

THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT [204 PA. CODE CHS. 85 AND 89]

Amendments to the Rules of Organization and Procedure of The Disciplinary Board of the Supreme Court of Pennsylvania; Doc. R-108

Order No. 48

Adopting Amendments to the Rules and Procedures of the Board relating to Recusal and Reinstatement

In this Order, The Disciplinary Board of the Supreme Court of Pennsylvania is adopting amendments to its Rules of Organization and Procedure relating to the procedures for (i) recusal of members of the Board or a hearing committee or a special master and (ii) reinstatement of formerly admitted attorneys.

Pa.R.D.E. 220 provides for the recusal of members of the Board or hearing committees or special masters under certain circumstances. The amendment to 204 Pa. Code § 85.11 being adopted by this Order establishes the procedures to be followed when such a motion is made.

Pa.R.D.E. 208(g)(1) provides that when the expenses of a formal proceeding are taxed against a respondent-attorney the expenses must be paid within 30 days after the entry of the order taxing the expenses. Pa.R.D.E. 531 provides that a respondent-attorney may not be reinstated until the Lawyers Fund for Client Security has been reimbursed for any disbursements it has made as a result of the conduct of the respondent-attorney. Notwithstanding those rules, the Board has encountered situations where formerly admitted attorneys have sought reinstatement before the taxed costs have been paid or the Lawyers Fund for Client Security has been reimbursed. This Order is accordingly amending several provisions of the Rules of the Board to provide expressly that reinstatement may not be sought until all taxed costs have been paid and reimbursement has been made.

A Notice of Proposed Rulemaking regarding the changes being adopted by this Order was published in the *Pennsylvania Bulletin* on January 22, 1996. No comments were received in response.

The Disciplinary Board of the Supreme Court of Pennsylvania hereby finds that the amendments to the Rules of Organization and Procedure of the Board adopted hereby are not inconsistent with the Pennsylvania Rules of Disciplinary Enforcement and are necessary and appropriate for the administration of the affairs of the Board.

The Board, acting pursuant to Rule 205(c)(10) of the Pennsylvania Rules of Disciplinary Enforcement, orders:

(1) Title 204 of the *Pennsylvania Code* is hereby amended as set forth in Annex A hereto.

(2) The Secretary of the Board shall duly certify this Order, and deposit the same with Administrative Office of Pennsylvania Courts as required by Pa.R.J.A. 103(c).

(3) The amendments adopted hereby shall take effect upon publication in the *Pennsylvania Bulletin* and shall apply to all disciplinary proceedings thereafter commenced and, insofar as just and practical, to proceedings pending at the time.

(4) This order shall take effect immediately.

By The Disciplinary Board of the Supreme Court of Pennsylvania

ELAINE BIXLER,
Secretary

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

Subpart C. DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA

CHAPTER 85. GENERAL PROVISIONS

§ 85.11. Recusal.

* * * * *

(b) *Procedure for recusal.* Enforcement Rule 220(b) provides that a motion to disqualify a member of the Board or of a hearing committee or a special master shall be made in accordance with these rules, but the making of such a motion shall not stay the conduct of the proceedings or disqualify the challenged member or special master pending disposition of the motion. **The procedures applicable to a motion for recusal shall be as follows:**

(1) **The motion shall be filed and served in accordance with Subchapter 89A (relating to preliminary provisions).**

(2) **In the case of a motion to disqualify a member of a hearing committee or special master, the motion must be filed within 15 days after the party filing the motion has been given notice of the referral of the matter to the hearing committee or special master.**

(3) **The motion shall be ruled upon by the challenged member or special master.**

(4) **An interlocutory appeal from the decision on the motion, which appeal shall be ruled upon by the Board Chairman, may be filed within five days after the decision on the motion.**

CHAPTER 89. FORMAL PROCEEDINGS

Subchapter F. REINSTATEMENT AND RESUMPTION OF PRACTICE

REINSTATEMENT OF FORMERLY ADMITTED ATTORNEYS

§ 89.272. Waiting period.

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(b) *Premature petitions.* Unless otherwise provided in an order of suspension or disbarment, the Board will not entertain a petition for reinstatement filed more than nine months prior to the expiration of the period set forth in subsection (a), or of the suspension, as the case may be. **The Board will also not entertain a petition for**

reinstatement filed before the formerly admitted attorney has paid in full any costs taxed under § 89.209 (relating to expenses of formal proceedings) and has made any required restitution to the Lawyers Fund for Client Security under Enforcement Rule 531 (relating to restitution a condition for reinstatement).

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§ 89.273. Procedures for reinstatement.

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(b) Attorneys suspended for less than one year: Enforcement Rule 218(f) provides that:

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(3) A verified statement may not be filed under paragraph (1) until the formerly admitted attorney has paid in full any costs taxed under § 89.209 (relating to expenses of formal proceedings) and has made any required restitution to the Lawyers Fund for Client Security under Enforcement Rule 531 (relating to restitution a condition for reinstatement).

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§ 89.274. Notice of reinstatement proceedings.

(a) General rule. The Office of the Secretary shall forward a copy of the petition for reinstatement and Form DB-30 (Reference for Reinstatement Hearing) to:

* * * * *

(6) The Executive Director of the Lawyers Fund for Client Security.

* * * * *

§ 89.275. Completion of questionnaire by respondent-attorney.

(a) General rule. If the petition for reinstatement does not have attached thereto a fully completed Form DB-36 (Reinstatement Questionnaire), the Office of the Secretary shall forward to the formerly admitted attorney four copies of Form DB-36 which shall require such attorney to set forth fully and accurately the following information and such other information as the Office of Disciplinary Counsel may require:

* * * * *

(16) An itemization of any costs taxed under § 89.209 (relating to expenses of formal proceedings) and any required restitution to the Lawyers Fund for Client Security under Enforcement Rule 531 (relating to restitution a condition for reinstatement), and a statement that all of those amounts have been paid in full.

(17) A concise statement of facts claimed to justify reinstatement to the bar of this Commonwealth.

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[Pa.B. Doc. No. 96-665. Filed for public inspection April 26, 1996, 9:00 a.m.]

Title 210—APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

[210 PA. CODE CH. 3]

Amendments to Rule 311; No. 100; Doc. No. 1

Order

Per Curiam:

And Now, this 10th day of April, 1996, the amendments to Rule 311 of the Pennsylvania Rules of Appellate Procedure and the Note to Rule 311 are adopted as follows.

This order shall be processed in accordance with Rule 103(b), Pa.R.J.A. and shall become effective April 27, 1996.

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

INTERLOCUTORY APPEALS

Rule 311. Interlocutory Appeals as of Right.

(a) General rule. [Except as otherwise prescribed by general rule, an] An appeal may be taken as of right and without reference to Pa.R.A.P. 341(c) from:

* * * * *

(2) Attachments, etc. An order confirming, modifying or dissolving or refusing to confirm, modify or dissolve an attachment, custodianship, receivership or similar matter affecting the possession or control of property, except for [attachments pursuant to Sections 401(c) and 403 (a) of the Divorce Code, Act of April 2, 1980, P. L. 63, 23 P. S. §§ 401(c) and 403(a)] orders pursuant to Sections 3323(f) and 3505(a) of the Divorce Code, 23 Pa.C.S. §§ 3323(f) and 3505(a).

* * * * *

(4) Injunctions. An order granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions, except for injunctions pursuant to [Sections 401(c) and 403(a) of the Divorce Code, Act of April 2, 1980, P. L. 63, 23 P. S. §§ 401(c) and 403(a)] Sections 3323(f) and 3505(a) of the Divorce Code, 23 Pa.C.S. §§ 3323(f) and 3505(a). A decree nisi granting or denying an injunction is not appealable as of right under this rule, unless the decree nisi (i) grants an injunction effective upon the entry of a decree nisi or (ii) dissolves a previously granted preliminary injunction effective upon the entry of a decree nisi.

(5) Peremptory judgment in mandamus. An order granting peremptory judgment in mandamus.

[(5)] (6) ***

[(6)] (7) ***

[(7)] (8) ***

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(d) *Commonwealth Appeals in Criminal Cases.* In a criminal case, under the circumstances provided by law, the Commonwealth may take an appeal as of right from an order that does not end the entire case [**but**] where the Commonwealth [**asserts**] **certifies in the notice of appeal** that the order will terminate or substantially handicap the prosecution.

* * * * *

The official Note to Rule 311 is rescinded and replaced with the following:

Official Note: Authority—This rule implements 42 Pa.C.S. § 5105(c) (interlocutory appeals), which provides:

(c) **Interlocutory appeals.** There shall be a right of appeal from such interlocutory orders of tribunals and other government units as may be specified by law. The governing authority shall be responsible for a continuous review of the operation of section 702(b) (relating to interlocutory appeals by permission) and shall from time to time establish by general rule rights to appeal from such classes of interlocutory orders, if any, from which appeals are regularly allowed pursuant to section 702(b).

The appeal rights under this rule, and under Rule 312 (interlocutory appeals by permission), Rule 313 (collateral orders), Rule 341 (final orders generally), and Rule 342 (final distribution orders), are cumulative; and no inference shall be drawn from the fact that two or more rules may be applicable to an appeal from a given order.

Subdivision (a)—If an order falls under Rule 311, an immediate appeal may be taken as of right simply by filing a notice of appeal. The procedures set forth in Rules 341(c) and 1311 do not apply to an appeal under Rule 311.

Subdivision (a), Paragraph (a)(1) (Affecting judgments)—The 1989 amendment to paragraph (a)(1) eliminated interlocutory appeals of right from orders opening, vacating, or striking off a judgment while retaining the right of appeal from an order refusing to take any such action.

Paragraph (a)(2) (Attachments, etc.)—The 1987 Amendment to paragraph (a)(2) is consistent with appellate court decisions disallowing interlocutory appeals in matrimonial matters. *Fried v. Fried*, 509 Pa. 89, 501 A.2d 211 (1985); *O'Brien v. O'Brien*, 359 Pa. Super. 594, 519 A.2d 511 (1987).

Paragraph (a)(3) (Change of criminal venue or venire)—Under prior practice, either a defendant or the Commonwealth could appeal an order changing venue. See former Pa.R.Crim.P. 311(a) (Third sentence) before amendment of June 29, 1977, 471 Pa. XLIV. An order refusing to change venue is not appealable. *Commonwealth v. Swanson*, 424 Pa. 192, 225 A.2d 231 (1967). This rule makes no change in existing practice.

Change of venire is authorized by 42 Pa.C.S. § 8702 (impaneling jury from another county). Pa.R.Crim.P. 312 (motion for change of venue or change of venire) treats changes of venue and venire the same. Thus an order changing venire is appealable by the defendant or the Commonwealth, while an order refusing to change venire is not.

See also Rule 903(c)(1) regarding time for appeal.

Paragraph (a)(4) (Injunctions)—The 1987 amendment to paragraph (a)(4) is consistent with appellate court decisions disallowing interlocutory appeals in matrimonial matters. *Fried v. Fried*, 509 Pa. 89, 501 A.2d 211 (1985); *O'Brien v. O'Brien*, 359 Pa. Super. 594, 519 A.2d 511 (1987).

The 1996 amendment to paragraph (a)(4) reconciled two conflicting lines of cases by adopting the position that generally an appeal may not be taken from a decree nisi granting or denying a permanent injunction. *Humphreys v. Cain*, 84 Pa. Cmwlth. 222, 474 A.2d 353 (1984). To the extent that *Agra Enterprises Inc. v. Brunozzi*, 302 Pa. Super. 166, 170, 448 A.2d 579, 581 (1982); *Martin Industrial Supply Corp. v. Riffert*, 366 Pa. Super. 89, 91, 530 A.2d 906, 907 (1987); *Bolus v. Ryder Truck Rental, Inc.*, 258 Pa. Super. 387, 388, 517 A.2d 995, 996 (1986); *Commonwealth ex. rel. Lewis v. Allowill Realty Corp.*, 330 Pa. Super. 32, 35, 478 A.2d 1334, 1336 (1984); and *Neshaminy Constructors, Inc. v. Philadelphia, Pennsylvania Building and Construction Trades Council, AFL-CIO*, 303 Pa. Super. 420, 422 n.1, 449 A.2d 1389, 1390 n.1 (1982) permit an immediate appeal from a decree nisi granting or denying prospective injunctive relief, they are overruled.

The 1996 amendment to paragraph (a)(4) simultaneously recognized two exceptions to the non-appealability of a decree nisi; these exceptions, identified as phrases (a)(4)(i) and (ii), permit an appeal from a decree nisi if the order has the immediate effect of changing the status quo. Thus, if the decree nisi grants or denies permanent injunctive relief to become effective when the decree nisi is made final, no appeal is possible. If, however, the decree nisi provides for permanent injunctive relief upon entry of the decree nisi, or strikes a previously granted preliminary injunction upon entry of the decree nisi, the decree nisi is appealable pursuant to phrase (a)(4)(i) or (ii).

Paragraph (a)(5) (Peremptory judgment in mandamus)—Paragraph (a)(5), added in 1996, authorizes an interlocutory appeal as of right from an order granting a motion for peremptory judgment in mandamus without the condition precedent of a motion to open the peremptory judgment in mandamus. Under prior practice established in *Hamby v. Stoe*, 448 Pa. 483, 295 A.2d 309 (1972), an order granting peremptory judgment in mandamus was not appealable; only the order denying a motion to open the peremptory judgment in mandamus was appealable. The 1996 amendment eliminated the need to move to open. The January 1, 1996 amendment to Pa.R.C.P. 1098 eliminates the former practice of filing a petition to open a peremptory judgment in mandamus. The 1996 amendment overrules *Hamby v. Stoe* and other decisions that quashed appeals that were taken from the peremptory judgment in mandamus rather than the order denying the motion to open the judgment, e.g., *Butler v. Emerson*, 76 Pa. Cmwlth. 156, 463 A.2d 109 (1983); *Mertz v. Lakatos*, 21 Pa. Cmwlth. 291 (1975); *Ellenbogen v. Larsen*, 16 Pa. Cmwlth. 353, 328 A.2d 587 (1974). An order denying a motion for peremptory judgment in mandamus remains unappealable.

Paragraph (a)(8) (Other cases)—Paragraph (a)(8) is directed primarily to statutes and general rules hereafter enacted or promulgated. The current text

of the Pennsylvania Rules of Civil Procedure, the Pennsylvania Rules of Criminal Procedure, etc., should be consulted to identify any interlocutory appeal rights provided for therein. See also, e.g., 42 Pa.C.S. § 7320 (appeals from court orders), concerning appeals from certain orders in nonjudicial arbitration proceedings, which section is not suspended by these rules. See Rule 5102(a) (Judicial Code unaffected).

Subdivision (b) (Order sustaining venue or personal or in rem jurisdiction)—Subdivision (b) is based in part on the Act of March 5, 1925, P. L. 23 (order ruling on question of jurisdiction). The term “civil action or proceeding” is broader than the term “proceeding at law or in equity” under the prior practice and is intended to include orders entered by the orphans’ court division. Cf. In the Matter of Phillips, 471 Pa. 289, 370 A.2d 307 (1977).

In paragraph (b)(1), a plaintiff is given a qualified (because it can be overridden by petition for and grant of permission to appeal under Rule 312 (interlocutory appeals by permission)) option to gamble that the venue of the matter or personal or in rem jurisdiction will be sustained on appeal. Paragraph (g)(ii) provides that if the plaintiff timely elects final treatment, the failure of the defendant to appeal constitutes a waiver. The appeal period under Rule 903 (time for appeal) ordinarily runs from the entry of the order, and not from the date of filing of the election, which procedure will ordinarily afford at least 20 days within which to appeal. See Rule 903(c) as to treatment of special appeal times. If the plaintiff does not file an election to treat the order as final, the case will proceed to trial unless (1) the trial court makes a finding under Paragraph (b)(2) of the existence of a substantial question of jurisdiction and the defendant elects to appeal, (2) an interlocutory appeal is permitted under Rule 312 or (3) another basis for appeal appears, e.g., under paragraph (a)(1), and an appeal is taken. Presumably a plaintiff would file such an election where he desires to force the defendant to decide promptly whether the objection to venue or jurisdiction will be seriously pressed. Subdivision (b) does not cover orders that do not sustain jurisdiction because they are, of course, final orders appealable under Rule 341.

Subdivision (b)(2) (Substantial issue of venue or jurisdiction)—The 1989 amendment to paragraph (b)(2) permits an interlocutory appeal as of right where the trial court certifies that a substantial question of venue is present. This eliminated an inconsistency formerly existing between subdivision (b) and paragraph (b)(2).

Subdivision (c) (Changes of venue, etc.)—Subdivision (c) is based in part on the act of March 5, 1925 (P. L. 23, No. 15) (order ruling on question of jurisdiction). The term “civil action or proceeding” is broader than the term “proceeding at law or in equity” under the prior practice and is intended to include orders entered by the orphans’ court division. Cf. In the Matter of Phillips, 471 Pa. 289, 370 A.2d 307 (1977).

Subdivision (c) covers orders that do not sustain venue, e.g., orders under Pa.R.C.P. 1006(d) and (e).

However, the subdivision does not relate to a transfer under 42 Pa.C.S. § 933(c)(1) (concurrent

and exclusive jurisdiction), 42 Pa.C.S. § 5103 (transfer of erroneously filed matter) or under any other similar provision of law, because such a transfer is not to a “court of coordinate jurisdiction” within the meaning of this rule; it is intended that there shall be no right of appeal from a transfer order based on improper subject matter jurisdiction. Such orders may be appealed by permission under Rule 312, or an appeal as of right may be taken from an order dismissing the matter for lack of jurisdiction. See *Balshy v. Rank*, 507 Pa. 384, 388, 490 A.2d 415, 416 (1985).

Other orders relating to subject matter jurisdiction (which for this purpose does not include questions as to the form of action, e.g., as between law and equity, or divisional assignment, see 42 Pa.C.S. § 952 (status of court divisions)) will be appealable under Rule 341 if jurisdiction is not sustained, and otherwise will be subject to Rule 312.

Subdivision (d) (Commonwealth appeals in criminal matters)—In subdivision (d), the 1992 amendment permits appeals by the Commonwealth from certain interlocutory orders that were previously treated as final orders under the pre-1992 version of Rule 341(c). See, e.g., *Commonwealth v. Dugger*, 506 Pa. 537, 486 A.2d 382 (1985); *Commonwealth v. Deans*, 530 Pa. 514, 610 A.2d 32 (1992); and *Commonwealth v. Cohen*, 529 Pa. 552, 605 A.2d 1212 (1992). The 1996 amendment to Rule 904(e) requires that the Commonwealth assert in the notice of appeal that the trial court’s order will terminate or substantially handicap the prosecution.

Subdivision (e) (Orders overruling preliminary objections in eminent domain cases)—In subdivision (e), the 1992 amendment permits interlocutory appeals from orders overruling preliminary objections in eminent domain cases. These orders were previously appealable as final orders under Rule 341 even though such orders did not dispose of all claims and all parties. See *In Re Certain Parcels of Real Estate*, 420 Pa. 289, 216 A.2d 774 (1966); and *Central Bucks Joint School Bldg. Authority v. Rawls*, 8 Pa. Cmwlth. 491, 303 A.2d 863 (1973).

Subdivision (f) (Administrative remand)—In subdivision (f), the 1992 amendment permitted an immediate appeal as of right from an order of a common pleas court or government unit remanding a matter to an administrative agency or hearing officer for execution of the adjudication of the reviewing tribunal in a manner that does not require the exercise of administrative discretion. Examples of such orders include: (1) a remand by a court of common pleas to the Department of Transportation for removal of points from a drivers license; and (2) an order of the Workmen’s Compensation Appeal Board reinstating compensation benefits and remanding to a referee for computation of benefits.

Subdivision (f) further permits immediate appeal from an order of a common pleas court or government unit remanding a matter to an administrative agency or hearing officer that decides an issue that would ultimately evade appellate review if an immediate appeal is not allowed. See *Department of Environmental Resources v. Big B Mining Co., Inc.*, 123 Pa. Cmwlth. 591, 554 A.2d 1002 (1989) (order of Environmental Hearing Board reversing D.E.R.’s denial of a surface mining permit and remanding to

D.E.R. for re-evaluation of effluent limitations); *Phila. Commission On Human Relations v. Gold*, 95 Pa. Cmwlth. 766, 503 A.2d 1120 (1986) (court of common pleas order reversing a Philadelphia Human Relations Commission finding of discrimination on ground the commission impermissibly commingled prosecutorial [or] and adjudicative functions). The 1992 amendment overrules, in part, *FMC Corporation v. Workmen's Compensation Appeal Board*, 116 Pa. Cmwlth. 527, 542 A.2d 616 (1988) to the extent that it is inconsistent with subdivision (f).

Subdivision (h) (Further proceedings in lower court)—See note to Rule 1701(a) (effect of appeal generally).

[Pa.B. Doc. No. 96-666. Filed for public inspection April 26, 1996, 9:00 a.m.]

[210 PA. CODE CHS. 1, 3, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 33 AND 51]

Proposed Amendments to Pa.R.A.P. 121 et seq.; Recommendation 28

The Appellate Court Rules Committee proposes to amend Rules 121, 123, 313, 341, 343, 752, 904, 906, 907, 1112, 1311, 1501, 1513, 1514, 1515, 1532, 1571, 1734, 1751, 1782, 1911, 2132, 2136, 2140, 2153, 2154, 2185, 2186, 2187, 2311, 2313, 2543, 2546, 3331, 5101 and 5102 of the Pennsylvania Rules of Appellate Procedure. The amendments are being submitted to the bench and bar for comments and suggestions prior to their submission to the Supreme Court.

All communications in reference to the proposed amendments should be sent not later than June 30, 1996 to Dean R. Phillips, Esquire, Counsel, Appellate Court Rules Committee, Exton Office Court, 300-F North Pottstown Pike, Exton, PA 19341.

The Explanatory Comment which appears in connection with the proposed amendments has been inserted by the Committee for the convenience of the bench and bar. It will not constitute part of the rules nor will it be officially adopted or promulgated by the Court.

By the Appellate Court Rules Committee

ROBERT L. BYER, ESQUIRE,
Chair

Annex A

TITLE 210. APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

ARTICLE I. PRELIMINARY PROVISIONS

CHAPTER 1. GENERAL PROVISIONS

DOCUMENTS GENERALLY

Rule 121. Filing and Service.

(a) *Filing.* Papers required or permitted to be filed in an appellate court shall be filed with the prothonotary. Filing may be accomplished by mail addressed to the prothonotary, but except as otherwise provided by these rules filing shall not be timely unless the papers are received by the prothonotary within the time fixed for filing. Paperbooks shall be deemed filed on the day of

mailing if first class mail is utilized. If an application under these rules requests relief which may be granted by a single judge, the judge in extraordinary circumstances may permit the application and any related papers to be filed with [him] that judge, in which event [he] that judge shall note thereon the date of filing and shall thereafter transmit such papers to the clerk.

(b) *Service of all papers required.* Copies of all papers filed by any party and not required by these rules to be served by the prothonotary shall, concurrently with their filing, be served by a party or person acting [for him] on behalf of that party or person on all other parties to the matter. Service on a party represented by counsel shall be made on [his] counsel.

* * * * *

(e) *Additional time after service by mail.* Whenever a party is required or permitted to do an act within a prescribed period after service of a paper upon [him] that party (other than an order of a court or other government unit) and the paper is served by mail, three days shall be added to the prescribed period.

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Rule 123. Application for Relief.

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(e) *Power of single judge to entertain applications.* In addition to the authority expressly conferred by these rules or by law or rule of court, a single judge of an appellate court may entertain and may grant or deny any request for relief which under these rules may properly be sought by application, except that an appellate court may provide by order or rule of court that any application or class of applications must be acted upon by the court. The action of a single judge may be reviewed by the court except for actions of a single judge under Rule 3102(c)(2) (relating to a quorum in Commonwealth Court in any election matter).

Official Note: The 1996 amendment precludes review by the Commonwealth Court of actions of a single judge in election matters. Based on former Supreme Court Rules 62, 63, and 66, former Superior Court Rules 53, 54, and 57, former Commonwealth Court Rule 112A and Pa.R.Crim.P. 304.

CHAPTER 3. ORDERS FROM WHICH APPEALS MAY BE TAKEN

INTERLOCUTORY APPEALS

Rule 313. Collateral Orders.

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The Official Note to Rule 313 is rescinded and replaced with the following:

Official Note: Rule 313 is a codification of existing case law with respect to collateral orders. See *Pugar v. Greco*, 483 Pa. 68, 73, 394 A.2d 542, 545 (1978) (quoting *Cohen v. Beneficial Industrial Corp.*, 337 U. S. 541 (1949)). Examples of collateral orders include an order denying a pre-trial motion to dismiss based on double jeopardy, *Commonwealth v. Brady*, 510 Pa. 363, 508 A.2d 286, 289-91 (1986) (allowing an immediate appeal from denial of double jeopardy claim under collateral order doctrine where trial court makes a finding that motion is not frivolous); an order denying a petition to

permit the payment of death taxes, *Hankin v. Hankin*, 338 Pa. Super. 442, 487 A.2d 1363 (1985); and an order denying a petition for removal of an executor, *Re: Estate of Georgianna*, 312 Pa. Super. 339, 458 A.2d 989 (1983), *aff'd*, 504 Pa. 510, 475 A.2d 744. Thorough discussions of the collateral order doctrine as it has been applied by Pennsylvania appellate courts are found in the following sources: Darlington, McKeon, Schuckers and Brown, 1 Pennsylvania Appellate Practice Second Edition, §§ 313:1—313:201 (1994) and Byer, *Appealable orders under the Pennsylvania Rules of Appellate Procedures in Practice and Procedures in Pennsylvania Appellate Courts* (PBI No. 1994-869); Pines, *Pennsylvania Appellate Practice: Procedural Requirements and the Vagaries of Jurisdiction*, 91 Dick. L. Rev. 55, 107—115 (1986). If an order falls under Rule 313, an immediate appeal may be taken as of right simply by filing a notice of appeal. The procedures set forth in Rules 341(c) and 1311 do not apply under Rule 313.

FINAL ORDERS

Rule 341. Final Orders Generally.

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(b) *Definition of Final Order*: A final order is any order that:

- (1) disposes of all claims [or] and of all parties; or
- (2) any order that is expressly defined as a final order by statute; or
- (3) any order entered as a final order pursuant to [subsection] subdivision (c) 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 governmental unit may enter a final order as to one or more but fewer than all of the claims [or] 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 [or] and parties shall not constitute a final order.

(1) ***

(2) The trial court or other governmental unit is required to act on an application for a determination of a finality under subdivision (c) within 30 days of entry of the order. During the time an application for determination for finality is pending, the action will be stayed. Any denial of such an application shall be reviewable only for abuse of discretion pursuant to Chapter 15. **Unless the trial court or other governmental unit acts on the application within 30 days after it is filed the trial court or other governmental unit shall no longer consider the application and it shall be deemed to have been denied.**

* * * * *

Official Note:

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Orders which are separable from and collateral to the main cause of action where the right involved is too important to be denied review, and the question pre-

sented is such that if review is postponed until final judgment in the case, the claim will be irreparably lost, previously appealable as final orders under Rule 341, are now appealable under Rule 313. See *Pugar v. Greco*, 483 Pa. 68, 73, 394 A.2d 543, 545 (1978) (quoting *Cohen v. Beneficial Industrial Loan Corp.*, 337 U. S. 541 (1949)).

* * * * *

Orders formerly appealable under Rule 341 by the Commonwealth in criminal cases as heretofore provided by law, but which do not dispose of the entire case, are now appealable as interlocutory appeals as of right under Subdivision [(e)] (d) of Rule 311.

The 1996 amendments to subdivisions (a) and (c), substituting the conjunction “and” for “or” are not substantive. The amendments merely clarify that by definition any order which disposes of all claims will dispose of all parties and any order that disposes of all parties will dispose of all claims.

The 1996 amendment to subdivision (c)(2) provides for a deemed denial where the trial court or other governmental unit fails to act on the application within 30 days. Under such circumstances, a party may need to praecipe for entry of the deemed denial pursuant to Rule 301(d) to perfect an appeal.

Rule 343. [Order Determining Challenge to a Plea of Guilty.] Rescinded.

[If a timely motion has been filed pursuant to Rule 321 of the Pennsylvania Rules of Criminal Procedure (challenge to guilty plea), any appeal taken as of right shall be from the final order disposing of such motion. Such timely motion shall have the effect, for the purposes of Rule 1701(b)(3) (authority of lower court or agency after appeal), of an order expressly granting reconsideration of the judgment previously entered on the plea of guilty.]

Official Note: [Pa.R.Crim.P. 321 provides a procedure whereby a timely motion challenging the validity of a plea of guilty, or the denial or a motion to withdraw a plea of guilty, shall be heard by the lower court. In such event, the time for filing an appeal from the judgment on the plea does not begin to run until such motion is decided by the lower court.

In the event an appeal from the judgment on a plea of guilty has been filed before a timely motion under Pa.R.Crim.P. 321 has been made, the filing of such motion acts as an automatic grant of reconsideration under Rule 1701(b)(3) (authority of lower court or agency after appeal), so as to render inoperative the prior appeal. In such event, an appeal could be filed anew after disposition of the Pa.R.Crim.P. 321 motion.]

The Supreme Court rescinded this Rule in 1996 as obsolete in view of the changes to the Rules of Criminal Procedure rescinding Pa.R.Crim.P. 321 and adopting new Pa.R.Crim.P. 1401, effective as to cases in which the determination of guilt occurs on or after January 1, 1994. See Criminal Procedural Rules Committee Final Report at 620—621 A.2d (Pennsylvania Reporter Series) pages CVIII—CXXXIII.

CHAPTER 7. COURTS TO WHICH APPEALS SHALL BE TAKEN

TRANSFERS OF CASES

Rule 752. Transfers Between Superior and Commonwealth Courts.

* * * * *

(b) *Content of application; answer.* The application shall contain a statement of the facts necessary to an understanding of the same or related questions of fact, law or discretion; a statement of the questions themselves; and a statement of the reasons why joint consideration of the appeals would be desirable. The application shall be served on all other parties to all appeals or other matters involved, and shall include or have annexed thereto a copy of each order from which any appeals involved were taken and any findings of fact, conclusions of law and opinions relating thereto. **[Within seven days after service of the application any]** Any other party to any appeal or other matter involved may file an answer in opposition **in accordance with Rule 123(b).** The application and answer shall be submitted without oral argument unless otherwise ordered.

ARTICLE II. APPELLATE PROCEDURE

CHAPTER 9. APPEALS FROM LOWER COURTS

Rule 904. Content of the Notice of Appeal.

* * * * *

(c) **[Order] Request for transcript.** The **[order] request for transcript [, if any,]** contemplated by Rule 1911 (order for transcript) **or a statement signed by counsel that there is either 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 order for transcript shall not affect the validity of the appeal.

* * * * *

(e) **Content in criminal cases.** When the Commonwealth takes an appeal pursuant to Rule 311(d), the notice of appeal shall include a certification by counsel that the order will terminate or substantially handicap the prosecution.

Official Note: [The former requirement that the appellant swear that the appeal is not taken for the purpose of delay has been omitted. The appeal to the Commonwealth Court was governed by former Commonwealth Court Rule 20A.]

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.*

[The form of the notice of appeal provided by subdivision (a) has been revised to include the required certification.]

The 1986 amendment requires that the notice of appeal include a statement that the order appealed from has been entered in the docket. The 1986 amendment deletes the requirement that the appellant 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.

An order for transcript is a request by the appellant of the court reporter to prepare a transcript of the verbatim record of the proceedings. It is not an order of the court, and no court order is required to obtain a transcript of the proceedings. See Pa.R.J.A. 5005.5 and the 1996 amendment to subdivision (a) of Rule 1911.

With respect to subdivision (e), in Commonwealth v. Dugger, 506 Pa. 537, 486 A.2d 382 (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. Thus, the need for a detailed analysis of the effect of the order, formerly necessarily a part of the Commonwealth's appellate brief, was eliminated. See also Commonwealth v. Deans, 530 Pa. 514, 610 A.2d 32 (1992); Commonwealth v. Cohen, 529 Pa. 552, 605 A.2d 1212 (1992) (allowing appeals by the Commonwealth from adverse rulings on motions in limine). Accordingly, the 1996 amendment added subdivision (e) as a requirement when the Commonwealth takes an appeal pursuant to Rule 311(d).

Rule 906. Service of Notice of Appeal.

(a) ***

(1) All parties to the matter in the trial court, **including parties previously dismissed pursuant to an interlocutory order.**

(2) The judge of the court below, whether or not the reasons for the order appealed from already appear of record.

(3) The official court reporter of the trial court, whether or not an order for transcript accompanies the papers.

(4) The district court administrator or other person designated by the administrator pursuant to Rule **[5000.5(a)(4)] 5000.5(a)(3)** of the Pennsylvania Rules of Judicial Administration (requests and orders for transcripts).

(b) ***

Official Note: See Rule 908 (Parties on Appeal).

Rule 907. Docketing of Appeal.

(a) *Docketing of appeal.* Upon the receipt of the papers specified in Rule 905(b) (transmission to appellate court) the prothonotary of the appellate court shall immediately enter the appeal upon the docket, note the appellate docket number upon the notice of appeal, and give written notice of the docket number assignment in person or by first class mail to the clerk of the lower court, to the appellant[,] **and to the persons named in the proof of service accompanying the notice of appeal [and to the Administrative Office].** An appeal shall be docketed under the caption given to the matter in the lower court, with the appellant identified as such, but if such caption does not contain the name of the appellant, his name, identified as appellant, shall be added to the caption in the appellate court.

(b) *Entry of appearance.* Upon the docketing of the appeal the prothonotary of the appellate court shall note on the record as counsel for the appellant the name of [his] counsel, if any, set forth in or endorsed upon the notice of appeal, and, as counsel for other parties, counsel, if any, named in the proof of service. The prothonotary of the appellate court shall upon praecipe of any such counsel for other parties, filed within 30 days after filing of the notice of appeal, strike off or correct the record of appearances. Thereafter [an entry of appearance may be withdrawn only by leave of the appellate court] a counsel's appearance for a party may not be withdrawn without leave of court, unless another lawyer has entered or simultaneously enters an appearance for the party.

Official Note: The transmission of a photocopy of the notice of appeal, showing a stamped notation of filing and the appellate docket number assignment, without a letter of transmittal or other formalities, will constitute full compliance with the notice requirement of Subdivision (a) of this rule.

With regard to subdivision (b) and withdrawal of appearance without leave of the appellate court, counsel may nonetheless be subject to trial court supervision pursuant to Pa.R.Crim.P. 1504 (Appointment of Counsel; Forma Pauperis).

CHAPTER 11. APPEALS FROM COMMONWEALTH COURT AND SUPERIOR COURT

PETITION FOR ALLOWANCE OF APPEAL

Rule 1112. Appeals by Allowance.

* * * * *

(b) **Definition. Final Order.** A final order of the Superior Court or Commonwealth Court is any order that concludes an appeal, including an order that remands an appeal, in whole or in part, unless the appellate court remands and retains jurisdiction.

[(b)] (c) ***

[(c)] (d) ***

[(d)] (e) ***

[(e)] (f) *Entry of appearance.*—Upon the filing of the petition for allowance of appeal the Prothonotary of the Supreme Court shall note on the record as counsel for the petitioner the name of his counsel, if any, set forth in or endorsed upon the petition for allowance of appeal, and, as counsel for other parties, counsel, if any, named in the proof of service. The Prothonotary shall upon praecipe of any such counsel for other parties, filed at any time within 30 days after filing of the petition, strike off or correct the record of appearance. Thereafter [an entry of appearance may be withdrawn only by leave of court] a counsel's appearance for a party may not be withdrawn without leave of court unless another lawyer has entered or simultaneously enters an appearance for the party.

* * * * *

With regard to subdivision (f) and withdrawal of appearance without leave of the appellate court, counsel may nonetheless be subject to trial court supervision pursuant to Pa.R.Crim.P. 1504 (Appointment of Counsel; Forma Pauperis).

CHAPTER 13. INTERLOCUTORY APPEALS BY PERMISSION

Rule 1311. Interlocutory Appeals by Permission.

* * * * *

(b) *Petition for permission to appeal.* Permission to appeal from an interlocutory order containing the statement prescribed by 42 Pa.C.S. § 702(b) may be sought by filing a petition for permission to appeal with the prothonotary of the appellate court within 30 days after entry of such order in the lower court or other government unit with proof of service on all other parties to the matter in the lower court or other government unit and on the government unit or clerk of the lower court, who shall file the petition of record in such lower court. An application for an amendment of an interlocutory order to set forth expressly the statement specified in 42 Pa.C.S. § 702(b) shall be filed with the lower court or other government unit within 30 days after the entry of such interlocutory order and permission to appeal may be sought within 30 days after entry of the order as amended. [The trial court must act on the application within 30 days.] Unless the trial court or other governmental unit acts on the application within 30 days after it is filed, the trial court or other governmental unit shall no longer consider the application and it shall be deemed denied. If the petition for permission to appeal is transmitted to the prothonotary of the appellate court by means of first class mail, the petition shall be deemed received by the prothonotary for the purposes of Rule 121(a) (filing) on the date deposited in the United States mail, as shown on a U. S. Postal Service Form 3817 certificate of mailing. The certificate of mailing shall show the docket number of the matter in the lower court or other government unit and shall be either enclosed with the petition or separately mailed to the prothonotary. Upon actual receipt of the petition for permission to appeal the prothonotary of the appellate court shall immediately stamp it with the date of actual receipt. That date, or the date of earlier deposit in the United States mail as prescribed in this subdivision, shall constitute the date when permission to appeal was sought, which date shall be shown on the docket. The prothonotary of the appellate court shall immediately note the appellate docket number assignment upon the petition for permission to appeal and give written notice of the docket number assignment in person or by first class mail to the government unit or clerk of the lower court, to the petitioner and to the other persons named in the proof of service accompanying the petition.

* * * * *

(d) *Entry of appearance.* Upon the filing of the petition for permission to appeal the prothonotary of the appellate court shall note on the record as counsel for the petitioner the name of [his] counsel, if any, set forth in or endorsed upon the petition for permission to appeal, and, as counsel for other parties, counsel, if any, named in the proof of service. The prothonotary shall upon praecipe of any such counsel for other parties, filed at any time within 30 days after filing of the petition, strike off or correct the record of appearance. Thereafter [an entry of appearance may be withdrawn only by leave of court] a counsel's appearance for a party may not be withdrawn without leave of court, unless another lawyer has entered or simultaneously enters an appearance for the party.

Official Note:

* * * * *

The 1996 amendment provides for a deemed denial where the trial court or other governmental unit fails to act on the application within 30 days. Under such circumstances, a party may need to praecipe for entry of the deemed denial pursuant to Rule 301(d).

With regard to subdivision (d) and withdrawal of appearance without leave of the appellate court, counsel may nonetheless be subject to trial court supervision pursuant to Pa.R.Crim.P. 1504 (relating to Appointment of Counsel; Forma Pauperis).

CHAPTER 15. JUDICIAL REVIEW OF GOVERNMENTAL DETERMINATIONS IN GENERAL

Rule 1501. Scope of Chapter.

* * * * *

(c) Unuspended statutory procedures. This chapter does not apply to any appeal pursuant to the following statutory provisions, which are not suspended by these rules:

(1) Section [135] 137 of Title 15 of the Pennsylvania Consolidated Statutes (Court to pass upon rejection of documents by Department of State).

* * * * *

PETITION FOR REVIEW

Rule 1513. Petition for Review.

* * * * *

(d) Notice [of demand for evidentiary hearing] to plead.—If under the applicable law the questions raised by the petition for review may be determined in whole or in part upon the record made before the court, the petition shall contain or have endorsed upon it a notice to plead.

* * * * *

Official Note:

* * * * *

The 1996 amendment to subdivision (d) remedies what had been an inconsistency between the former heading and the text of the rule.

Rule 1514. Filing and Service of the Petition for Review.

* * * * *

(d) Entry of appearance.—Upon the filing of the petition for review the prothonotary shall note on the record as counsel for the petitioner the name of [his] counsel, if any, set forth in or endorsed upon the petition for review, and, as counsel for other parties, counsel, if any, named in the proof of service. The prothonotary shall upon praecipe of any such counsel for other parties, filed within 30 days after filing of the petition, strike off or correct the record of appearances. Thereafter [an entry of appearance may be withdrawn only by leave of court] a counsel's appearance for a party may not be withdrawn without leave of court, unless another lawyer has entered or simultaneously enters an appearance for the party.

* * * * *

Rule 1515. Answer to Petition.

Where under the applicable law the questions raised by the petition for review may be determined in whole or in

part upon the record made before the court, and the right to an evidentiary hearing has been claimed by inclusion or endorsement of a notice to plead as prescribed by Rule 1513(d) [(notice of demand for evidentiary hearing)] (notice to plead), any adverse party may file an answer to the petition controverting any factual allegation of the petition.

* * * * *

Rule 1532. Special and Summary Relief.

* * * * *

(b) Summary relief.—At any time after the filing of a petition for review in an appellate or original matter the court may on application enter judgment if the right of the applicant thereto is clear. [A party against whom judgment is entered under this subdivision may apply to open or vacate the judgment within 30 days after entry, or within such lesser time as may be fixed by the court under Rule 105 (waiver and modification of rules) after reasonable notice to the parties.]

Official Note:

* * * * *

The 1996 amendment to subdivision (b) is analogous to the 1996 amendment to Pa.R.C.P. 1098.

The deletion of the last sentence of Rule 1532(b) is intended to eliminate the requirement of filing a motion to open or vacate the order granting summary relief. Under prior practice, a party was required to file a motion to open or vacate the order granting summary relief before an appeal could be taken. To the extent that Zemprelli v. Scranton, 102 Pa. Commw. 637, 519 A.2d 518 (1986) suggest that an aggrieved party may appeal only from an order denying a motion to open or vacate an order granting summary relief, rather than the order granting summary relief, it is overruled. An order denying an application for summary relief is not appealable as of right.

REVIEW OF DETERMINATIONS OF THE BOARD OF FINANCE AND REVENUE

Rule 1571. Determinations of the Board of Finance and Revenue.

* * * * *

(d) Service.—In the case of a petition for review by a taxpayer or similar party, a copy of the petition shall be served on the Board of Finance and Revenue and on the Attorney General by the petitioner in accordance with Rule 1514(c). All other parties before the Board shall be served as prescribed by Rule 121(b) (service of all papers required).

* * * * *

CHAPTER 17. EFFECTS AND APPEALS; SUPERSEDEAS AND STAYS

STAY OR INJUNCTION IN CIVIL MATTERS

Rule 1734. Appropriate Security.

(a) General rule. For the purposes of this chapter any of the following, when deposited with the clerk, constitutes appropriate security, unless otherwise ordered pursuant to this chapter:

- (1) Legal tender of the United States.
(2) Any of the following, if registered in the name of or to the order of the Commonwealth of Pennsylvania:
(i) United States Treasury bills,
(ii) certificates of de-

posit issued by a Federally-insured bank, bank and trust company, savings bank, savings association, banking association or savings and loan association having an office within this Commonwealth, (iii) irrevocable letters of credit issued by a Federally-insured bank, bank and trust company, savings bank, savings association, banking association or saving and loan association having an office within this Commonwealth. The clerk may transfer or negotiate such bills or certificates for the purposes of this chapter. [The clerk shall be entitled to receive commission or poundage with respect to such bills or certificates only when the deposit is made pursuant to Rule 1782 (security on review on tax matters).]

* * * * *

Rule 1751. Form of Bond.

A bond under this chapter may be in substantially the following form:

(Caption)

Appellant, having appealed from an order of the Court of Common Pleas of _____ County (or "of the _____ Judicial District"), entered in this matter on the ___ day of _____, 19___, and having procured the execution of this instrument for the purpose of complying with the Pennsylvania Rules of Appellate Procedure, the undersigned surety acknowledges itself bound and indebted to the Commonwealth of Pennsylvania, for the use of the persons or parties entitled thereto, in the sum of _____ dollars (\$ _____), to be paid as required by law.

[The condition of this obligation is that if the appellant shall satisfy the above-identified order, if it is affirmed or if for any reason the appeal is dismissed, or shall satisfy any modification of the order, and in either case shall pay all costs, interest and any damages for delay that may be awarded, this obligation shall be void; but otherwise it shall remain in force.]

Upon conclusion of this matter, if the appellant satisfies the above identified order or any court order modifying or affirming that order and pays all costs, interest and damages for delay that may be awarded, this obligation shall be void; otherwise, it shall remain in force.

Date _____
(Name of Surety)

By _____
(Name and Title of Authorized signatory)

* * * * *

STAY PENDING ACTION ON PETITION FOR REVIEW

Rule 1782. Security on Review in Tax Matters.

* * * * *

(b) *Form of bond.* A bond under this rule may be in substantially the following form:

(Caption)

Petitioner, having sought review of an order of the Board of Finance and Revenue entered (or deemed entered) in this matter on the _____ day of _____, 19___, and having procured the execution of this instrument for the purpose of complying with the Pennsylvania Rules of

Appellate Procedure, the undersigned surety acknowledges itself bound and indebted to the Commonwealth of Pennsylvania in the [sum of 120% of] amount of \$(_____), which is 120% of the sum of \$ _____ (taxes found due) and \$(_____) (penalty found due), the amount of taxes and penalty found due by the Board and remaining unpaid in this matter, to be paid as required by law.

[The condition of this obligation is that if the Petitioner shall satisfy the above-identified order, if it is affirmed or if for any reason the matter is dismissed, or shall satisfy any modification of the order, and in either case shall pay all costs, interest and any damages for delay that may be awarded, this obligation shall be void; but otherwise it shall remain in force.]

Upon conclusion of this matter, if the petitioner satisfies the above identified order or any court order modifying or affirming that order and pays all costs, interest and any damages for delay that may be awarded, this obligation shall be void; otherwise it shall remain in full force.

Date _____
(Name of Surety)

By _____
(Name and Title of Authorized signatory)

* * * * *

CHAPTER 19. PREPARATION AND TRANSMISSION OF RECORD AND RELATED MATTERS
RECORD ON APPEAL FROM LOWER COURT

Rule 1911. [Order] Request for Transcript.

* * * * *

Official Note: [The order under this rule constitutes the "formal request" under] The 1996 amendment deletes the reference to order for transcript. See Pa.R.J.A. 5000.5 and 1996 amendment to Rule 904(c).

* * * * *

CHAPTER 21. BRIEFS AND REPRODUCED RECORD
CONTENT OF BRIEFS

Rule 2132. References in Briefs to the Record.

(a) *General rule.* References in the briefs to parts of the record appearing in a reproduced record filed with the brief of the appellant (see Rule 2154(b) (large records)) shall be to the pages in the reproduced record where those parts appear, e.g.: "(R. 26a)." If the record is reproduced after the briefs are [filed] served in advance typewritten or page proof form (see Rule 2185(c) (definitive copies)), the brief may also contain references to the pages of the parts of the original record, e.g.: "(Tr. 279—280; R. 26a—27a)."

* * * * *

Rule 2136. Briefs in Cases Involving 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 nature of the matter is such that 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 this chapter and Chapter 23 when giving notice under Rule 1934 (filing of the record). The brief of the appellee shall contain the issue and argument involved in [his] the cross appeal, as well as the answer to the brief of the appellant, and the appellant may file a brief in answer to the brief of the appellee on the cross appeal.

Official Note: Ordinarily there will be three briefs in a case involving a cross appeal: appellant's main brief, appellee's main brief, and appellant's reply brief directed to the issues on the cross appeal. However, [if the case is submitted without oral argument,] Rule 2113 permits a fourth brief: appellee's reply to appellant's answer on the cross appeal.

Rule 2140. Brief on Remand or Following Grant of Reargument or Reconsideration.

* * * * *

(b) [**Caption**] **Cover on brief.** The brief (whether new or refiled) shall be appropriately [**captioned**] titled to reflect the current status of the case (e.g., brief on remand, supplemental brief on remand, brief on reargument, supplemental brief on reargument).

* * * * *

CONTENT OF REPRODUCED RECORD

Rule 2153. Docket Entries and Related Matter.

* * * * *

[**Official Note:** Based on former Supreme Court Rules 42 and 43; former Superior Court Rules 34 and 35, and (in the case of Subdivision (a)) former Commonwealth Court Rule 87, without change in substance. As to the type of matters contemplated by Subdivision (b) see *Steel v. Levy*, 282 Pa. 338, 343, 127 A. 766, 768 (1925).]

Rule 2154. Designation of Contents of Reproduced Record.

* * * * *

Explanatory Note—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.]**

FILING AND SERVICE

Rule 2185. Time for Serving and Filing Briefs.

(a) *General rule.* The appellant shall serve [his] **appellant's** brief not later than the date fixed pursuant to 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 [his] **the appellee's** brief within 30 days after service of the **appellant's** brief [**of the appellant**] **and reproduced record if proceeding under Rule 2154(a).** A party may serve 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. Except as prescribed by Rule 2187(b) (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.

* * * * *

Official Note: Former Supreme Court Rule 57 and former Superior Court Rule 47 provided that the brief of the appellant was to be filed within 60 days after the issuance of the writ of certiorari. Former Commonwealth Court Rule 32A provided that the brief of the appellant was to be filed within 30 days of mailing of notice of the filing of the record. To avoid paperwork relating to continuances because the record is not ready, the time under these rules commences to run from the filing of the record. The time for filing the brief of the appellee is the same as under the prior practice, except that formerly only 25 days was allowed in the Commonwealth Court.

Subdivision (b) is necessary because approximately one year can elapse under existing practices before an appellate court hears a case filed in the Middle or Harrisburg districts, and briefing the case far in advance permits intervening decisions and legislation to render the briefs stale.]

Unlike the provision for filing other papers, Rule 121(a) provides "paperbooks shall be deemed filed on the day of mailing if first class mail is utilized." "Paperbooks" are defined in Rule 102 as briefs and reproduced records, but "the term does not include applications for reconsideration of denial of allowance of appeal under Rule 1123(b) (reconsideration) or applications for reargument under Chapter 25 (post-submission proceedings)."

Rule 2186. Time for Serving and Filing Reproduced Record.

(a) *General rule.* The reproduced record shall be served and filed not later than:

(1) the date of service of the **appellant's** brief [**of the appellant**]; or

(2) [**51 days after the date of service of the brief of appellant in advance form**] **21 days from the date of service of the appellee's brief in advance form**, if the record is being reproduced pursuant to Rule 2154(b) (large records).

* * * * *

Official Note: Former Supreme Court Rule 57, former Superior Court Rule 47 and former Commonwealth Court Rule 32A provided that the appellant was to serve and file the reproduced record with his brief, which continues

to be the rule under Paragraph [(a)(2)] (a)(1) of this rule. The delayed filing of the reproduced record results in the designation and reproduction of the minimum amount of the original record since the parties will then know exactly the portions of the original record mentioned in their briefs and may accordingly limit the amount of record reproduced.

Rule 2187. Number of Copies to be Served and Filed.

(a) General rule. [Twenty-five copies of each definitive brief and of each reproduced record shall be filed with the Prothonotary of the Supreme Court, and fifteen copies of each definitive brief and of each reproduced record shall be filed with the Prothonotary of the Commonwealth Court and ten copies shall be filed with the Superior Court, unless the appellate court by order in a particular case shall direct a lesser number, and two copies of each definitive brief and of each reproduced record shall be served on each party separately represented.] Unless the appellate court directs otherwise, each party shall file:

- (i) twenty-five (25) copies of each definitive brief and reproduced record in the Supreme Court;
- (ii) fifteen (15) copies of each definitive brief and eight (8) copies of each reproduced record in the Commonwealth Court;
- (iii) seven (7) copies of each definitive brief and reproduced record in the Superior Court.

Each party shall serve two (2) copies of its definitive brief and reproduced record on every other party separately represented.

* * * * *

(c) *In forma pauperis*. [A party who has been permitted to proceed in forma pauperis shall file fifteen copies of his brief with the prothonotary of the appellate court and shall serve one copy on each party separately represented.] Unless the appellate court directs otherwise, a party who has been permitted to proceed in forma pauperis shall file:

- (i) fifteen (15) copies of each definitive brief with the Supreme Court;
- (ii) fifteen (15) copies of each definitive brief with the Commonwealth Court;
- (iii) seven (7) copies of each definitive brief with the Superior Court.

Each party who has been permitted to proceed in form pauperis shall serve one copy of each definitive brief on every other party separately represented.

* * * * *

**CHAPTER 23. SESSIONS AND ARGUMENT
SCHEDULING OF ARGUMENT**

Rule 2311. Submission on Briefs.

* * * * *

(b) *Post conviction [hearing] relief cases*. All parties shall submit post conviction [hearing] relief cases on the briefs unless otherwise directed by the court on its own motion or upon application.

* * * * *

Rule 2313. Advancement or Continuance.

* * * * *

Official Note: [Based on former Supreme Court Rules 27 and 72, former Superior Court Rules 16 and 17, and former Commonwealth Court Rule 71. The omitted procedural provisions are covered by Rule 123 (applications for relief). Obviously, when all parties join in an application, the court may act upon it without waiting the seven-day period for answer. The Supreme Court formerly permitted two automatic extensions of time for filing briefs (usually resulting in corresponding continuance to a later argument list) by consent of the parties; the Superior Court formerly permitted one such automatic extension. Generally the only justifiable basis for such automatic extensions was the difficulty in securing the preparation and transmission of the original record. Since under Rule 2185 (time for serving and filing briefs) the usual briefing schedule commences no earlier than the filing of the record in the appellate court, there is no longer any need for the automatic extension machinery.

The rule does not, as did former Supreme Court Rule 72 and former Superior Court Rule 17, contain any specific deadline for the filing of an application for continuance. Obviously, the later the party files such an application the greater the risk (1) that the court will not be able to act upon it in time, or (2) if it is denied, that the unsuccessful applicant will find it difficult or impossible to comply with these rules, with the adverse consequences which flow therefrom.

In the Supreme Court, continuances are handled by the Chief Justice.] Rule 3305 provides that in the Supreme Court, the prothonotary may dispose of motions generally relating to calendar control. In the Superior Court, continuances are handled by the presiding judge of the panel. In the Commonwealth Court, continuances are handled by the president judge or the duty judge. In each [Appellate Court] appellate court, the application is to be submitted to the prothonotary and not to an individual judge of the appellate court.

**CHAPTER 25. POST-SUBMISSION PROCEEDINGS
APPLICATION FOR REARGUMENT**

Rule 2543. Considerations Governing Allowance of Reargument.

Reargument before an appellate court is not a matter of right, but of sound judicial discretion, and reargument will be allowed only when there are compelling reasons therefor. An application for reargument is not permitted from a final order of an intermediate appellate court under (1) the Pennsylvania Election Code; or (2) the Local Government Unit Debt Act or any similar statute relating to the authorization of public debt.

Official Note: The following, while neither controlling nor fully measuring the discretion of the court, indicate the character of the reasons which will be considered:

* * * * *

The 1996 amendment eliminates the prior practice of permitting application for reargument in matters arising under the Pennsylvania Election Code, the act of June 3, 1937, P. L. 1333, 25 P. S. §§ 2600—3591, [et seq.,] or the Local Government Unit Debt Act, the act of July 12, 1972, P. L. 781, 53

P. S. §§ 6780-1—6780-609. [et seq.] Matters involving elections and authorization of public debt require expeditious treatment. See, e.g., Rule 1113(c).

Rule 2546. Transmission of Papers to and Action by the Court.

* * * * *

Official Note: See Rule 2140 regarding the filing and content of briefs following the grant of reargument or reconsideration.

Where there is a deemed denial of an application for reargument, a party seeking a further appeal must follow subdivision (d) of Rule 301 and praecipe for entry of the deemed denial on the docket, if the prothonotary has failed to do so.

ARTICLE III. MISCELLANEOUS PROVISIONS

CHAPTER 33. BUSINESS OF THE SUPREME COURT

REVIEW OF SPECIAL PERSECUTIONS OR INVESTIGATIONS

Rule 3331. Review of Special Prosecutions or Investigations.

(a) *General rule.* Any of the following orders shall be subject to review pursuant to Chapter 15 (judicial review of governmental determinations):

* * * * *

[(5) An order enforcing or refusing to enforce a subpoena issued by or otherwise affecting the existence or operation of the Pennsylvania Crime Commission existing under the Pennsylvania Crime Commission Act (71 P. S. § 1199.1 et seq.)]

[(6)] (5) ***

Official Note: This rule is intended to provide a simple and expeditious method for Supreme Court supervision of special prosecutions and investigations, e.g. orders of the supervising judge of an investigating grand jury, findings of contempt (whether civil or criminal) by witnesses called before such a grand jury, etc. Rule 702([b]c) (supervision of special prosecutions or investigations) and 42 Pa.C.S. § 722(5) (direct appeals from courts of common pleas) vest jurisdiction over such matters in the Supreme Court. However, this rule is not applicable to review of investigating grand jury issues which collaterally arise in plenary criminal prosecution initiated by complaint, information or indictment. Rule 1512(b)(3) (special provisions) requires that review be sought within ten days. Essentially the procedure is analogous to the review of a bail order under Rule 1762 (release in criminal matters). The last brief is due not later than 21 days after the entry of the order sought to be reviewed. There is no delay for certification of the record, oral argument is ordinarily not available, and the matter is ready for final disposition by the Supreme Court immediately upon completion of the briefing schedule. The term "investigating grand jury" in Subdivision (a) includes a "multicounty investigating grand jury" convened under 42 Pa.C.S. § 4544 (convening multicounty investigating grand jury).

The "independent grounds" referred to in Subdivision (d) include grounds for relief in the nature of mandamus, prohibition, etc. and cases where the order is reviewable under the standards of 42 Pa.C.S. § 702(b) (interlocutory appeals by permission). Failure to petition for review under this rule from an interlocutory order will ordinarily

not constitute a waiver of objections to the order since, except as prescribed by Rule 311 ([d]g)(1)(ii) (waiver of objections), there is no requirement under these rules that a party seek available interlocutory relief.

Under Rule 1702(a) (stay ancillary to appeal) the Supreme Court or a justice thereof will not entertain an application for relief under Rule 1781 (stay pending action on petition for review) in connection with a special prosecution or investigation order until a petition for review has been filed under this rule.

CHAPTER 51. PROVISIONS OF LAW SAVED AND ABROGATED

Rule 5101 is rescinded and replaced with the following:

Rule 5101. Statutes and Other Authorities Suspended or Abrogated.

(a) **The Statute of 13 Edw. 1, c. 31 (3 Binney 606) (1 Ruffhead 99) is hereby suspended absolutely insofar as it is in force in this Commonwealth as supplied by Rule 1923 of these rules.**

(b)

(1) **The practice and procedure provided in all former statutes governing appellate procedure within the scope of these rules, which have been repealed effective June 27, 1978 or June 27, 1979 by the Judiciary Act Repealer Act (JARA), act of April 28, 1978 (P. L. 202, No. 53), and which are now part of the common law of this Commonwealth by virtue of Section 3(b) of JARA (42 P. S. § 20003(b)) are hereby abolished and shall not continue as part of the common law of this Commonwealth.**

(2) **With respect to all statutes relating to practice and procedure, repeal of which will become effective June 27, 1980 as provided by Section 4(b) of JARA (42 P. S. § 20004(b)), these rules are a general rule within the meaning of Section 3(b) of JARA and the practice and procedure provided in those statutes, so far as relates to appellate procedure within the scope of these rules, shall not continue as part of the common law of this Commonwealth.**

(c) **These rules are intended to provide a complete and exclusive procedure relating to appellate practice and procedure and:**

(1) **Except as provided in Rule 5102 (statutes saved from suspension), all statutes relating to practice and procedure finally enacted prior to January 1, 1981 are hereby suspended to the extent inconsistent with these rules.**

(2) **All local rules of court relating to appellate practice and procedure are hereby abrogated, except where these rules expressly authorize the adoption of a local rule of court supplementary to a provision of these rules applicable to appeals generally.**

Rule 5102. Statutes Saved from Suspension.

* * * * *

(b) **Other statutes.—**These rules shall not be deemed to suspend or affect:

- (1) ***
- (2) ***
- (3) ***
- (4) ***

[(5) Last sentence of section 423 of the act of June 13, 1967 (P. L. 31, No. 21), known as the Public Welfare Code (62 P. S. § 423).]

Official Note: Relates to automatic *supersedeas* of orders in public assistance matters.

(6) 15 Pa.C.S. § [135] 137 (Commonwealth Court to pass upon rejection of documents by Department of State).

(7) Rescinded. 20 Pa.C.S. § 746 (money paid into court), repealed by the Judiciary Act Repealer Act effective June 27, 1980.

Official Note: Rule 5102(b)(7) is rescinded as obsolete effective June 27, 1980.

Explanatory Comment

Introduction: The Appellate Court Rules Committee originally published Recommendation 28 at 24 Pa.B. 2289—2296 (April 30, 1994) following comments the Committee withdrew proposed amendments to Rules 2113, 2315 and 2542. In addition, the Committee has added proposed amendments to Rules 313, 341, 343, 752, 1514, 1911, 2153 and 2154, 2313, 2543, 2546 and 3331. Because of the extensive revisions to Recommendation 28 the Committee has republished it for comment.

Rule 121 (Filing and Service)

The proposed amendment substitutes gender neutral language.

Rule 123 (Application for Relief)

The proposed amendment to Rule 123 specifies that actions of a single judge acting as a quorum of the Commonwealth Court in an election matter, *see* Pa.R.A.P. 3102(c)(2), are not subject to review by that court. The proposed amendment to Rule 2543 is to specify that no application for reargument will be entertained in cases under either the Pennsylvania Election Code or the Local Government Debt Act. The proposed amendments to Rules 123 and 2543 will expedite final determination of Election Code matters and matters under the Local Government Unit Debt Act. It is inconsistent to permit reargument or reconsideration in such cases while maintaining a ten day time limit for a petition for allowance of appeal. *See* Rule 1113(c). *See also* Rule 903(c)(2) and (3) (ten day appeal period for matters arising under Election Code and Local Government Unit Debt Act) and Rule 1512(b)(1) (15 day petition for review period from determination of the Department of Community Affairs in any matter arising under the Local Government Unit Debt Act).

Rule 313 (Collateral Orders)

The Official Note to Rule 313 is amended to correct typographical errors and to update citations.

Rule 341 (Final Orders; Generally)

The 1996 amendments to subdivisions (a) and (c) of Rule 341 substitute the conjunction "and" for "or". These amendments are not substantive; they merely clarify that by definition any order which disposes of all claims will dispose of all parties and any order that disposes of all parties will dispose of all claims. Use of the conjunction "or" mistakenly implies that it is possible to dispose of all claims, but not all parties, or all parties, but not all claims. Also, the Official Note to Rule 341 is amended to correct a typographical error in a citation.

The proposed 1996 amendment to subdivision (c)(2) provides for a deemed denial where the trial court or

other governmental unit fails to act on the application within 30 days. Under such circumstances, a party may need to praecipe for entry of the deemed denial pursuant to Rule 301(d) to perfect an appeal.

Rule 343 (Order Determining Challenge to a Plea of Guilty)

Rule 343 is rescinded as obsolete in view of prior rescission of Pa.R.Crim.P. 321 and adoption of Pa.R.Crim.P. 1410 (Post-Sentence Procedures; Appeal).

Rule 752 (Transfers Between Superior and Commonwealth Courts)

Rule 752 is amended to require a party filing an answer opposing an application for transfer to proceed in accordance with Rule 123(b).

Rule 904 (Content of the Notice of Appeal)

The proposed amendment to subdivision (c) provides for a statement signed by counsel that there is either no verbatim record of the proceedings or that the complete transcript has been lodged of record. The proposed amendment to subdivision (c) also explains that the order of transcript is, in fact, a request by appellant and not an order of court. The proposed note cross-references Rule 1911(a) (Order for Transcript; General Rule), which explains that the transcript is "ordered" by appellant. The proposed amendment to the note remedies a problem where some common pleas court judges have required that an order for transcript be entered by the Court.

The proposed amendment to subdivision (e) requires certification in the notice of appeal when the Commonwealth takes an appeal pursuant to Rule 311(d).

The proposed amendment adding subdivision (e) provides that when the Commonwealth takes an appeal pursuant to Rule 311(d), the notice of appeal shall include a certification by counsel that the order will terminate or substantially handicap the prosecution.

The proposed amendment to the Official Note to Rule 904 deletes the penultimate sentence of the last paragraph which is not useful.

The proposed amendment to the Note to Rule 904 adds an explanation of *Commonwealth v. Dugger*, 506 Pa. 537, 486 A.2d 382 (1985) and its progeny.

Rule 906 (Service of Notice of Appeal)

The proposed amendment to Rule 906 provides for service of a notice of appeal to parties previously dismissed from an action where the dismissal was nonappealable or where an interlocutory appeal as of right is optional and an immediate appeal was not taken. The interests of such dismissed parties may be directly affected by such appeals and they should receive notices of appeal. Because an order dismissing one party in a multiparty case is no longer appealable immediately as of right, a defendant dismissed by an interlocutory order from a case prior to entry of a final order dismissing all claims and all parties may be brought back into the case by a plaintiff/appellant appealing the earlier order of dismissal.

Rule 907 (Docketing of Appeal)

The proposed amendment to subdivision (a) deletes the requirement of docket number assignment notice to the Administrative Office.

The proposed amendment to subdivision (b) deletes the requirement that substitution of counsel not delay proceedings. The Official Note is to be amended to cross-reference Pa.R.Crim.P. 1504.

Subsection (b) is amended to prohibit withdrawal of appearance without leave of court unless another attorney has entered or simultaneously enters an appearance.

Rule 1112 (Appeals by Allowance)

The proposed amendment adds a new subdivision (b) is added defining a final order for purposes of appeals by allowance as "any order that concludes an appeal including an order that remands an appeal, in whole or in part, unless the appellate court remands and retains jurisdiction." The proposed new subdivision (b) also clarifies that where an intermediate appellate court remands a matter, but retains jurisdiction, there is no final order from which to petition for allowance of appeal. The proposed amendment is needed because of some confusion in the bar that order of an intermediate appellate court such as a remand for trial is interlocutory. In fact, such an order of an intermediate appellate court is final for purposes of an appeal or petition for allowance of appeal to the Supreme Court.

The proposed amendment to subdivision (f) provides that a counsel's appearance can be withdrawn without leave of court where another lawyer has entered or simultaneously enters an appearance for the party.

The proposed amendment to the Official Note cross-references Pa.R.Crim.P. 1504.

Rule 1311 (Interlocutory Appeals by Permission)

Subdivision (b) is amended as follows: "The trial court or other government unit must act on the application within 30 days."

Subdivision (d) is amended to prohibit withdrawal of appearance without leave of court unless another attorney has entered or simultaneously enters an appearance.

The proposed 1996 amendment provides for a deemed denial where the trial court or other governmental unit fails to act on the application within 30 days. Under such circumstances, a party may need to praecipe for entry of the deemed denial pursuant to Rule 301(d).

Rule 1501 (Scope of Chapter)

This is a technical amendment to paragraph (c)(1) to correct a code citation as follows: "Section [135] 137 of Title 15 . . ." This is to conform to legislative renumbering of Title 15 of the Pennsylvania Consolidated Statutes.

Rule 1513 (Petition for Review)

The proposed amendment redesignates subdivision (d) as "Notice to Plead" instead of "Notice of Demand for Evidentiary Hearing," when a matter is within the original jurisdiction of Commonwealth Court. This remedies an inconsistency between the heading and the text of rule.

Rule 1514 (Filing and Service of the Petition for Review)

The proposed amendment clarifies that a counsel's appearance can be withdrawn without leave of court where another lawyer has entered or simultaneously enters an appearance for the party.

Rule 1515 (Answer to Petition)

The proposed amendment conforms the reference to "Notice To Plead." See proposed amendment to Rule 1513(d).

Rule 1532 (Special and Summary Relief)

The proposed amendment deletes the last sentence of subdivision (b) to eliminate the requirement of filing a motion to open or vacate an order granting summary relief. The proposed amendment overrules *Zemprelli v. Scranton*, 102 Pa. Cmwlth. Ct. 637, 519 A.2d 518 (1986). The proposed amendment to subdivision (b) is explained in the proposed amendment to the Official Note. This change is similar to amendment to Pa.R.C.P. 1098 effective January 1, 1996. See also proposed amendment to Rule 311(a)(5) in Recommendation 28-A.

Rule 1571 (Determinations of the Board of Finance and Revenue)

The proposed amendment requires that service of a petition for review from a Board of Finance and Review determination must be served on the Attorney General *in accordance with Rule 1514(c)*, i.e., service in person or by certified mail.

Rule 1734 (Appropriate Security)

The proposed amendment to Pa.R.A.P. 1734 adds as appropriate security irrevocable letters of credit and uses language comparable to that applicable to certificates of deposit.

Rule 1751 (Form of Bond)

The proposed amendment to Pa.R.A.P. 1751 substitutes plain English for the legalese in the second paragraph of the bond form.

Rule 1782 (Security on Review in Tax Matters)

The proposed amendment simplifies the second paragraph of subdivision (b) which sets forth the form of bond on a petition for review in tax matters.

Rule 1911 ([Order] Request for Transcript)

The Proposed amendment deletes the reference to an order for transcript. Since the order for transcript is, in fact, a request by a party and not an order of court, the use of the term order is misleading. See proposed amendment to Rule 904.

Rule 2132 (References in Briefs to the Record)

The proposed amendment corrects a reference to advance forms of brief. Advance briefs are to be served, but not filed.

Rule 2136 (Briefs in Cases Involving Cross Appeals)

The proposed amendment to the rule substitutes gender neutral language. The proposed amendment to the note is necessary because based on the 1987 amendments waiver of oral argument is no longer a prerequisite before an appellee may file a reply to appellant's answer on a cross-appeal.

Rule 2140 (Brief on Remand or Following Grant of Reargument or Reconsideration)

The proposed amendment reflects that the title on the cover of the brief (not the caption) should reflect the current status of the case.

Rule 2153 (Docket Entries and Related Matter)

The proposed amendment deletes the Official Note. The Official Note is a historical reference that does not assist in application of the rule.

Rule 2154 (Designation of Contents of Reproduced Record)

The proposed amendment deletes an inaccurate reference in the note of the number of briefs to be filed under the in forma pauperis procedure.

Rule 2185 (Time for Serving and Filing Briefs)

The proposed amendment requires that reproduced record be filed before the appellee's brief is due.

Rule 2186 (Time for Serving and Filing Reproduced Record)

The proposed amendment sets the time for service of the reproduced record as 21 days after service of appellee's brief rather than 51 days after service of appellant's advance brief. The proposed amendment to the official note corrects an erroneous reference to paragraph (a)(2). The proper reference is to paragraph (a)(1).

Rule 2187 (Number of Copies to be Served and Filed)

The proposed amendment conforms the number of briefs required by Commonwealth Court and Superior Court to actual practice.

Rule 2311 (Submission on Briefs)

The proposed amendment changes "PCHA" to "PCRA".

Rule 2313 (Advancement or Continuance)

The proposed amendment deletes historical references in the Official Note which do not assist in application of the rule. The Official Note is further amended to cross-reference Rule 3305 and explain that "*in the Supreme Court the prothonotary may dispose of motions generally relating to calendar control.*"

Rule 2543 (Considerations Governing Allowance of Reargument)

Rule 2543 is amended to provide that: "An application for reargument is not permitted from a final order of an appellate court under (1) the Pennsylvania Election Code; or (2) the Local Government Unit Debt Act or any similar statute relating to the authorization of public debt." See summary to Rule 123 (explaining why reargument is anomalous to the expedited appeal period for such cases).

Rule 3331 (Review of Special Prosecutions or Investigations)

Paragraph (a)(5) ("An order enforcing or refusing to enforce a subpoena issued by or otherwise affecting the existence or operation of the Pennsylvania Crime Commission existing under the Pennsylvania Crime Commission Act (71 P. S. § 1190.1 et seq.)" is deleted.

Rule 5101 (Statutes and Other Authorities Suspended or Abrogated)

The proposed amendment to Rule 5101 deletes subdivisions (a) and (c) because the legislature has repealed the statutory provisions which previously had been suspended by this Rule. The proposed amendment also deletes subdivision (d) which is obsolete.

Rule 5102 (Statutes Saved from Suspension)

The proposed amendment corrects the Rule to conform legislative renumbering of Title 15 of the *Pennsylvania Consolidated Statutes*.

[Pa.B. Doc. No. 96-667. Filed for public inspection April 26, 1996, 9:00 a.m.]

Title 246—MINOR COURT CIVIL RULES

PART I. GENERAL

[246 PA CODE CHS. 500 AND 1000]

Order Amendment PA.R.C.P.D.J. Nos. 504, 514, 515, 517, 519, 520, 581, 1002, 1008, 1013 and 1081; No. 165; Doc. No. 1

Please be advised that the docket number for the above captioned matter has been changed to the following:

No. 107 Magisterial Docket No. 1, Book 2

PATRICIA JOHNSON,
Chief Clerk—Eastern District

(*Editor's Note:* For the document referenced in this notice, see 26 Pa.B. 1691 (April 13, 1996).)

[Pa.B. Doc. No. 96-668. Filed for public inspection April 26, 1996, 9:00 a.m.]

Title 252—ALLEGHENY RULES

ALLEGHENY COUNTY

Rules of Court of Common Pleas; No. 2 of 1996
Rules Docket; No. 2 of 1996 District Justice
Docket

Order of Court

And Now, this 11th day of April, 1996, pursuant to action of the Board of Judges, the following local rule of the Court of Common Pleas (Rule 1005C—District Justice Proceedings) is adopted, effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

By the Court

ROBERT E. DAUER,
President Judge

Proposed Local Rule 1005C. District Justice Proceedings.

C. *(1) At the same time an appeal is filed and using envelopes provided by the Prothonotary with the Prothonotary's return address, every appellant appealing from a judgment entered by a district justice:

(a) shall address an envelope to every other party at his or her address as listed on the complaint form filed in the office of the district justice or as otherwise appears in the records of that office, or the attorney of record, if any;

(b) shall address an envelope to the district justice in whose office the judgment was rendered; and

(c) shall, if the appellant was a defendant in the action before the district justice, (i) address an envelope to himself or herself at the address used for the appeal and (ii) in addition to the envelopes required by subsection *(1)(a) of this Local Rule, address another envelope to every other defendant, if any, at his or her address as it appears in the records of the district justice, or his or her attorney of record, if any.

C. *(2) Using the envelopes addressed by the appellant under Allegheny County Local Rule 1005C.*(1), the Prothonotary shall mail by first class mail:

(a) to every party other than appellant, (i) a copy of the notice of appeal, and (ii) if any other party was a plaintiff in the action before the district justice, a copy of the rule pursuant to Pa.R.C.P.D.J. No. 1004B, or, if any other party was a defendant in the action before the district justice, a copy of the complaint, with such service and any return being noted on the court's docket;

(b) to the district justice, a copy of the notice of appeal, with such service and any return being noted on the court's docket; and

(c) if appellant was a defendant in the action before the district justice, to appellant and any other defendant, a copy of any complaint filed pursuant to a rule to file a complaint, with such service and any return being noted on the court's docket.

C. *(3) Pursuant to Pa.R.C.P.D.J. No. 1005C, such first class mailings by the Prothonotary pursuant to Allegheny County Local Rule 1005C.*(2) shall operate as service and proof of service as required by Pa.R.C.P.D.J. Nos. 1005A and 1005B.

[Pa.B. Doc. No. 96-669. Filed for public inspection April 26, 1996, 9:00 a.m.]

ALLEGHENY COUNTY

Rules of Court of Common Pleas; No. 3 of 1996 Rules Docket

Order of Court

And Now, this 11th day of April, 1996, pursuant to action of the Board of Judges, the following local rules affecting the Summary Appeals Branch of the Court of Common Pleas are adopted, effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

By the Court

ROBERT E. DAUER,
President Judge

Proposed Local Rules of the Summary Appeals Branch of the Court of Common Pleas of Allegheny County

Rule 1. Filing of Appeals.

A. Appeals from summary criminal convictions, ordinance violations and summary convictions for offenses of the Pennsylvania Vehicle Code shall be filed with the office of the Clerk of Courts of Allegheny County in accordance with the Pennsylvania Rules of Court, "Pennsylvania Rules of Criminal Procedure," Rule 86.

B. Appeals from summary determinations and orders of civil service commissions, zoning boards, the Pennsylvania Liquor Control Board, the Pennsylvania Department of Transportation and other miscellaneous summary proceedings from which appeal to the Court of Common Pleas is specifically authorized by statute shall be filed with the office of the Prothonotary of Allegheny County in accordance with the Pennsylvania Rules of Court, "Rules of Conduct, Office Standards and Civil Procedure for District Justices," Rule 1005.

Rule 2. Notice of Appeal.

The appellant shall notify the respondent (appellee) and the District Justice, City Magistrate, governmental agency, department, board or commission in writing of the appeal and the date of hearing at least thirty (30) days prior to the scheduled hearing date in accordance with the Pennsylvania Rules of Court, "Rules of Conduct, Office Standards and Civil Procedure for District Justices", Rule 1005, or Rule 86 of the "Pennsylvania Rules of Criminal Procedure," whichever is applicable.

Rule 3. Determination of Timeliness of Appeal.

The office of the Prothonotary of Allegheny County and the office of the Clerk of Courts of Allegheny County shall, upon presentation of a summary appeal to the Court of Common Pleas for filing, determine if the appeal is timely. All untimely attempts to file appeals shall be rejected by the filing agency unless an order granting allowance of appeal nunc pro tunc accompanies the appeal.

Rule 4. Sessions of Court.

The regular sessions of court shall be held daily before the assigned judge, except Saturdays, Sundays, and legal holidays, commencing at 8:30 o'clock a.m. and 1:00 o'clock p.m. unless otherwise ordered by the President Judge.

Rule 5. Notice of Presentment of Motions.

The moving party shall notify the respondent in writing of any presentment (with the exception of petitions to proceed in forma pauperis) at least five (5) days prior to the date of said presentment.

Rule 6. Motions.

All petitions, motions (including motions for postponement) and miscellaneous business shall be presented before the assigned motions judge on Mondays at 8:30 o'clock a.m. In the event that any Monday is an official court holiday or that the court is closed by order of the President Judge, all such matters shall be presented on Tuesday at 8:30 o'clock a.m. unless otherwise ordered by the President Judge.

Rule 7. Motions for Postponement.

Motions for postponement of cases shall be presented a minimum of seven (7) days prior to the scheduled hearing date of the case unless otherwise permitted by the court upon a showing of good cause. All such motions shall be completed using the forms supplied by the Summary Appeals Branch of the Court of Common Pleas. Motions granted by the court shall be filed with the appropriate filing agency and the appropriate filing fee paid within three (3) days of the date of the granting of the motion.

Rule 8. Petitions for Reconsideration.

Petitions pursuant to 42 Pa.C.S. 5505 shall be filed directly with the Summary Appeals Branch of the Court of Common Pleas and forwarded by the court to the assigned judge for review. Argument on such petitions may be held at the discretion of the assigned judge.

Rule 9. Petitions to Proceed in Forma Pauperis.

Petitions to proceed in forma pauperis in the Summary Appeals Branch of the Court of Common Pleas shall be presented before the court within twenty (20) days of the date of the decision of the issuing authority (District Justice or City Magistrate). Such petitions shall be presented before the assigned motions judge on Mondays

at 8:30 o'clock a.m. At the time of presentment Petitioner shall document all averments contained in the petition.

Rule 10. Advisement of In Forma Pauperis Presentation.

In addition to the mandate of Pa.R.C.P. 83(e) regarding advisement of appellate rights by the issuing authority (District Justice or City Magistrate) defendant shall be advised by the issuing authority that petitions to proceed in forma pauperis in the Summary Appeals Branch of the Court of Common Pleas shall be presented before the court within twenty (20) days of the date of the decision of the issuing authority.

Rule 11. Scheduling of Miscellaneous Summary Appeals and Motions.

A. The assigned judge presiding over summary appeals to the Court of Common Pleas from determinations of the Pennsylvania Labor Relations Board, Civil Service Commissions, School Boards, Water and Sewer Authorities, Housing Authorities, and other local and non-local agencies (with the exception of the Pennsylvania Liquor Control Board and Zoning Boards) shall hold the hearing, conference or conciliation within thirty (30) days of the assignment of the case to the court. Presentment of petitions, motions and other miscellaneous business shall be completed according to the procedure implemented by the assigned judge.

B. The assigned judge presiding over summary appeals to the Court of Common Pleas from determinations of the Pennsylvania Liquor Control Board and Zoning Boards shall schedule the date and time of hearing, conference or conciliation and any other necessary proceedings including the presentment of all petitions, motions and other miscellaneous business. Presentment of petitions, motions and other miscellaneous business shall be completed according to the procedure implemented by the assigned judge.

Rule 12. Disposition of Miscellaneous Summary Appeals.

A verdict in miscellaneous summary appeals (with the exception of appeals from zoning boards and the Pennsylvania Liquor Control Board) shall be entered within thirty (30) days of the date of hearing, conference, or conciliation. The filing of briefs shall be completed according to the procedure implemented by the assigned judge.

Rule 13. Withdrawal of Appeals.

Summary Appeals to the Court of Common Pleas from summary criminal convictions, ordinance violation convictions, vehicle code violation convictions and orders of the Pennsylvania Department of Transportation may be withdrawn at any time by the personal appearance of appellant or appellant's counsel before the court. Withdrawal of miscellaneous summary appeals shall be completed according to the procedure implemented by the assigned judge.

[Pa.B. Doc. No. 96-670. Filed for public inspection April 26, 1996, 9:00 a.m.]

Title 25—LOCAL COURT RULES

GREENE COUNTY

Amendment and Addition to Local Rules of Procedure G216, G2206 and G216-CRIM

Order

And now, this 12th day of April, 1996, it is *Ordered* that the above-stated Local Rules be amended as follows. The prior listed rules are rescinded upon the effective date of these amendments.

These amendments shall be effective 30 days after publication in the *Pennsylvania Bulletin*.

H. TERRY GRIMES,
President Judge

Rule G216: Continuances.

* * * * *

d. A filing fee of twenty five (\$25.00) dollars shall be paid to the Prothonotary upon filing of the motion for continuance and receipt received prior to the Prothonotary's time stamp and prior to presentment to this Court.

e. The Prothonotary shall remit said filing fee on a monthly basis to the Court Administrator for expenditure on the Greene County Law Library.

Rule G2206: Settlement, Compromise, Discontinuance and Judgment—Notice to the Department of Revenue. Contents of the Petition. Department's Response.

a. When a petition is presented seeking an order permitting a compromise of a claim, whether in suit or not, by an estate or when a petition is presented pursuant to Pa.R.C.P. 2206, the court shall set a date for hearing. Petitioner shall provide a copy of the petition and notice of the hearing date to the Office of Chief Counsel, Department of Revenue, Commonwealth of Pennsylvania, at least twenty-one (21) days prior to the hearing date.

b. Said petition shall contain the following information:

1. The extent, if any, of the decedent's conscious pain and suffering resulting from the incident giving rise to the decedent's claim;

2. A copy of an accident report, if available;

3. The medical expenses incurred resulting from the incident giving rise to the decedent's claim;

4. Name, age, relationship to decedent, and the extent of financial dependence upon decedent of wrongful death beneficiaries of decedent;

5. Non-minor decedent's probable future earned income less cost of maintenance discounted to present worth (attach supporting economist's report, if available).

c. Counsel for the Department of Revenue shall notify the petitioner's counsel at least seven (7) days prior to the hearing date whether or not the Department agrees with the proposed apportionment.

Rule G216-CRIM: Continuances.

a. Motions for continuance shall contain the following information:

1. A statement of the number of prior continuances, if any,

2. A clear, concise and certain reason for the request, and

3. In the event the reason for requesting a continuance is a prior commitment to another Court appearance or administrative agency, a copy of the notice of the conflicting hearing shall be attached as an exhibit.

b. If the continuance is by consent, all counsel *and all parties* must sign the application.

c. Granting of a continuance pursuant to this Rule and Pa.R.Crim.P. 301 shall be at the discretion of the Court.

d. A filing fee of twenty-five (\$25.00) dollars shall be paid to the Clerk of Courts upon filing of the motion for continuance and receipt received prior to the Clerk of Courts' time stamp and prior to presentation to this Court.

e. The Clerk of Courts shall remit said filing fee on a monthly basis to the Court Administrator for expenditure on the Greene County Law Library.

[Pa.B. Doc. No. 96-671. Filed for public inspection April 26, 1996, 9:00 a.m.]

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MONROE COUNTY Civil Court Rules

Order

And Now, April 4th, 1996, the following Civil Court Rules 206 and 207 are adopted to be effective June 1, 1996. Local Civil Rules 206 and 207 heretofore adopted are rescinded effective June 1, 1996.

This is a certified copy of the proposed Civil Court Rules 206 and 207 to be adopted June 1, 1996.

By the Court

RONALD E. VICAN,
President Judge

Rule 206. Petition and Rule to Show Cause Practice.

1. A petition and rule to show cause may be used to bring before the court any proper matter for which no other specific procedure is authorized or in which only a petition is prescribed as the authorized procedure for bringing such matter before the court for disposition.

2. A rule to show cause shall be issued at the discretion of a judge of the court as contemplated by Pa.R.C.P. 206.5. The court, upon its own initiative, may schedule an evidentiary hearing on disputed issues of material fact and may, in its discretion, provide for disposition of the matter on briefs, without the necessity of oral argument. In such instances, the court shall establish a briefing schedule in its initial order.

3. All petitions shall contain a certification by counsel for the moving party that concurrence in the petition has been sought from all opposing counsel and that such concurrence has been granted or denied. Where concurrence has been granted, the written concurrence of opposing counsel shall be attached to the petition.

4. All petitions, except those made in the course of trial or hearing, shall be in writing. All written petitions shall be signed by counsel and may be filed at any time during regular business hours with the prothonotary (civil division), clerk of courts (criminal division), or clerk of

orphans' court¹ or presented to the motions court judge at a time specified on the court calendar. Counsel's signature upon a petition shall constitute a certification that counsel has read the petition and that, to the best of counsel's knowledge, information and belief, it is supported by sufficient legal or factual grounds and that it is not interposed merely for delay. The prothonotary/clerk of courts shall deliver daily a petitions list with accompanying petitions to the court administrator to monitor and assign to a judge.

5. All petitions and answers thereto, shall comply with the provisions of Pa.R.C.P. 206.1 through 206.3.

6. The party obtaining the issuance of a rule to show cause shall forthwith serve a true and correct copy of the court order entering the rule and specifying a return date, along with a copy of the underlying petition, upon each attorney of record and unrepresented party in the manner prescribed by Pa.R.C.P. 440. An affidavit of service shall be filed within five (5) days with the prothonotary/clerk of courts and court administrator.

7. If no answer is filed on or before the return date, the moving party may file a motion to make the rule absolute. A motion to make the rule absolute shall evidence compliance with the service requirements of Pa. R.C.P. 440, setting forth the time, place and nature of service. No rule shall be made absolute without certification that the petition and rule to show cause have been served in compliance with Pa.R.C.P. 440. Counsel or the moving party shall make such certification under oath or in conformance with Pennsylvania Rules of Civil Procedure.

8. Failure to comply with any provision of this rule may constitute sufficient grounds for the court to dismiss the petition and/or deny any requested relief.

Rule 207. Motion Practice.

1. All motions, except those made in the course of trial or hearing, shall be in writing. All written motions shall be signed and presented at motions court or filed with the prothonotary (civil division), clerk of courts (criminal division), or clerk of orphans' court.¹ Counsel's signature upon a motion shall constitute a certification that counsel has read the motion and that, to the best of counsel's knowledge, information and belief, the underlying circumstances which give rise to the filing of the motion are based upon either sufficient legal or factual grounds and that it is not interposed merely for delay.

2. All motions shall state with particularity those grounds upon which relief is sought and, where written, shall be in paragraph form in conformity with Pa.R.C.P. 207. Further, all written motions shall cite any statute or procedural rule authorizing the grant of such relief.

3. Except for motions enumerated in subsection (4), all motions shall contain a certification by counsel for the moving party that concurrence in the motion has been sought from all opposing counsel and that such concurrence has been granted or denied. Where concurrence has been granted, the written concurrence of opposing counsel shall be attached to the motion.

4. At the time of filing motions authorized by Pa. R.C.P. 1028 (preliminary objections), 1034 (judgment on the pleadings), 1035 (summary judgment), and 1509 (preliminary objections), the moving party shall also file a praecipe to place the matter on the first argument list set

¹ The form and substance of Petition and Rule to Show Cause Practice will be adhered to in criminal court and orphans' court.

¹ The form and substance of Motion Practice will be adhered to in criminal court and orphans' court.

forth on the court calendar occurring more than thirty (30) days following the date of filing the motion. Briefs in support of legal propositions shall be filed in accordance with 43 J.D.R.C.P. 210 and 211.

5. At the time of presentation at motions court or filing with the prothonotary, clerk of courts, or clerk of orphans' court, the party filing the motion shall forthwith serve a true and correct copy of the motion, proposed order, praecipe for argument (if applicable), upon each attorney of record and unrepresented party in the manner prescribed by Pa.R.C.P. 440. Within seven (7) days, the party filing the motion shall file with the court an affidavit of service indicating the time, place and manner of service.

6. The legibility of all attachments, exhibits and photocopies shall be the sole responsibility of counsel initiating the motion.

7. Failure to comply with any provision of this rule may constitute sufficient grounds for the court to deny the motion.

[Pa.B. Doc. No. 96-672. Filed for public inspection April 26, 1996, 9:00 a.m.]

MONROE COUNTY

Criminal Court Rule 303—Arraignment

Order

And Now, April 4th, 1996, the following Criminal Court Rule 303—Arraignment is adopted to be effective June 1, 1996. Local Criminal Rule VIII heretofore adopted is rescinded effective June 1, 1996.

This is a certified copy of the proposed Criminal Court Rule 303—Arraignment to be adopted June 1, 1996.

By the Court

RONALD E. VICAN,
President Judge

Rule 303. Arraignment.

Arraignment may be in writing as an alternative to an appearance by the defendant. At the discretion of the district attorney, a personal appearance by the defendant may be required. The form for arraignment shall be as follows:

WAIVER OF APPEARANCE AT ARRAIGNMENT

Case No. _____ Date: _____

Defendant's Name: _____

Address: _____

S. S. Number: _____ - _____ - _____

Driver's License Number: _____ State: _____

Defense Counsel's Name: _____

I. D. Number: _____

I, the undersigned Defendant, understand the nature of the charges filed against me by the Commonwealth of Pennsylvania and do hereby waive formal arraignment and do expressly waive my right to appear for arraignment.

Commencing with the date of this Waiver, I acknowledge the right to request a bill of particulars within seven (7) days; to file a discovery motion and inspection within

fourteen (14) days; and to file an omnibus pretrial motion within thirty (30) days, unless extended by order of court.

I further acknowledge that I must personally attend the call of the criminal trial list scheduled for _____, at 9:30 a.m., Courtroom No. 1, Monroe County Courthouse, Stroudsburg, Pennsylvania, and be present for trial during the _____ Criminal Trial Term commencing _____, at 9:00 a.m., in Courtroom No. 3, Monroe County Courthouse, Stroudsburg, Pennsylvania.

Date Signature of Defendant

Date Signature of Defense Counsel

[Pa.B. Doc. No. 96-673. Filed for public inspection April 26, 1996, 9:00 a.m.]

NORTHAMPTON COUNTY

Administrative Order 1996-3—A.R.D. in Summary Cases; Misc. 122-1996

Order of Court

And Now, this 10th day of April, 1996, Northampton County Administrative Order 1996-3—A.R.D. in Summary Cases—is hereby adopted as follows, effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

Seven (7) certified copies of the within Administrative 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*; and one (1) certified copy shall be filed with the Pennsylvania Criminal Procedural Rules Committee. One (1) copy of this Administrative Order shall be kept available in the Office of the Clerk of Courts. A copy is directed to be published in the *Northampton County Reporter*.

Order of Court

And Now, this 10th day of April, 1996, pursuant to Pa.R.Crim.P. 160(d), the Court adopts the following local procedure for A.R.D. in summary cases:

1. The following types of summary cases shall be eligible for A.R.D., to be supervised by the District Justice, pursuant to Pa.R.Crim.P. 161:

- a. Retail theft. 18 Pa.C.S.A. § 3929(a), (b)(1)(i).
- b. Purchase, consumption, possession, or transportation of intoxicating beverages by one less than 21 years of age. 18 Pa.C.S.A. § 6308.

c. Misrepresentation of age to secure liquor or malt or brewed beverages by one less than 21 years of age. 18 Pa.C.S.A. § 6307.

d. Carrying a false identification card. 18 Pa.C.S.A. § 6310.3.

2. Admission shall be requested within ten (10) days of receipt of the citation or summons. Extensions of the application period may be granted by the District Justice for good cause. The District Justice shall determine eligibility for summary A.R.D. within seventy-two (72) hours of the submission of the application.

3. a. A District Justice shall notify the Minor-Judiciary Administrator when a defendant is placed in A.R.D. for a summary matter.

b. The Minor-Judiciary Administrator shall maintain a list of all defendants placed in A.R.D. in a summary matter.

4. a. No defendant who has previously been placed in an A.R.D. program in any court shall be admitted to A.R.D. in a summary matter.

b. A defendant who applies for A.R.D. in a summary matter shall execute the following:

AFFIDAVIT

I have not previously been placed in an A.R.D. program in any court at either the common pleas or district justice level. I make this statement subject to the penalties of 18 Pa.C.S.A. 4904, relating to unsworn falsification to authorities.

Date	Name
_____	_____

c. Prior to placing a defendant in A.R.D., the District Justice shall determine that the defendant has not previously been placed in A.R.D. in a summary matter in this judicial district by contacting the Minor-Judiciary Administrator.

5. Costs of supervision and restitution, if any, must be paid in full before admission to the A.R.D. program. These costs include court costs incident to a non-traffic summary offense and any costs incident to the program to which the defendant is referred.

6. The defendant shall be notified in writing of acceptance or rejection from A.R.D.

a. If accepted, defendant shall appear at a time designated by the District Justice for completion of all documentation incident to admission to A.R.D.

b. If rejected, the District Justice shall notify defendant that he has ten (10) days to enter his plea and the case shall proceed in accord with Chapter 50 of the Pennsylvania Rules of Criminal Procedure.

7. The District Justice shall schedule and notify the defendant at the time of admission to A.R.D. of a hearing date to determine if all A.R.D. requirements have been met within ninety (90) days of the entry into A.R.D.

8. Requests for continuance of said hearing shall be denied, except in compelling circumstances. No continuance shall be for more than seven (7) days.

9. A defendant accepted into A.R.D. for retail theft shall be referred to the Stoplift program conducted by THE PROGRAM for Women and Families. A defendant accepted for the alcohol-related offenses shall be referred to the Alcohol and Drug Dependence Center—Lehigh Valley for counseling. Successful completion of the rehabilitation program shall be required.

10. Each District Justice shall file a report on a monthly basis with the Minor-Judiciary Administrator setting forth the disposition and completion or non-completion of all program requirements. If a defendant eligible for A.R.D. is not admitted, the District Justice shall include the reasons therefor in the report. Upon successful completion of all requirements, the defendant's case shall be dismissed and defendant discharged.

11. If defendant declines A.R.D. or fails to successfully complete the program requirements, the case shall pro-

ceed in accord with Chapter 50 of the Pennsylvania Rules of Criminal Procedure.

12. No summary case shall remain "active" for purposes of A.R.D. supervision in excess of ninety (90) days.

13. The following shall be displayed in each District Justice office:

NOTICE TO THOSE CHARGED WITH SUMMARY RETAIL THEFT OR UNDERAGE ALCOHOL-RELATED OFFENSES

You may be eligible to participate in a program (A.R.D.) which will result in dismissal of the charge against you. The A.R.D. program is available for defendants who have not previously been placed into an A.R.D. program.

You must pay all costs and restitution before admission to the A.R.D. program. You will be required to attend a counseling program for up to ninety (90) days. If you successfully complete the program, the charge against you will be dismissed. If you want to apply for the A.R.D. program, notify the District Justice immediately.

By the Court

ROBERT A. FREEDBERG,
President Judge

[Pa.B. Doc. No. 96-674. Filed for public inspection April 26, 1996, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Transfer of Attorneys to Inactive Status

The following attorneys have been transferred to inactive status by Order of the Supreme Court of Pennsylvania dated March 13, 1996, pursuant to Rule 219, Pa.R.D.E. The Order became effective April 12, 1996.

Notice with respect to attorneys having Pennsylvania registration addresses, who have been transferred to inactive status by said Order, was published in the appropriate county legal journal.

ELAINE M. BIXLER,
Secretary
The Disciplinary Board of the
Supreme Court of Pennsylvania

FRANCIS BRADFORD BATCHA
Freehold, NJ

THOMAS ASHTON EDWARDS
Coral Gables, FL

LUDWIG PETER GAINES
Washington, DC

BRUCE J. MILLER
Dix Hills, NY

[Pa.B. Doc. No. 96-675. Filed for public inspection April 26, 1996, 9:00 a.m.]