of the date of assignment in Children's Fast Track appeals. A Justice who disagrees with the recommended disposition shall circulate a counter-recommendation within fourteen (14) days of the original recommendation, or within seven (7) days of the date of the original recommendation in Children's Fast Track appeals. A vote of the majority is required to grant reconsideration. In any case in which reconsideration has been denied, a Justice may request that the order record that he or she voted to grant reconsideration. All orders shall indicate if a Justice did not participate in the consideration or decision of the matter.

Source

The provisions of this § 63.5 amended February 4, 2011, effective in 30 days, and shall be applicable to petitions filed thereafter, 41 Pa.B. 923; amended May 18, 2011, 41 Pa.B. 2837; renumbered as § 63.6 and amended January 9, 2013, effective in 30 days, 43 Pa.B. 514; amended May 31, 2013, effective immediately, 43 Pa.B. 3227. Immediately preceding text appears at serial pages (365789) to (365791).

§ 63.7. [Rescinded].

Source

The provisions of this § 63.7 rescinded January 9, 2013, effective in 30 days, 43 Pa.B. 514. Immediately preceding text appears at serial page (357253).

§ 63.7. Motions, Miscellaneous Petitions, and Applications for Relief.

A. *Duties of Prothonotary*. All assignments of motions, miscellaneous petitions and applications for relief, including emergency motions and those requesting the exercise of King's Bench powers, extraordinary jurisdiction and original jurisdiction, shall originate in the Prothonotary's office. No motions, petitions or applications will be considered which were not first filed in the Prothonotary's office and thence assigned. Documents may be filed in paper format, or by electronic or facsimile transmission. Once received, motions, petitions and applications will be monitored by the Prothonotary's office for compliance with applicable appellate rules. Proposed filings that are not in compliance will not be docketed. Proposed filings that are in compliance will be docketed and a response will be allowed. At the expiration of the response period the documents will be forwarded to the Court.

Procedural motions (*e.g.*, first requests for extension of time for not more than thirty days, requests to exceed page limits, and requests to proceed in forma pauperis) may be resolved by the Prothonotary without further action of the Court.

Requests for extension of time in excess of thirty days, and second or subsequent requests for extension of time, are disfavored and will be granted only upon a showing of good cause. Applications for such extensions will be assigned to the Chief Justice.

(**Court Note:** Time periods for responses*

Filing	*Rule*	*Response Period*
Application for Relief (Extensions)	123	14 Days
Jurisdictional Statement	909(b)	14 Days
Petition for Allowance of Appeal	1116	14 Days
Petition for Allowance of Appeal— Children's Fast Track Cases	1116(b)	10 Days
Reconsideration	1123	No Answer Permitted
Petition for Perm. To Appeal	1314	14 Days
Petition for Review	1516(c)	30 Days
N.B. No Answer Required Unless Petition Contains Notice to Plead		
Application for Release (Bail)	1762	14 Days

Reargument	2545	14 Days
Original Process (e.g., Habeas, Mandamus)	3307	14 Days
Extraordinary Relief	3309	14 Days

*May be shorter in stay or supersedeas applications when circumstances require, or by court order.)

B. *Assignment, Circulation and Disposition*. All motions, petitions and applications will be assigned to the Chief Justice, except for emergency motions, motions addressed to a single Justice, and applications for stay of execution in capital cases. In matters assigned to the Chief Justice, the Chief Justice will prepare a memorandum setting forth the positions of the parties and a recommended disposition. Recommendations should be circulated within sixty (60) days from the date the answer is filed or is due to be filed, whichever occurs first, and should contain a proposed disposition date no greater than thirty (30) days from the date of circulation, except in Children's Fast Track cases, in which recommendations shall be circulated within fifteen (15) days from the date the answer is filed or due to be filed, whichever occurs first, and the proposed disposition date shall be no greater than fifteen (15) days from the date of circulation. A vote of the majority is required to implement the proposed disposition.

Every motion, petition or application shall be decided within sixty (60) days, or within thirty (30) days in Children's Fast Track cases. A Justice may request that the order record that he or she voted for a different disposition. Orders disposing of motions, petitions and applications shall indicate if a Justice did not participate in the consideration or decision of the matter.

C. *Emergency Motions*.

1. *Assignment.* On or before the first Monday in January, the Chief Justice shall publish a calendar of duty assignments for the handling of emergency motions. Two Justices will be assigned by the Chief Justice on a monthly rotating basis to review emergency motions for the Eastern and Western Districts. Cases filed in the Middle District will be assigned alternately between the Eastern and Western District duty Justices.

2. *Circulation and Disposition.* Any motion assigned to the duty Justice may at the discretion of that Justice be referred to the full Court for consideration, with or without the entry of an interim order.

D. *Motions Directed to a Single Justice*. A Justice may entertain and may grant or deny any request for relief which may under Pa.R.A.P. 123 or 3315 properly be sought by motion, except that a single Justice may not dismiss or otherwise determine an appeal or other proceeding.

E. *Applications for Stay of Execution in a Capital Case or for Review of an Order Granting or Denying a Stay of Execution.*

1. *Assignment.* The application will be assigned to the duty Justice.

2. *Circulation and Disposition.* The assigned Justice shall promptly circulate a proposed disposition and the application shall be resolved according to the vote of the majority.

F. *Reconsideration Applications.*

1. *Assignment.* The Prothonotary shall direct applications for reconsideration to the Justice who entered the order resolving the application.

2. *Circulation and Disposition.* The assigned Justice shall circulate to the Court a recommended disposition within fourteen (14) days of the date of the assignment, within seven (7) days of the date of assignment in Children's Fast Track appeals, or as soon as practicable in emergency and stay of execution matters. A Justice who disagrees with the recommended disposition shall circulate a counter-recommendation within fourteen (14) days of the original recommendation, within seven (7) days of the date of the original recommendation in Children's Fast Track appeals, or as soon as practicable in emergency and stay of execution matters. A vote of the majority is required to grant reconsideration. In any case in which reconsideration has been denied, a Justice may request that the order record that he or she voted to grant reconsideration. All orders shall indicate if a Justice did not participate in the consideration or decision of the matter.

Source

The provisions of this § 63.6 amended through September 27, 1995; amended May 18, 2011, 41 Pa.B. 2837; renumbered as § 63.7 and amended January 9, 2013, effective in 30 days, 43 Pa.B. 514; amended May 31, 2013, effective immediately, 43 Pa.B. 3227; amended May 13, 2021, effective immediately, 51 Pa.B. 2962. Immediately preceding text appears at serial pages (367371) to (367372).

§ 63.8. [Rescinded].

Source

The provisions of this § 63.8 rescinded January 9, 2013, effective in 30 days, 43 Pa.B. 514. Immediately preceding text appears at serial pages (357253).

§ 63.8. Certification of Questions of Law.

A. *Court Limitation.* This Court will accept Certification Petitions from the United States Supreme Court or any United States Court of Appeals.

B. *Assignment, Circulation and Disposition.* The Prothonotary shall refer Certification Petitions to the Chief Justice, who will prepare a memorandum setting forth the positions of the parties and a recommended disposition. Acceptance of certification is a matter of judicial discretion. The Court shall decide whether to accept or decline certification without hearing oral argument. The recommendation should be circulated within thirty (30) days from the date of assignment, and should contain a proposed disposition date no greater than thirty (30) days from the date of circulation. Every Certification Petition should be decided within sixty (60) days. A vote of the majority is required to implement the proposed disposition. A Justice may request that the order record that he or she voted for a different disposition. Orders disposing of Certification Petitions shall indicate if a Justice did not participate in the consideration or decision of the matter.

Upon acceptance of certification by the Court, the Prothonotary shall (1) issue an order accepting certification, which shall specify the questions of law for which certification was accepted, and whether the case is to be submitted on the briefs or heard at an argument session; (2) establish a briefing schedule; (3) list the matter for oral argument if oral argument has been granted; and (4) take such further action as the Court directs.

C. *Amicus curiae briefs.* After the Court accepts certification, amicus curiae briefs may be submitted without prior leave of Court. Such briefs shall be filed and served in the manner and within the time directed by the Prothonotary.

D. *Reconsideration Applications.*

1. *Assignment.* Upon receipt of an application for reconsideration following an order resolving a Certification Petition, the Prothonotary shall direct the reconsideration application to the Chief Justice for assignment.

2. *Circulation and Disposition.* The assigned Justice shall circulate to the Court a recommended disposition within fourteen (14) days of the date of the assignment. A Justice who disagrees with the recommended disposition shall circulate a counter-recommendation within fourteen (14) days of the original recommendation. A vote of the majority is required to grant reconsideration. In any case in which reconsideration has been denied, a Justice may request that the order record that he or she voted to grant reconsideration. All orders shall indicate if a Justice did not participate in the consideration or decision of the matter.

Source

The provisions of this § 63.10 adopted January 12, 2000, effective January 12, 2000, 30 Pa.B. 519; amended October 25, 2010, effective October 25, 2010, 40 Pa.B. 6387; renumbered as § 63.8 and amended January 9, 2013, effective in 30 days, 43 Pa.B. 514; amended May 31, 2013, effective immediately, 43 Pa.B. 3227. Immediately preceding text appears at serial pages (365793) and (365795).

§ 63.9. [Rescinded].

Source

The provisions of this § 63.9 rescinded January 9, 2013, effective in 30 days, 43 Pa.B. 514. Immediately preceding text appears at serial pages (357253) to (357254).

§ 63.9. Photographing, Recording and Broadcasting.

A. *General Provisions.*

1. The Supreme Court reserves the right to restrict usage of all sound recordings and visual images taken in Supreme Court Courtrooms. Photographing, recording and broadcasting in those areas are permissible only in accordance with the following provisions.

2. The Executive Administrator of the Supreme Court or his or her designee (‘‘Executive Administrator’’) may permit photographing, recording and broadcasting in any Supreme Court Courtroom in his or her discretion. Requests to photograph, record or broadcast sound or images for public or private use in any media, including, but not limited to, printed, online and video form, must be submitted to the Executive Administrator at least three business days before the proposed date of photographing, recording or broadcasting, or within a shorter period as the Executive Administrator may determine. Requests to photograph, record or broadcast during scheduled Supreme Court proceedings will not be entertained.

3. Members of the general public visiting any Supreme Court Courtroom as a permitted guest or a participant in a supervised tour may take photographs or record sound or images for their private, non-profit use, unless otherwise directed by the Executive Administrator. This provision does not authorize photographing, recording or broadcasting during scheduled Supreme Court proceedings.

4. When a Supreme Court Courtroom is being used by an executive or legislative agency, board, commission or similar entity, sections A. 2.-3. shall not affect that entity's policies relating to photographing, broadcasting and recording.

B. *Photographing, Recording and Broadcasting of Supreme Court Proceedings by the Pennsylvania Cable Network (''PCN'').*

1. *General Provisions.*

a. The recording by PCN of a proceeding before the Supreme Court for future broadcast on PCN is permissible only in accordance with this section.

b. A request to be present to record a scheduled proceeding electronically for future broadcast on PCN must be made at least three business days before the proceeding. Such requests must be submitted to the Executive Administrator for approval by the Chief Justice. The Supreme Court shall maintain discretion to prohibit camera coverage of any proceeding, or any part thereof, due to the nature of the issues or the sensitivity of the subject matter of a proceeding.

c. There shall be no coverage of a proceeding involving any case that has been designated as ''sealed.''

d. There shall be no audio pickup or broadcast of conferences between co-counsel or among the Justices.

e. The Supreme Court may limit or terminate coverage, or direct the removal of camera coverage personnel, when necessary to protect the rights of the parties or to assure the orderly conduct of the proceedings.

f. The Supreme Court shall not incur any expense for equipment, wiring or personnel necessary to provide coverage by PCN.

g. Introductory commentary, if any, shall be supplied by members in good standing of the Pennsylvania Bar approved by the Supreme Court.

h. All coverage must be ''gavel-to-gavel,'' including rebroadcasts, with the exceptions in 1.c.—e.

i. All copyrights to the broadcasts are the possession of the Supreme Court and may not be used without its approval. PCN shall provide the Supreme Court with DVD or videotape recordings of all sessions covered by PCN, whether or not broadcast or aired.

j. Broadcasts are not permitted until a minimum of 48 hours after recording.

2. *Equipment and Personnel.*

a. Only robotic cameras will be permitted in the courtroom. PCN personnel shall consult with the Executive Administrator to determine the location in the courtroom for the camera equipment and operators.

b. Equipment shall not produce distracting sound or light. Signal lights or devices to show when the equipment is operating shall not be visible.

c. Except as otherwise approved by the Executive Administrator, existing courtroom sound and light systems shall be used without modification. Audio pickup for all media purposes shall be accomplished from existing audio systems present in the court facility, or from a camera's built-in microphone. If no technically suitable audio system exists in the court facility, microphones and

related wiring essential for media purposes shall be unobtrusive and shall be located in places designated in advance by the Executive Administrator.

d. All equipment must be in place prior to the opening of the court session and shall not be removed until after the conclusion of the day's proceedings. Video recording equipment which is not a component part of a camera shall be located in an area remote from the courtroom. PCN personnel shall not enter or exit the courtroom once the proceedings are in session except during a recess or adjournment. PCN personnel shall wear appropriate attire in the courtroom.

e. PCN personnel shall adhere to the direction of the Executive Administrator in matters such as security, parking, noise avoidance and other related issues.

3. *Impermissible Use of Material.*

None of the film, videotape, video discs, still photographs or audio reproductions developed during or by virtue of coverage of a proceeding shall be admissible as evidence in the proceeding from which it arose, in any proceeding subsequent or collateral thereto, or upon any appeal of such proceedings.

Source

The provisions of this § 63.11 adopted August 15, 2011, effective August 27, 2011, 41 Pa.B. 4620; renumbered as § 63.9 and amended January 9, 2013, effective in 30 days, 43 Pa.B. 514; amended November 17, 2015, effective immediately, 45 Pa.B. 6880. Immediately preceding text appears at serial pages (367374) to (367375).

§ 63.10. Communications to the Court in Pending Cases.

Whenever any matter is pending before the Court, all communications to the Court from counsel or from a party, if unrepresented, are to be addressed to the Prothonotary's office with copies to all other counsel and unrepresented parties.

Source

The provisions of this § 63.10 adopted January 9, 2013, effective in 30 days, 43 Pa.B. 514.

§ 63.11. Quorum.

A majority of the Court shall be a quorum of the Court.

Source

The provisions of this § 63.11 adopted January 9, 2013, effective in 30 days, 43 Pa.B. 514.

§ 63.12. Suspension of Procedures.

Whenever exceptional or emergency conditions require speedy action, or whenever there is other good cause for special action regarding any matter, the operation of these procedures may be suspended by affirmative vote of a majority of the Court.

The Chief Justice may alter any applicable time limit in extraordinary circumstances (e.g., when the Court lacks a full complement of members), or on written request by a Justice stating good cause for the extension and the date by which he or she expects to comply.

Source

The provisions of this § 63.12 adopted January 9, 2013, effective in 30 days, 43 Pa.B. 514.

§ 63.13. Temporary Judicial Assignments to the Supreme Court.

(A) Where a quorum of the Court cannot be assembled to transact the business of the Court, or where extraordinary circumstances warrant appointment of additional Justices, the Chief Justice or senior participating Justice may request temporary judicial assignment(s) to the Court as set forth below.

(B) A request for one or more temporary judicial assignments shall be made in accordance with the affirmative vote of a majority of the Justices voting on that question.

(C) The Court Administrator will select the requested number of temporary judges by random drawing from a pool of all commissioned judges of the Superior Court, or the Commonwealth Court, or both, excluding any judges who previously participated in the matter(s) to be considered by the Court. In the event a judge so selected is unable to serve, the Court Administrator shall select another temporary judge from the pool by random drawing. The Court Administrator will submit the selected names to the Chief Justice or senior participating Justice for appointment to the Court.

(D) This Section supplants Rule of Judicial Administration 701(C)(1) and (2) relative to temporary judicial assignments to the Supreme Court. The balance of the Rules of Judicial Administration continue to pertain, to the extent otherwise applicable.

Source

The provisions of this § 63.13 adopted April 1, 2020, effective immediately, 50 Pa.B. 2013.

Top Bottom

CHAPTER 65. OPERATING PROCEDURES OF THE SUPERIOR COURT

ADMINISTRATIVE OFFICES AND STAFF

Sec.

MOTIONS PRACTICE

DECISIONAL PROCEDURES

WIRETAPS

Source

The provisions of this Chapter 65 amended June 15, 1990, effective June 16, 1990, 20 Pa.B. 3147, unless otherwise noted. Immediately preceding text appears at serial pages (89345) to (89354) and (99803).

ADMINISTRATIVE OFFICES AND STAFF

§ 65.0. Introduction.

These operating procedures are intended to implement Article V of the Constitution of Pennsylvania, statutory provisions, the Pennsylvania Rules of Appellate Procedure and the customs and traditions of this Court. No substantive or procedural rights are created, nor are any such rights diminished.

Source

The provisions of this § 65.0 adopted September 19, 2012, effective immediately, 43 Pa.B. 298 as § 65.1; renumbered as § 65.0 as adopted by the Superior Court.

§ 65.1. Executive Administrator.

The President Judge may appoint an Executive Administrator who shall be the administrative officer of the Superior Court and who shall report directly to the President Judge. The Executive Administrator shall carry out assignments necessary to the efficient operation of the court including:

1. analyzing administrative operations;

2. conducting independent research;

3. preparing the budget and providing for expenditure control, financial accounting, procurement of supplies, facilities management, and telecommunications.

Source

The provisions of this § 65.1 renumbered as § 65.1a September 19, 2012, effective immediately, 43 Pa.B. 298; reversed renumbering at request of Superior Court.

§ 65.2. Prothonotary.

A. The Prothonotary is an officer of the Superior Court who is charged with the clerical duties and responsibilities of the business of the Court. The duties and responsibilities of the Prothonotary include but are not limited to:

1. keeping the records and seal of the Court;

2. issuing, processing, and entering judgments and orders at the direction of the Court;

3. certifying copies from the records of the Court;

4. scheduling all hearings and arguments before the Court, preparing the calendar, and coordinating judicial schedules;

5. supervising the collection of all fees collected by the Court and ensuring the proper receipt and distribution of such fees; overseeing the preparation of the Court's official record of proceedings, attesting to their accuracy, and providing for distribution;

6. promptly securing all records wherein appeals have been filed and, where provided by Rule of Appellate Procedure, dismissing an appeal for failure to comply with the Rules or Order of the Court;

7. prepare the daily judgment lists for the Reporter to post pursuant to O.P. 65.3.B; and

8. any other such duties as required by the Court.

B. Opinions filed with the Prothonotary are to be made available to the parties and the public promptly thereafter.

Source

The provisions of this § 65.2 amended June 30, 2022, effective June 30, 2022, 52 Pa.B. 4231. Immediately preceding text appears at serial page (403553).

§ 65.3. Reporter.

A. The Reporter shall be a member of the administrative staff of the Court whose duties and responsibilities include:

1. maintaining accurate journals and recording the votes and miscellaneous correspondence on all opinions, memoranda, and petitions for reargument for each case before the Court;

2. preparing statistical reports, in cooperation with the legal systems coordinator, which shall indicate the number of decisions rendered each year by the Court;

3. compiling assignment lists and records of the case assignments of the judges;

4. maintaining a record of all panels and compiling paperbooks which shall be kept until cases have been reported to the printer;

5. preparing and preserving for a reasonable period of time correspondence to and from the Superior Court printer; and

6. preparing a digest to inform the Court of recent Supreme Court and *en banc* Superior Court decisions.

B. In conjunction with the Prothonotary's responsibility pursuant to O.P. 65.2.A.7, the Reporter shall verify and post the daily judgment lists of the Court.

Source

The provisions of this § 65.3 amended November 20, 2003, effective immediately, 33 Pa.B. 5913; amended June 30, 2022, effective June 30, 2022, 52 Pa.B. 4231. Immediately preceding text appears at serial pages (403553) to (403554).

§ 65.4. Court Crier.

A. Court Criers shall be responsible for courtroom operations including:

1. opening and adjourning the Court and maintaining order in the courtroom;

2. assembling and making proper distribution of case briefs and records;

3. preparing the journals of the Court and of the Prothonotary;

4. maintaining a list of the Cases Book, which shall contain the date of argument or hearing, the judges present, and the names of counsel for the parties;

5. coordinating security in the courtroom;

6. performing related work as required by the Court.

§ 65.5. Panels.

A. Except as otherwise provided by these rules, all appeals, whether argued or submitted, shall be assigned to and decided by panels consisting of three judges. A panel may make any order or render any judgment therein. Every such order made or judgment rendered by a panel shall be made and given effect as an order or judgment of the Court and shall be so entered by the clerk.

B. The President Judge shall appoint the panels, assign cases to the panels, and designate the time, date, and place in which the panels shall sit.

C. 1. After the Prothonotary has listed the cases for an argument panel, but before the actual argument of the cases: (a) if a member of a panel becomes unable to participate in the disposition of a particular case, the presiding judge of that panel shall notify the President Judge or his/her designee, and the President Judge or his/her designee shall secure another judge to sit on that case; (b) if a member of a panel becomes unable to participate in a particular panel, the President Judge or his/her designee shall designate and assign another judge to sit on the panel.

2. After the Prothonotary has listed the cases for a submitted panel: (a) if a member of a panel becomes unable to participate in the disposition of a particular case, the case may be decided by the two remaining judges if they agree on the entire disposition of the case; if the two remaining judges are unable to agree on the entire disposition of the case, the panel shall proceed in accordance with § 65.5F.; (b) if a member becomes unable to participate in a particular panel, the President Judge or his/her designee shall designate and assign another judge to the panel.

3. If, after oral argument on a case, a judge becomes unable to participate in the disposition of a particular case, the case may be decided by the two remaining judges if they agree on the entire disposition of the case. If the two remaining judges are unable to agree on the entire disposition of the case, the panel shall proceed in accordance with § 65.5F.

4. If a judge on a motions panel is unable to participate in the review of a particular motion, the motion may be decided by the two remaining judges. In the event that the two remaining judges are unable to agree on a disposition, they shall request the President Judge or his/her designee to assign another judge to sit in review of the motion.

D. The presiding judge of each panel shall be the commissioned judge highest in seniority, except where the panel includes the President Judge who shall then be the presiding judge. The presiding judge shall preside at all panel sessions, assign the cases, and record the assignment of cases. The presiding judge shall transmit to the members of the panel and the Reporter a record of all assignments and/or other actions taken by the panel.

E. All discussions, votes, and drafts of decisions prior to the filing of the final decision shall remain confidential.

F. If, following argument or submission, a member of the three judge panel assigned to decide an appeal becomes unavailable, and the remaining two judges are unable to decide the appeal, they shall request the President Judge or his/her designee to either reassign the appeal for reargument or submission before another panel, or they may request that the appeal be reargued before a court en banc. If the full court shall decline to accept the appeal for reargument before a court en banc, the President Judge or his/her designee shall reassign the same to another three judge panel for reargument or submission and decision.

G. Cases remanded to this Court from the Supreme Court for further disposition shall be returned to the panel originally assigned to the case. In the event that the original panel cannot be reconstituted, for instance as a result of retirement from the court, the president judge, in consultation with any remaining members of the merits panel, will create a new argument or

submission panel depending on the nature of the remand. If an en banc case is remanded, the president judge will determine if the case can be submitted or argued to the same members of the original en banc court or whether the case should be reargued or submitted to a new en banc court which would include as many members of the original en banc panel as feasible.

Comment

In accordance with Pa.R.A.P. 3102(a), a panel of three judges constitutes a quorum of the Court. 42 Pa.C.S. § 325(e)(1) authorizes the President Judge to make assignments. Subdivision (C) and (D) of this rule do not alter the effect of Pa.R.A.P. 3102(b).

Source

The provisions of this § 65.5 amended November 20, 2003, effective immediately, 33 Pa.B. 5913; amended December 23, 2003, effective immediately, 34 Pa.B. 379; amended September 15, 2010, effective immediately, 40 Pa.B. 6078; amended September 11, 2013, effective September 11, 2013, 44 Pa.B. 6223; amended June 14, 2017, effective immediately, 47 Pa.B. 6362. Immediately preceding text appears at serial pages (378610) to (378611).

§ 65.6. Courts en banc.

A. A Court en banc shall consist of not more than nine commissioned judges of the Superior Court.

B. The President Judge shall assign the judges to each en banc panel and shall designate the location, the time, and the date of each session. The presiding judge of a Court en banc shall be the commissioned judge highest in seniority, except where the Court en banc includes the President Judge, who shall then preside.

C. At the conclusion of each en banc session, the presiding judge shall forward to all judges, the Prothonotary, the Chief Staff Attorney, the administrative assistant to the President Judge, and the Reporter a record of all assignments and other action taken during the session.

Comment

In accordance with Pa.R.A.P. 3103(a), the Court en banc shall consist of no more than nine active members of the Court. *See also*: § 65.41.

Source

The provisions of this § 65.6 amended November 20, 2003, effective immediately, 33 Pa.B. 5913; amended September 15, 2010, effective immediately, 40 Pa.B. 6078. Immediately preceding text appears at serial pages (342596) to (342597).

§ 65.7. Central Legal Staff.

Central Legal Staff is an office of the Court created for the purpose of assisting the Court in:

1. reviewing and processing motions;

2. preparing memos for the Court as directed;

3. screening cases;

4. reviewing proposed decisions to advise the Court of apparent conflicts or of conflict-clearance; and

5. accepting such other responsibilities as may be assigned by the Court or the President Judge.

Source

The provisions of this § 65.7 amended June 30, 2022, effective June 30, 2022, 52 Pa.B. 4231. Immediately preceding text appears at serial page (403556).

§ 65.8. Composition of Staff.

A. The Central Legal Staff is comprised of members of the Bar of the Commonwealth of Pennsylvania and serves the interests of the Court as a whole and assists the Judges in procedural and substantive matters under the direction of the President Judge.

B. The staff is supervised by the Chief Staff Attorney. The Chief Staff Attorney shall prepare and make available to the members of the Court written Internal Operating Procedures for all aspects of Central Legal Staff's operations.

§ 65.9. Confidentiality Considerations.

A member of staff owes a duty of confidentiality to the judges of the Superior Court. This duty extends to matters concerning any opinions, statements, or events with respect to the decision-making process of the Court. A staff member should avoid even informal contact with attorneys or litigants with respect to a matter pending before the Court. An attorney should refrain from discussions outside the Court, public or private, regarding the merits of pending proceedings. Matters involving the decision-making process are inappropriate for discussion outside the Court, including but not limited to the assignment of a case to a particular judge, the motions assignment judge, or the identity of the judge who may have signed an order in a case per curiam.

Source

The provisions of this § 65.9 amended November 20, 2003, effective immediately, 33 Pa.B. 5913. Immediately preceding text appears at serial page (216471).

§ 65.10. Disqualification Considerations.

A member of staff shall disqualify himself or herself in a proceeding in which his or her impartiality might reasonably be questioned.

§ 65.11. Practice of Law.

Staff attorneys must be members of the Bar of the Commonwealth of Pennsylvania; however, they may not engage in the practice of law outside the Court. The prohibited practice of law, for the purpose of this rule, includes the acceptance of appointment to, or participation in the deliberations of, arbitration panels appointed pursuant to 42 Pa.C.S. § § 7361—7362. This prohibition, however, does not extend to the limited representation of relatives who may be in need of legal assistance.

§ 65.12. Initial Review of Docketing Statements.

Central Legal Staff is responsible for the screening of docketing statements filed pursuant to Pa.R.A.P. 3517. These statements are to be initially screened to determine if the appeal is jurisdictionally or procedurally defective. Failure to file a timely docketing statement may result in dismissal of the appeal. However, no appeal shall be subject to being quashed or dismissed on the basis of review of the completed docketing statement alone; rather, if a potential defect is identified, a rule-to-show-cause order shall issue to the appellant as to why the appeal should not be quashed or dismissed . Following notification to counsel, the appeal is subject to being quashed or dismissed by the assigned monthly motions judge.

Source

The provisions of this § 65.12 amended June 30, 2022, effective June 30, 2022, 52 Pa.B. 4231. Immediately preceding text appears at serial page (403557).

§ 65.13. Political Activity.

Appointed judicial employees are not permitted to engage in partisan political activities.

Comment

See Supreme Court Order of June 29, 1987, 82 Judicial Administration Docket No. 1., In re: Prohibition of Political Activities by Court-Appointed Employees.

§ 65.14. Children's Fast Track and Other Family Fast Track Appeals.

A. In accordance with Pa.R.A.P. 102, revised in 2009, and in accordance with a program first established in this court in 2000, the court shall expedite handling of appeals involving parent-child relationships as follows:

1. Children's Fast Track: All cases involving dependency, termination of parental rights, adoption, custody, or paternity shall be designated as Children's Fast Track in the Superior Court.

2. Other Family Fast Track: Central Legal Staff in its discretion may expedite other appeals involving the parent-child relationship. Such cases shall be designated ''Other Family Fast Track.''

B. For all cases designated as Children's Fast Track or Other Family Fast Track, primary responsibility for monitoring the receipt of the record shall rest with the Central Legal Staff.

1. Upon receipt of an appeal that has been designated Children's Fast Track appeal by the trial court and/or the parties, the Prothonotary shall forward a letter from the President Judge of the Superior Court to the trial court judge, with copies to the clerk of the lower court, counsel for the parties or to the parties themselves if they are proceeding pro se, and Central Legal Staff. The letter shall stress the importance of the trial court's duty to send the record to the Superior Court in a timely manner, and shall stress the Superior Court's internal operating policy with respect to extensions of time for briefing, as set forth in § 65.21 B.2.

2. In all cases designated Other Family Fast Track by the Superior Court, the Central Legal Staff shall forward the letter from the President Judge as set forth in the preceding paragraph B.1.

3. Upon receipt of an appeal that has not been designated Children's Fast Track by the trial court or the parties, the Prothonotary or Central Legal Staff may designate the appeal as a Children's Fast Track appeal if the circumstances so warrant. In such a case, the procedures set forth in paragraph B.1. or B.2. above will apply.

Source

The provisions of this § 65.14 adopted March 16, 2009, effective immediately, 39 Pa.B. 1613.

MOTIONS PRACTICE

§ 65.21. Motions Review Subject to Single Judge Disposition.

A. Except as otherwise provided in § 65.22, a single judge of this Court, whether commissioned or specially assigned, may entertain and may grant or deny any request for relief which under the Rules of Appellate Procedure may properly be sought. A party may file an answer to an application, Pa.R.A.P. 123(b); a speaking application shall be verified unless the interest of justice requires action without it, Pa.R.A.P. 123(c); oral argument will not be permitted unless otherwise ordered by the Court, Pa.R.A.P. 123(d). The action of a single judge may be reviewed by the Court.

Comment

Section 65.21(A) merely reaffirms the procedure codified in Pa.R.A.P. 123. A single judge may grant or deny relief requested by a proper application, Pa.R.A.P. 123(e). However, the Court may by order or rule provide that an application or class of applications must be acted upon by the Court.

B. All petitions for extension of time shall be referred by the Prothonotary to the motions judge. Such petitions should be acted upon as soon as possible unless the motions judge feels an answer is necessary.

1. Petitions for extension shall be granted only on cause shown and in any event the filing of the brief is required, particularly in criminal cases, even though the right to argue is lost. However, if the petition for extension is accompanied by a substantive motion, such as a motion to quash, remand, or withdraw, Central Legal Staff shall review the motion in an expeditious manner pursuant to the procedures set forth in Section 65.21(D).

2. Notwithstanding any contrary procedures set forth above, all petitions for extension of time to file a brief in cases designated Children's Fast Track or Other Family Fast Track, upon receipt by the Prothonotary, shall be sent to Central Legal Staff for processing. All such petitions shall be presented to a motions judge for disposition within three days of receipt of the petition by Central Legal Staff. Petitions for extension of time to file a brief in Children's Fast Track or Other Family Fast Track cases shall be granted only upon a showing of good cause and extraordinary circumstances. Generalities such as the purpose of the motion is not for delay or that counsel is too busy will not constitute either good cause or extraordinary circumstances. Extensions for time should rarely be granted, and when granted should rarely be for a period in excess of seven days.

C. All other motions, petitions or applications for relief subject to this rule, shall, upon receipt by the Prothonotary, be transmitted to Central Legal Staff.

D. Central Legal Staff, upon receiving an application for relief pursuant to subsection C, shall review the application and prepare a recommendation and present the application and recommendation to the assigned motions judge at a time and place convenient to the motions judge. Central Legal Staff may also present recommendations for *sua sponte* orders deemed necessary to correct or clarify preliminary procedural matters.

E. The motions judge may decide the application on the basis of the application or may require the filing of an answer or briefs, or the motions judge may schedule a hearing thereon.

F. Unless ordered by the Court, oral argument will not be permitted.

G. It is within the discretion of a single judge to whom an application has been referred to decide the motion or to have it presented to a motions panel. Pa.R.A.P. 123(e).

(As amended, effective 1/1/97)

H. Once a case is scheduled before a panel, all motions filed thereafter shall be referred to that panel.

I. Motions for continuance are to be referred to the presiding judge of the panel who alone may decide the motion, or who may obtain a vote of the other judges of the panel by letter or phone.

J. Any motions for mandamus, prohibition and writs of habeas corpus where no direct appeal is pending shall be referred by the Chief Staff Attorney to the assigned motions judge.

Comment

See *Municipal Publications v. Court of Common Pleas of Philadelphia County*, 507 Pa. 194, 489 A.2d 1286 (1985).

Source

The provisions of this § 65.21 amended November 11, 1994, effective September 29, 1994, 24 Pa.B. 5651; amended November 20, 2003, effective immediately, 33 Pa.B. 5913; amended January 16, 2004, effective December 24, 2003, 34 Pa.B. 379; amended March 16, 2009, effective immediately, 39 Pa.B. 1613; amended August 25, 2014, effective August 25, 2014, 44 Pa.B. 6223. Immediately preceding text appears at serial pages (342599) to (342601).

§ 65.22. Motions Review Subject to Motions Panel Disposition.

A. Motions to Quash or Dismiss Appeals, Petitions for Permission to Appeal pursuant to Pa.R.A.P. 312, 1301—1323 and 42 Pa.C.S. § 702(b), and Petitions for Review pursuant to Pa.R.A.P. 1501 et seq. shall be subject to review and disposition by a panel of three judges.

B. After a motion subject to this Rule has been filed with the Prothonotary's office, the Prothonotary shall forward the motion to Central Legal Staff which shall prepare and circulate to the motions panel a legal memorandum and recommendation.

1. Votes thereon shall be due three weeks from the date on which the motion and accompanying documents are sent by Central Legal Staff, unless the case has been designated Children's Fast Track or Other Family Fast Track.

2. Votes on cases which have been identified as Children's Fast Track or Other Family Fast Track shall be due two weeks from the date on which the motion and accompanying documents are sent by Central Legal Staff.

C. If, in reviewing motions to be referred to a motions panel, Central Legal Staff determines that the motion is patently defective or the appeal is clearly defective or can be disposed of based upon established case law, the motion may be presented to the assigned motions judge.

D. Where a motions panel denied a motion to quash or dismiss, it shall be denied without prejudice to the moving party's right to again raise the issue(s) presented by the motion before the merits panel by refiling the original motion in writing or preserving the issue in the written brief.

Source

The provisions of this § 65.22 amended November 11, 1994, effective September 29, 1994, 24 Pa.B. 5651; amended December 27, 1996, effective January 1, 1997, 26 Pa.B. 6180; amended February 7, 1997, effective February 10, 1997, 27 Pa.B. 715; amended November 20, 2003, effective immediately, 33 Pa.B. 5913; amended October 25, 2007, effective immediately, 37 Pa.B. 6200; amended March 16, 2009, effective immediately, 39 Pa.B. 1613; amended June 14, 2017, effective immediately, 47 Pa.B. 6362. Immediately preceding text appears at serial pages (378615) to (378616).

§ 65.23. Discontinuances.

A. Discontinuances shall be reviewed pursuant to Pa.R.A.P. 1973.

B. Fugitive appeals will be quashed rather than discontinued on motion of the District Attorney or sua sponte by the Court. See Pa.R.A.P. 1972(6), *Commonwealth v. Passaro*, 504 Pa. 611, 476 A.2d 346 (1984).

Source

The provisions of this § 65.23 amended November 20, 2003, effective immediately, 33 Pa.B. 5913; amended August 25, 2014, effective August 25, 2014, 44 Pa.B. 6223. Immediately preceding text appears at serial pages (342601) to (342602).

§ 65.24. Hybrid Representation.

Where a litigant is represented by an attorney before the Court and the litigant submits for filing a petition, motion, brief or other type of pleading in the matter, it shall not be accepted for filing, but noted on the docket and forwarded to counsel of record.

Exceptions:

1. A pro se notice of appeal received from the trial court shall be docketed, even in instances where the pro se was represented by counsel in the trial court.

2. A motion by the pro se for appointment of new counsel, for reasons such as abandonment by counsel, or to proceed pro se shall be docketed and referred to Central Legal Staff, or the merits panel if constituted, for review and further action by the Court.

3. A pro se brief or writing filed in response to counsel's petition to withdraw from representation.

Source

The provisions of this § 65.24 amended August 25, 2014, effective August 25, 2014, 44 Pa.B. 6223. Immediately preceding text appears at serial page (342602).

§ 65.25. Assignment of Judges to Motions Duty.

A. The President Judge shall be responsible for assigning the Commissioned, Senior and specially assigned Judges of the Court to Motions Duty in the Western, Middle and Eastern Districts. All motions shall be presented to the judge assigned motions duty unless otherwise provided in these Rules or in exigent circumstances.

B. The President Judge shall set the motions panel. Each motions panel shall consist of three judges and shall serve for a period of two months. During each two-month period, the motions panel shall consider all Section 65.22 motions ready for disposition during the two-month period.

Source

The provisions of this § 65.25 amended November 20, 2003, effective immediately, 33 Pa.B. 5913; amended October 25, 2007, effective immediately, 37 Pa.B. 6200. Immediately preceding text appears at serial pages (302214) and (301501).

§ 65.26. Notices of Bankruptcy.

A party that has initiated bankruptcy proceedings and has obtained an automatic stay pursuant to the United States Bankruptcy Code shall file a Notice of Bankruptcy with the Prothonotary of this Court. The Notice must include: (1) the federal court that entered the stay, including the court's district, if applicable; (2) the federal court case number; (3) the date of entry of the automatic stay; and (4) the Superior Court docket number. The party shall also include federal filings relevant to the stay including, but not limited to, the Notice of Bankruptcy Case Filing issued by the federal court. The parties shall provide written updates to the Court every six months as to the status of the bankruptcy proceedings.

Source

The provisions of this § 65.26 adopted September 12, 2017, effective immediately, 47 Pa.B. 6362; amended September 13, 2018, effective September 13, 2018, 48 Pa.B. 7306. Immediately preceding text appears at serial page (388607).

DECISIONAL PROCEDURES

§ 65.31. Argument Sessions and Submit Panels.

A. Argument sessions shall be held in the cities of Harrisburg, Philadelphia, and Pittsburgh. Special argument sessions may be scheduled in other locations by decision of the President Judge. Argument sessions shall begin at 9:30 a.m. unless otherwise designated.

B. Submit panels shall be governed by § 65.36.

C. The Prothonotary shall give Children's Fast Track and Other Family Fast Track cases priority in listing before argued and submit panels, and may schedule special sessions of the court at any time that the unlisted and eligible number of Children's Fast Track plus Other Family Fast Track cases which cannot be listed before a scheduled argued or submitted panel within thirty days exceeds six in any district.

Source

The provisions of this § 65.31 amended March 16, 2009, effective immediately, 39 Pa.B. 1613. The immediately preceding text appears at serial page (331673).

§ 65.32. Daily List.

A. The Prothonotary shall periodically prepare daily lists of cases for assignment to specific panels of the Court from those cases which are ready for oral argument.

B. A case shall be ready and available for assignment to a daily list on the date on which the appellee's brief is due, regardless of whether the brief has been filed, unless the case has been designated Children's Fast Track or Other Family Fast Track. Cases designated as Children's Fast Track or Other Family Fast Track shall be eligible for listing before an argument panel at the time that the brief for the appellant is filed.

C. The daily list for each panel shall include cases filed in the district in which the panel is scheduled to sit. Ordinarily, cases will be assigned only to a daily list for an argument session which is to be held in the district in which the appeal was filed. The Court, on motion of a party for good cause shown, or on its own motion, may assign cases to a daily list for a panel sitting in a district other than the one in which the appeal was filed.

D. As soon as practical after a case has been assigned to a daily list, the Prothonotary shall notify the parties of the date, time, and location of the argument. Ready cases shall be assigned to a daily list four to six weeks before the scheduled argument date, except in exceptional circumstances upon request of the parties for cause shown and except for expedited matters which may be assigned to a daily list until one (1) week before the argument date.

Source

The provisions of this § 65.32 amended March 16, 2009, effective immediately, 39 Pa.B. 1613. Immediately preceding text appears at serial page (331673).

§ 65.33. Reading of Briefs.

Counsel should prepare for oral argument in a manner consistent with the policy of the Court that judges participating in a panel or en banc argument have read the briefs in advance of oral argument.

§ 65.34. Oral Argument.

A. Except in unusual circumstances, oral argument shall not exceed a total of fifteen (15) minutes for appellant and a total of fifteen (15) minutes for appellee. Where there are two or more appeals from the same order raising different or unrelated issues and in joint appeals, counsel addressing the court for each side shall be allowed ten (10) minutes to present argument. The total time allowed any side shall not exceed thirty (30) minutes. At the discretion of the presiding judge, the amount of time for argument may be increased or decreased.

B. Counsel filing briefs late shall not be permitted to argue but shall be available to answer any questions the Court may ask.

C. Counsel may use exhibits and graphic aids during argument. Copies of all such exhibits must be appended to the presenting party's brief in compliance with the requirements of Pa.R.A.P. 2134. Arrangements must be made by counsel with the Court Crier prior to argument for use of a blackboard or easel.

D. Pro se arguments, except from parties then incarcerated, shall be heard in the same manner and on the same basis as arguments of counsel.

E. The use of laptops, tablets, and phones by attendees at argument sessions, in a non-disruptive manner, is permitted in the courtroom, *except* that they are disallowed for oral communication,

photography, or audio- or video-recording purposes.

1. The Court does not provide Internet connectivity.

2. All electronic devices must be on a silent or vibrate mode.

3. Parties presenting oral argument may, without seeking permission of the panel, utilize laptops, tablets, or phones for data, reading, and reference purposes only, so long as usage of the device will not be disruptive to the oral argument.

Source

The provisions of this § 65.34 amended June 14, 2017, effective immediately, 47 Pa.B. 6362. Immediately preceding text appears at serial page (378618).

§ 65.35. Oral Motions.

A. Oral motions raising again an issue previously denied without prejudice must first be re-raised, in writing by refiling the original motion or preserving the issue in the written brief, before the scheduled argument date.

B. When oral motions are considered by the Court at oral argument, or when the Court issues an order sua sponte at oral argument, the presiding judge shall inform the Deputy Prothonotary and shall convey to him/her the substance of an appropriate order. The Deputy Prothonotary will then direct the preparation and docketing of the corresponding written order.

Source

The provisions of this § 65.35 amended June 14, 2017, effective immediately, 47 Pa.B. 6362; amended September 13, 2018, effective September 13, 2018, 48 Pa.B. 7306. Immediately preceding text appears at serial page (388609).

§ 65.36. Submitted Cases.

A. All post-conviction hearing cases shall be submitted on the briefs and record unless otherwise directed by the Court upon its own motion or upon application of a party.

B. On a weekly basis, the Prothonotary shall assign to the next available submit panel cases filed in all three districts which are to be submitted and which are ready to be assigned. A case is ready to be assigned to a submit panel as of the date that appellee's brief is due, regardless of whether the brief has been filed. As submitted cases are assigned to a panel, the briefs and reproduced records shall be sent to the panel. At the same time as the panel receives notification of assignment of a case, the parties shall receive notice that the case has been submitted for consideration on the briefs.

Comment

See Pa.R.A.P. 2311(a) and (b).

Source

The provisions of this § 65.36 amended June 28, 2002, effective June 6, 2002, 32 Pa.B. 3076. Immediately preceding text appears at serial page (279444).

§ 65.37. Non-Precedential Decisions (formerly titled Unpublished Memoranda Decisions).

A. For purposes of these operating procedures, ‘‘non-precedential decision’’ refers to an unpublished, non-precedential, memorandum decision of the Superior Court filed after May 1, 2019. All references to a memorandum decision filed after May 1, 2019, within these operating procedures shall be analogous to ‘‘non-precedential decision’’ for purposes of Pa.R.A.P. 126(b).

Comment

The title to this O.P. was changed to reflect the Amendments enacted by the Supreme Court to Pa.R.A.P. 126, effective May 1, 2019. *See* 278 Appellate Procedural Rules Docket (order amending Pa.R.A.P. 126) (Pa. 2019).

B. Non-precedential decisions filed after May 1, 2019, may be cited for their persuasive value, pursuant to Pa.R.A.P. 126(b). An unpublished memorandum decision filed prior to May 2, 2019, shall not be relied upon or cited by a Court or a party in any other action or proceeding, except that such a memorandum decision may be relied upon or cited (1) when it is relevant under the doctrine of law of the case, res judicata, or collateral estoppel, and (2) when the memorandum is 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. When an unpublished memorandum filed prior to May 2, 2019, is relied upon pursuant to this rule, a copy of the memorandum must be furnished to the other party and to the Court.

C. 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.

Source

The provisions of this § 65.37 amended and effective May 11, 1992, 23 Pa.B. 1939; amended July 7, 2000, effective July 1, 2000, 30 Pa.B. 3429; amended April 20, 2001, effective July 21, 2001, 31 Pa.B. 2108; amended October 10, 2003, effective November 24, 2003, 33 Pa.B. 5075; amended November 20, 2003, effective immediately, 33 Pa.B. 5913; amended April 16, 2019, effective April 16, 2019, 49 Pa.B. 2218. Immediately preceding text appears at serial page (394674).

§ 65.38. Reconsideration, Reargument, and En Banc Review.

A. All applications, motions, or petitions requesting reconsideration of the final decision of a merits panel, shall be recognized as Applications for Reargument pursuant to Pa.R.A.P. 2541 *et seq.*, and shall be subject to all the rules and limitations otherwise applicable to Applications for Reargument.

B. All such applications described in subsection A shall first be submitted to the merits panel that issued the decision in question, *i.e.*, the original merits panel, for consideration by that panel.

C. The members of the merits panel may vote to grant panel reconsideration, grant en banc reargument, or deny any such application.

1. If the merits panel recommends en banc reargument, Central Legal Staff shall circulate the application, motion, or petition, along with any relevant filings, original decision(s), and/or summaries, to the commissioned judges for votes.

2. If a majority of the merits panel does not vote to grant reconsideration, Central Legal Staff shall forward all relevant reconsideration submissions to the commissioned judges as an Application for Reargument before a court en banc.

3. A party's request that the case be reargued before a court en banc shall not foreclose a merits panel's ability to reconsider the decision that prompted the underlying application.

D. Reargument before a court en banc is not a matter of right, but of sound judicial discretion. An Application for Reargument will be denied unless there are compelling reasons therefor. Such reasons include, but are not limited to, the following:

1. It appears that a decision of a merits panel may be inconsistent with a decision of a different panel of the court;

2. It appears that a merits panel may have overlooked relevant precedent, statute, or rule of court;

3. It appears that a merits panel may have overlooked or misapprehended one or more material facts of record;

4. It appears a merits panel relied upon legal authority relevant to the decision that has been reversed, modified, overruled, discredited, or materially altered during the pendency of the appeal; and

5. It appears the issues have potential for a significant impact upon developing law or public policy.

E. Reargument before a court en banc will be granted only if at least half of the available commissioned judges of the court vote to grant reargument. A judge's vote of ''Did Not Participate'' or ''Recuse'' shall constitute a reduction in the count of available judges.

F. The court will not entertain an application, motion, or petition for reconsideration of a decision rendered by a court en banc.

Source

The provisions of this § 65.38 amended and effective May 11, 1992, 23 Pa.B. 1939; amended August 25, 2014, effective August 25, 2014, 44 Pa.B. 6223; amended September 12, 2017, effective immediately, 47 Pa.B. 6362; amended October 26, 2022, effective immediately, 52 Pa.B. 6959. Immediately preceding text appears at serial pages (405041) to (405042).

§ 65.39. Rescinded, October 26, 2022, imd. Effective.

[Rescinded October 26, 2022]

Source

The provisions of this § 65.39 amended September 12, 2017, effective immediately, 47 Pa.B. 6362; deleted October 26, 2022, effective immediately, 52 Pa.B. 6959. Immediately preceding text appears at serial page (405042).

§ 65.40. [Rescinded].

Source

The provisions of this § 65.40 rescinded and effective April 29, 1992, 23 Pa.B. 1939. Immediately preceding text appears at serial page (149384).

§ 65.41. Argument Before a Court En Banc.

A. When argument before a Court En Banc is granted, the President Judge shall direct the Prothonotary to schedule such argument at the next available session. The judges to hear argument shall be selected by the President Judge. The presiding judge shall be the commissioned judge highest in seniority except when the Court En Banc includes the President Judge, who shall then be the presiding judge.

B. Where en banc argument is limited to one or more but less than all issues raised by an appellant, counsel shall be notified regarding the specific issues on which the Court En Banc desires to hear argument.

C. Before or after argument before the Court En Banc, the Court may vote that en banc consideration was improvidently granted. In such event, the previous panel decision in the matter shall be reinstated or, if there is no previous panel decision in the matter, the case shall be listed before the next available panel of this Court.

D. In the event that a party seeks to remove en banc status and reinstate a panel's decision, such request must be made by motion and is subject to full court review.

E. In the event that a party in another appeal has raised an issue for which the Court has granted Reargument, the Court shall stay such appeal pending the decision of the en banc panel.

F. The Court may decide to stay the case *sua sponte* or upon a motion that a party files.

Source

The provisions of this § 65.41 amended and effective May 30, 1991, 23 Pa.B. 1939; amended June 14, 2017, effective immediately, 47 Pa.B. 6362; amended June 10, 2021, effective immediately, 51 Pa.B. 3441. Immediately preceding text appears at serial pages (403566) to (403567).

§ 65.42. Circulation and Voting in Children's Fast Track and Other Family Fast Track Appeals.

Notwithstanding any contrary procedures set forth above, panels shall give priority in both circulation of and voting on proposed decisions, first in Children's Fast Track cases, and then in Other Family Fast Track cases.

Source

The provisions of this § 65.42 adopted March 16, 2009, effective immediately, 39 Pa.B. 1613.

§ 65.43. [Rescinded].

Source

The provisions of this § 65.43 adopted September 15, 2010, effective immediately, 40 Pa.B. 6078; rescinded June 1, 2012, effective immediately, 43 Pa.B. 298. Immediately preceding text appears at serial pages (353591) to (353592).

§ 65.44. Confidentiality Issues.

The names of the parties in a caption for an appeal from a divorce, equitable distribution, custody, visitation or child support decision shall include the full names of the parties if listed as such in the caption of the trial court's docket. The Court, however, in a custody action upon application of a party and for cause shown, in its discretion may order that the names of the parties listed in the caption be initialized if the Court determines that a child may be identified from the full names of the parties in the caption, pursuant to Pa.R.A.P. 904(b)(2). This rule applies only to the names in the caption and does not apply to the text of a circulation or order of the Court. In such documents, the name of the child shall be initialized or the document shall refer to the child as ''Child.''

Source

The provisions of this § 65.44 adopted December 16, 2020, effective January 1, 2021, 51 Pa.B. 11; amended May 24, 2021, effective immediately, 51 Pa.B. 3090. Immediately preceding text appears at serial page (403567).

WIRETAPS

§ 65.51. Introduction.

The procedures for proceedings pursuant to the Wiretapping and Electronic Surveillance Control Act formerly found at this location are now located in Chapter 35 of the Pennsylvania Rules of Appellate Procedure.

Source

The provisions of this § 65.51 rescinded September 15, 2010, effective immediately, 40 Pa.B. 6078; amended June 10, 2015, effective June 10, 2015, 45 Pa.B. 5906; amended November 24, 2020, effective immediately, 50 Pa.B. 6994. Immediately preceding text appears at serial page (388613).

§ 65.52. [Reserved].

Source

The provisions of this § 65.52 amended June 10, 2015, effective June 10, 2015, 45 Pa.B. 5906; reserved November 24, 2020, effective immediately, 50 Pa.B. 6994. Immediately preceding text appears at serial page (388613).

§ 65.53. [Reserved].

Source

CHAPTER 69. INTERNAL OPERATING PROCEDURES OF THE COMMONWEALTH COURT OF PENNSYLVANIA

ORGANIZATION AND ASSIGNMENT OF JUDGES

Sec.

APPELLATE JURISDICTION

ORIGINAL JURISDICTION

DECISIONS

MISCELLANEOUS

Source

The provisions of this Chapter 69 adopted July 14, 2012, effective June 5, 2012, 42 Pa.B. 4450, unless otherwise noted.

ORGANIZATION AND ASSIGNMENT OF JUDGES

§ 69.101. Classification of Judges; Definitions.

For the purpose of these Internal Operating Procedures, the following terms shall have the meanings indicated:

"Assigned Judge" means a judge of the Commonwealth who has been assigned to serve this Court.

"Commissioned Judge" means a judge serving as a member of this Court by gubernatorial appointment or, pursuant to election, during an elective term as a member of this Court.

''Duty Judge'' means the Judge currently designated for service by the duty roster established under § 69.121.

''Judge'' shall include (1) each Commissioned Judge (2) each Senior Judge and Assigned Judge with respect to matters on which the Senior Judge or Assigned Judge has been designated to sit, and (3) each Assigned Judge with respect to designation as a Duty Judge.

''Mediation Judge'' means a Judge of the Court, assigned on a periodic basis by the President Judge to conduct mediations under § 69.501 (Mediation).

''Senior Judge'' means a Judge, formerly elected as a member of this Court or another court of the Commonwealth, who has retired and is designated to sit as a Senior Judge on panels of this Court, whether or not also designated to serve as a Duty Judge.

Source

The provisions of this § 69.101 amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (377838).

§ 69.102. Court Officers; Definitions.

''Chief Legal Counsel'' means the officer appointed by this Court to provide legal support and counsel to the Court and to manage the Office of Chief Legal Counsel, as described in Pa.R.A.P. 3702.1.

''Prothonotary'' means the officer appointed by this Court in accordance with Pa.R.A.P. 3111 to administer the clerical duties and responsibilities of the business of the Court as described in Pa.R.A.P. 3702. This includes overseeing the receipt, docketing, and maintenance of all documents filed with the Court, the scheduling of the Court's argument sessions, and the maintenance of caseload inventory and statistics.

Source

The provisions of this § 69.102 adopted January 17, 2020, effective immediately, 50 Pa.B. 657.

§ 69.111. Courts En Banc and Panels; Number of Judges Assigned.

An en banc Court shall consist of no more than seven Commissioned Judges. Panels of the Court shall consist of three Judges, except in the circumstance of a two-member panel in accordance with Pa.R.A.P. 3102(b).

Source

The provisions of this § 69.111 amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (377838).

§ 69.112. Courts En Banc and Panels; Composition.

(a) The President Judge shall structure the judicial membership of en banc Courts and panels to provide for rotation of Judges. Before the day of argument, Court personnel shall not identify the judicial membership of en banc Courts and of panels to any other persons.

(b) The President Judge may designate Judges to serve on a special court en banc or panel to hear election law matters, appellate or original jurisdiction, on an expedited basis.

Source

The provisions of this § 69.112 amended November 21, 2013, effective immediately, 43 Pa.B. 7074; amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (369583).

§ 69.121. Duty Rosters; Establishment.

The President Judge shall annually establish a duty roster, which shall, on a weekly basis, provide for the assignment to each Judge, when designated as Duty Judge by the duty roster, all matters required by law or deemed necessary by the President Judge for evidentiary hearing, oral argument or disposition on briefs or otherwise. The duty roster normally shall exclude weeks during which regular argument sessions of the Court are scheduled. Court personnel shall not identify any designated Duty Judge, in advance of sitting, to any other person.

Source

The provisions of this § 69.121 amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (369583).

§ 69.122. Location of Proceedings.

All evidentiary hearings and arguments assigned to a Judge shall be conducted at the seat of the Court in Harrisburg unless ordered to be heard elsewhere or by a method specified under § 69.124.

Source

The provisions of this § 69.122 amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (369583).

§ 69.123. Duty Rosters; Availability.

Each Duty Judge shall be present in Harrisburg or otherwise available from 8:00 a.m. on the Monday commencing the Duty Judge's duty week and remain available until 7:59 a.m. on the following Monday and shall make the Prothonotary and Chief Legal Counsel aware of where the Duty Judge can be reached when not at the Pennsylvania Judicial Center during regular hours. The Duty Judge shall be in charge of making administrative decisions when the President Judge is not available by telephone communication, but the President Judge shall be consulted if major decision making is required.

Source

The provisions of this § 69.123 amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (369583).

§ 69.124. Video or Teleconference Proceedings.

A Judge may conduct a proceeding by use of video or telephone conference pursuant to an order fixing the argument date and the time.

Source

The provisions of this § 69.124 amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (369583).

§ 69.125. Case Assignments.

The President Judge may assign a matter within the Court's original jurisdiction to a particular Judge. Any Judge so assigned (a) may be relieved of other responsibilities during the pretrial, trial and decision processes, and (b) shall be responsible for the management of the case by such authorized procedures as the Judge shall elect to apply, including a pretrial order under § 69.313.

Source

The provisions of this § 69.125 amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (369584).

§ 69.126. Emergency Applications.

(a) An emergency application is defined as an application filed during non-business hours, including holidays and weekends. Filing of emergency applications outside of normal business hours will be allowed only when both of the following conditions are present:

(1) The application will be moot unless a ruling is obtained prior to noon of the next business day; and

(2) The application is being filed within two business days of the filing of the order sought to be reviewed.

(b) An emergency application shall include the following:

(1) An explanation of why an order of this Court is necessary, time sensitive and satisfies the threshold requirements set forth in (a)(1)—(2); and

(2) An explanation of how service has been perfected upon the opposing party or, if service has not been made, a summary of the efforts to perfect service or explanation of why service is impossible or impracticable; and

(3) Unless already docketed with this Court:

(i) a stamped ''filed'' copy of the relevant common pleas court order being appealed, as well as a copy of the notice of appeal that will be filed with this Court; or

(ii) a copy of the relevant petition for review, whether addressed to this Court's appellate or original jurisdiction; and

(4) The appropriate filing fee or a sufficient affidavit to proceed in forma pauperis.

(c) The filing of an emergency application should be made by contacting this Court's Prothonotary or designee, at one of the phone numbers provided in (c)(2), who will accept the papers by the most expeditious means available.

(1) The Court officer accepting the filing shall contact the Duty Judge to make arrangements for consideration and disposition of the emergency application. If the Duty Judge is not available, the

emergency application shall be referred to the President Judge and then to the other Judges in descending order of seniority, if the President Judge is not available.

(2) The telephone number of the Court officer accepting the filing of emergency applications shall be made available through the Court's after hours telephone message system (717-255-1600 or 717-649-5153).

Source

The provisions of this § 69.126 amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial pages (369584) and (363235).

APPELLATE JURISDICTION

§ 69.201. Permission to Appeal; Interlocutory Orders.

The Chief Legal Counsel shall present each petition for permission to appeal, together with opposing briefs and any recommendation, to the Duty Judge for appropriate action. In the absence of a recommendation by the Chief Legal Counsel, the disposition of such petitions shall follow the procedure for petitions for reargument, stated in § 69.291.

Source

The provisions of this § 69.201 amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (363235).

§ 69.211. Petition for Review; Clarification.

When the Prothonotary receives a written communication that evidences an intention to appeal an adjudication of a state administrative agency but does not conform to the rules for an appellate petition for review, the Prothonotary shall time-stamp the written communication with the date of receipt. The Prothonotary shall advise the party by letter (1) of the procedures necessary to perfect the appeal and (2) that the date of receipt of the communication will be preserved as the date of filing of the appeal if that party files a fully conforming petition for review within 30 days of the date of the Prothonotary's letter. If the party fails to file a fully conforming petition for review within that period, the Prothonotary shall advise the party by letter that the Court will take no further action in the matter.

Source

The provisions of this § 69.211 amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (363235).

§ 69.221. Preargument Matters; Applications, Motions and Petitions.

The Prothonotary shall promptly, after filing, submit preargument applications, motions and petitions requiring consideration by a Judge to the Chief Legal Counsel. The Chief Legal Counsel shall daily confer with the President Judge or the Duty Judge on such matters, who shall act by order granting or denying the relief or remedy sought, directing the matter to be decided on

submitted briefs, or listing the matter for argument before, or in conjunction with, argument on the merits of the appeal. Applications for extensions of time and/or continuances shall be acted upon as soon as practicable unless the Judge determines an answer is necessary, in which case the Court may order an expedited answer.

Source

The provisions of this § 69.221 amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (363235).

§ 69.222. Preargument Matters; Arguments and Evidentiary Hearings.

If an application pending appeal merits or requires an evidentiary hearing or argument, the President Judge or the Duty Judge shall list the matter for hearing or argument at the earliest opportunity consistent with appropriate notice and any applicable statutory provisions or procedural rules, for disposition consistent with the procedure governing matters within the original jurisdiction of the Court.

Source

The provisions of this § 69.222 amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (363235).

§ 69.223. (Reserved).

Source

The provisions of this § 69.223 reserved January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (363236).

§ 69.231. Briefs; Advance Reading.

Briefs timely filed as to cases to be heard by the Court at its regular argument sessions are read in advance of oral argument by the Judges participating in an en banc session as to cases so listed, and by the Judges participating in a panel session as to cases listed before the panel to which a Judge is assigned. Counsel should prepare for oral argument consistent with the practice of this Court.

Source

The provisions of this § 69.231 amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (363236).

§ 69.232. Briefs; Submission of Cases on Briefs.

Where cases are to be submitted for decision upon the briefs without oral argument, either by determination of the Court or by leave to do so at the request of one or more of the parties, the Prothonotary shall so designate them if they appear upon argument lists. Apart from argument lists, the President Judge shall appoint additional panels, designated as ‘‘Submission Panels,’’ for the disposition of cases thus submitted.

Source

The provisions of this § 69.232 amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (363236).

§ 69.241. Arguments; Sessions.

Argument sessions of the Court shall be annually fixed by order of the Court, the particular days to be devoted to en banc and panel sessions, or combinations thereof, to be determined by the President Judge. The President Judge shall allocate cases to be heard by panels or by the Court en banc, except as otherwise directed by the Court as to particular cases.

Source

The provisions of this § 69.241 amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (363236).

§ 69.242. Arguments; Preparation of Lists.

To aid the President Judge in the allocation of cases to be heard by the Court en banc or by panels, the Prothonotary shall submit an analysis of the procedural posture and issues raised in each case ready for argument. The Chief Legal Counsel shall review the list of cases, and present to the President Judge recommendations as to cases on the list to be heard by the Court en banc or by a panel. The President Judge shall review the proposed argument list and make any changes deemed necessary. As approved or as modified by the President Judge, the Prothonotary shall proceed to publish the argument list and give notice to litigants. The argument list as published shall disclose a day certain for argument of each case listed.

Source

The provisions of this § 69.242 amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (363236).

§ 69.243. Arguments; Number of Cases.

The President Judge and the Prothonotary shall determine the number of cases to be listed at a regular argument session before the Court en banc and beforepanels, on the basis of expediting the disposition of cases ready for argument, to the maximum extent feasible.

Source

The provisions of this § 69.243 amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (363237).

§ 69.244. Arguments; Time Allowed.

As a general rule, the presiding Judge normally shall allow the parties on each side, including intervening parties, fifteen (15) minutes for argument in cases before the Court en banc and seven and one-half (7 1/2) to ten (10) minutes in cases before panels. Exercising discretion, the presiding Judge may nevertheless limit any argument to a shorter period pursuant to Pa.R.A.P. 2315(a) or may allow additional time.

Source

The provisions of this § 69.244 amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (363237).

§ 69.251. Decisions; Conferences and Assignments of Draft Opinions.

(a) After argument sessions and consideration of argued and submitted cases in a conference of the Judges comprising the respective Court en banc or panel, the presiding Judge shall assign each case to a Judge who represents the expressed majority view at the conference, for the preparation of the opinion of the Court.

(b) The opinion-writing Judge shall proceed to prepare a draft opinion in accordance with the decision of the Court en banc or of the panel or expressing any different views which the Judge may reach after subsequent study of the case, designated as an ''Opinion'' or ''Memorandum Opinion'' in accordance with § 69.413 below. The draft opinion shall ordinarily be one to be signed by the writer when final, but in appropriate cases it may be a briefer opinion recommended by the writer to be handed down per curiam. Except in the case of adoption of the reasoning in the opinion of the trial court, or where the appeal is meritless, the opinion shall state, at least summarily, the nature of the case, the principal question or questions involved, the holding of the court or agency below and the rationale of this Court's decision.

Source

The provisions of this § 69.251 amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (363237).

§ 69.252. Decisions; Circulation of Draft Opinions.

When the draft opinion has been prepared, the opinion-writing Judge shall transmit it, normally within forty-five days after the date of assignment, to the other Judges, with a face sheet bearing the date the case was argued or submitted on briefs, and also with a memorandum in standardized form requesting them to inform the writer of (1) their agreement or disagreement with the opinion and order in accordance with these rules, together with any suggestions which they may desire to make with respect to the draft opinion, and (2) any disagreement as to the writer's recommendation concerning reporting, in accordance with § 69.412. The writer shall also indicate by memorandum (1) when the draft proposes a result different from the tentative conference vote, and (2) when a proposed panel decision would overrule a previous panel decision of this Court. The other Judges shall respond to the opinion-writing Judge within fifteen days. If no response is received in that time, the opinion-writing Judge shall consider nonresponse as indicating that each Judge not responding is willing to have the opinion filed as circulated.

Source

The provisions of this § 69.252 amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial pages (363237) to (363238).

§ 69.253. Decisions; Concurrences and Dissents.

If a Judge on the Court en banc or the panel before which a case was argued, or to which it was submitted, responds by stating an intention to write a concurring opinion or a dissenting opinion, the opinion-writing Judge shall hold the opinion for an additional twenty days, during which period the concurring or dissenting Judge shall submit an opinion to the opinion-writing Judge, to be filed on the same date as the opinion of the Court. A dissenting or concurring Judge shall also inform all other Judges of such intention and shall circulate the opinion to them when written. The opinion-

writing Judge shall consider concurrences and dissents and the reasons for them, and may revise the draft opinion and recirculate it. If a concurring opinion or dissenting opinion is not received by the opinion-writing Judge within the twenty-day period, the opinion writing Judge shall consider the previous intent to be waived and may proceed to file the opinion of the Court and any concurring opinions or dissenting opinions actually submitted to the opinion-writing Judge. A Judge on the Court en banc or panel may join in a concurring or dissenting opinion and shall so notify the opinion-writing Judge, who shall be responsible for noting the joinder of that Judge in such concurring opinion or dissenting opinion. When a Judge circulates a concurring or dissenting opinion, the opinion of the Court and any concurring or dissenting opinion may be filed no earlier than ten days after the circulation of the concurring or dissenting opinion.

Source

The provisions of this § 69.253 amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (363238).

§ 69.254. Decisions; Reassignments.

If, in connection with a draft opinion in circulation, a majority of the Judges who heard the case, or to whom it was submitted on briefs, decline to join in that opinion and favor a result or rationale contrary to it, the presiding Judge with respect to that case shall reassign it to a Judge who represents the new majority view.

Source

The provisions of this § 69.254 amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (363238).

§ 69.255. Decisions; Objections.

(a) If a Judge who is not a member of the en banc Court or of the panel before which a case is argued, or to which it is submitted, responds with an objection to the draft opinion, the opinion-writing Judge shall consider the objection and reasons for it, and may revise the draft opinion and recirculate it as deemed necessary.

(b) An objecting Judge shall also inform all other Judges of the objection and the reasons for it. An objection, however, shall not entitle the objecting Judge to file a concurring or dissenting opinion.

Source

The provisions of this § 69.255 amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (363238).

§ 69.256. Decisions; Effect of Disagreements.

(a) If a draft opinion in circulation in any case produces any combination of four or more proposed dissents, objections, or concurring opinions, the opinion-writing Judge shall not file the opinion but shall notify the President Judge to list the case for consideration at the next judicial conference. For purposes of this subsection the notation ‘‘concur in result only’’ shall not be considered in the foregoing combination. If, pursuant to vote after judicial conference consideration, a majority of all of the Judges, as well as a majority of the Judges who heard the case or to whom it was submitted on briefs, favor the result reached in the circulated draft opinion, that opinion, together with any concurring or dissenting opinions and notations of concurrences or dissents, shall be filed.

Otherwise, if judicial conference consideration and vote does not warrant reassignment in accordance with § 69.254, the President Judge shall list the case for reargument before the Court en banc.

(b) When there exists a vacancy or a recusal among the Commissioned Judges that results in an even number of Commissioned Judges voting on a circulating panel opinion or en banc opinion, and when the vote of all participating Commissioned Judges results in a tie, the opinion shall be filed as circulated. The opinion shall contain a footnote on the first page indicating that the opinion is filed pursuant to this paragraph. Unless there is a majority vote of the participating Commissioned Judges to report, the opinion shall not be reported.

Source

The provisions of this § 69.256 amended November 21, 2013, effective immediately, 43 Pa.B. 7074; amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (369585).

§ 69.257. Decisions; Overruling Previous Decisions.

Pursuant to the circulation of a draft opinion accompanied by a notation in accordance with § 69.252 that the proposed panel decision would overrule a previous panel decision, if a majority of the Court agrees that such an overruling would result, the President Judge shall list the matter on the agenda of the next judicial conference for consideration as to reargument.

Source

The provisions of this § 69.257 amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (369585).

§ 69.258. Decisions; Election Law Appeals.

The procedures of § § 69.252—69.257 shall not apply to election law appeals heard by a special Court en banc or panel. The members of a special Court en banc or panel, under the supervision of the President Judge or presiding Judge, shall reach and file their decision, together with concurrences and dissents, if any, as soon as possible, without circulation to, or participation by, the Judges not sitting on the respective special Court en banc or panel.

Source

The provisions of this § 69.258 amended November 21, 2013, effective immediately, 43 Pa.B. 7074; amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial pages (369585) to (369586).

§ 69.259. Decisions; Informational Circulation.

When circulating draft opinions, memoranda, responses, dissenting opinions, concurring opinions, comments and other matters pursuant to § § 69.252—69.258, the Judges shall also circulate copies for information to Senior Judges not members of the respective Court en banc or panel.

Source

The provisions of this § 69.259 amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (369586).

§ 69.261. Decisions; Notation of Recusals.

If a Judge anticipates recusal with respect to a case on which the Judge has been assigned to sit, the Judge shall notify the presiding Judge of the Court en banc or panel as soon as possible. A Commissioned Judge may also be recused with respect to responding with an objection or no objection under § 69.255. For the information of the Judge who, as the writer of the opinion of the Court, has the responsibility for preparing the opinions to be filed in accordance with § 69.262, a recused Judge, whether sitting on the particular Court en banc or panel or not, shall communicate the fact of recusal by notation upon the response form or in writing otherwise. The Judge responsible for preparing the opinions to be filed shall have the non-participation of a Judge noted upon the majority opinion of the Court, whether such Judge was sitting as a member of the Court en banc or panel or not.

Source

The provisions of this § 69.261 amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (369586).

§ 69.262. Decisions; Filing.

When the opinion of the Court and any accompanying concurring opinions or dissenting opinions are ready to be filed, the opinion-writing Judge shall transmit to the Prothonotary the original opinions and such number of copies as the Prothonotary shall from time to time specify, with each opinion of the Court bearing notations as to any Judges who dissent without opinion, who concur in the result only, and who are recused. The Prothonotary shall file, docket, and distribute the opinions. The writer shall sign the original of each opinion, except that, in the case of a per curiam opinion, the writer shall identify authorship by accompanying memorandum. To enable the opinion-writing Judge to carry out this responsibility, any Judge writing a concurring opinion or dissenting opinion shall deliver to the opinion-writing Judge a sufficient number of copies. The opinion-writing Judge shall date the opinion and any concurring opinions or dissenting opinions with the filing date.

Source

The provisions of this § 69.262 amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (369586).

§ 69.291. Reargruments; Petitions for Reargument.

The President Judge shall distribute petitions for reargument and answers to them, involving cases decided by a panel of the Court or the Court en banc, to all Judges of the Court. See Pa.R.A.P. 2542 et seq. After consideration pursuant to such circulation, the vote of the majority of the Commissioned Judges to grant or deny the petition for reargument shall govern, although comments from the Court's Senior Judges shall be solicited. Where a party files an application for reargument of an order issued by a single Judge, the Chief Legal Counsel shall submit the application, together with any answer, to that Judge for action, in accordance with Pa.R.A.P. 123(e).

Source

The provisions of this § 69.291 amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (394675).

ORIGINAL JURISDICTION

§ 69.301. General; Applicability of Appellate Jurisdiction Procedures.

Sections 69.221 through 69.262, inclusive, of these Internal Operating Procedures under Appellate Jurisdiction, shall govern proceedings in original jurisdiction matters when those proceedings are before Courts en banc and panels. Election law matters assigned to a special Court en banc or panel shall be subject to § 69.258.

Source

The provisions of this § 69.301 amended November 21, 2013, effective immediately, 43 Pa.B. 7074; amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (394675).

§ 69.311. Pretrial Matters; Applications, Motions, Petitions and Praecipes.

The Prothonotary shall promptly, after filing papers in original jurisdiction cases, submit pretrial applications, praecipes for trial after a case is at issue, petitions for summary judgment or for judgment on the pleadings, statutory enforcement proceedings requiring a hearing before a Judge, praecipes for hearing inmatters under Pa.R.A.P. 1571, and all other motions and matters requiring the consideration of a Judge before trial or argument on the merits, to the Chief Legal Counsel, who shall, on a daily basis, confer with the President Judge or Duty Judge on such matters. Depending upon the nature of the matter, the President Judge or the Duty Judge shall by order set the matter down for evidentiary hearing or formal trial, for argument before a single Judge in cases in which a single Judge may dispose of the matter, for argument before the Court en banc or a panel, or for other disposition consistent with the applicable Rules of Appellate Procedure or Rules of Civil Procedure.

Source

The provisions of this § 69.311 amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (394675).

§ 69.312. Pretrial Matters; Subpoenas.

Subpoenas of the Court may issue from the Office of the Prothonotary.

Source

The provisions of this § 69.312 amended November 21, 2013, effective immediately, 43 Pa.B. 7074; amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial pages (394675) to (394676).

§ 69.313. Pretrial Matters; Pretrial Orders.

To govern the expeditious disposition of matters filed within the Court's original jurisdiction, pretrial orders may regulate discovery, set a pretrial conference, require consideration of settlement, make provision for the identification of issues, establish a procedure for the acceptance of evidence

through stipulations, provide for the advance exchange of exhibits and experts' reports, and limit the number of witnesses, together with all other matters which the Judge shall deem proper.

Source

The provisions of this § 69.313 amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (394676).

§ 69.321. Proceedings; Election Cases.

Proceedings under the Pennsylvania Election Code within the Court's original jurisdiction (petitions for review in the nature of mandamus and objections to nomination petitions and papers) shall be under the direct supervision of the President Judge, the Prothonotary and the Chief Legal Counsel. The President Judge, to dispose of such cases, shall establish a special election Court schedule, assign Judges to hear cases or, when necessary, convene a special Court en banc or panel to hear the same promptly.

Source

The provisions of this § 69.321 amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (394676).

§ 69.322. Proceedings; Costs of Transcripts of Testimony.

In any proceeding where a stenographer is present, the Presiding Judge or Duty Judge shall, incident to the disposition of the proceeding, provide by order for the allocation of the costs for the stenographer. Such costs normally include the appearance fee and the cost for the transcription of the notes of testimony, if the Court orders transcription or the filing of a notice of an appeal requires it. Upon receipt of such an order, the Prothonotary shall forthwith bill the responsible party. If the responsible party fails to pay the amount due within thirty days of the date of the bill, the Court shall impose appropriate sanctions to enforce payment.

Source

The provisions of this § 69.322 amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (394676).

§ 69.331. Reargument; Applications for Reargument.

When a party files an application for reargument of an order issued by a single Judge, see Pa.R.A.P. 2541 et seq., the Chief Legal Counsel shall submit the application, together with any answer, to the Judge for action, in accordance with Pa.R.A.P. 123(e). When a party files an application for reargument of an order issued by a panel of the Court in its original jurisdiction, the President Judge shall distribute the application and any answers thereto, to all Judges of the Court, along with the recommendation of the authoring Judge.

Source

The provisions of this § 69.331 amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (394676).

§ 69.341. Process; Designation of Officials for Service of Process.

The Commonwealth Court is a court of Statewide jurisdiction. Therefore, for purposes of Pa.R.C.P. No. 400(d), an action commenced in this Court is deemed commenced in all counties of this Commonwealth. Accordingly, where service is to be effectuated within this Commonwealth by a sheriff, the sheriff of any county where service may be made is authorized to serve process issuing from this Court and does not need to be deputized.

Source

The provisions of this § 69.341 amended November 16, 2018, effective December 14, 2018, 48 Pa.B. 7208; amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial pages (394676) to (394677).

§ 69.342. Process; Designation of Officials for Execution of Bench Warrants of Arrest.

By order in a particular case, a Judge may designate the Pennsylvania State Police or the sheriff of any county where the bench warrant may be executed as the official agency for the execution of a bench warrant of arrest.

Source

The provisions of this § 69.342 amended November 16, 2018, effective December 14, 2018, 48 Pa.B. 7208; amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (394677).

DECISIONS

§ 69.401. Issuance of Decisions; Orders and Opinions.

On the day each order or opinion and order is filed, the Prothonotary shall send a copy to each counsel of record or pro se litigant. In matters on appeal from a trial court, the Prothonotary shall send a copy of the opinion to the trial judge. The Prothonotary shall also promptly distribute copies of opinions, when designated to be reported, to the list of distributees of opinions of the Commonwealth Court, as from time to time approved by the President Judge.

Source

The provisions of this § 69.401 amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (394677).

§ 69.412. Reporting of Opinions; Determination as to Reporting.

(a) Each Judge who is the author of an opinion of a panel or the Court en banc shall indicate, in circulating the opinion to the other members of the Court, the authoring Judge's recommendation as to whether the opinion shall be reported. A decision generally should 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, or

(iii) a review of conflicting decisions among the courts of other jurisdictions.

The recommendation shall govern the determination as to reporting, unless a majority of the Commissioned Judges disagrees with it.

(b) Except as provided in subsection (c) (relating to single Judge opinions in election law matters), opinions of a single Judge shall be filed but not reported unless, because of the unique character of the case, the Chief Legal Counsel or the authoring Judge shall recommend that the opinion be reported and two-thirds of the Commissioned Judges shall concur with the recommendation.

(c) Opinions of a single Judge or a special Court en banc or panel in election law matters, original and appellate jurisdiction, shall be filed but not reported. Thereafter, the Chief Legal Counsel or authoring Judge may recommend that the opinion be reported. The recommendation shall be transmitted to the Court, together with a copy of the unreported opinion and order, requesting the Judges to indicate (1) their agreement or disagreement with the opinion and order, and (2) any disagreement as to the writer's recommendation concerning reporting. If two-thirds of the Commissioned Judges vote or agree with the opinion and order and the recommendation concerning reporting, the unreported opinion and order shall be reported.

Source

The provisions of this § 69.412 amended November 21, 2013, effective immediately, 43 Pa.B. 7074; amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial pages (394677) to (394678).

§ 69.413. Reporting of Opinions; Designation as to Reporting.

Each opinion which is to be reported shall be designated as an ''OPINION.'' Each unreported opinion shall be designated as a ''MEMORANDUM OPINION,'' its face sheet shall bear the advice, ''OPINION NOT REPORTED,'' and the Court's docket shall note that it is an unreported opinion.

Source

The provisions of this § 69.413 amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (394678).

§ 69.414. Citing Judicial Opinions in Filings.

(a) An 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. Parties may also cite an unreported panel decision of this Court issued after January 15, 2008, for its persuasive value, but not as binding precedent.

(b) Except as provided in subsection (d) (relating to single-Judge opinions in election law matters), a single-Judge opinion of this Court, even if reported, shall be cited only for its persuasive value and not as a binding precedent.

(c) A reported opinion of the Court en banc or panel may be cited as binding precedent.

(d) A reported opinion of a single Judge filed after October 1, 2013, in an election law matter may be cited as binding precedent in an election law matter only. For purposes of § 414, ''an election law matter'' is one that involves the content of a ballot for the next ensuing election.

Source

The provisions of this § 69.414 amended November 21, 2013, effective immediately, 43 Pa.B. 7074; amended July 16, 2015, 45 Pa.B. 3975; amended March 10, 2017, effective immediately, 47 Pa.B. 2101; amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (394678).

§ 69.415. Reporting of Opinions; Adoption of Trial Court Opinions.

When a reported opinion of the Court, whether per curiam or signed by a Judge, adopts the trial court's opinion in its entirety, the opinion shall cite a publication containing the trial court opinion when possible; the citation may be to a reporter in which the trial court opinion has been published or to District & County Reports, if publication of the trial court opinion in that reporter is anticipated. If the opinion of this Court so adopting a trial court opinion is unreported, the opinion shall include a reporter citation with respect to the trial court opinion only if it has in fact been reported in a publication.

Source

The provisions of this § 69.415 amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial pages (394678) and (369591).

§ 69.416. Reporting of Unreported Opinions.

After an opinion has been filed as unreported, the Court, at any time on its own motion or on the application of any person, may order the opinion to be reported. Applications to report unreported opinions shall be filed within 30 days after the filing of the opinion, and, except as otherwise provided in § 69.412(c), may be granted by majority vote of the Commissioned Judges.

Source

The provisions of this § 69.416 amended November 21, 2013, effective immediately, 43 Pa.B. 7074; amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial page (369591).

MISCELLANEOUS

§ 69.501. Mediation.

(a) *Scope; Costs; Mediation Judge; Form of Papers.*

(1) To facilitate settlement and otherwise assist in the expeditious resolution of matters before the Commonwealth Court, appeals of orders of the courts of common pleas, petitions for review of state administrative agency decisions filed in the Court's appellate jurisdiction, and matters filed in the Court's original jurisdiction may be selected for mediation by the Court's Mediation Program.

(2) Tax appeals from orders of the Board of Finance and Revenue, which are subject to a status conference program, shall be excluded from the Mediation Program.

(3) Mediation shall be offered at no cost to the parties.

(4) Mediation shall be conducted by a Mediation Judge. The Mediation Judge may dispose of motions related to the scheduling of mediation and the mediation process. The Mediation Judge shall have authority to impose any necessary sanctions for the failure of any attorney or party to comply with the requirements of the Mediation Program.

(5) The mediation statement required by this section, and any other documents prepared for submission to the Mediation Judge, shall follow the format required by Pa.R.A.P. 124(a).

(b) *Selection of Cases and Scheduling; Mediation Statement.*

(1) Counseled matters shall be screened for referral to mediation immediately upon the filing of the Docketing Statement and all attachments as required by Pa.R.A.P. 3706. Any matter not initially screened or selected for mediation may be referred to the Mediation Program at any time upon request of any party or at the direction of any Judge, en banc or three-judge panel of the Court.

(2) After a matter has been selected for mediation, the Prothonotary shall notify the parties of the referral to the Mediation Program and the name of the Mediation Judge assigned to conduct mediation. The Mediation Judge, when appropriate, shall promptly contact the parties to establish the location, date and time for mediation.

(3) Within ten days of receiving notice of mediation, or as otherwise directed, each party shall submit to the Mediation Judge a confidential mediation statement of no more than five pages, setting forth the positions of the party as to the key disputed and undisputed facts and legal issues in the matter, and stating whether prior settlement negotiations have occurred. The mediation statement shall focus on practical considerations in the matter and the party's good faith position on resolving issues by compromise and agreement. The mediation statement shall also identify any motions filed in Commonwealth Court and their disposition. The mediation statement shall not be filed with the Prothonotary or served upon opposing parties, and shall remain confidential.

(4) All matters referred to mediation shall remain subject to the Court's normal scheduling for briefing and oral argument. The Prothonotary shall not modify the Court's briefing or oral argument schedule unless so directed by the Mediation Judge to accommodate mediation.

(c) *Sessions; Confidentiality; Settlement; Effect of Mediation.*

(1) All mediation sessions must be attended by each unrepresented party and counsel for each represented party with authority to settle the matter and, if required, such other persons with actual authority to negotiate a settlement, whether involving the Commonwealth of Pennsylvania, a local government unit, or an individual litigant. The Mediation Judge may at his or her discretion require the parties (or real parties in interest) to attend mediation. In cases involving the Commonwealth government, upon direction of the Mediation Judge, counsel shall have available someone from the appropriate agency with authority to settle who can be reached during mediation to discuss settlement if such person is not already required to attend the mediation session. In the alternative, the Mediation Judge may obtain the name and title of the government official or officials authorized to settle on behalf of the state or local government unit.

(2) No future mediation shall be conducted unless the Mediation Judge determines that further sessions are necessary to effectuate a settlement. The Mediation Judge assigned to mediate a matter shall attend all future mediation sessions scheduled in the case.

(3) All participants in the Mediation Program shall act with due diligence and in good faith.

(4) The Mediation Judge shall not disclose the substance of the mediation settlement discussions and proceedings, and counsel likewise shall not disclose such discussions and proceedings to anyone other than their clients or co-counsel. No information obtained during settlement discussions shall be construed as an admission against interest, and the parties shall not use any information obtained during settlement discussions as the basis for any motion or application other than one related to the Court's briefing or argument scheduling. All mediation information, documents and communications are to be kept strictly confidential, not to be used or disclosed outside of mediation. All statements made in the course of mediation are for mediation purposes only and are not to be construed as representing the official position of the Mediation Judge, the Court, or any employee thereof.

(5) Where settlement is reached, the parties shall prepare a written settlement agreement and obtain all necessary signatures of the parties and counsel. The agreement shall be binding upon the parties to the agreement, and after execution or any necessary approval by a tribunal, the parties shall file a stipulation of dismissal within ten days thereof. Where necessary or upon the request of a party, the Mediation Judge may enter an appropriate order approving the settlement or remanding the matter to the tribunal below for its approval, enforcement, or implementation.

(6) Any matter not resolved by mediation shall remain on the Court's docket and proceed as if mediation had not occurred.

(7) A Mediation Judge who reviewed a mediation statement or conducted a mediation session shall not participate in any decision on the merits of the matter. Upon the termination of mediation, either through settlement and dismissal or through a continuation of the matter and final disposition on the Court's docket, the Mediation Judge shall dispose of all documents obtained during mediation.

Official Note

The Commonwealth Court Mediation Program was established and initially governed by Order dated September 15, 1999, effective January 1, 2000. That Order has been withdrawn and supplanted by this section.

Source

The provisions of this § 69.501 amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial pages (369591) to (369593).

§ 69.502. Pennsylvania Cable Network (PCN) Guidelines.

(a) *General Provisions*

(1) From the date of these Guidelines until further order of this Court, the recording by PCN of en banc proceedings before Commonwealth Court for future broadcast on PCN is permissible only in accordance with these Guidelines.

(2) Three business days advance notice is required of a request to be present to record a scheduled en banc proceeding electronically for future broadcast on PCN electronically. Such requests must be submitted to the Executive Administrator for approval by the President Judge. The President Judge,

or presiding Judge of the en banc panel will retain the authority, in the Judge's sole discretion, to prohibit camera coverage of any proceeding.

(3) There shall be no coverage of an en banc proceeding involving any case that the Court has designated SEALED, or of any case involving the expungement or the refusal to expunge founded or indicated reports of child abuse.

(4) The President Judge, or presiding Judge of an en banc proceeding may limit or terminate coverage, or direct the removal of camera coverage person nel when necessary to protect the rights of the parties or to assure the orderly conduct of the proceedings.

(5) No expense by Commonwealth Court is to be incurred for equipment, wiring or personnel needed to provide coverage by PCN.

(6) Introductory commentary, if any, shall be supplied by members of the Pennsylvania Bar approved by the Board of Judges of the Commonwealth Court.

(7) All coverage must be gavel-to-gavel, including any rebroadcasts, with the exceptions of (a)(3) and (a)(4).

(8) All copyrights to the broadcasts are the possession of the Commonwealth Court of Pennsylvania and may not be used without the approval of the Commonwealth Court of Pennsylvania. PCN shall provide to the Court DVD or videotape recordings of all sessions covered by PCN, whether or not broadcasted.

(9) This shall become effective November 1, 2006.

(b) *Limitations*

(1) Camera coverage of en banc proceedings must be conducted in conformity with applicable statutes, national rules, any guidelines that may be issued by the U.S. Judicial Conference or the Supreme Court of Pennsylvania.

(2) There shall be no audio pickup or broadcast of conferences between co-counsel or among the Judges.

(c) *Equipment and Personnel*

(1) Only two television cameras, with one operator per camera, and one small robotic camera, will be permitted in the courtroom. The Executive Administrator, or designee, shall identify the location in the courtroom for the camera equipment and operators.

(2) Equipment shall not produce distracting sound or light. Signal lights or devices to show when the equipment is operating shall not be visible. Motorized drives, moving lights, flash attachments or sudden light changes shall not be used.

(3) Except as otherwise approved by the Executive Administrator, or designee, existing courtroom sound and light systems shall be used without modification. Audio pickup for all media purposes shall be accomplished from existing audio systems present in the Court facility, or from a television camera's built-in microphone. If no technically suitable audio system exists in the Court facility, microphones and related wiring essential for media purposes shall be unobtrusive and shall be located in places designated in advance by the Executive Administrator or designee.

(4) All equipment must be set up prior to the opening of the court session and may not be removed until after the conclusion of the day's proceedings. Video tape recording equipment which is not a component part of a television camera shall be located in an area remote from the

courtroom. Camera operators shall not exit or enter the courtroom once the proceedings are in session except during a recess or adjournment. Camera operators shall wear suitable attire in the courtroom.

(5) PCN personnel shall adhere to the direction of the Executive Administrator, or designee, in such matters as security, parking, noise avoidance, and other related issues.

(d) *Impermissible Use of Material*

None of the film, video tape, still photographs or audio reproductions developed during or by virtue of coverage of an en banc proceeding shall be admissible as evidence in the proceeding out of which it arose, any proceeding subsequent and collateral thereto, or upon any appeal of such proceedings.

Source

The provisons of this § 69.502 amended November 21, 2013, effective immediately, 43 Pa.B. 7074; amended January 17, 2020, effective immediately, 50 Pa.B. 657. Immediately preceding text appears at serial pages (369593) to (369595).

Purdon's Pennsylvania Statutes and Consolidated Statutes
Pennsylvania Rules of Appellate Procedure (Refs & Annos)
Article II. Appellate Procedure
Chapter 21. Briefs and Reproduced Record
Content of Briefs

Pa.R.A.P., Rule 2111

Rule 2111. Brief of the Appellant

Currentness

(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 issue 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.

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 allowed 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 and 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.

Credits

Adopted Nov. 5, 1975, effective July 1, 1976. Amended Dec. 11, 1978, effective Dec. 30, 1978; May 16, 1979, effective 120 days after June 2, 1979; Feb. 27, 1980, effective March 15, 1980; Jan. 14, 1999, imd. effective; March 20, 2003, imd. effective; April 14, 2003, imd. effective; Oct. 15, 2004, effective Dec. 14, 2004; May 10, 2007, effective 60 days after adoption; June 5, 2008, effective 30 days after adoption; Jan. 5, 2018, effective Jan. 6, 2018.

Editors' Notes

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 limits 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.

Notes of Decisions (50)

Rules App. Proc., Rule 2111, 42 Pa.C.S.A., PA ST RAP Rule 2111
Current with amendments received through April 15, 2023. Some rules may be more current; see credits for details.

End of Document

Purdon's Pennsylvania Statutes and Consolidated Statutes
Pennsylvania Rules of Appellate Procedure (Refs & Annos)
Article II. Appellate Procedure
Chapter 21. Briefs and Reproduced Record
Content of Briefs

Pa.R.A.P., Rule 2112

Rule 2112. Brief of the Appellee

Currentness

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). 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).

Note: See Pa.R.A.P. 2111 and 2114--2119.

Credits

Adopted Nov. 5, 1975, effective July 1, 1976. Amended Dec. 11, 1978, effective Dec. 30, 1978; May 1, 2013, effective in 30 days; Jan. 5, 2018, effective Jan. 6, 2018.

Notes of Decisions (4)

Rules App. Proc., Rule 2112, 42 Pa.C.S.A., PA ST RAP Rule 2112
Current with amendments received through April 15, 2023. Some rules may be more current; see credits for details.

End of Document

Pa.R.A.P., Rule 2113

Rule 2113. Reply Brief

Currentness

(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.

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) (service and filing of 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.

Credits

Adopted Nov. 5, 1975, effective July 1, 1976. Amended June 23, 1976, effective July 1, 1976; Dec. 30, 1987, effective Jan. 16, 1988; Oct. 18, 2002, effective Dec. 2, 2002; Jan. 13, 2009, effective as to appeals filed 60 days or more after adoption; Oct. 3, 2011, effective in 30 days [Nov. 2, 2011]; Jan. 5, 2018, effective Jan. 6, 2018.

Editors' Notes

EXPLANATORY COMMENT--2002

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

Notes of Decisions (20)

Rules App. Proc., Rule 2113, 42 Pa.C.S.A., PA ST RAP Rule 2113
Current with amendments received through April 15, 2023. Some rules may be more current; see credits for details.

End of Document

Purdon's Pennsylvania Statutes and Consolidated Statutes
Pennsylvania Rules of Appellate Procedure (Refs & Annos)
Article II. Appellate Procedure
Chapter 21. Briefs and Reproduced Record
Content of Briefs

Pa.R.A.P., Rule 2114

Rule 2114. Statement of Jurisdiction

Currentness

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.

Credits
Adopted Nov. 5, 1975, effective July 1, 1976.

Notes of Decisions (4)

Rules App. Proc., Rule 2114, 42 Pa.C.S.A., PA ST RAP Rule 2114
Current with amendments received through April 15, 2023. Some rules may be more current; see credits for details.

End of Document

Purdon's Pennsylvania Statutes and Consolidated Statutes
Pennsylvania Rules of Appellate Procedure (Refs & Annos)
Article II. Appellate Procedure
Chapter 21. Briefs and Reproduced Record
Content of Briefs

Pa.R.A.P., Rule 2115

Rule 2115. Order or Other Determination in Question

Currentness

(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.

Credits

Adopted May 16, 1979, effective 120 days after June 2, 1979.

Editors' Notes

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).

Notes of Decisions (5)

Rules App. Proc., Rule 2115, 42 Pa.C.S.A., PA ST RAP Rule 2115
Current with amendments received through April 15, 2023. Some rules may be more current; see credits for details.

Pa.R.A.P., Rule 2116

Rule 2116. Statement of Questions Involved

Currentness

(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 will 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.

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.

Credits

Adopted Nov. 5, 1975, effective July 1, 1976. Renumbered from Rule 2115 and amended May 16, 1979, effective June 2, 1979. Amended July 11, 2008, effective 30 days after adoption; March 27, 2013, effective 60 days after adoption; May 28, 2014, effective July 1, 2014.

Notes of Decisions (148)

Rules App. Proc., Rule 2116, 42 Pa.C.S.A., PA ST RAP Rule 2116
Current with amendments received through April 15, 2023. Some rules may be more current; see credits for details.

End of Document

Purdon's Pennsylvania Statutes and Consolidated Statutes
Pennsylvania Rules of Appellate Procedure (Refs & Annos)
Article II. Appellate Procedure
Chapter 21. Briefs and Reproduced Record
Content of Briefs

Pa.R.A.P., Rule 2117

Rule 2117. Statement of the Case

Currentness

(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 state 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 quasijudicial 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.

Credits

Adopted Nov. 5, 1975, effective July 1, 1976. Renumbered from Rule 2116 and amended May 16, 1979, effective 120 days after June 2, 1979. Amended Feb. 18, 2004, imd. effective.

Notes of Decisions (51)

Rules App. Proc., Rule 2117, 42 Pa.C.S.A., PA ST RAP Rule 2117
Current with amendments received through April 15, 2023. Some rules may be more current; see credits for details.

End of Document

Purdon's Pennsylvania Statutes and Consolidated Statutes
Pennsylvania Rules of Appellate Procedure (Refs & Annos)
Article II. Appellate Procedure
Chapter 21. Briefs and Reproduced Record
Content of Briefs

Pa.R.A.P., Rule 2118

Rule 2118. Summary of Argument

Currentness

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.

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.

Credits

Adopted Nov. 5, 1975, effective July 1, 1976. Renumbered from Rule 2117 May 16, 1979, effective 120 days after June 2, 1979. Amended March 27, 2013, effective 60 days after adoption.

Notes of Decisions (9)

Rules App. Proc., Rule 2118, 42 Pa.C.S.A., PA ST RAP Rule 2118
Current with amendments received through April 15, 2023. Some rules may be more current; see credits for details.

End of Document

Purdon's Pennsylvania Statutes and Consolidated Statutes
Pennsylvania Rules of Appellate Procedure (Refs & Annos)
Article II. Appellate Procedure
Chapter 21. Briefs and Reproduced Record
Content of Briefs

Pa.R.A.P., Rule 2119

Rule 2119. Argument

Currentness

(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 in briefs shall be in accordance with Pa.R.A.P. 126 governing citations of authorities.

(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* Pa.R.A.P. 2132).

(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 as required by Pa.R.A.P. 2117(c), 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.

Note: 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.

Credits

Adopted Nov. 5, 1975, effective July 1, 1976. Renumbered from Rule 2118 and amended May 16, 1979, effective June 2, 1979; Feb. 27, 1980, effective March 15, 1980. Amended April 14, 2014, effective immediately; May 28, 2014, effective July 1, 2014; Nov. 24, 2015, effective Jan. 1, 2016.

Notes of Decisions (667)

Rules App. Proc., Rule 2119, 42 Pa.C.S.A., PA ST RAP Rule 2119
Current with amendments received through April 15, 2023. Some rules may be more current; see credits for details.

End of Document

Purdon's Pennsylvania Statutes and Consolidated Statutes
Pennsylvania Rules of Appellate Procedure (Refs & Annos)
Article II. Appellate Procedure
Chapter 21. Briefs and Reproduced Record
Content of Briefs

Pa.R.A.P., Rule 2135

Rule 2135. Length of Briefs

Currentness

(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.

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.

Credits

Adopted Nov. 5, 1975, effective July 1, 1976. Amended Dec. 30, 1987, effective Jan. 16, 1988; May 16, 2003, effective July 15, 2003; March 27, 2013, effective in 60 days; Dec. 30, 2014, effective in 60 days.

Notes of Decisions (7)

Rules App. Proc., Rule 2135, 42 Pa.C.S.A., PA ST RAP Rule 2135
Current with amendments received through April 15, 2023. Some rules may be more current; see credits for details.

End of Document

Some Thoughts on Reply Briefs

by Brian Wolfman[1]

(9.10.2022 draft)

I. Introduction

Legal-writing expert (and my former colleague) Sue McMahon asked recently for advice on writing reply briefs. Sue was planning to teach the subject to her legal-writing students and wanted input, so I emailed her a few thoughts.

I'm glad Sue is teaching about reply briefs because, though reply briefs are important litigation tools, most law students are not formally taught about them. I direct the Georgetown Law Appellate Courts Immersion Clinic (@ImmersionClinic)—where law students litigate public-interest appeals—and we write reply briefs frequently. When my students arrive in clinic in their second or third years of law school, none has had instruction about writing replies. That's understandable. Teaching time is limited, and it's hard to fit in everything. I cover replies only about half the time in my Appellate Courts & Advocacy Workshop, a doctrinal class on the law of appellate courts that also touches on brief writing. The bottom line is that most new lawyers haven't given much thought to reply briefs, but they should. For that reason, and urged on by Sue's inquiry, I wrote this essay aimed at new litigators and law students as well as legal-writing instructors, who may want to incorporate the ideas here into their teaching or even ask their students to read this essay.

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[1] Professor from Practice, Georgetown University Law Center; Director, Georgetown Law Appellate Courts Immersion Clinic (@ImmersionClinic); Faculty Director, Blume Public Interest Scholars Program. Thanks to Sue McMahon (@ProfSueMcMahon), for the inquiry that led to this essay and for terrific comments on an earlier draft. Thanks also to Erin Carroll (@erincarroll13) for superb suggestions and edits and to Raffi Melkonian (@RMFifthCircuit) for his insight on reply briefs.

Four preliminary thoughts:

First, and perhaps counterintuitively, the reply brief is often the appeal's fulcrum—the place where the case crystallizes. The appellant's lawyer wants to do everything possible to understand the law and the record, and to anticipate all the case's strengths, weaknesses, and traps when writing the opening brief. So, I hope to have a comprehensive understanding of the case and bring it to bear from the start. As time has gone on, I've gotten better at that. But even the best appellant's lawyer will agree, I think, that it's not until you've seen the answering brief—in which your arguments have been subjected to the crucible of real (not hypothetical or imagined) dispute—that the appeal in all its beauty (or ugliness) is fully realized. That means that the reply brief—no matter its length or complexity—often is a critical tool in the appellant's overall presentation.

Second, and relatedly, reply briefs should not be overlooked because they are filed near or at the end of the litigation process. Quite the contrary. The reply brief is important to appellate practice in large part because it is typically the last significant written advocacy in the appeal—and, generally, the last major submission that the judges and law clerks will read. If recency matters, then reply briefs matter.

Third, reply briefs are especially important for some practitioners. They've been important to my practice—and thus my clinical teaching—because I tend to represent appellants, the parties entitled to file replies. Public-interest appellate lawyers represent appellants (as opposed to appellees) disproportionately, including especially appellate public defenders. Typically, it's not great to have lost in the lower court, but a silver lining is that appellants get the last word, and they should try to make the most of it.

Fourth, this essay focuses on reply briefs in typical three-brief *appellate* litigation, though much of what I say here applies to reply briefs in trial practice (such as a reply in support of a motion for summary judgment). So,

when I refer to a reply brief in this essay, I mean what is typically the third and last brief filed in standard appellate practice—the brief filed by the appellant in response to the appellee's (answering) brief. There are other types of replies, such as answering briefs and responses filed in simultaneous-briefing scenarios and in cross appeals. Some of what discuss here applies in those other contexts, but, again, in general, I'm referring to the reply brief filed by the appellant in the standard three-brief setting.

And now, on to what I view as key attributes of a good reply brief. I welcome comment and criticism.

II. Basic preparation for writing a reply

Preparation for writing a good reply brief is simple and well understood, so much so that what follows in this section may seem obvious. But here's the minimum that I do and ask my students to do.

First, consider your opponent's arguments comprehensively. List each of your opponent's points, no matter how small or seemingly unimportant. Once you've done this job for a while, there may be minor or irrelevant points raised by the appellee that can be skipped without even listing them. But err on the side of inclusion. Comprehensive identification of your opponent's plausible arguments is critical for advocates who are new to this game. And, besides, covering the waterfront can't hurt.

For each of your opponent's arguments that challenge points in your opening brief or that otherwise may require a response, research and write out each counterargument. This doesn't mean you are going to respond in your reply brief to everything—ordinarily you won't, as discussed in point V below. But often you cannot know whether an argument calls for a formal response unless you dig into it first.

Second, and relatedly, read the cases and other authorities cited by your opponent, and make sure you understand them. Read and understand your opponent's assertions about the record. As to each authority and assertion

about the record, determine whether your opponent is telling the truth, bending the truth, or is flat-out lying, and be prepared to rebut each misstatement or falsehood in writing.

Third, carefully note all the ways in which your opponent *agrees* with you, either expressly or *tacitly*, because your opponent's express or tacit agreement can be used to narrow the issues or (of course) buttress your affirmative arguments. If your opponent's express or tacit agreement is widespread or on key topics, that is a potential theme for your reply brief (as discussed below).

What I've just said is not unimportant. But the tough nut in writing a reply brief is *not* how to research and otherwise acquire your counterarguments, but, rather, how (and whether) to deploy the counterarguments once you've assembled them. Now for that more nuanced stuff.

III. Don't go tit-for-tat.

Generally speaking, a reply brief should *not* simply go tit-for-tat. That is, a good reply brief does not just set up each argument made by your opponent and respond one after the other. Try to avoid significant stretches that go in the form of the-bad-guy-said-X-and-the-answer-is-not-X-or-Y. This approach is usually boring and ponderous. At best, a tit-for-tat approach provides some useful responses for the judge or law clerk. That's not a bad thing, but that alone generally is not ideal. You're likely to lose the reader's interest and miss opportunities for true persuasion, while arguing the case on your opponent's terms—which is a serious no-no. At worst, a mindless tit-for-tat approach can leave the impression that you're just repeating your opponent's basic points, even her thesis statement. So, you could be helping the other side!

IV. Frame the reply on *your* terms.

A. Rather than going tit-for-tat, the appellant should try to respond to her opponent's points within the framework of the basic thesis statement(s) or theme(s) established in the opening brief—while keeping repetition to a minimum.

If you do this well, you can gain back some or all of the terrain lost after the reader digests the appellee's brief, so that, once again, you are arguing the case on *your* terms. This is tricky, but important. You'll find some good examples of this approach, I think, on the Georgetown Law Appellate Courts Immersion Clinic's website (@ImmersionClinic) here (e.g., at 1-2 & 7-8), here (e.g., at 2-3, 19-22), here (e.g., at 1-2, 5-6), and here (e.g., at 2-4). Or consider this reply brief the Immersion Clinic filed recently in a Title VI racial-harassment case. Our Introduction and Summary of Argument (at 1-2) seeks to strike our client's basic themes and then use them to provide high-level responses to our opponent's brief.

Finally, look at the beginning of this Supreme Court cert-stage reply in an employment-discrimination case. We first explain that our opponent—the Solicitor General—agreed with us, expressly or impliedly, on most of the traditional pillars of cert-worthiness, leaving only a couple points on the table for further discussion. This approach allowed us immediately to situate the reply brief on our terms—that is, while saying otherwise, the SG had effectively agreed that the case was cert-worthy(!)—without undue repetition.

B. I've found that to succeed in striking the balance between restating the themes of the opening brief and responding to the appellee's plausible arguments, the advocate must think as broadly as possible—at as high a level of generality as the case materials and the appellee's arguments allow—about what the appellee is doing as a *general proposition*. Is your opponent agreeing, expressly or impliedly, with some of your basic points? Do her arguments illustrate a misunderstanding of the governing law or the

record in the case, or both? Is your opponent making a basic category error or errors? Has she simply ignored one or more things unfavorable to her? Or is it a combination of flaws, misstatements, and the like—all of which allow you to weave your responses to your opponent's arguments into *your* basic thesis or theme? The idea here is that, when possible, before rebutting the *particulars* of your opponent's positions, try to place the flaws in those positions in a small number of *broad* categories—each of which can be countered by *your* overall understanding of the case. If you do this fairly and accurately, you have juxtaposed your opponent's arguments against the law and the facts as you have presented them to the court and as you believe them to be.

This technique needs to be executed with care because, again, you cannot use the reply to repeat your opening arguments at length. Judges and law clerks will (rightly) tune out if that's what you're doing. Rather, you need to *identify* your opening arguments with sufficient clarity and precision to *call them back* for your reader—again, without undue repetition—using them as framing devices for rebutting your opponent's positions.

Take a look, for instance, at this @ImmersionClinic reply brief (at 5-7), where we employ this approach. In this case, the question is which state-law statute of limitations should be "borrowed" to govern a federal claim given that federal law contains no express limitations period. We start (at 5) by describing our position on the general principles governing that question. Note that we do this in broad strokes to reestablish our basic themes and to put the conversation back on our terms, but without repeating the details of what we had already said in our opening brief. Then, on the following pages, we respond to the particulars of our opponent's arguments against the backdrop of the (now reestablished) governing principles.

In all events, the objective, as I've said, is to get the argument back on your terms while ensuring that your opponent's key points are thoroughly and efficiently rebutted. (Efficiency is key to a reply brief both because the

word limit for a reply brief is generally only half that of a principal brief and because the reader is often a bit fatigued by the time she reads the reply, so you want to get in and out economically.)

It's particularly useful to *end* a reply brief in a way that both discredits one of your opponent's arguments and affirmatively emphasizes a basic attribute of your appeal. That is, end a reply brief on your terms, not your opponent's. The concluding arguments in these @ImmersionClinic reply briefs—here, here, here, and here—accomplish that objective, I believe. To read more on this topic, see my essay titled *How to Conclude a Brief*.

V. Don't respond to everything.

A good reply brief does not respond to all the appellee's points, even all those that the appellee got wrong. Only respond to things that matter. Responding to everything will often undermine the structure and/or rigor of your reply brief and your effort to get the case back on your terrain. Responding to only things that matter will (a) reduce clutter and streamline your presentation, (b) help with brevity (which, as already noted, is important), and (c) increase your credibility and stature as an advocate, making *you* the adult in the room.

Recently, our opponent included in its answering brief a meandering discourse on background principles of employment-discrimination law. Some of it was incomplete and misleading. But we just let it lie because it had nothing to do with the issue on appeal, and we were confident that the reader would know what was truly at stake after reading our briefs. Sure, it can be difficult to determine what does and does not matter, but the point here is that you shouldn't go into a reply with the presumption that you need to respond to every misstatement or error, even when it is annoying or downright maddening. In particular, ignoring your opponent's irrelevant personal invective or otherwise nasty arguments is generally preferable. Your stature as an on-point, mature advocate will be elevated, and your opponent's stature will suffer by comparison.

In all events, it's hard to overstate this point, so I'll repeat it: Do not argue about every little thing; argue about what matters.

VI. Reply briefs are related to opening briefs.

Reply briefs are connected to opening briefs. In one sense, that's obvious because the opening brief sets up in part what the answering brief will say and the reply, in turn, responds in large part to the answering brief. But what I am stressing here is that an opening brief can serve, in part, *as a reply brief*.

The writer of an opening brief usually will have a good idea what the appellee plans to argue. So, when I write an opening brief, I try to anticipate my opponent's serious points and weave my responses to them into my opening brief's affirmative arguments. This approach to opening briefs should help establish my honesty and credibility as an advocate, and it tends to dull (if not wholly preempt) the appellee's arguments because I've already outed them (fully and fairly, but hopefully on *my* client's terms).

Here's an example: This @ImmersionClinic opening brief urges the D.C. Circuit to hold that the key federal employment-discrimination law (Title VII) prohibits a wide range of discriminatory employer conduct, not only discriminatory hiring, firing, demoting, and other actions that impose immediate monetary consequences. We were confident that our opponent would argue that two Supreme Court Title VII precedents effectively rejected our position, and we knew, in any event, that the court would be curious about those precedents. So, at pages 39-43, we explain why those precedents concern off-topic issues and why, if understood as our opponent viewed them, the result would run headlong into the statute's text and create serious and irrational anomalies in statutory coverage. The goals here were three-fold: to be forthright about what was lurking in the appeal (which judges like); to get the first word on something we knew would be before the court anyway; and, relatedly, to use our opponent's arguments to score affirmative points for our client at the earliest possible time. Waiting for the reply would have undermined those goals.

There are strategic reasons not to anticipate all of the appellee's arguments in an opening brief—such as genuine uncertainty about whether the appellee will raise the argument or good reason to see how the appellee puts the argument before responding to it. And, of course, not all arguments can be or will be anticipated. But the point here is that you should think hard about including potential counterarguments in your opening brief, rather than reflexively leaving all your responses for the reply brief.

Anticipating in the opening brief points the appellee is likely to raise comes with two potential bonuses. First, as indicated, you get more words for an opening brief than for a reply—in the federal courts of appeals, twice the words—so anticipating an argument in an opening brief (if you have the space there) may save space for what may be a jam-packed reply. When it comes time to write the reply, you may not be able to completely disregard the argument you anticipated. But your reply can call back your opening brief and reply economically on the points you've already discussed.

Second, the earlier an appellant raises something the less likely the appellee can raise a plausible assertion that the appellant's issues or arguments have been forfeited. I don't want to overstate this point. Many times, reply briefs contain counterarguments that do not raise genuine forfeiture concerns—that is, often there's nothing to worry about. But forfeiture doctrine—which is beyond the scope of this essay—is notoriously unpredictable and becoming more so with each passing year. So, one reason to anticipate arguments in an opening brief is to avoid a later non-frivolous claim of forfeiture.

VII. An answering brief is a type of reply brief.

Finally, though beyond the scope of this essay, note that an *appellee's answering brief* is a kind of reply, though a quite different one from the appellant's reply brief that I've been discussing. I have thoughts about them, which I'll save for another essay. For now, I'll say only that new lawyers will benefit from understanding that an appellee's brief, much more so than a

standard reply, must ensure that the appeal is presented on the client's terms. It must describe the case from the ground up even though the opening brief is already on file. The appellee's lawyer must reorient the reader to every aspect of the case from the appellee's perspective—making sure, for instance, to include a comprehensive statement of the case so as not to accede to the appellant's storytelling—while weaving in comprehensive answers to the appellant's arguments.

# # #

I'll end where I began. Reply briefs are important, but they are not given much consideration in law-school instruction. I hope this essay helps a bit. And, again, I welcome comment and criticism.

Purdon's Pennsylvania Statutes and Consolidated Statutes
Pennsylvania Rules of Appellate Procedure (Refs & Annos)
Article II. Appellate Procedure
Chapter 11. Appeals from Commonwealth Court and Superior Court
Petition for Allowance of Appeal

Pa.R.A.P., Rule 1114

Rule 1114. Standards Governing Allowance of Appeal

Currentness

(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.

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).

Credits

Adopted Nov. 5, 1975, effective July 1, 1976. Amended Dec. 11, 1978, effective Dec. 30, 1978; Feb. 4, 2011, effective in 30 days; May 31, 2013, imd. effective.

Notes of Decisions (9)

Rules App. Proc., Rule 1114, 42 Pa.C.S.A., PA ST RAP Rule 1114
Current with amendments received through April 15, 2023. Some rules may be more current; see credits for details.

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Purdon's Pennsylvania Statutes and Consolidated Statutes
Pennsylvania Rules of Appellate Procedure (Refs & Annos)
Article II. Appellate Procedure
Chapter 11. Appeals from Commonwealth Court and Superior Court
Petition for Allowance of Appeal

Pa.R.A.P., Rule 1115

Rule 1115. Content of the Petition for Allowance of Appeal

Effective: April 1, 2022
Currentness

(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 subdivision (a)(7).

(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) Where under the applicable law an issue is not reviewable on appeal unless raised or preserved below, the petition shall contain a statement of place of raising or preservation of issues, as required in Pa.R.A.P. 2117(c).

(4) 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.

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

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

(7) 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.

(8) 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.

(9) 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 subdivision (a)(6) 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 subdivisions (a)(7) and (a)(8) shall not count against the word count limitations of this rule.

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.

Credits

Adopted Nov. 5, 1975, effective July 1, 1976. Amended June 23, 1976, effective July 1, 1976; May 16, 1979, effective June 2, 1979; Sept. 25, 2008, effective as to all petitions for allowance of appeal filed more than 30 days after entry of the order; May 28, 2014, effective July 1, 2014; Dec. 30, 2014, effective in 60 days; Jan. 5, 2018, effective Jan. 6, 2018; Dec. 7, 2021, effective April 1, 2022.

Editors' Notes

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).

Notes of Decisions (7)

Rules App. Proc., Rule 1115, 42 Pa.C.S.A., PA ST RAP Rule 1115
Current with amendments received through April 15, 2023. Some rules may be more current; see credits for details.

Pa.R.A.P., Rule 1116

Rule 1116. Answer to the Petition for Allowance of Appeal

Effective: April 1, 2022
Currentness

(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)(8). 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.

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.

Parties are strongly encouraged to raise any waiver-based or procedural objection to a petition for allowance of appeal in an answer to the petition. In addition, parties are reminded that they may raise waiver-based, procedural, and jurisdictional objections after the grant of a petition for allowance of appeal, but before merits briefing, through a dispositive motion filed under Pa.R.A.P. 1972.

Credits

Adopted Nov. 5, 1975, effective July 1, 1976. Amended June 23, 1976, effective July 1, 1976; Sept. 10, 2008, effective Dec. 1, 2008; Jan. 13, 2009, effective as to appeals filed 60 days or more after adoption; Dec. 30, 2014, effective in 60 days; Jan. 5, 2018, effective Jan. 6, 2018; June 1, 2018, effective July 1, 2018; Dec. 7, 2021, effective April 1, 2022.

Rules App. Proc., Rule 1116, 42 Pa.C.S.A., PA ST RAP Rule 1116
Current with amendments received through April 15, 2023. Some rules may be more current; see credits for details.

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