

THE COURTS

Title 201—RULES OF JUDICIAL ADMINISTRATION

[201 PA. CODE CH. 19]

Order Amending Rule 1905 of the Pennsylvania Rules of Judicial Administration; No. 626 Judicial Administration Docket

Order

Per Curiam

And Now, this 23rd day of October, 2024, pursuant to Article V, Section 10 of the Constitution of Pennsylvania, and in the interests of justice and efficient administration pursuant to Pa.R.J.A. No. 103(a)(3),

It Is Ordered that Rule 1905 of the Pennsylvania Rules of Judicial Administration is amended in the attached form.

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

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

Deletions from the rules are shown in bold and brackets.

Annex A

TITLE 201. RULES OF JUDICIAL ADMINISTRATION CHAPTER 19. MISCELLANEOUS ADMINISTRATIVE PROVISIONS

MISCELLANEOUS ADMINISTRATIVE PROVISIONS

Rule 1905. Investment Advisory Board.

(a) *General.* There is hereby established the Investment Advisory Board (“Board”), which shall consist of nine voting members. The Supreme Court shall appoint five members and the Board’s chair **and vice-chair**. The Disciplinary Board of the Supreme Court, the Pennsylvania Lawyers Fund for Client Security Board, the Pennsylvania Continuing Legal Education Board and the Pennsylvania Board of Law Examiners (“the program boards”) shall each appoint one member to serve on the Board. The Court Administrator and Counsel to the Supreme Court shall serve as *ex officio* members to the Board. All members of the Board shall serve at the pleasure of the Supreme Court.

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[Pa.B. Doc. No. 24-1567. Filed for public inspection November 1, 2024, 9:00 a.m.]

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART II. GENERAL ADMINISTRATION

[204 PA. CODE CH. 33]

Order Amending Rule 303 of the Pennsylvania Minor Judiciary Education Rules; No. 996 Supreme Court Rules Docket

Order

Per Curiam

And Now, this 21st day of October, 2024, pursuant to Article V, Section 10 of the Constitution of Pennsylvania,

and in the interests of justice and efficient administration pursuant to Pa.R.J.A. No. 103(a)(3),

It Is Ordered that Rule 303 of the Pennsylvania Minor Judiciary Education Rules is amended in the attached form.

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

Additions to the rules are in bold and are underlined.

Deletions from the rules are shown in bold and brackets.

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART II. GENERAL ADMINISTRATION

CHAPTER 33. MINOR JUDICIARY EDUCATION

Rule 303. Certification and Examination.

(a) All persons elected or appointed as judges shall be members of the bar of this Commonwealth or shall attend a certification course, which shall be at least forty (40) hours in length, and earn a passing score of seventy percent (70%) on **each section of** the certification examination prior to assuming office, as set forth in 42 Pa.C.S. § 3112—§ 3114 and Pa.R.J.A. 601(a).

* * * * *

[Pa.B. Doc. No. 24-1568. Filed for public inspection November 1, 2024, 9:00 a.m.]

Title 210—APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

[210 PA. CODE CHS. 3 AND 9]

Proposed Amendment of Pa.R.A.P. 341 and 904

The Appellate Court Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Pa.R.A.P. 341 and 904 for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. 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 report accompanying this proposal was prepared by the Committee to indicate the rationale for the proposed rulemaking. It will neither constitute a part of the rules nor be 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, Deputy Chief Counsel
Appellate Court Procedural Rules Committee
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
PO Box 62635
Harrisburg, PA 17106-2635
FAX: 717-231-9551
appellaterules@pacourts.us

All communications in reference to the proposal should be received by December 31, 2024. 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*

PETER J. GARDNER,
Chair

Annex A

TITLE 210. APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

ARTICLE I. PRELIMINARY PROVISIONS

CHAPTER 3. ORDERS FROM WHICH APPEALS MAY BE TAKEN

FINAL ORDERS

Rule 341. Final Orders; Generally.

(a) *General Rule.* Except as prescribed in subdivisions (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 subdivision (c) [**of this rule**]; or
- (4) is an order pursuant to subdivision (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 subdivision (c) [**must**] **shall** 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.

Comment:

*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 Pa.R.A.P. 311(d).

*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] Concerning orders made appealable pursuant to subdivision (b)(1)—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, e.g., K.H. v. J.R.*, 826 A.2d 863, 870-71 (Pa. 2003) (notice of appeal following trial); *Betz v. Pneumo Abex LLC*, 44 A.3d 27, 54 (Pa. 2012) (notice of appeal of summary judgment); *Laster v. Unemployment Comp. Bd. of Rev.*, 80 A.3d 831, 832 n.2 (Pa.Cmwlt. 2013) (petition for review of agency decision). **See also Pa.R.A.P. 904, cmt. at ¶ 2.**

[Where] If, 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 subdivisions (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 subdivision (b)(2)—*Former subdivision (b)(2) provided for appeals of orders defined as final by

statute. The 2015 rescission of subdivision (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 subdivision (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 subdivision (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 subdivision (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).

Subdivision (c)—Determination of finality—Subdivision (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 subdivision (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 subdivision (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.

Subdivision (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 subdivision (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).

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

Pa.R.A.P. 902 addresses whether separate notices of appeal are required to be filed where an order appealable under this rule is entered on more than one docket.

ARTICLE II. APPELLATE PROCEDURE

CHAPTER 9. APPEALS FROM LOWER COURTS

Rule 904. Content of the Notice of Appeal.

(a) *Form*. Except as otherwise prescribed by this rule, the notice of appeal shall be in substantially the following form:

COURT OF COMMON PLEAS
OF _____ COUNTY

[**Party A’s full name**] _____, Plaintiff(s):

v.

[**Party B’s full name**] _____, Defendant(s):

Docket or File No. _____

Offense Tracking Number _____

NOTICE OF APPEAL

[**Notice is hereby given that _____, defendant above named, hereby appeals to the (Supreme) (Superior) (Commonwealth) Court of Pennsylvania from the order entered in this matter on the ____ day of _____, 20 ____ . This order has been entered in the docket as evidenced by the attached copy of the docket entry.]**

(name all parties taking the appeal) appeal to the (Superior) (Commonwealth) (Supreme) Court of Pennsylvania from the order entered on _____ (state the date the order

was entered). This order has been entered upon the docket as evidenced by the attached copy of the docket entry.

(S) _____

(Address and telephone number)

(Email address)

(b) *Caption.*

(1) *General Rule.* [**The parties shall be stated in the caption as they appeared on the record of the trial court at the time the appeal was taken.**] **The caption of the notice of appeal shall set forth all parties appearing on the record in the trial court on the date the appeal is taken.**

(2) *Appeal of Custody Action.* In an appeal of a custody action where the trial court has used the full name of the parties in the caption, upon application of a party and for cause shown, an appellate court may exercise its discretion to use the initials of the parties in the caption based upon the sensitive nature of the facts included in the case record and the best interest of the child.

(c) *Request for Transcript.* The request for transcript contemplated by Pa.R.A.P. 1911 or a statement signed by counsel that either there is no verbatim record of the proceedings or the complete transcript has been lodged of record shall accompany the notice of appeal, but the absence of or defect in the request for transcript shall not affect the validity of the appeal.

(d) *Docket Entry.* The notice of appeal shall include a statement that the order appealed from has been entered on the docket. A copy of the docket entry showing the entry of the order appealed from shall be attached to the notice of appeal.

(e) *Content in Criminal Cases.* If the Commonwealth takes an appeal pursuant to Pa.R.A.P. 311(d), the notice of appeal shall include a certification by counsel that the order will terminate or substantially handicap the prosecution.

(f) *Content in Children's Fast Track Appeals.* In a children's fast track appeal, the notice of appeal shall include a statement advising the appellate court that the appeal is a children's fast track appeal.

(g) *Content in Orphans' Court Appeals.* In an orphans' court appeal, the notice of appeal shall include a statement advising the appellate court that the appeal is an orphans' court appeal.

(h) *Completely Consolidated Civil Cases.* In an appeal of completely consolidated civil cases where only one notice of appeal is filed, a copy of the consolidation order shall be attached to the notice of appeal.

Comment:

The Offense Tracking Number (OTN) is required only in an appeal in a criminal proceeding. It enables the Administrative Office of the Pennsylvania Courts to collect and forward to the Pennsylvania State Police information pertaining to the disposition of all criminal cases as provided by the Criminal History Record Information Act, 18 Pa.C.S. §§ 9101 *et seq.*

Pursuant to Pa.R.A.P. 341(b)(1), a final order encompasses all prior non-final orders for purposes of

appeal. Therefore, a party need not list any prior non-final order in the notice of appeal. See Pa.R.A.P. 341, cmt. ¶ 4.

The notice of appeal must include a statement that the order appealed from has been entered on the docket. Because generally a separate notice of appeal must be filed on each docket on which an appealable order is entered so as to appeal from that order, see Pa.R.A.P. 902(a), the appellant is required to attach to the notice of appeal a copy of the docket entry showing the entry of the order appealed from on that docket. The appellant does not need to certify that the order has been reduced to judgment. This omission does not eliminate the requirement of reducing an order to judgment before there is a final appealable order where required by applicable practice or case law.

Subdivision (b)(1) emphasizes the necessity for the caption to set forth all parties who appear on the record in the trial court on the date an appeal is taken in order to aid the appellate court in accurately identifying the parties in the appeal. A party shall not use "et al" in a caption. Subdivision (b)(2) provides the authority for an appellate court to initialize captions in custody appeals. *See also* Pa.R.Civ.P. 1915.10.

Information regarding the appropriate appellate court to which an appeal should be taken can be found on the website of the Unified Judicial System at <https://www.pacourts.us/learn>.

With respect to subdivision (e), in *Commonwealth v. Dugger*, 486 A.2d 382, 386 (Pa. 1985), the Supreme Court held that the Commonwealth's certification that an order will terminate or substantially handicap the prosecution is not subject to review as a prerequisite to the Superior Court's review of the merits of the appeal. The principle in *Dugger* has been incorporated in and superseded by Pa.R.A.P. 311(d). *Commonwealth v. Dixon*, 907 A.2d 468, 471 n.8 (Pa. 2006). Thus, the need for a detailed analysis of the effect of the order, formerly necessarily a part of the Commonwealth's appellate brief, has been eliminated.

A party filing a cross-appeal should identify it as a cross-appeal in the notice of appeal to assure that the prothonotary will process the cross-appeal with the initial appeal. *See also* Pa.R.A.P. 2113, 2136, and 2185 regarding briefs in cross-appeals and Pa.R.A.P. 2322 regarding oral argument in multiple appeals.

See Pa.R.A.P. 342 for the orders that may be appealed as of right in orphans' court matters.

A party appealing completely consolidated civil cases using one notice of appeal must attach a copy of the consolidation order to the notice of appeal to assure the applicability of Pa.R.A.P. 902.

* * * * *

**SUPREME COURT OF PENNSYLVANIA
APPELLATE COURT PROCEDURAL RULES
COMMITTEE**

PUBLICATION REPORT

Proposed Amendment of Pa.R.A.P. 341 and 904

The Appellate Court Procedural Rules Committee is considering proposing to the Supreme Court the amendment of Pennsylvania Rules of Appellate Procedure 341 and 904 to clarify and refine the language in the form notice of appeal in Pa.R.A.P. 904. Additional corollary amendments are proposed for Pa.R.A.P. 341.

Pursuant to a request, the Committee examined the language set forth in the form notice of appeal in

Pa.R.A.P. 904, which states that notice is given to the appropriate appellate court from the order entered upon the lower court's docket. It provides:

Notice is hereby given that _____, defendant above named, hereby appeals to the (Supreme) (Superior) (Commonwealth) Court of Pennsylvania from the order entered in this matter on the _____ day of _____, 20____. This order has been entered in the docket as evidenced by the attached copy of the docket entry.

The requester indicated that form notice referring to "order" in the singular was ambiguous and misleading because it could lead to the conclusion that the only order that must be referenced is the final order. The requester suggested a revision to the last sentence stating that "[T]his order (or orders) has been entered in the docket. . ." would clarify that "order" includes any and all orders in the entire case, including any pre-trial orders for which a party requests appellate review.

The Committee observed that neither the form notice of appeal nor the commentary to Pa.R.A.P. 904 makes any mention that 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; that guidance is found in the commentary to Pa.R.A.P. 341 relating to final orders. *See* Pa.R.A.P. 341, cmt. ¶ 4. The Committee proposes adding a statement to the commentary of Pa.R.A.P. 904 to indicate that non-final orders are merged into the final order for the purposes of appeal. The Committee also proposes adding a cross reference to Pa.R.A.P. 904 in the commentary to Pa.R.A.P. 341.

The Committee also proposes amending the text of the form notice of appeal in Pa.R.A.P. 904 to update the language and change the sequence of the list of appellate courts in the form. Commentary would also be added to emphasize that only the final order should be listed in the notice of appeal and that it is not necessary to list any prior non-final orders that merged into the final order.

Finally, the Committee proposes amending Pa.R.A.P. 904(b) to clarify that the caption in the notice of appeal must state all parties as they appeared on the record in the trial court at the time the appeal was taken. This change will aid the filing office of the appellate court in identifying the parties involved in an appeal and have the docket accurately reflect who is a participant. Commentary was added in Pa.R.A.P. 904 to emphasize this requirement.

Accordingly, the Committee invites all comments, objections, concerns, and suggestions regarding this proposed rulemaking.

[Pa.B. Doc. No. 24-1569. Filed for public inspection November 1, 2024, 9:00 a.m.]

Title 210—APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE [210 PA. CODE CH. 19]

Proposed Amendment of Pa.R.A.P. 1925

The Appellate Court Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Pa.R.A.P. 1925(c)(3) for the reasons

set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. 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 report accompanying this proposal was prepared by the Committee to indicate the rationale for the proposed rulemaking. It will neither constitute a part of the rules nor be 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, Deputy Chief Counsel
Appellate Court Procedural Rules Committee
Supreme Court of Pennsylvania
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All communications in reference to the proposal should be received by December 31, 2024. 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*

PETER J. GARDNER,
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 RECORD ON APPEAL FROM LOWER COURT

(*Editor's Note:* Rule 1925 as printed in 210 Pa. Code reads "Official Note" rather than "Note.")

Rule 1925. Opinion in Support of Order.

* * * * *

(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**] a **criminal defendant**-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.

* * * * *

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

* * * * *

[**Paragraph**] **Subdivision** (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**] **Subdivision** (c)(1): This [**subparagraph**] **subdivision** 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. **The 2024 amendment was technical in nature and did not alter practice or procedure.**

[**Subparagraph**] **Subdivision** (c)(2): This [**subparagraph**] **subdivision** 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**] **Subdivision** (c)(3): This [**subparagraph**] **subdivision** allows an appellate court to remand in criminal cases only when [**an**] a **criminal defendant**-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**] **subdivision** (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**] **Self-represented** appellants **and the Commonwealth** are excluded from this exception to the waiver doctrine as set forth in *Commonwealth v. Lord*, 719 A.2d 306 (Pa. 1998). **The rule supersedes the holdings in *Commonwealth v. Grohowski*, 980 A.2d 113 (Pa. Super. 2009), and *Commonwealth v. Baker*, 311 A.3d 12 (Pa. Super. 2024).**

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**] **subdivision** (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**] **subdivision**, and any appellant who is able to demonstrate *per se* ineffectiveness is entitled to a remand. Accordingly, this [**subparagraph**] **subdivision** 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**] **Subdivision** (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.

SUPREME COURT OF PENNSYLVANIA
APPELLATE COURT PROCEDURAL RULES
COMMITTEE

PUBLICATION REPORT

Proposed Amendment of Pa.R.A.P. 1925

The Appellate Court Procedural Rules Committee is considering proposing to the Supreme Court the amendment of Pennsylvania Rule of Appellate Procedure 1925 to clarify that it is the criminal defendant-appellant, and not the Commonwealth, who is afforded the exception to the bright-line waiver standard in *Commonwealth v. Lord*, 710 A.2d 306 (Pa. 1988), set forth in subdivision (c)(3) when there is a failure to file a timely Pa.R.A.P. 1925(b) Statement.

Current Pa.R.A.P. 1925(c)(3) provides:

(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.

(Emphasis added.)

In the recent decision of *Commonwealth v. Baker*, 311 A.3d 12 (Pa. Super. 2024), the Superior Court examined the question of whether the Commonwealth, an appellant, had waived all issues for failure to file a timely Pa.R.A.P. 1925(b) statement. The majority interpreted Pa.R.A.P. 1925(c)(3) to apply to the Commonwealth in this circumstance. It ultimately held the Commonwealth did not waive its issues because the trial court had an adequate opportunity to prepare an opinion addressing the issues raised on appeal, and cited to *Commonwealth v. Burton*, 973 A.2d 428 (Pa. Super. 2009) as support for this conclusion.

The concurring opinion questioned whether the waiver exception for appellants in criminal cases as set forth in Pa.R.A.P. 1925(c)(3) applied to the Commonwealth, and would have found that the Commonwealth waived all issues for failure to file a timely 1925(b) statement under the Supreme Court's the bright-line waiver standard set forth in *Commonwealth v. Lord*. The concurring opinion also noted that there was some question about the reach of the waiver exception in light of the Superior Court's holding in *Commonwealth v. Grohowski*, 980 A.2d 113 (Pa. Super. 2009), which reached the same conclusion as the majority in *Baker* that the exception to waiver in Pa.R.A.P. 1925(c)(3) applies to the Commonwealth when there is a failure to file a statement or is done so untimely. Citing to the dissenting opinion in *Grohowski*, the concurrence noted, among other points, that the concept of *per se* ineffectiveness is a term of art particular to criminal defense lawyers, not prosecutors, and the reason for the exception was to forestall claims under the Post Conviction Relief Act. 311 A.3d at 22 (Olson, J., concurring), citing *Grohowski*, 980 A.2d at 117 (Klein, J., dissenting).

The Committee is proposing to clarify this subdivision and its accompanying commentary. First, the Committee proposes that Pa.R.A.P. 1925(c)(3) be modified to explicitly state that this subdivision applies only to appellants who are criminal defendants, thereby excluding the Commonwealth from its scope. The Committee notes that the dissenting opinion in *Grohowski*, which also questioned whether subdivision (c)(3) applied to the Commonwealth, suggested that if the subdivision was intended to apply to only criminal defendants, "appellant" should be clarified as the "criminal defendant-appellant." 980 A.2d at 117. The proposed amendment incorporates this language; a similar change is proposed for the commentary discussing subdivision (c)(3).

The Committee also proposes amending the commentary to explicitly state that the exception in subdivision (c)(3) is not available to the Commonwealth, and to add a statement indicating that the rule supersedes both *Grohowski* and *Baker*.

Accordingly, the Committee invites all comments, objections, concerns, and suggestions regarding this proposed rulemaking.

[Pa.B. Doc. No. 24-1570. Filed for public inspection November 1, 2024, 9:00 a.m.]

Title 255—LOCAL COURT RULES

CRAWFORD COUNTY

In the Matter of the Modification of Local Civil Rules of Procedure; No. AD 2008-1807

Order

And Now, October 17, 2024, the Court Orders as follows:

1. Local Rules of Civil Procedure 1915.3 and 1915.15 (concerning custody) are amended in the forms presented as follows, in which deletions are shown in bold and brackets, and additions are shown in bold and underlined;

2. Exhibit 1915.3 to Cra.R.Civ.P. 1915.3 is hereby deleted;

3. Local Rule of Civil Procedure 1915.4-1 is hereby rescinded.

4. Local Rule of Civil Procedure 1915.4-3 is hereby adopted in the form presented as follows; and

5. This Order shall be processed in accordance with Pa.R.J.A. 103(d), and effective thirty days after publication in the *Pennsylvania Bulletin*.

By the Court

JOHN F. SPATARO,
President Judge

Rule L1915.3. Commencement of Action. Complaint. Order.

Order for [**Mediator's**] **Custody** Conference.

Each custody complaint shall contain [**the following**] **a** notice and order to appear before a [**custody mediator:**] **conference officer, substantially in the form provided by the District Court Administrator and posted on the County website.**

Rule L1915.4-3. Non-Record Proceedings.

(1) *Custody Conference. Conference Officer.*

The initial proceeding in all custody cases shall be non-record before the County custody conference officer, in conformity with Pa.R.Civ.P. 1915-4-3(a). A conference officer shall be appointed by the President Judge in all cases where the County's conference officer is unable to serve. Custody conferences shall be held at Level 4 of the Judicial Center except as otherwise directed by the conference officer.

Every party who 1) initiates a custody action by the filing of a custody complaint, 2) includes a custody count in filing a divorce action, or 3) petitions for modification of custody, shall, in addition to any filing fee assessed by the Prothonotary, pay to the Prothonotary a custody conference fee in an amount to be set from time to time by administrative order of court.

(2) *Custody Questionnaire.*

Each party shall complete and bring to the custody conference a questionnaire in the form provided by the District Court Administrator and posted on the County website, which shall be sent to the parties by the conference officer along with a notice of the conference.

(3) *Purpose.*

The parties, with the aid and assistance of the conference officer, shall make a good faith effort to resolve the issues and reach an agreement that meets the best interest of the child(ren).

(4) *Conference Officer’s Report. Court Order.*

If the parties reached an agreement, the conference officer shall submit a conference report to the court, along with a proposed order which sets forth the terms of the parties’ agreement. Copies of the conference report and proposed order shall be promptly provided to the parties. The court shall issue a custody order in conformity with the proposed order, within twenty days of which custody order, any party may file a request for trial de novo.

If no agreement was reached by the parties, the conference officer shall submit a conference report and proposed order to the parties and to the District Court Administrator, who shall schedule a pretrial conference before the court, at which the presiding judge will issue an interim order pending a trial. Upon the unexcused absence of a party at the pretrial conference, the court may issue a custody order in conformity with the proposed order, and cancel the trial if already scheduled.

Rule L1915.15. Petition to Modify a [**Partial**] Custody [**or Visitation**] Order.

(1) [**Order for Mediator’s Conference.**

Each [**A**] petition to modify a custody [**or visitation**] order shall have attached thereto a notice and order to appear in the form [**found on page 67 of the Crawford County Rules of Civil Procedure following Cra.R.C.P.1915.3 in lieu of the order of Court that is contained in Pa.R.C.P. 1915.15(c)**] **provided by the District Court Administrator and posted on the County website.**

(2) [**Each**] **A** petition to modify must include the current addresses **and telephone numbers** of the parties.

[(3) **Mediation.**

The mediation process set forth in Cra.R.C.P. 1915.4-1 shall apply to petitions to modify a partial custody or visitation order.]

[Pa.B. Doc. No. 24-1571. Filed for public inspection November 1, 2024, 9:00 a.m.]

Title 255—LOCAL COURT RULES

MONTGOMERY COUNTY

Amendment to Local Rule of Judicial Administration 5104*—Custody of Exhibits.; No. 2024-00001

Order

And Now, this 18th day of October, 2024, the Court hereby amends Montgomery County Local Rule of Judi-

cial Administration 5104*—Custody of Exhibits. This Amended Local Rule shall become effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

The Court Administrator is directed to publish this Order once in the *Montgomery County Law Reporter* and in *The Legal Intelligencer*. In conformity with Pa.R.J.A. 103, one (1) certified copy of this Order shall be filed with the Administrative Office of Pennsylvania Courts. Two (2) certified copies shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*. One (1) copy shall be filed with the Law Library of Montgomery County, and one (1) copy with each Judge of this Court. This Order shall also be published on the Court’s website and incorporated into the complete set of the Court’s Local Rules.

By the Court

CAROLYN T. CARLUCCIO,
President Judge

Additions are in bold face and are underscored.

Local Rule of Judicial Administration 5104*. Custody of Exhibits.

- (a) . . .
- (b) . . .

(c) *Standards for Filing of Exhibits with the Records Office.* At the conclusion of the court proceeding, the custodian shall comply with the requirements of Pa.R.J.A. 5102(b). All documentary exhibits shall be submitted to the record office by the custodian within five (5) business days following the close of the court proceeding. Exhibits may be e-filed with the record office, if available, and if provided to the custodian in electronic format. Nothing in this rule shall prevent the filing of exhibits prior to court proceedings, as is the current practice in juvenile dependency cases. **Once filed, original exhibits returned by the record office to a court reporter, designated as custodian herein, do not need to be maintained thereafter by the court reporter. Once filed, original exhibits returned by the record office to a non-court reporter custodian shall be retained as required by relevant statute or rule. (See Pa.R.C.P. No. 205.4(b)(4))**

- (d) . . .
- (e) . . .
- (f) . . .
- (g) . . .
- (h) . . .

[Pa.B. Doc. No. 24-1572. Filed for public inspection November 1, 2024, 9:00 a.m.]