

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

NOTICE OF PROPOSED RULEMAKING

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:

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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

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 - (2) (Rescinded);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.

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.** When 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]** **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.