

# THE COURTS

## Title 210—APPELLATE PROCEDURE

### PART I. RULES OF APPELLATE PROCEDURE

#### [ 210 PA. CODE CHS. 21 AND 23 ]

#### Order Amending Rules 2113, 2135, 2136, 2185, and 2322 of the Pennsylvania Rules of Appellate Procedure; No. 311 Appellate Procedural Rules Docket

#### Order

#### *Per Curiam*

And Now, this 18th day of July, 2024, upon the recommendation of the Appellate Court Procedural Rules Committee; the proposal having been published for public comment at 53 Pa.B. 2725 (May 20, 2023):

It is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rules 2113, 2135, 2136, 2185, and 2322 of the Pennsylvania Rules of Appellate Procedure are amended in the attached form.

This Order shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective January 1, 2025.

Additions to the rule are shown in bold and are underlined.

Deletions from the rule are shown in bold and brackets.

#### Annex A

### TITLE 210. APPELLATE PROCEDURE

#### PART I. RULES OF APPELLATE PROCEDURE

#### ARTICLE II. APPELLATE PROCEDURE

#### CHAPTER 21. BRIEFS AND REPRODUCED RECORD

#### CONTENT OF BRIEFS

(*Editor's Note:* Rule 2113 as printed in 210 Pa. Code reads "Official Note" rather than "Note" and the "Explanatory Comment" is not previously codified.)

#### Rule 2113. Reply Brief.

(*a*) *General [ rule.— ] 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** ] **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 **Pa.R.A.P. 2135(d)**.

(*b*) *Response to [ draft or plan.— ] Draft or Plan.* A reply brief may be filed as prescribed in Pa.R.A.P. 2134 (drafts or plans).

(*c*) *Other [ briefs.— ] Briefs.* No further briefs may be filed except with leave of court.

#### [ *Note:* ] **Comment:**

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** ] **If there is a cross-appeal, the** designated appellee may file a similarly limited reply brief addressing issues in the [ **cross appeal** ] **cross-appeal**. *See also* Pa.R.A.P. 2136 (briefs in cases involving [ **cross appeals** ] **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.** ]

#### Historical Commentary

**The following commentary is historical in nature and represents statements of the Committee at the time of rulemaking:**

#### **Explanatory Comment—2002**

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

(*Editor's Note:* Rule 2135 as printed in 210 Pa. Code reads "Official Note" rather than "Note.")

#### **Rule 2135. Length of Briefs.**

(*a*) ***General Rule.*** 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)** ] **subdivisions (a)(2)—(a)(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** ] **In cross-appeals, the brief of the designated appellee required by Pa.R.A.P. 2136(b)(2) and the brief of the designated appellant required by Pa.R.A.P. 2136(b)(3)** 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] Matters.* 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] subdivision (a).

(c) *Size and [physical characteristics] Other Physical Characteristics.* Size and other physical characteristics of briefs shall comply with Pa.R.A.P. 124.

(d) *[Certification of compliance] Certificate 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.]

**Comment:**

A principal brief is any party's initial brief. In a cross-appeal, the designated appellant's brief required by Pa.R.A.P. 2136(b)(3) is the principal brief. 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] Each appellate court has the option of reducing the word count for a brief, either by general rule, see Chapter 33 (Business of the Supreme Court), Chapter 35 (Business of the Superior Court), and Chapter 37 (Business of the Commonwealth Court), or by order in a particular case.

(Editor's Note: The "Official Note" and the "Explanatory Comment" as follows are not codified in Rule 2136 as printed in 210 Pa. Code.)

Rule 2136. Briefs in Cases Involving [Cross Appeals] Cross-Appeals.

[ (a) *Designation of parties in cross appeals.* If a cross appeal is filed, the plaintiff or moving party in the court or other government unit below shall be deemed the appellant for the purposes of this chapter and Chapter 23 (sessions and argument), unless the parties otherwise agree or the appellate court otherwise orders. Where the identity of the appellant for the purposes of this chapter and Chapter 23 is not readily apparent, the prothonotary of the appellate court shall designate the appellant for the purposes of those two chapters when giving notice under Rule 1934 (filing of the record).

(b) *Order of briefs.* The deemed or designated appellant shall file its principal brief on the merits of its appeal in accordance with the briefing schedule. The deemed or designated appellee shall then

file a brief that addresses (i) the arguments advanced in the appellant's brief and (ii) the merits of the cross appeal. Thereafter, the appellant shall file its second brief, which shall (i) reply to issues raised in the appellee's brief and not previously addressed in appellant's principal brief and (ii) respond to the issues raised by appellee regarding the cross appeal. The appellee may then file a reply brief limited to issues raised by the appellant that were not previously addressed by the appellee in its principal brief on the merits of the cross appeal.

*Official Note:* For cross appeals, Rule 2136 provides both a method for determining which party shall file the first brief and a description of the subsequent briefs. Either party may initiate the process described in Subdivision (a) by notifying the prothonotary by letter that the prothonotary must designate the appellant, that is the party to file the first brief, or that the parties have agreed which party shall be the appellant.

With regard to the briefing process, when there are cross appeals, there may be up to four briefs: (1) the deemed or designated appellant's principal brief on the merits of the appeal; (2) the deemed or designated appellee's brief responding to appellant's arguments and presenting the merits of the cross appeal; (3) the appellant's second brief replying in support of the appeal and responding to the issues raised in the cross appeal; and (4) appellee's second brief in support of the cross appeal.

Thus, the deemed or designated appellee's first brief (Brief No. 2 as described above) functions as both a response to the arguments advanced by the appellant in the first appeal and the primary brief on the merits of the cross appeal. Similarly, the deemed or designated appellant's second brief (Brief No. 3 as described above) serves the dual purposes of responding to the merits of the arguments in the cross appeal and replying to arguments raised in opposition to the first appeal. See generally Rule 2111 (brief of the appellant), Rule 2112 (brief of the appellee), and Rule 2113(a) (regarding reply briefs).

Rule 2135 (length of briefs) establishes the length of the various briefs. Only appellee's second brief is considered a reply brief subject to the lesser page limits. There is no provision for a longer principal brief on the merits in cross appeal situations.

Rule 2185(a) (time for serving and filing briefs) provides that appellant's second brief shall be served within 30 days after service of the preceding brief. Appellee's second brief is due 14 days later.

Rule 2322 (cross and separate appeals) addresses oral argument in cross appeals.]

(This is entirely new text.)

(a) *Designation of the Parties in Cross-Appeals.* If a cross-appeal is filed, for the purposes of this chapter (briefs and reproduced record) and Chapter 23 (sessions and argument), the plaintiff or moving party in the trial court or other government unit shall be designated the appellant and any remaining party shall be designated the appellee, unless other designations are made by:

(1) order of the appellate court; or

(2) agreement of the parties, who shall promptly notify the prothonotary of the appellate court of the parties' designations.

(b) *Scope and Sequence of Briefs.* In accordance with the briefing schedule, the scope and sequence of briefs shall be as follows:

(1) *First Brief—Designated Appellant’s Brief on the Merits of the Appeal.* The designated appellant shall file a brief addressing the merits of the appeal in accordance with Pa.R.A.P. 2111.

(2) *Second Brief—Designated Appellee’s Brief in Response to the Appeal and on the Merits of the Cross-Appeal.* The designated appellee shall file a response to the designated appellant’s arguments in the designated appellant’s brief on the appeal in accordance with Pa.R.A.P. 2112. In the same brief, the designated appellee shall argue the merits of its cross-appeal in accordance with Pa.R.A.P. 2111.

(3) *Third Brief—Designated Appellant’s Response to Cross-Appeal and Reply Brief in Support of Appeal.* The designated appellant shall file a response to the designated appellee’s arguments in the designated appellee’s brief on the merits of the cross-appeal in accordance with Pa.R.A.P. 2112. If the designated appellant files a reply in support of the appeal, it shall be included in the same brief and in accordance with Pa.R.A.P. 2113.

(4) *Fourth Brief—Designated Appellee’s Reply Brief.* If the designated appellee files a reply to the designated appellant’s response, the reply brief shall be filed in accordance with Pa.R.A.P. 2113.

#### Comment:

Pa.R.A.P. 2136 provides both a method for determining which party shall file the first brief and the sequence for filing those briefs. Subdivision (a) specifies that the party initiating the action in either the trial court or other government unit is the designated appellant, unless the appellate court otherwise orders or the parties otherwise agree.

If the parties have agreed to a designation of appellant and appellee, they shall inform the prothonotary of the appellate court of the agreed-upon designations at the earliest opportunity. An agreement of the parties to designate a different appellant or appellee does not toll the time for filing a party brief. Following an agreement to designate a different appellant or appellee, each party maintains the obligation to file briefs pursuant to the schedule set by the appellate court.

Subdivision (b) addresses the sequence of briefs. A designated appellant may file up to two briefs, as described in subdivisions (b)(1) and (b)(3). A designated appellee may file up to two briefs, as described in subdivisions (b)(2) and (b)(4).

See Pa.R.A.P. 2111, 2112, and 2113 for the scope and content of briefs filed pursuant to subdivision (b).

Pa.R.A.P. 2135 (length of briefs) establishes the length of the various briefs. Only the brief filed by the designated appellee pursuant to subdivision (b)(4) is considered a reply brief subject to lower page and word limitations. All other briefs are subject to usual page and word limitations.

Pa.R.A.P. 2185(a) (time for serving and filing briefs) provides that the brief by the designated appellant pursuant to subdivision (b)(3) shall be served within 30 days after service of the brief filed by the designated appellee pursuant to subdivision (b)(2). The designated appellee’s brief filed pursuant to subdivision (b)(4) is due 14 days following the filing of the designated appellant’s brief pursuant to subdivision (b)(3).

Pa.R.A.P. 2322 (cross-appeals and separate appeals) addresses oral argument in cross-appeals.

#### Historical Commentary

**The following commentary is historical in nature and represents statements of the Committee at the time of rulemaking:**

#### Explanatory Comment—2002

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

#### FILING AND SERVICE

(*Editor’s Note:* The “Explanatory Comments” are not previously codified in Rule 2185 as printed in 210 Pa. Code.)

#### Rule 2185. Service and Filing of Briefs.

(a) *Time for [ serving and filing briefs ] Serving and Filing Briefs.*

(1) *General [ rule.— ] Rule.* Except as otherwise provided by this rule, the appellant shall serve and file appellant’s brief not later than the date fixed pursuant to [ **Subdivision** ] **subdivision** (b) [ **of this rule,** ] or within 40 days after the date on which the record is filed, if no other date is so fixed. The appellee shall serve and file appellee’s brief within 30 days after service of appellant’s brief and reproduced record if proceeding under [ **Rule** ] **Pa.R.A.P.** 2154(a) (general rule). A party may serve and file a reply brief permitted by these rules within 14 days after service of the preceding brief but, except for good cause shown, a reply brief must be served and filed so as to be received at least three days before argument. [ **In cross appeals, the second brief of the deemed or designated appellant shall be served and filed within 30 days of service of the deemed or designated appellee’s first brief.** ] **In cross-appeals, the brief of the designated appellant required by Pa.R.A.P. 2136(b)(3) shall be served and filed within 30 days of service of the brief of the designated appellee required by Pa.R.A.P. 2136(b)(2).** Except as prescribed by [ **Rule** ] **Pa.R.A.P.** 2187(b)(3) (advance text of briefs), each brief shall be filed not later than the last day fixed by or pursuant to this rule for its service. Briefs shall be deemed filed on the date of mailing if first class, express, or priority United States Postal Service mail is utilized.

(2) *Children’s [ fast track appeals ] Fast Track Appeals.*

(i) In a children’s fast track appeal, the appellant shall serve and file appellant’s brief within 30 days after the date on which the record is filed, if no other date is so fixed. The appellee shall serve and file appellee’s brief within 21 days after service of appellant’s brief and reproduced record. A party may serve and file a reply brief permitted by these rules within [ **7** ] **seven** days after service of the preceding brief but, except for good cause shown, a reply brief must be served and filed so as to be received at least [ **3** ] **three** days before argument. [ **In cross appeals, the second brief of the deemed or designated appellant shall be served and filed within 21 days of service of the deemed or designated appellee’s first brief.** ] **In cross-appeals, the brief of the designated appellant required by Pa.R.A.P. 2136(b)(3) shall be served and filed within 21 days of service of the brief of the designated appellee required by Pa.R.A.P. 2136(b)(2).** Briefs shall

be deemed filed on the date of mailing if first class, express, or priority United States Postal Service mail is utilized.

(ii) In a children's fast track appeal, the provisions of [ **Subdivisions** ] **subdivisions** (b) and (c) [ **of this Rule** ] shall not apply.

(3) *Multiple [ **briefs for appellants or appellees.**— ] **Briefs for Appellants or Appellees.*** If the time for filing a brief is established by reference to service of a preceding brief and more than one such preceding brief is filed, the deadline for filing the subsequent brief shall be calculated from the date on which the last timely filed preceding brief is served. If no such preceding brief is filed, the deadline for a subsequent brief shall be calculated from the date on which the preceding brief should have been filed.

(b) *Notice of [ **deferred briefing schedule.**— ] **Deferred Briefing Schedule.*** When the record is filed, the prothonotary of the appellate court shall estimate the date on which the matter will be argued before or submitted to the court, having regard for the nature of the case and the status of the calendar of the court. If the prothonotary determines that the matter will probably not be reached by the court for argument or submission within 30 days after the latest date on which the last brief could be filed under the usual briefing schedule established by these rules, the prothonotary shall fix a specific calendar date as the last date for the filing of the brief of the appellant in the matter, and shall give notice thereof as required by these rules. The date so fixed by the prothonotary shall be such that the latest date on which the last brief in the matter could be filed under these rules will fall approximately 30 days before the probable date of argument or submission of the matter.

(c) *Definitive [ **copies.**— ] **Copies.*** If the record is being reproduced pursuant to [ **Rule** ] **Pa.R.A.P.** 2154(b) (large records), the brief served pursuant to [ **Subdivision** ] **subdivision** (a) [ **of this rule** ] may be typewritten or page proof copies of the brief, with appropriate references to pages of the parts of the original record involved. Within 14 days after the reproduced record is filed, each party who served briefs in advance form under this subdivision shall serve and file definitive copies of [ **his or her** ] **the party's** brief or briefs containing references to the pages of the reproduced record in place of or in addition to the initial references to the pages of the parts of the original record involved (see [ **Rule** ] **Pa.R.A.P.** 2132 (references in briefs to the record)). No other changes may be made in the briefs as initially served, except that typographical errors may be corrected.

[ **Official Note: The 2002 amendment** ] **Comment:**

**Pa.R.A.P. 2185(a)** recognizes that in [ **cross appeals** ] **cross-appeals** the [ **deemed or** ] designated appellant's second brief is more extensive than a reply brief and, therefore, may require more than 14 days to prepare. [ **See Rule** ] **See Pa.R.A.P.** 2136 (briefs in cases involving [ **cross appeals** ] **cross-appeals**).

[ **The addition of paragraph** ] **Subdivision** (a)(3) [ **clarified** ] **clarifies** practice in an appeal in which there is more than one appellant or appellee and all appellants or all appellees do not file their briefs on the same date. For example, if there are two appellants and one files early or one is granted an extension of time to

file, the two briefs for appellants will not be filed or served on the same date. [ **Without paragraph (a)(3), it was not** ] **Subdivision (a)(3) makes** clear when the appellee's 30-day period to file its brief [ **began** ] **begins**. The same issue can arise with respect to the appellant's time for filing its reply brief when there are two or more appellees. [ **New paragraph (a)(3) clarified** ] **Subdivision (a)(3) clarifies** the point by starting the period on the date on which the latest, timely filed preceding brief is served.

### Historical Commentary

**The following commentary is historical in nature and represents statements of the Committee at the time of rulemaking:**

#### **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.

Also, the number of briefs to be filed under the in forma pauperis procedure has been increased from ten to 15 in the Commonwealth and Superior Courts.

#### **Explanatory Comment—2002**

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

## **CHAPTER 23. SESSIONS AND ARGUMENT**

### **ORDER AND CONTENT OF ARGUMENT**

*(Editor's Note: Rule 2322 as printed in 210 Pa. Code reads "Official Note" rather than "Note" and the "Explanatory Comment" is not previously codified.)*

Rule 2322. [ **Cross** ] **Cross-Appeals** and Separate Appeals.

(a) **Cross-Appeals.** A [ **cross or separate appeal** ] **cross-appeal** shall be argued with the initial appeal at a single argument, unless the court otherwise directs. [ **If a case involves a cross appeal, the plaintiff or moving party in the action below shall be deemed the appellant for the purposes of these rules unless the parties otherwise agree or the court otherwise directs. If two or more parties support the same argument, care shall be taken to avoid duplication of argument.** ]

(b) **Separate Appeals.** A separate appeal shall be argued with the initial appeal at a single argument, unless the court otherwise directs. **If two or more parties support the same argument, care shall be taken to avoid duplication of argument.** [ **Where** ] **If** two or more appeals [ **,** **not being cross-appeals,** ] are heard together, each appellant shall open the argument on [ **his** ] **each appellant's** appeal, each appellee shall

reply thereto[ , and (if permitted by the court by way of rebuttal) ]. If permitted by the court in rebuttal, not more than two appellants will be heard in conclusion.

[ **Note: Based in part on former Supreme Court Rule 31 and former Superior Court Rule 23. See Rule ]**

**Comment:**

See Pa.R.A.P. 2136 (briefs in cases involving [ **cross appeals** ] **cross-appeals**) for inclusion of **the** designation of **the** appellant **and the appellee** for purposes of this chapter in **the** notice given by the appellate prothonotary under [ **Rule** ] Pa.R.A.P. 1934 (filing of the record).

**Historical Commentary**

**The following commentary is historical in nature and represents statements of the Committee at the time of rulemaking:**

**Explanatory Comment—1979**

The appellate prothonotary is directed to designate the party who shall file the first brief in cases involving cross appeals where the identity of the “moving party” below is not readily apparent.

**APPELLATE COURT PROCEDURAL RULES  
COMMITTEE**

**ADOPTION REPORT**

**Amendment of Pa.R.A.P. 2113, 2135, 2136, 2185, and  
2322**

On July 18, 2024, the Supreme Court of Pennsylvania adopted amendments to Pennsylvania Rules of Appellate Procedure 2113, 2135, 2136, 2185, and 2322. The Appellate Court Procedural Rules Committee has prepared this Adoption Report describing the rulemaking process. An Adoption Report should not be confused with Comments to the rules. See Pa.R.J.A. 103, cmt. The statements contained herein are those of the Committee, not the Court.

The Committee received a request to amend Pa.R.A.P. 2136 to clarify for practitioners the order and sequence of filing briefs in cross-appeals. Preliminarily, the Committee acknowledged that the Superior Court and the Commonwealth Court have different practices for the administrative management of cross-appeals. The Commonwealth Court most often designates the appellant and the appellee via court order followed by a briefing schedule that instructs which party is to file a specific brief. The Superior Court, on the other hand, has administratively designated each brief as a “Step 1 brief,” “Step 2 brief,” etc. to guide practitioners as to who must file which brief and when. Given the disparity in practice, the Committee agreed to consider amendments to the rule.

At the outset of its review, the Committee observed that current Pa.R.A.P. 2136 contained two components. First, subdivision (a) governs how the parties are designated in cross-appeals. It provides that the plaintiff in the lower court is the appellant on appeal unless the parties agree or the court orders otherwise. The Committee examined Pennsylvania’s designation procedure, including how it differs from the designation procedure in Fed.R.App.P. 28.1. Under the federal approach, the first to file is the presumptive appellant. The Committee weighed the relative merits of each approach and concluded that the federal approach does not provide any marked benefit to the courts or practitioners over Pennsylvania’s existing practice.

The Committee therefore proposed retaining Pennsylvania’s existing approach to the designation of parties in a cross-appeal with the following changes to subdivision (a):

1) Restate the subdivision in shorter sentences so that each part contained a single procedural step, in appropriate sequence, and to reflect current practice.

2) Remove the second sentence of the subdivision authorizing the appellate court prothonotary to designate the appellant when the appellant’s identity is not readily apparent when giving notice under Pa.R.A.P. 1934 (notice of filing of the record) and Pa.R.A.P. 2185 (notice of deferred briefing schedule). This part of the subdivision was redundant given that the appellate courts already have authority to designate the parties by order.

Second, subdivision (b) provides for the order of briefs and the contents of each brief. Typically, the sequence of briefs is set forth in an appellate court’s briefing schedule. However, to benefit the appellate courts and practitioners alike, the proposed amendment to subdivision (b) was intended to improve legibility and reflect current practice.

As a result, the Committee proposed the following substantial changes to subdivision (b):

1) Restate the subdivision in shorter sentences so that each part contained a single procedural step, in appropriate sequence.

2) Add the current commentary relating to the order of briefs to the rule text. The Committee observed that the current Comment to Pa.R.A.P. 2136, which discusses the order of briefs in a numerical sequence, was instructive to practitioners and proposed making it part of the rule.

3) Restate the requirements for the content of briefs in subdivision (b) by referencing Pa.R.A.P. 2111, 2112, and 2113. Those rules govern the scope of the appellant’s opening brief, the appellee’s responsive brief, and the appellant’s reply brief. Referencing Pa.R.A.P. 2111, 2112, and 2113 in relation to the contents of briefs was intended to provide clearer direction for practitioners filing briefs in a cross-appeal.

The Committee published the proposal for comment, see 53 Pa.B. 2725 (May 20, 2023), and received responses supporting the proposal; the respondents also suggested modifications to the proposal.

A respondent suggested that the wording in proposed Pa.R.A.P. 2136(b)(2) be clarified as to how the content is presented in the second brief filed in a cross-appeal so that the response to the merits of the appeal is presented first followed by the arguments supporting the cross-appeal. The respondent also suggested that a clarification to Pa.R.A.P. 2136(b)(4) was necessary to remove any interpretation that the rule required the filing of a reply brief in a cross-appeal when the intention of that provision was to cross-reference the requirements of Pa.R.A.P. 2113 should any reply brief be filed in a cross-appeal. The Committee accepted these suggestions and modified the rule text. In addition, the Committee also identified similar wording in Pa.R.A.P. 2136(b)(3) relating to the filing of a reply brief and made the same modification as the change to Pa.R.A.P. 2136(b)(4).

Another respondent supported the proposal, but suggested that Pa.R.A.P. 2136(a), governing the designation of parties in a cross-appeal, be modified in favor of the federal approach. As noted above, in developing the proposal, the Committee evaluated the differences between the Pennsylvania designation procedure and the federal court designation procedure, and concluded that there was no significant advantage to the federal approach over Pennsylvania’s existing procedure. Accordingly, the Committee declined to incorporate this suggestion into the proposal.

The amendments become effective on January 1, 2025.

The following commentary from Pa.R.A.P. 2113 has been removed by this rulemaking:

**Comment:**

\* \* \*

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.

[Pa.B. Doc. No. 24-1073. Filed for public inspection August 2, 2024, 9:00 a.m.]

**Title 210—APPELLATE  
PROCEDURE**

**PART II. INTERNAL OPERATING PROCEDURES**

[ 210 PA. CODE CH. 63 ]

**Amendment of Supreme Court Internal Operating  
Procedures; No. 621 Judicial Administration  
Docket**

**Order**

*Per Curiam*

*And Now*, this 22nd day of July, 2024, it is Ordered, pursuant to Article V, Section 10(c) of the Constitution of Pennsylvania, that Section 6 of the Internal Operating Procedures of the Supreme Court is amended in the attached form.

This Order is to be processed in accordance with Pa.R.J.A. 103(b), and the amendments shall be effective in 30 days.

Additions to the rule are shown in bold and are underlined.

Deletions from the rule are shown in bold and brackets.

**Annex A**

**TITLE 210. APPELLATE PROCEDURE**

**PART II. INTERNAL OPERATING PROCEDURES**

**CHAPTER 63. INTERNAL OPERATING  
PROCEDURES OF THE SUPREME COURT**

**§ 63.6. Allowance of Appeal.**

**A. [ Assignment ] Duties of Prothonotary.**

**(1)** 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. ]** **The Prothonotary shall note if the following defects are present:**

**(a) whether the petition violates the prohibition against hybrid representation;**

**(b) whether the petitioner has not provided proper proof of service;**

**(c) whether the petitioner has not paid the required filing fee or submitted a petition to proceed in forma pauperis; and**

**(d) whether the petition exceeds the permissible word count limit.**

**Where any of these four defects are present, the Prothonotary shall notify the petitioner and afford an opportunity for correction, while preserving the filing date based upon the initial submission. If the identified defects are not corrected, the Prothonotary may refuse the petition for filing without further action of the Court.**

**Untimely petitions may be refused for filing by the Prothonotary without further Court action.**

**(2)** 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.

\* \* \* \* \*

[Pa.B. Doc. No. 24-1074. Filed for public inspection August 2, 2024, 9:00 a.m.]

**Title 255—LOCAL COURT RULES**

**LEHIGH COUNTY**

**Rules of Judicial Administration 5101—5104; No.  
2024-J-81**

**Administrative Order**

*And Now*, this 19th day of July, 2024;

*It Is Ordered* that Lehigh County Rules of Judicial Administration 5102—5104 are rescinded, and the following Lehigh County Rules of Judicial Administration 5101—5104 are adopted, effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

*It Is Further Ordered* that the Court Administrator of Lehigh County shall:

1. File one (1) copy of the Order and Lehigh County Rules of Judicial Administration 5102—5104 with the Administrative Office of Pennsylvania Courts via e-mail to [adminrules@pacourts.us](mailto:adminrules@pacourts.us).

2. Mail one (1) copy to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*; and e-mail another copy in Microsoft Word format to [bulletin@palrb.us](mailto:bulletin@palrb.us).

3. Publish the local rules on the court’s website.

4. Incorporate the local rules into the set of local rules on the court’s website no later than thirty (30) days following publication in the *Pennsylvania Bulletin*.

5. File one (1) copy with the Lehigh County Clerk of Judicial Records for public inspection and copying.

*By the Court*

J. BRIAN JOHNSON,  
*President Judge*

**CUSTODY OF EXHIBITS IN COURT  
PROCEEDINGS**

**Rule 5101. Definitions.**

(a) When used in these rules, the following words and phrases shall have the meanings set forth below:

(2) "Custodian"—The Court Reporter/Monitor during each Court Proceeding and shall include a Successor Custodian.

(8) "Court Reporter/Monitor"—A Court Reporter or Court Recorder as defined at Pa.R.J.A. 4002.

(9) "Index of Exhibits"—A list prepared and maintained by a Custodian during a Court Proceeding, which includes all of the following information and is in the form attached to these rules as Appendix I:

- (i) The case caption;
- (ii) The case number;
- (iii) The type of Court Proceeding;
- (iv) The name of the presiding judge;
- (v) The dates of the Court Proceeding;
- (vi) The name of the Court Reporter/Monitor acting as Custodian.
- (vii) The Exhibit number;
- (viii) The Proponent of each Exhibit;
- (ix) A description or identification of each Exhibit; and
- (x) The dates on which each Exhibit admitted or not admitted into evidence.

(10) "Reproduced Exhibit"—A true and correct copy of an over-sized documentary exhibit or photographic exhibit, or a photograph of a non-documentary exhibit, that is no larger than 8 1/2 x 11 inches and is legible, clear, and capable of further reproduction or transfer to digital media, supplied to the Custodian by a Proponent pursuant to Pa.R.J.A. 5103(a)—(e).

(11) "Successor Custodian"—Any member of Court staff who accepts exhibits from the Custodian.

**Rule 5102. Custody of Exhibits. General Provisions.**

(a) *During Court Proceedings.*

(1) The Court Reporter/Monitor during each Court Proceeding is designated as the Custodian who shall maintain and secure all Exhibits offered during that Court Proceeding.

(2) The Custodian shall:

- (i) Mark each Exhibit by affixing a sticker to the first page that provides the Exhibit number, the date of the Court Proceeding, and the initials of the Custodian; and
- (ii) Prepare and/or maintain the Index of Exhibits; and

(3) In the event a Court Proceeding requires additional days, the Custodian shall retain, or deliver to a Successor Custodian, custody of the Index of Exhibits and the documentary, photographic, and/or digital media exhibits until the next date of the Court Proceeding.

(b) *After Court Proceedings.*

(3) *Confirmation*

(i) In the event the exhibits are transferred from a Custodian to a Successor Custodian, the Successor Custodian shall also complete and file the form attached as Appendix II.

(5) *Method of Filing*

(i) For Civil Cases, Orphans' Court, Family Court, and Mental Health cases, the Index of Exhibits and Exhibits shall be filed directly through the Court's e-filing platform. After the Index of Exhibits and Exhibits have been filed, the Exhibits shall be returned to the Proponent, and Appendix II shall be filed where applicable.

(ii) For Criminal Cases, Juvenile Delinquency, and Juvenile Dependency, and Protection From Abuse cases, the Custodian shall deliver the original Index of Exhibits and Exhibits in person to the Clerk of Judicial Records—Criminal Division for filing. The form attached as Appendix III shall also be completed and filed upon transfer of the documents to the Clerk of Judicial Records—Criminal Division.

**Rule 5103. Custody of Exhibits. Special Provisions.**

(c) *Non-documentary Exhibits: Generally.*

(4) The proponent shall retain custody of physical evidence (including, but not limited to weapons, cash, other items of value, drugs, or other dangerous materials) and bulky, oversized, or otherwise physically impractical exhibits at all times during and after a court proceeding.

(g) *Reproduced Exhibits.*

(1) A witness deposition offered by a Proponent shall be submitted as a written transcript, rather than in digital media form.

**Rule 5104. Local Rule. Prohibition.**

(b) *Optional Provision.* Record hearings before hearing officers in divorce, custody, support, delinquency, and dependency matters are exempt from these local rules of judicial administration regarding Custody Of Exhibits In Court Proceedings.

**APPENDIX I  
Leh.R.J.A. 5101(9)**

**Court of Common Pleas of Lehigh County  
INDEX OF EXHIBITS**

Case Caption: \_\_\_\_\_

Case No(s): \_\_\_\_\_ Judge: \_\_\_\_\_

Type of Court Proceeding: \_\_\_\_\_

Name of Custodian: \_\_\_\_\_

Dates of Court Proceeding:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_





<i>Exhibit No.</i>	<i>Proponent</i>	<i>Description/Identification of Exhibit</i>	<i>Date Admitted</i>	<i>Date Not Admitted</i>	<i>RE<sup>1</sup> CD<sup>2</sup> CI<sup>3</sup></i>

<sup>1</sup> Reproduced Exhibit  
<sup>2</sup> Confidential Exhibit  
<sup>3</sup> Confidential Information

**APPENDIX II**  
**Leh.R.J.A. 5102(b)(3)(i)**  
**Court of Common Pleas of Lehigh County**  
**TRANSFER, FILING, AND RETURN OF EXHIBITS**

Case Caption: \_\_\_\_\_

Case No(s): \_\_\_\_\_ Judge: \_\_\_\_\_

Type of Court Proceeding: \_\_\_\_\_

On \_\_\_\_\_, 20 \_\_\_\_, I filed the Index of Exhibits and all documentary exhibits, photographs, photographs of non-documentary exhibits maintained by me as Custodian/Successor Custodian during the above Court Proceeding with:

- \_\_\_\_\_ the Clerk of Judicial Records—Civil Division
- \_\_\_\_\_ the Clerk of Judicial Records—Criminal Division
- \_\_\_\_\_ the Clerk of the Orphans’ Court

On \_\_\_\_\_, 20 \_\_\_\_, I accepted from the Custodian the attached copy of the Index of Exhibits, and all of the Exhibits listed therein, from the above Court Proceeding.

On \_\_\_\_\_, 20 \_\_\_\_, I returned the paper copies of all filed Exhibits to the Proponent/Counsel for Proponent as follows:

<i>Exhibit No.</i>	<i>Proponent/Counsel for Proponent</i>	<i>Delivery Method</i>
Eg. P1—6	Plaintiff, John Smith/Atty. Joe Jones	U.S. Mail

Custodian/Successor Custodian:

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

APPENDIX III  
Leh.R.J.A. 5102(b)(5)(ii)

Court of Common Pleas of Lehigh County  
TRANSFER OF PAPER-FORMAT EXHIBITS  
AT CONCLUSION OF COURT PROCEEDING

Acknowledgement of Receipt by Clerk of Judicial Records

Case Caption: \_\_\_\_\_

Case No(s): \_\_\_\_\_

Name of delivering Custodian: \_\_\_\_\_

Name of receiving Clerk of Judicial Records staff: \_\_\_\_\_

Date of Court Proceeding: \_\_\_\_\_

On this date, I accepted from the delivering Custodian the attached Index of Exhibits and all of the Exhibits listed therein.

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of receiving Clerk of Judicial Records staff

[Pa.B. Doc. No. 24-1075. Filed for public inspection August 2, 2024, 9:00 a.m.]

## Title 255—LOCAL COURT RULES

### NORTHAMPTON COUNTY

#### Administrative Order 2024-13; Electronic Filing in Criminal Dockets; No.: CP-48-AD-197-2024

##### Administrative Order

*And Now*, this 19th day of July, 2024, it is *Ordered and Decreed* that the Third Judicial District of the Commonwealth of Pennsylvania hereby adopts local rule N576.1, following hereto, employing electronic filing in Northampton County's criminal dockets.

It is further *Directed* that the Court Administrator of Northampton County shall comply with all publishing requirements set forth in Pa.R.J.A. 103(c)(5)-(6), such as: filing two (2) certified copies of this Order with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*; filing one (1) certified copy of the Order with the Administrative Office of Pennsylvania Courts; publishing a copy of this Order on the Court's website; and incorporating these procedures into the complete set of Northampton County Local Rules no later than thirty (30) days following publication in the *Pennsylvania Bulletin*.

This local rule shall become effective on September 3, 2024, after no less than thirty (30) days of publication in the *Pennsylvania Bulletin*.

*By the Court*

CRAIG A. DALLY,  
*President Judge*

#### ELECTRONIC FILING IN CRIMINAL DOCKETS

##### N576.1. Electronic Filing in Criminal Dockets.

(A) Per Pa.R.Crim.P. 576.1, the Northampton County Clerk of Courts Office and the Administrative Office of Pennsylvania Courts (AOPC) have agreed upon a plan to implement PACFile in Northampton County for certain criminal filings. Electronic filing for criminal matters is permissive and not mandatory.

(1) PACFile may be located on Pennsylvania's Unified Judicial System Web Portal at: <http://ujportal.pacourts.us/>

(B) As used in this rule, the following words shall have the following definitions:

(1) "*electronic filing*," the electronic submission of legal papers by means other than facsimile transmission and the acceptance of the document by the clerk of courts;

(2) "*filing party*," an attorney, defendant, or other person who files a legal paper by means of electronic filing;

(3) "*legal paper*," a pleading or other submission to the court, including motions, answers, notices, or other documents, of which filing is required or permitted, including orders, copies of exhibits, and attachments. The following documents are excluded from the definition of "legal paper" and are therefore prohibited from being filed electronically:

(a) applications for search warrants,

(b) applications for arrest warrants,

(c) any grand jury materials, except the indicting grand jury indictment or the investigating grand jury presentment,

(d) submissions filed *ex parte* as authorized by law,

(e) submissions filed or authorized to be filed under seal,

(f) exhibits offered into evidence, whether or not admitted, in a court proceedings;

(4) "*original document*," a legal paper filed electronically shall be deemed the original document, but copies of exhibits electronically filed do not constitute the original of the exhibit for evidentiary purposes;

(5) "*the system*," the PACFile electronic filing system, developed and administered by the Administrative Office of Pennsylvania Courts, is the exclusive system for electronic filing.

(C) Attorneys or self-represented parties who wish to file legal papers electronically must establish a PACFile account using the Unified Judicial System of Pennsylvania Web Portal. Pursuant to Pa.R.Crim.P. 576.1(D)(2), the establishment of a PACFile account constitutes consent to participate in electronic filing, which includes consenting to accepting electronic service of all legal papers filed using PACFile.

(D) *Filing Fees.*

(1) Applicable filing fees for electronically filed legal papers shall be paid electronically to the Clerk of Courts simultaneously with the filing.

(2) A party who was granted in forma pauperis status shall not pay filing fees to the Clerk of Courts.

(E) All filings shall comply with the Case Records Public Access Policy of the Unified Judicial System of Pennsylvania.

(F) *Service of Legal Papers.*

(1) Attorneys or self-represented parties who do not participate in the system, or who are unable to electroni-

cally file or accept service of electronically filed legal papers, or who cannot access the system, shall be allowed to file and serve legal papers in a physical paper format.

(2) Service of legal papers on any attorney or party who has not created a PACFile account, as provided in subsection (C), must be made in accordance with Pa.R.Crim.P. 114(B) and 576(b)

(3) Notification sent by the system to an attorney or defendant who has created a PACFile account, pursuant to subsection (C), will satisfy the service requirements of Pa.R.Crim.P. 114(B) and 576(b).

[Pa.B. Doc. No. 24-1076. Filed for public inspection August 2, 2024, 9:00 a.m.]