



Petitions for Allowance of Appeal: Best Practices

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Overview

- I. Before the PAA
- II. Drafting the PAA: Procedure and Form
- III. Drafting the PAA: Content
- IV. Answering the PAA
- V. Adjudication Process



I. Before the PAA

- Preservation
 - Trial Court
 - Contemporaneous Objection (Pa.R.A.P. 302(a), *Dilliplane v. Lehigh Valley Trust Co.*, 332 A.2d 1114 (Pa. 1974))
 - Numerous claim-specific and forum-specific requirements
 - Development
 - Claim must be sufficiently clear
 - *Commonwealth v. Bishop*, 217 A.3d 833 (Pa. 2019) (*Edmunds* claims)



I. Before the PAA (cont'd)

- Intermediate Appellate Court (If Applicable)
 - Concise Statement (Pa.R.A.P. 1925; *Commonwealth v. Lord*, 719 A.2d 306 (Pa. 1998); *Commonwealth v. Castillo*, 888 A.2d 775 (Pa. 2005))
 - Statement of Issues (Pa.R.A.P. 2116)
 - Appellate Brief
 - Reproduced Record/Record (Pa.R.A.P. 1911 *et seq.*; Pa.R.A.P. 2151 *et seq.*)



II. Drafting the PAA: Procedure and Form

- Timing – 30 Days After Final Order or Final Order On Reargument (Pa.R.A.P. 1113)
- Contents (Pa.R.A.P. 1115)
 - Reference To The Opinions Below
 - Text of Order In Question
 - Questions Presented For Review
 - Reframe in Terms of Question To Be Presented
 - Do Not Reframe In Terms of Whether PAA Should Be Granted
 - Concise Statement of Case



II. Drafting the PAA: Procedure and Form (cont'd)

- Concise Statement of the Reasons Relied Upon For Allowance of Appeal
- Appendices
- 9,000 word limit
- Failure to provide with “accuracy, brevity, and clearness whatever is essential to a ready and adequate disposition of the points requiring consideration” warrants denial of allowance of appeal (Pa.R.A.P. 1115(d))



III. Drafting the PAA: Content

- Concise Statement of the Case
 - In the form of a statement of a case in an appellate brief (Pa.R.A.P. 2117)
 - Statement of form of action
 - Brief procedural history
 - Names of judges below
 - Statement of preservation
 - “Closely condensed chronological statement, in narrative form, of all the facts . . . necessary . . . to determine the point in controversy, with an appropriate reference in each instance to the place in the record[.]”
 - Statement of preservation
 - Brief statement of the order or other determination under review
 - No argument (maybe a little argument, as a treat)



III. Drafting the PAA: Content (cont'd)

- Concise Statement of Reasons Relied Upon for Allowance of appeal
 - In the form of an argument in an appellate brief
 - Include citations and analysis as appropriate
 - Demonstrate a colorable claim (not necessarily even a certain entitlement to relief), and rebut the lower courts' rationales, but, more importantly, demonstrate that the claim implicates:



III. Drafting the PAA: Content (Cont'd)

“The holding of the intermediate appellate court conflicts with another intermediate appellate court opinion;”

- Holding
- Intermediate appellate court
- Another intermediate appellate court opinion

“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;”

- Holding
- Intermediate appellate court
- Same legal question



III. Drafting the PAA: Content (Cont'd)

“The question presented is one of first impression;”

- Framing
- Great as an alternative basis

“The question presented is one of such substantial public importance as to require prompt and definitive resolution by the Pennsylvania Supreme Court;”

- Substantial public importance alone?
- Substantial public importance requiring intervention



III. Drafting the PAA: Content (Cont'd)

“The issue involves the constitutionality of a statute of the Commonwealth;”

- Constitutional challenges to Pennsylvania statutes rejected below
- Note: Where a statute has been declared unconstitutional by a court of common pleas, the Supreme Court has exclusive jurisdiction and the Commonwealth has a direct appeal as of right. See 42 Pa.C.S. § 722.

“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;”

- “So far departed”/”So abused discretion”
- Supervisory authority over lower courts



III. Drafting the PAA: Content (Cont'd)

“The intermediate appellate court has erroneously entered an order quashing or dismissing an appeal.”

- Erroneous “quashing or dismissing” versus erroneous “affirming” – substance over form



III. Drafting the PAA: Content (Cont'd)

And most importantly . . .

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Not included in the comment, if the Supreme Court wants to hear the case, such as in cases of other kinds of legal conflict, jurisprudential error, jurisprudential reexamination, big policy issues, high-stakes error, or simple Justice interest or will, it will hear the case!



IV. Answering the PAA (Pa.R.A.P. 1116)

- Timing: 14 Days After Filing of PAA, 10 Days Children's Fast-Track
- Optional, But Risks Waiving Waiver Or Other Procedural Arguments
 - See *Commonwealth v. Bishop*, 217 A.3d 833 (Pa. 2019)
 - See also Pa.R.A.P. 1116, note (encouraging “waiver-based or procedural objection” in answer or post-grant, pre-briefing dispositive motion)
- “Set forth any procedural, substantive or other argument or ground why the order involved should not be reviewed”
- If Not Filed, No-Answer Letter
- 9,000 Word Limit



V. Adjudication Process (Supreme Court IOPs § 6)

- Assigned by prothonotary to individual Justice on rotating basis
- Preparation of Allowance of Appeal Report
- Circulation of Report Within 90 days (30 days children's fast track), w/ proposed disposition date at most 60 days later (30 days in Fast Track)
- Holds
 - Petitions raising the same or substantially overlapping issues
 - Preparation of a Counter Report (30 days, absent majority vote, and never more than 90 days) (15 and 45 Children's Fast Track)
- These dates are more aspirational than not.
- Vote: 3 to Grant
- Grant Oral Argument/Grant Submit
- Per curiam orders granting summary relief
- Reconsideration within 14 days of order limited to intervening circumstances



V. Adjudication Process (Supreme Court IOPs § 6)

- 2020 Statistics (<https://www.pacourts.us/Storage/media/pdfs/20220110/171116-2020reportonline.pdf>)
 - Petitions for Allowance of Appeal Filed: 1,637
 - Petitions for Allowance of Appeal Adjudicated: 1,704
 - PAA Appeals Granted: 109 (or ~6%)
 - 98 Ordinary
 - 11 Children's Fast Track



Bonus: Top Ten PAA Mistakes & Q&A

- Make sure you want allowance of appeal, not reconsideration/reargument
- Drafting the PAA in the form of a trial-court pleading
- Filing a re-captioned version of the lower court brief
- Framing a question presented as “The lower court erred, “ or, worse, “The trial court erred...”
- Ignoring the standard of review
- Baldly asserting facts in controversy, legal principles, legal conclusions, or entitlement to relief
- Hiding waiver
- Arguing error and error alone
- Failing to cite to Rule 1114 or discuss Rule 1114 considerations with any depth
- Failing to file an answer