

THE COURTS

Title 210—APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

[210 PA. CODE CHS. 19 AND 25]

Proposed Amendments to Pa.R.A.P. 1972 and 2542

The Appellate Court Procedural Rules Committee proposes to recommend amendments to Pa.R.A.P. 1972 and 2542. This proposal is being submitted for public comments, suggestions, and concerns prior to submission to the Supreme Court.

Proposed new material is in bold face type and deleted material is bracketed and in bold face type.

All communications in reference to the proposed amendment should be sent no later than October 16, 2013 to:

Appellate Court Procedural Rules Committee
 Pennsylvania Judicial Center
 601 Commonwealth Ave., Suite 6200
 P. O. Box 62635
 Harrisburg, Pennsylvania 17106-2635
 or Fax to
 (717) 231-9551
 or E-Mail to
 appellaterules@pacourts.us

An Explanatory Comment precedes the proposed amendment and has been inserted by this Committee for the convenience of the bench and bar. It will not constitute part of the rule nor will it be officially adopted or promulgated.

*By the Appellate Court
 Procedural Rules Committee*

HONORABLE RENÉE COHN JUBELIRER,
Chair

Annex A

TITLE 210. APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

ARTICLE II. APPELLATE PROCEDURE

CHAPTER 19. PREPARATION AND TRANSMISSION OF RECORD AND RELATED MATTERS

DISPOSITION WITHOUT REACHING THE MERITS

Rule 1972. Dispositions on Motion.

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Official Note: [Based on former Supreme Court Rule 33 and former Superior Court Rule 25.

As to Paragraph (6), see, e.g. *Commonwealth v. Galloway*, 460 Pa. 309, 333 A.2d 741 (1975) (continuing generally), *Commonwealth v. Barron*, 237 Pa. Super. 369, 352 A.2d 84 (1975) (quashing).]

If an appellate court dismisses a criminal appeal under Pa.R.A.P. 1972(a)(6), the fugitive forfeits rather than simply waives the right to assert errors the fugitive might otherwise have raised on direct appeal, and the fugitive may not raise those errors on collateral review. *Commonwealth v. Judge*, 797

A.2d 250, 255, 258-60 (Pa. 2002); *Commonwealth v. Doty*, 48 A.3d 451 (Pa. Super. 2012) (on PCRA); 997 A.2d 1184 (Pa. Super. 2010) (on direct appeal). Forfeiture under this Rule does not limit any review under 42 Pa.C.S. § 9711(h) or Pa.R.A.P. 1941 (Review of Death Sentences).

[Rule 1933 (record for preliminary hearing in appellate court)] Pa.R.A.P. 1933 makes clear the right of a moving party to obtain immediate transmission of as much of the record as may be necessary for the purposes of a motion under this rule. See [Rule 123(c) (speaking applications)] Pa.R.A.P. 123(c).

CHAPTER 25. POST-SUBMISSION PROCEEDINGS

APPLICATION FOR REARGUMENT

Rule 2542. Time for Application for Reargument[.],
Reconsideration or Rehearing; Manner of Filing.

(a) *Time.*

(1) *General rule.*—Except as otherwise prescribed by this rule **or by Pa.R.A.P. 1123(b) or Pa.R.A.P. 3814**, an application for reargument **or for reconsideration of a dispositive order** shall be filed with the prothonotary within [14] 30 days after entry of the judgment or other order involved.

(2) *Children's fast track appeals.*—In a children's fast track appeal, an application for reargument **or for reconsideration of a dispositive order** shall be filed with the prothonotary within 7 days after entry of the judgment or other order involved.

* * * * *

Official Note: [Former Supreme Court Rule 64, former Superior Court Rules 55 and 58 and former Commonwealth Court Rule 113A required the application for reargument to be filed within ten days of the entry of the order. Under Rule 105(b) (enlargement of time) the time for seeking reargument may be enlarged by order, but no order of the Superior Court or of the Commonwealth Court, other than an actual grant of reargument meeting the requirements of Rule 1701(b)(3) (authority of lower court or agency after appeal), will have the effect of postponing the finality of the order involved under Rule 1113 (time for petitioning for allowance of appeal).

The 1986 amendment provided that an application shall be deemed received on the date deposited in the United States mail as shown on a United States Postal Service Form 3817 Certificate of Mailing.

The 2008 amendment provides that an application shall be deemed received on the date deposited in the United States mail as shown on a United States Postal Service Form 3817 Certificate of Mailing or other similar United States Postal Service form from which the date of deposit can be verified.]

This does not affect the 14-day requirement for reconsideration of a petition for allowance of appeal under Pa.R.A.P. 1123(b) or under the Abortion Control Act.

Explanatory Comment*Proposed Amendment to Note to Pa.R.A.P. 1972*

Pa.R.A.P. 1972 addresses appeals that may be dismissed on motion. Paragraph (a)(6) of the rule allows a motion to continue or dismiss because the appellant is a fugitive.

The purpose of the proposed amendment to the note to this rule pertains to paragraph (a)(6) and is to conform the note to reflect more recent case law holding that, although dismissal pursuant to a motion under paragraph (a)(6) or *sua sponte* is not a *per se* rule, a returning fugitive returns to the case in the posture in which it stands at the time of the fugitive's return and with the consequences attendant to that return.

The proposed amendment to the note also explains that, if an appeal is dismissed, appellate rights—except for those guaranteed by 42 Pa.C.S. § 9711(h)—are forfeited, not simply waived, and errors that would have been raised on direct appeal cannot be reviewed collaterally.

Proposed Amendment to Pa.R.A.P. 2542 and Note

Pa.R.A.P. 2542 addresses the time for reargument, reconsideration or rehearing and makes it consistent with the 30-day statutory time for reconsideration under 42 Pa.C.S. § 5505, except in limited circumstances, such as children's fast track (must be filed within seven days); or under Pa.R.A.P. 1123 or 3814.

The proposed amendment to the note to Pa.R.A.P. 2542 explains that, the amendment to the rule extending the time limit generally does not affect the 14-day requirement for reconsideration of a petition for allowance of appeal under Pa.R.A.P. 1123(b) or under the Abortion Control Act.

The remaining proposed amendments to the note to Pa.R.A.P. 2542 eliminate unnecessary language and are ministerial in nature.

[Pa.B. Doc. No. 13-1638. Filed for public inspection September 6, 2013, 9:00 a.m.]

PART I. RULES OF APPELLATE PROCEDURE
[210 PA. CODE CH. 31]

Order Amending Rule 3121 of the Rules of Appellate Procedure; No. 235 Appellate Procedural Rules Doc.

Order*Per Curiam*

And Now, this 21st day of August, 2013, the proposal having not been published in the interests of justice and efficient administration:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule 3121 of the Pennsylvania Rules of Appellate Procedure is amended in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and the amendments shall be effective immediately.

Annex A**TITLE 210. APPELLATE PROCEDURE****PART I. RULES OF APPELLATE PROCEDURE****ARTICLE III. MISCELLANEOUS PROVISIONS****CHAPTER 31. BUSINESS OF THE COURTS
GENERALLY****ATTORNEYS AND COUNSELORS**Rule 3121. Practice of Law by Staff; **Qualifications.**

A. Neither the prothonotary, deputy prothonotary, chief clerk, nor any person employed in the Office of the Prothonotary, nor any [**law clerk, administrative assistant, or secretary**] **personal staff** employed by an appellate court or by any judge thereof, shall practice [**in the court**] **before any court or tribunal of this Commonwealth.** Nor shall any such person otherwise practice law [**without prior approval of the judge on whose staff such person is employed or of the president judge if such person is not so employed**]. **Such a person may act *pro se*, and may perform routine legal work incident to the management of the personal affairs of the person or a member of the person's family, as long as the work is performed without compensation and does not involve the entry of an appearance on behalf of the family member in a court or other tribunal. Such limited practice is also subject to the disclosure of employment within the Unified Judicial System to the parties and the court in which the employee represents himself or herself.**

This rule does not apply to *pro bono* activities, provided that they are performed without compensation; do not involve the entry of an appearance before any court or tribunal; do not involve a matter of public controversy, an issue likely to come before the person's court, or litigation against federal, state or local government; and are undertaken after written approval of the Justice or Judge for whom the person is employed and the Chief Justice, or the President Judge of the Superior Court or Commonwealth Court, depending on which court employs the person.

B. Staff attorneys must either be members of the Bar of Pennsylvania, or must have received without exception an earned Bachelor of Laws or Juris Doctor degree from a law school that was an accredited law school at the time the staff attorney matriculated or graduated.

Official Note: Based on former Supreme Court Rule 6, former Superior Court Rule 4 and former Commonwealth Court Rule 60[, and makes no change in substance except to require approval by the appointing authority of the continuance of an outside law practice]. See also 42 Pa.C.S. § 2502 (certain persons not to appear as counsel). **The term "personal staff" includes, for example, a staff attorney, law clerk, administrative assistant, secretary or tipstaff. See 42 Pa.C.S. § 102 (defining "personal staff").**

[Pa.B. Doc. No. 13-1639. Filed for public inspection September 6, 2013, 9:00 a.m.]

Title 255—LOCAL COURT RULES

BUTLER COUNTY

Local Rules of Court; MsD 13-40206

Administrative Order of Court

And Now, this 19th day of August, 2013 it is hereby ordered and decreed that Butler County local rule of Judicial Administration (L1907) is approved and adopted and is made a part of the Butler County Local Rules of Court for use in the Court of Common Pleas of Butler County, Pennsylvania, the 50th Judicial District of Pennsylvania, effective thirty days after the publication of the rule in the *Pennsylvania Bulletin*.

It is further ordered and decreed that the Court Administrators Office of Butler County shall:

1. File one (1) certified copy of this Administrative Order & Local Rule with the Administrative Office of the Pennsylvania Courts.
2. File two (2) certified copies of this Administrative Order & Local Rule and one (1) diskette in the required format with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
3. Publish a copy of this local rule on the Unified Judicial System's website if required.
4. Forward one (1) copy of this Administrative Order to the administrative office of the *Butler County Legal Journal* for publication.
5. Keep continuously available for public inspection copies of this Administrative Order in the Office of the

Butler County Clerk of Courts, in the Office of the Court Administrator and the Butler County Law Library.

By the Court

THOMAS J. DOERR,
President Judge

Rule L1907. Constables; Policies, Procedures and Standards of Conduct.

Constables, including any elected or appointed constable or deputy constable, who may be engaged to perform services for the Court of Common Pleas of Butler County, Pennsylvania or any of Butler County's Magisterial District Judges, shall adhere to the rules promulgated by the Administrative Office of the Pennsylvania Court governing Constable Policies, Procedures and Standards of Conduct. The state rules are herewith adopted for use in Butler County.

Further, all constables shall adhere to the specific Butler County procedures that may be published from time to time to enhance the state's policies and procedures. Should a conflict arise between the state's policies and procedures and those published at the county level the state's policies and procedures shall be considered governing.

The Butler County Court Administrator shall review and publish the Butler County procedures on an annual basis to ensure that any changes in the state's policies and procedures are properly addressed. The Butler County Court Administrator shall make available annually to all certified constables serving the Butler County courts a copy of the most recent publication of the Butler County procedures.

[Pa.B. Doc. No. 13-1640. Filed for public inspection September 6, 2013, 9:00 a.m.]