

# THE COURTS

## Title 210—APPELLATE PROCEDURE

### PART I. RULES OF APPELLATE PROCEDURE

[210 PA. CODE CH. 15]

#### Proposed Amendments to Pa.R.A.P. 1501—1561; Internal Recommendation 50

The Appellate Court Procedural Rules Committee proposes to amend Rules 1501 through 1561 of the Pennsylvania Rules of Appellate Procedure.

The proposed 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 21, 2003 to the Appellate Court Procedural Rules Committee, 5035 Ritter Road, Suite 700, Mechanicsburg, PA 17055.

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 Procedural Rules Committee*

HONORABLE JOSEPH A. HUDOCK,  
*Chair*

#### Annex A

#### TITLE 210. APPELLATE PROCEDURE

#### PART I. RULES OF APPELLATE PROCEDURE

#### ARTICLE II. APPELLATE PROCEDURE

#### CHAPTER 15. JUDICIAL REVIEW OF GOVERNMENTAL DETERMINATIONS

#### IN GENERAL

#### Rule 1501. Scope of Chapter.

(a) *General rule.* Except as otherwise prescribed by Subdivisions (b) and (c) of this rule, this chapter applies to:

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(3) [ **Objections to a determination by a government unit** ] **Original jurisdiction actions** heretofore cognizable in an appellate court by [ **an action** ] **action** in the nature of equity, replevin, mandamus or quo warranto or for [ **a** ] declaratory judgment, or upon writs of certiorari or prohibition.

(4) **Matters designated by general rule, e.g., review of orders refusing to certify interlocutory orders for immediate appeal, release prior to sentence, appeals under Section 17(d) of Article II of the Constitution of Pennsylvania and review of special prosecutions or investigations.**

(b) *Appeals governed by other provisions of rules.* This chapter does not apply to any appeal within the scope of:

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(3) Chapter 13 (interlocutory appeals by permission), except that the provisions of this chapter and ancillary provisions of these rules applicable to practice and proce-

dures on petition for review, so far as they may be applied, shall be applicable (a) where required by the Note to Rule 341 and the Note to Rule 1311; and (b) after permission to appeal has been granted from a determination which, if final, would be subject to judicial review pursuant to this chapter.

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#### *Official Note:*

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**Subsection (a)(4) was added in 2003 to recognize the references in various appellate rules and accompanying notes to petition for review practice. For example, the Notes to Rules 341 and 1311 direct counsel to file a petition for review of a trial court or government agency order refusing to certify an interlocutory order for immediate appeal. Similarly, Rule 1762 directs the filing of a petition for review when a party seeks release on bail before judgment of sentence is rendered. A petition for review is also the proper method by which to seek judicial review pursuant to Rule 3321 (regarding legislative reapportionment commission) and Rule 3331 (regarding special prosecutions or investigations). The 2003 amendments clarify the use of petitions for review in these special situations.**

Subdivision (b) of this rule is necessary because otherwise conventional appeals from a court (which is included in the scope of the term "government unit") to an appellate court would fall within the scope of this chapter under the provisions of Paragraph (a)(2) of this rule.

[ **Rule 1561 (disposition of petition for review) makes clear that this chapter does not apply to ordinary tort, contract and post conviction hearing matters.** ]

Subdivision (c) expressly recognizes that some statutory procedures are not replaced by petition for review practice. Thus matters brought pursuant to Section 137 of the Associations Code governing judicial review of documents rejected by the Department of State or pursuant to the Election Code are controlled by the applicable statutory provisions and not by the rules in Chapter 15. See 15 Pa.C.S. § 137; Act of June 3, 1937, P. L. 1333, as amended 25 P. S. §§ 2600—3591.

[ **Where** ] **In light of Subdivision (d), where the court in which a petition for review is filed lacks subject matter jurisdiction (e.g., a petition for review of a local government question filed in the Commonwealth Court), Rules 741 (waiver of objections to jurisdiction), 751 (transfer of erroneously filed cases) and 1504 (improvident petitions for review) will be applicable. See also 42 Pa.C.S. § 5103.**

The 2003 amendments are made to petition for review practice to address the evolution of judicial responses to governmental actions. As indicated in the Note to Rule 1502, when the Rules of Appellate Procedure were initially adopted, there was a "long history in the Commonwealth . . . of relatively complete exercise of the judicial review function under the traditional labels of equity, mandamus, certiorari and prohibition." While such original jurisdiction forms of action are still available, their proper usage is now the exception rather than the rule

because appellate proceedings have become the norm. Thus, the need to rely on Rule 1503 to convert an appellate proceeding to an original jurisdiction action and vice versa arises less often. Moreover, the emphasis on a petition for review as a generic pleading that permits the court to simultaneously consider all aspects of the controversy is diminished. The primary concern became making the practice for appellate proceedings more apparent to the occasional appellate practitioner. Accordingly, the rules have been amended to more clearly separate procedures for appellate proceedings from those applicable to original jurisdiction proceedings.

The responsibility of identifying the correct type of proceeding to be used to challenge a governmental action is initially that of counsel. Where precedent makes the choice clear, counsel can proceed with confidence. Where the choice is more problematic, then counsel should draft the petition for review so as to satisfy the directives for both appellate and original jurisdiction proceedings. Then the court can designate the proper course of action regardless of counsel's earlier assessment.

[Explanatory Comment—1976]

[ It is made clear that where permission to appeal is granted under Chapter 13 from a determination, which, if final, would be subject to the petition for review procedures of Chapter 15 (e.g. permission to appeal from an interlocutory order of the Public Utility Commission) the further proceedings in the appellate court are governed by Chapter 15. ]

**Rule 1502. Exclusive Procedure.**

The appeal[, the] and the original jurisdiction actions of equity, replevin, mandamus and quo warranto, the action for a declaratory judgment, and the writs of certiorari and prohibition are abolished insofar as they relate to matters within the scope of a petition for review under this chapter. The petition for review, insofar as applicable under this chapter, shall be the exclusive procedure for judicial review of a determination of a government unit.

**Official Note:** This chapter recognizes that the modern label "appeal" has little significance in connection with judicial review of governmental determinations in light of the long history in this Commonwealth of relatively complete exercise of the judicial review function under the traditional labels of equity, mandamus, certiorari and prohibition. If the simple form of notice of appeal utilized in Chapter 9 (appeals from lower courts) were extended to governmental determinations without any requirement for the filing of [ exceptions ] motions for post-trial relief, a litigant who incorrectly selected the appeal label, rather than the equity, mandamus, replevin, or prohibition, etc. label, would probably suffer dismissal, [ since ] because the court would be reluctant to try a proceeding in the nature of equity, mandamus, replevin, or prohibition, etc. in the absence of a proper pleading adequately framing the issues.

The solution introduced by these rules is to substitute a new pleading (the petition for review) for all of the prior types of pleading which seek relief from a governmental determination (including governmental inaction). Where the reviewing court is required or permitted to hear the

matter de novo, the judicial review proceeding will go forward in a manner similar to an equity or mandamus action. Where the reviewing court is required to decide the questions presented solely on the record made below, the judicial review proceeding will go forward in a manner similar to appellate review of an order of a lower court. However, experience teaches that governmental determinations are so varied in character, and generate so many novel situations, that [ frequently ] on occasion it is only at the conclusion of the judicial review process, when a remedy is being fashioned, that one can determine whether the proceeding was in the nature of equity, mandamus, prohibition, or statutory appeal, etc. The petition for review will eliminate the wasteful and confusing practice of filing multiple "shotgun" pleadings in equity, mandamus, prohibition, statutory appeal, etc., and related motions for consolidation, and will permit the parties and the court to proceed directly to the merits unencumbered by procedural abstractions.

Rule 1551 (scope of review) makes clear that the change in manner of pleading does not change the scope or standard of review of governmental determinations or otherwise affect the [ substantial ] substantive rights of the parties.

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**Rule 1503. Improvident Appeals or [ Plenary ] Original Jurisdiction Actions.**

If an appeal is taken from an order of a government unit, or if a complaint in the nature of equity, replevin, mandamus, or quo warranto, or a petition for a declaratory judgment or for a writ in the nature of certiorari or prohibition is filed against a government unit or one or more of the persons for the time being conducting its affairs[, as such,] objecting to a determination by any one or more of them, this alone shall not be a ground for dismissal[, but the]. The papers whereon the improvident matter was commenced shall be regarded and acted upon as a petition for review of such governmental determination and as if filed at the time the improvident matter was commenced. The court may require that the papers be clarified by amendment.

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**Rule 1504. Improvident Petitions for Review.**

If a petition for review is filed against any person, where the proper mode of relief is an original jurisdiction action in equity, replevin, mandamus or quo warranto, or a petition for a declaratory judgment or for a writ of certiorari or prohibition, this alone shall not be a ground for dismissal, but the papers whereon the improvident matter was commenced shall be regarded and acted upon as a complaint or other proper process commenced against such person and as if filed at the time the improvident matter was commenced. The court may require that the papers be clarified by amendment.

**Official Note:** Based on 42 Pa.C.S. § 102 (definitions) (which includes petition for review proceedings within the statutory definition of "appeal") and 42 Pa.C.S. § 708(b) (appeals). When the moving party files [ his ] a clarifying amendment, the amendment will operate to specify that one form of action which the party elects to proceed on.

PETITION FOR REVIEW

Rule 1512. Time for Petitioning for Review.

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(b) *Special appellate provisions.* A petition for review of:

(1) A determination of the Department of Community [ **Affairs** ] and Economic Development in any matter arising under the Local Government Unit Debt Act, 53 Pa.C.S. §§ 8001—8271, shall be filed within 15 days after entry of the order or the date the determination is deemed to have been made, when no order has been entered.

\* \* \* \* \*

(4) A determination of a Commonwealth agency under section 1711 of the Commonwealth Procurement Code, 62 Pa.C.S. § 1711, shall be filed within 14 days of receipt of the decision.

(c) [ *Other governmental determinations* ] *Original jurisdiction actions.* A petition for review of a determination of a government unit not within the scope of Subdivisions (a) or (b) of this rule may be filed with the prothonotary of the appellate court within the time, if any, limited by law.

*Official Note:* The note to Rule 903 (time for appeal) addresses the development of the standard 30 day appeal period. Rule 102 defines a “quasijudicial order” as “an order of a government unit, made after notice and opportunity for hearing, which is by law reviewable solely upon the record made before the government unit, and not upon a record made in whole or in part before the reviewing court.”

Subdivision (c) relates to matters [ **which are original in nature** ] addressed to the original jurisdiction of an appellate court. For example, equitable matters are governed by existing principles of laches, etc. Other matters, such as petitions for review raising issues formerly cognizable by action in mandamus or quo warranto, etc., are governed by the time limits, if any, applicable under the prior procedure. See generally 42 Pa.C.S. §§ 1702 (regarding the Supreme Court’s rulemaking procedures), 1722(c) (Time limitations), 5501—5574 (Limitations of time).

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Rule 1513. Petition for Review.

(a) [ *Content.* The petition for review shall contain a statement of the basis for the jurisdiction of the court; the names of the parties seeking review; the name of the government unit (see Rule 503 (description of public officers)) which made the determination sought to be reviewed; reference to the order or other determination sought to be reviewed; a general statement of the objections to the order or other determination; and a short statement of the relief sought. The statement of objections will be deemed to include every subsidiary question fairly comprised therein. It shall not be necessary for the petition to include or have annexed thereto a copy of the text, if any, of the order or other determination sought to be reviewed. ] *Caption and parties on appeal.* In an appellate jurisdiction petition for review, the aggrieved party or person shall be named as the petitioner and, unless the government unit is disinterested, the government unit and no one else shall

be named as the respondent. If the government unit is disinterested, all real parties in interest, and not the government unit, shall be named as respondents.

(b) [ *Caption and parties.* The government unit which made the determination sought to be reviewed, and no other party, shall be named as a respondent, except where the petition seeks review of an order of a government unit which is in fact disinterested in the subject matter of the order, in which case all real parties in interest before such government unit shall be named as respondents and the government unit shall not be named as a respondent. Where a public act or duty is required to be performed by an executive or administrative department, by a departmental administrative board or commission or by an independent administrative board or commission of this Commonwealth, or other board or body, it shall be sufficient to name the department, board, commission or body in the petition for review, without naming or joining as a respondent the head of the department or the members of the board, commission or body. Where necessary in order to join an indispensable party to the matter, the petition for review may name as a respondent a person who is not a government unit. ] *Caption and parties in original jurisdiction actions.* The government unit and any other indispensable party shall be named as respondents. Where a public act or duty is required to be performed by a government unit, it is sufficient to name the government unit, and not its individual members, as respondent.

(c) [ *Alternative objections.* Objections to a determination of a government unit and the related relief sought may be stated in the alternative, and relief of several different types may be demanded. ] *Form.* Any petition for review shall be divided into consecutively numbered paragraphs. Each paragraph shall contain, as nearly as possible, a single allegation of fact or other statement. When petitioner seeks review of an order refusing to certify an interlocutory order for immediate appeal, numbered paragraphs need not be used.

(d) [ *Notice 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. ] *Content of appellate jurisdiction petition for review.* An appellate jurisdiction petition for review shall contain: (1) a statement of the basis for the jurisdiction of the court; (2) the name of the party or person seeking review; (3) the name of the government unit that made the order or other determination sought to be reviewed; (4) reference to the order or other determination sought to be reviewed, including the date the order or other determination was entered; (5) a general statement of the objections to the order or other determination; and (6) a short statement of the relief sought. A copy of the order or other determination to be reviewed shall be attached to the petition for review as an exhibit. The statement of objections will be deemed to include every subsidiary question fairly comprised therein. No notice to plead or verification is necessary.

Where there were other parties to the proceedings conducted by the government unit, and such parties are not named in the caption of the petition for review, the petition for review shall also contain a notice to participate, which shall provide substantially as follows:

If you intend to participate in this proceeding in the (Supreme, Superior or Commonwealth, as appropriate) Court, you must serve and file a notice of intervention under Rule 1531 of the Pennsylvania Rules of Appellate Procedure within 30 days.

(e) [ *Verification.* A petition for review which contains or has endorsed upon it a notice to plead shall be verified either by oath or affirmation or by verified statement. Otherwise a petition for review need not be verified. ] *Content of original jurisdiction petition for review.* A petition for review addressed to an appellate court's original jurisdiction shall contain: (1) a statement of the basis for the jurisdiction of the court; (2) the name of the person or party seeking relief; (3) the name of the government unit whose action or inaction is in issue and any other indispensable party; (4) a general statement of the material facts upon which the cause of action is based and (5) a short statement of the relief sought. It shall also contain a notice to plead and be verified either by oath or affirmation or by verified statement.

(f) [ *Form.* The petition for review shall be divided into paragraphs numbered consecutively, each containing as nearly as may be a single allegation of fact or other statement. ] *Alternative objections.* Objections to a determination of a government unit and the related relief sought may be stated in the alternative, and relief of several different types may be requested.

*Official Note:* [ This rule supersedes former Commonwealth Court Rules 20A, 20B and 21. Subdivision (b) is based in part upon Pa.R.Civ.P. 1094.

Examples of government units which are not ordinarily "interested" in the subject matter of a petition for review of their action for the purposes of Subdivision (b) of this rule are the Environmental Hearing Board, the Department of Education (with respect to tenure appeals under Section 1132 of the Public School Code of 1949 (24 P.S. § 11-1132)) and the State Civil Service Commission. With respect to the last sentence of Subdivision (b) see *Bruhin v. Commonwealth*, 14 Pa. Commonwealth Ct. 300, 320 A.2d 907 (1974) and 42 Pa.C.S. § 761(d) (ancillary matters) (last sentence), which provides that to the extent prescribed by general rule the Commonwealth Court shall have ancillary jurisdiction over any claim or other matter which is related to a claim or other matter otherwise within its exclusive original jurisdiction.

The inclusion or omission of a notice to plead in the petition for review is the signal which the petition gives to the opposing parties and the court as to the position which the petitioner will take on the issue of going beyond the record made below. If a notice to plead is included, the fact issue may be resolved by the subsequent pleadings permitted by Rules 1515 (answer to petition) and 1516 (other pleadings allowed), but if not the matter will under

Rule 1542 (oral argument and evidentiary hearing) move either to summary judgment or to trial.

The 1997 amendment to subdivision (d) remedies what had been an inconsistency between the former heading and the text of the rule. ]

The 2003 amendments to this rule clarify what must be included in a petition for review addressed to an appellate court's appellate jurisdiction and what must be included in a petition for review addressed to an appellate court's original jurisdiction. Where it is not readily apparent whether a "determination" (defined in Rule 102 as "[ a ]ction or inaction of a government unit) is reviewable in the court's appellate or original jurisdiction, compliance with the requirements of Subdivisions (d) and (e) is appropriate.

Subdivisions (a) and (b) reflect the provisions of Rule 501 (Any Aggrieved Party May Appeal), Rule 503 (Description of Public Officers), Section 702 of the Administrative Agency Law, 2 Pa.C.S. § 702 (Appeals), and Pa.R.C.P. 1094 (regarding parties defendant in mandamus actions).

Government units that are usually disinterested in appellate jurisdiction petitions for review of their determinations include:

- the Board of Claims,
- the Department of Education (with regard to teacher tenure appeals from local school districts pursuant to section 1132 of the Public School Code of 1949, 24 P.S. § 11-1123),
- the Environmental Hearing Board,
- the State Civil Service Commission, and
- the Workers' Compensation Appeal Board.

The provision for joinder of indispensable parties in original jurisdiction actions reflects the last sentence of section 761(c) of the Judicial Code, 42 Pa.C.S. § 761(c), providing for the implementation of ancillary jurisdiction of the Commonwealth Court by general rule.

Subdivisions (d) and (e) reflect the differences in proceeding in a court's original and appellate jurisdiction, while preserving the need for sufficient specificity to permit the conversion of an appellate document to an original jurisdiction pleading and vice versa should such action be necessary to assure proper judicial disposition. See also the notes to Rules 1501 and 1502. The paragraph regarding the notice to participate was formerly found in Rule 1514(c).

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

(a) *Filing with the prothonotary.* The petition for review, with proof of service required by Subdivision (c) of this rule, shall be filed with the prothonotary of the appellate court **in person or by first class or certified mail.**

If the petition for review is [ transmitted to the prothonotary ] filed by [ means of ] first class or certified 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 ] stamped by post office personnel on a U.S. Postal Service Form 3817, certificate of mailing, or U.S.

**Postal Service Form 3800.** The certificate of mailing shall show the docket number of the matter in the government unit, and shall be either enclosed with the petition or separately mailed to the prothonotary.

Upon actual receipt of the petition for review, the prothonotary shall immediately:

(1) 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 review was sought, which date shall be shown on the docket. The prothonotary of the appellate court shall immediately note the docket number assignment in the appellate court upon] of filing;

(2) assign a docket number to the petition for review; and

(3) give written notice of the docket number assignment in person or by first class mail to the government unit [which] that made the determination sought to be reviewed, to the petitioner, and to the other persons named in the proof of service accompanying the petition.

(b) *Fee.* The petitioner, upon filing the petition for review, shall pay any [fee] fees therefor [prescribed by Chapter 27 (fees and costs in appellate courts and on appeal)] as set by law or general rule.

(c) *Service.* A copy of the petition for review shall be served by the petitioner in person or by certified mail on the government unit [which] that made the determination sought to be reviewed. In matters involving the Commonwealth, the petitioner shall similarly serve a copy upon the Attorney General of Pennsylvania. [When the government unit is comprised of a plurality of persons, each of whom is to be joined individually, or where there is otherwise a plurality of persons named as respondents] Where there is more than one respondent, the petitioner shall separately serve each [such person] one. All other parties before the government unit [which] that made the determination sought to be reviewed shall be served as prescribed by Rule 121(b) (service of all papers required). [Whenever any such other parties are served, unless they have been named as respondents under Rule 1513(b) (caption and parties), the petition for review shall contain or have endorsed upon it a statement substantially as follows: "If you intend to participate in this proceeding in the (Supreme, Superior or Commonwealth, as appropriate) Court, you must serve and file a notice of or application for intervention under Rule 1531 of the Pennsylvania Rules of Appellate procedure within 30 days." ]

(d) *Entry of appearance.* Upon the filing of the petition for review, the prothonotary shall note on the [record] docket 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 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:** [This rule supersedes former Commonwealth Court Rules 20C, 21, 22 and 24.] See the

note to Rule 1112 (appeals by allowance) for an explanation of the procedure when Form 3817 is used.

**The petition for review must be served on the government unit that made the determination in question. Rule 102 defines "government unit" as including "any court or other officer or agency of the unified judicial system." Thus, a petition for review of a trial court order must be served on the judge who issued the order.**

Service on the Attorney General shall be made at: Strawberry Square, Harrisburg, PA 17120.

Rule 1515. [Answer to Petition] (Rescinded).

[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 to plead), any adverse party may file an answer to the petition controverting any factual allegation of the petition.]

**Official Note:** [When the question is one of law, the denial of the contentions made in the petition for review will appear in the briefs of the parties. However, where for example the petition for review raises a question which formerly would have been determined in an action in equity, mandamus, etc., the petition may allege facts which the adverse party will desire to controvert at an evidentiary hearing before the reviewing court, and the factual issues should be properly framed for the court.] Rule 1515 formerly provided for an answer to a petition for review addressed to an appellate court's original jurisdiction. Answers to such petitions are now discussed in Rule 1516.

Rule 1516. Other Pleadings Allowed.

(a) [General rule. The pleadings on petition for review are limited to the petition, an answer thereto if permitted by Rule 1515 (answer to petition), a reply if the answer contains new matter or a counterclaim, a counter-reply if the reply to a counterclaim contains new matter, a preliminary objection and an answer thereto.] *Appellate jurisdiction petitions for review.* No answer or other pleading to an appellate jurisdiction petition for review is authorized, unless the petition for review is filed pursuant to the Notes to Rules 341 or 1311 (seeking review of a trial court or other government unit's refusal to certify an interlocutory order for immediate appeal), Rule 1762 (regarding release in criminal matters), Rule 3321 (regarding appeals from decisions of the Legislative Reapportionment Commission) or Rule 3331 (regarding review of special prosecutions and investigations). Where an answer is authorized, the time for filing an answer shall be as stated in Rule 123(b).

(b) [Effect of absence of answer. A further pleading may be filed only in a matter in which an answer is permitted to be or has been filed.] *Original jurisdiction petitions for review.* Where an action is commenced by filing a petition for review addressed to the appellate court's original jurisdiction, the pleadings are limited to the petition for review, an answer thereto, a reply if the answer contains new matter or a counterclaim, a counter-

reply if the reply to a counterclaim contains new matter, a preliminary objection, and an answer thereto. Every pleading filed after an original jurisdiction petition for review shall be filed within 30 days after service of the preceding pleading, but no pleading need be filed unless the preceding pleading is endorsed with a notice to plead.

[ (c) *Time for filing.* Every pleading subsequent to the petition for review shall be filed within 30 days after service of the preceding pleading, but no pleading need be filed unless the preceding pleading is endorsed with a notice to plead. ]

**Official Note:** [ Patterned after Pa.R.Civ.P. 1017 (a) and 1026. The ten additional days in the pleading period is in recognition of the time required for agency coordination where the Commonwealth is a party. Under Rule 1972 (dispositions on motion) a party may move to dispose of the matter on a number of grounds without reaching the merits. ] The 2003 amendments made clear that, with five limited exceptions, no answer or other pleading to a petition for review addressed to an appellate court's appellate jurisdiction is proper. With regard to original jurisdiction proceedings, practice is patterned after Rules of Civil Procedure 1017(a) (Pleadings Allowed) and 1026 (Time for Filing, Notice to Plead). The ten additional days in which to file a subsequent pleading are in recognition of the time required for agency coordination where the Commonwealth is a party.

#### Rule 1517. Applicable Rules of Pleading.

Unless otherwise prescribed by these rules, the practice and procedure under this chapter relating to pleadings in original jurisdiction petition for review practice shall be in accordance with the appropriate Pennsylvania Rules of Civil Procedure, so far as they may be applied.

#### Rule 1531. Intervention.

(a) [ *Notice of intervention* ] **Appellate jurisdiction petition for review proceedings.** A party to a proceeding before a government unit [ which ] that resulted in a quasijudicial order may intervene as of right in a proceeding under this chapter relating to such order by filing a notice of intervention (with proof of service on all parties to the matter) with the prothonotary of the appellate court within 30 days after notice of the filing of the petition for review. [ In the case of a person for whom an appearance has been entered pursuant to Rule 1514(d) (entry of appearance) the failure to file a timely notice of intervention under this rule shall operate to strike off the appearance of such person in the appellate court. ] The notice of intervention may be in substantially the following form:

[[CAPTION]]

#### NOTICE OF INTERVENTION

Notice is hereby given that A.B., a party below, hereby intervenes in this matter.

(s) \_\_\_\_\_

(Address and telephone number)

After 30 days after notice of filing of an appellate petition for review, permission to intervene may be sought by application pursuant to Rule 123.

(b) [ *Application for intervention* ] **Original jurisdiction petition for review proceedings.** A person not named as a respondent in [ the ] an original jurisdiction petition for review, who desires to intervene in a proceeding under this chapter, [ and who is not entitled to file a notice of intervention under Subdivision (a) of this rule, ] may seek leave to intervene by filing an application for leave to intervene (with proof of service on all parties to the matter) with the prothonotary of the court [ within 30 days after the filing of the petition for review ]. The application shall contain a concise statement of the interest of the applicant and the grounds upon which intervention is sought.

**Official Note:** A nonparty may file a brief as of right under Rule 531 (participation by amicus curiae) and, therefore, intervention is not necessary in order to participate in the appellate court where the petition for review is filed. However, except as provided in Rule 521(b) (status of Attorney General) and Rule 522(b) (status of Court Administrator), the mere filing of a brief does not confer party status. Where, for example, a nonparty to a petition for review proceeding in the Commonwealth Court desires to be in a position to seek further review in the Supreme Court of Pennsylvania or the Supreme Court of the United States of [ the ] an order of the Commonwealth Court disposing of the petition for review, the nonparty should intervene or seek leave to intervene in the Commonwealth Court at the outset, since under Rule 501 (any aggrieved party may appeal), party status is a prerequisite to the right to further review.

#### Rule 1532. Special and Summary Relief.

(a) *Special relief.* At any time after the filing of a petition for review, the court may, on application, order the seizure of property, dispose of seized property, [ grant relief in the nature of peremptory mandamus, ] issue a preliminary or special injunction, appoint a temporary receiver or grant other interim or special relief required in the interest of justice and consistent with the usages and principles of law.

(b) *Summary relief.* At any time after the filing of a petition for review in an appellate or original jurisdiction matter, a single judge of the court may on application enter judgment if the right of the applicant thereto is clear.

**Official Note:** [ Subdivision (a) of this rule, which incorporates Rule 123(a) (contents of application for relief), makes clear that a request for two or more types of relief, including alternative relief ] Subdivision (a) provides examples of specific types of interim relief that may be sought using the procedures set forth in Rule 123 (application for relief). Thus, multiple forms of relief, including those in the alternative, may be combined in the same application, [ notwithstanding the fact that ] even though separate actions might otherwise be necessary under the Pennsylvania Rules of Civil Procedure. Compare Rule 106 (original jurisdiction matters) [ . See also ]; 42 Pa.C.S. § 708(e) (single form of action).

[ Subdivision (b) of this rule is a generalization of Pa.R.Civ.P. 1098 (peremptory judgment). Cf. Pa.R.Civ.P. 1035(a) (motion for summary judgment), which is not available until after the pleadings are closed. ]

Subdivision (b) authorizes immediate disposition of a petition for review, similar to the type of relief

envisioned by the Pennsylvania Rules of Civil Procedure regarding judgment on the pleadings and peremptory and summary judgment. However, such relief may be requested before the pleadings are closed where the right of the applicant is clear.

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**Rule 1541. Certification of the Record.**

[When under the applicable law the questions raised by the petition for review may be determined by the court in whole or in part upon the record before the government unit,] Upon notice from the appellate court of the filing of a petition for review addressed to the appellate jurisdiction of an appellate court, the government unit shall prepare and transmit the record as provided by Chapter 19 (preparation and transmission of record and related matters).

**Official Note:** [Based in part on former Pa.R.Civ.P. 5 and former Commonwealth Court Rule 23.] Rule 102 defines “government unit” to include “any court or other officer or agency of the unified judicial system.” Thus, if the order to be reviewed was filed by a trial court, that court shall certify the record. This occurs when the petition for review was filed pursuant to Rule 1762, 3321 or 3331, or the note to Rules 341 or 1311.

**Rule 1542. [ Oral Argument and ] Evidentiary Hearing.**

[ (a) *General rule.* Except as otherwise ordered by the court on its own motion or on application of any party, after the pleadings are closed the matter may be listed for argument before or submission to the court. At argument or on briefs any party may urge in support of its position any factual ground appearing of record or any legal ground not theretofore waived.

(b) *Evidentiary Hearing.* ] In any matter [ where under the applicable law the questions raised by the petition for review may be determined by the court in whole or in part upon the record made before the court and where, before or at final hearing, ] addressed to the appellate court’s original jurisdiction, where it appears that a genuine issue as to a material fact has been raised by the pleadings, depositions, answers to interrogatories, stipulations of fact, admissions on file and supporting verified statements, if any, the court on its own motion or on application of any party [ shall ] may, after notice to the parties, hold an evidentiary hearing for the development of the record.

**Official Note:** In view of Rule 106 (original jurisdiction matters) and Rule 1532 (special and summary relief), motions for judgment on the pleadings, Pa.R.C.P. 1034, summary relief and [ for ] summary judgment [ under ], Pa.R.C[ iv ].P. [ 1034 and ] 1035, will be available where a petition for review [ with notice to plead ] invoking the appellate court’s original jurisdiction has been filed. The procedure under this rule is intended to be flexible, although subject to the control of the appellate court by either rule of court adopted pursuant to Rule 104(a)(3) (rules of court) or by order[, and is necessarily experimental. The rule permits the case to pass directly from the evidentiary hearing before

a single judge to a panel or the court en banc without the necessity of a preliminary decision by the hearing judge ].

**Rule 1543. [ Trial by jury ] (Rescinded).**

[ An issue of fact shall be tried to a jury where the right to such trial is secured either by the Constitution or statutes of this Commonwealth or by the Constitution of the United States. Any right to trial by jury shall be deemed waived unless expressly reserved in the petition for review or an answer thereto. ]

\* \* \* \* \*

**Rule 1551. Scope of Review.**

(a) [ *Review of quasijudicial orders* ] **Appellate jurisdiction petitions for review.** Review of quasijudicial orders shall be [ heard ] conducted by the court on the record made before the government unit. No question shall be heard or considered by the court which was not raised before the government unit except:

\* \* \* \* \*

(3) Questions which the court is satisfied that the petitioner could not by the exercise of due diligence have raised before the government unit. If, upon hearing before the court, the court is satisfied that any such additional question within the scope of this paragraph should be so raised, it shall remand the record to the government unit for further consideration of the additional question.

\* \* \* \* \*

(b) [ *Other matters* ] **Original jurisdiction petitions for review.** The court shall hear and decide [ all other matters raised by petition ] original jurisdiction petitions for review [ with the scope of review provided by ] in accordance with law. This chapter is not intended to modify [ or ], enlarge [ the scope of judicial review of determinations of government units as heretofore existing ] or abridge the rights of any party to an original jurisdiction petition for review.

**Official Note:** Subdivision (a) is a generalization of former Pa.R.C[ iv ].P. 8 and makes no change in substance except to provide that procedural issues not raised below are waived—unless excused under Paragraph (a)(3). Compare Rule 302 (requisites for reviewable issue). [ Paragraph 3 of the Order amending Subdivision (a)(1) provides that where an administrative proceeding was commenced prior to September 1, 1976, a petitioner for review of a quasijudicial order entered in such proceeding may raise in the appellate court questions involving procedure before the government unit notwithstanding the fact that the questions were not raised before the government unit below. ]

Subdivision (b) is based on Section 10(c) of Article V of the Constitution of Pennsylvania, which prevents this chapter from enlarging the [ substantial ] substantive rights of the petitioner or abridging the [ substantial ] substantive rights of the government unit named in the petition. Under the new practice, the appellate judge should inquire: “Assuming that this case had been properly brought before me by a complaint in equity (or in mandamus, replevin, quo warranto, etc., or by two or more of such actions properly consolidated for hearing

and disposition) containing the factual allegations of the petition for review, to what relief, if any, would the moving party have been entitled under the prior practice?" This rule makes clear that the moving party is entitled to the same relief, and no more, under the new practice, since only the procedural requirement for separately labeled papers has been eliminated.

\* \* \* \* \*

**Rule 1561. Disposition of Petition for Review.**

(a) [ **General rule** ] **Appellate jurisdiction petitions for review.** The court may affirm, modify, vacate, set aside or reverse any order brought before it for review, and may remand the matter and direct the entry of such appropriate order, or require such further proceedings [ **to be had,** ] as may be just under the circumstances.

(b) [ **Other relief** ] **Original jurisdiction petitions for review.** Where the petition for review raises questions [ **which** ] that formerly were determinable in an action in equity, replevin, mandamus, quo warranto or for a declaratory judgment or upon a petition for a writ of certiorari or prohibition, or in another similar plenary action or proceeding, the court may grant the relief heretofore available in any such plenary action or proceeding.

\* \* \* \* \*

(d) *Review of detention.* Except as prescribed by Rule 1762(a)(2) (release [ **prior sentence** ] in criminal matters) or by Rule 3331 (review of special prosecutions or investigations), review in the nature of criminal habeas corpus or post conviction [ **hearing** ] relief may not be granted under this chapter.

**Official Note:**

\* \* \* \* \*

Subdivision (b) is based on 42 Pa.C.S. § 708(e) (single form of action) (which provides that 1 Pa.C.S. § 1504 (statutory remedy preferred over common law) does not limit the jurisdiction of a court over a petition for review proceeding, but to the extent applicable shall limit the relief available) and 42 Pa.C.S. § 5105(d)(2) (scope of appeal). Under 42 Pa.C.S. § 102 (definitions), statutory references to "appeal" include proceedings on petition for review. The subdivision is intended to make clear that the petition for review is a generic pleading which will permit the court to consider simultaneously all aspects of the controversy.

Subdivision (c) is intended to make clear that the petition for review does not encompass trespass or assumpsit actions, but that an appeal may reach tort or contract matters adjudicated by a government unit as contemplated by Section 2(h) of the Judiciary Act Repealer Act (42 P. S. § 20002(h)). As to ancillary statutory damages, see 42 Pa.C.S. § 8303 (action for performance of a duty required by law).

\* \* \* \* \*

**REVIEW OF DETERMINATIONS OF THE BOARD OF FINANCE AND REVENUE**

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

\* \* \* \* \*

(f) *Record.* No record shall be certified to the court by the Board of Finance and Revenue. After the filing of the petition for review, the parties shall take appropriate

steps to prepare and file a stipulation of such facts as may be agreed to and to identify the issues of fact, if any, which remain to be tried. See Rule 1542 [ **(b)** ] (evidentiary hearing).

(g) *Oral argument.* Except as otherwise ordered by the court on its own motion or on application of any party, after the record is closed, the matter may be listed for argument before or submission to the court.

(h) *Scope of review.* Rule 1551(a) [ **(review of quasijudicial orders)** ] (**appellate jurisdiction petitions for review**) shall be applicable to review of a determination of the Board of Finance and Revenue except that:

\* \* \* \* \*

(2) To the extent provided by the applicable law, the questions raised by the petition for review shall be determined on the record made before the court. See Subdivision (f) of this rule.

(i) *Exceptions.* Any party may file exceptions to an initial determination by the [ **trial** ] court under this rule within 30 days after the entry of the order to which exception is taken. Such timely exceptions 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 determination previously entered by the court. Issues not raised on exceptions are waived and cannot be raised on appeal.

**Official Note:** Subdivision (b) represents an exercise of the power conferred by 42 Pa.C.S. § 5105(a) (right to appellate review) to define final orders by general rule [ , and is derived from the provisions of Section 1104(a) of the Fiscal Code (72 P. S. § 1104(a)), which are suspended absolutely by these rules ]. The following statutes expressly require the Board of Finance and Revenue to act within six months in certain cases:

Section 1103 of [ **the** ] **The Fiscal Code (72 P. S. § 1103).**

[ **Act of May 21, 1931 (P. L. 149, No. 105), known as The Liquid Fuels Tax Act, § 7 (72 P. S. § 2611g).**

**Act of May 5, 1933 (P. L. 284, No. 104), known as the Malt Beverage Tax Law, § 4 (47 P. S. § 106).** ]

Act of December 5, 1933, (**Sp. Session 1933-34**), (P. L. 38, No. 6), known as the Spirituous and Vinous Liquor Tax Law, § 5 (47 P. S. § 749).

\* \* \* \* \*

Sections 234 (sales and use tax) [ **and** ], 341 (personal income tax), and 2005 (malt beverage tax), act of March 4, 1971 (P. L. 6, No. 2), known as The Tax Reform Code of 1971 (**72 P. S. §§ 7234, 7341, 9005**). **The following statute requires the Board of Finance and Revenue to act within twelve months in certain tax refund matters:**

**Section 3003.5 of the Tax Reform Code of 1971, Act of March 4, 1971, P. L. 6, No. 2, 72 P. S. § 10003.5. Section 3003.5 was added by Section 41 of the Act of June 16, 1994, P. L. 279, No. 48.**

The following statutes are covered by Section 1103 of The Fiscal Code (**petition to Board of Finance and Revenue for review**):

[ **Section** ] **Sections 809** (various insurance taxes) and 1001 (miscellaneous settlements, e.g., under **the** act of



May 17, 1921 (P. L. 789, No. 285), known as The Insurance Department Act of 1921, § 212 (40 P. S. § 50) (retaliatory insurance taxes) [ ; with respect to district justice collections; etc. ) ] of The Fiscal Code (72 P. S. §§ 809 and 1001).

Act of June 22, 1931 (P. L. 694, No. 255) § 4 (72 P. S. § 2186) (motor carriers-trackless trolley carriers).

Act of June 22, 1935 (P. L. 414, No. 182), known as the State Personal Property Tax Act, § 18(b) (72 P. S. § 3250-11a(b)) (corporate loans tax). See [ act ] Act of April 25, 1929 (P. L. 669, No. [ 228 ] 288), § 1.

\* \* \* \* \*

[ Act of December 27, 1951 (P. L. 1742, No. 467), known as The Realty Transfer Tax Act, § 10.1 (72 P. S. Sec. 3291.1).

Act of June 19, 1964 (P. L. 7, No. 1), known as the Motor Carriers Road Tax Act, § 20 (72 P. S. § 2617.20).

Act of June 22, 1964 (P. L. 16, No. 2), known as The Mutual Thrift Institutions Tax Act, § 4 (72 P. S. § 1986.4). ]

Act of January 24, 1966 ([ 1965 ] P. L. (1965) 1509, No. 531), § 11 (40 P. S. § 1006.11) (surplus lines tax).

Sections 407 (corporate net income tax), [ 503 (corporation income tax), ] 603 (capital stock—franchise tax), 702 (bank shares tax), 802 (title insurance and trust companies shares tax), 904 (insurance premiums tax) [ and ], 1102 (utilities gross receipts tax), 1111-C (realty transfer tax) and 1503 (mutual thrift institutions tax of [ The ] the Tax Reform Code of 1971 (72 P. S. §§ 7407, [ 7503, ] 7603, 7702, 7802, 7904 [ and ], 8102, 8111-C and 8503).

75 Pa.C.S. § 9616(f) (motor carriers road tax).

The basis of jurisdiction of the court under this rule will ordinarily be 42 Pa.C.S. § 763 (direct appeals from government agencies). Subdivision (c) is not intended to change the practice in connection with the review of orders of the Board of Finance and Revenue insofar as the amount of detail in the pleadings is concerned. What is required is that the petitioner raise every legal issue in the petition for review which the petitioner wishes the court to consider. The legal issues raised need only be specific enough to apprise the respondent of the legal issues being contested (e.g. "valuation," "manufacturing," "sale for resale," etc.). See generally *House of Pasta, Inc. v. Commonwealth*, 37 Pa. Cmwlth. Ct. 317, 390 A.2d 341 (1978).

Subdivision (e) is based on Section 1104(e) of The Fiscal Code [ (72 P. S. § 1104(e)) ], which [ is ] was suspended absolutely by these rules, and subsequently repealed.

\* \* \* \* \*

Subdivision (h) is based on Section 1104(d) of The Fiscal Code [ (72 P. S. § 1104(d)) ], which [ is ] was suspended absolutely by these rules and subsequently repealed, and is intended as a continuation of the prior law, except, of course, that the separate specification of objections has been abolished by these rules.

Subdivision (i) is intended to make clear that the failure to file exceptions will result in waiver by [ an appellant ] a petitioner of any issues previously pre-

sented to the Commonwealth Court. [ Compare note to Rule 343 (order determining challenge to plea of guilty). ]

See also [ rule ] Rule 1782 (security on review in tax matters).

**EXPLANATORY COMMENT FOR INTERNAL RECOMMENDATION 50—CHAPTER 15**

The primary purpose of this Recommendation is to make Chapter 15 more user-friendly. The recommendation includes amendments to the notes that should make the Chapter easier for attorneys and judges to follow. The Recommendation conforms various rules to statutory amendments and includes technical and stylistic revisions. A summary of the Recommendation follows a brief introduction to Chapter 15. This Recommendation follows a comprehensive review of Chapter 15 by the Appellate Court Procedural Rules Committee and was prepared with substantial contributions from the Commonwealth Court's legal staff. After an exhaustive review of the Chapter and consideration of alternatives to the Petition for Review practice for original and appellate jurisdiction matters prescribed in Chapter 15, the Committee has determined that Chapter 15 still represents the most efficient and comprehensive method for review of governmental action. Accordingly, this Recommendation does not propose any fundamental change in practice under Chapter 15.

**Introduction to Chapter 15**

Chapter 15 of the Rules of Appellate Procedure is titled "Judicial Review of Governmental Determinations." The Chapter is a road map for one of the four primary ways to appeal a matter to an appellate court within the Unified Judicial System.<sup>1</sup>

A thorough introduction to Chapter 15 is found in *Darlington, McKeon, Schuckers and Brown, Pennsylvania Appellate Practice 2d* at 1501:1. Darlington states:

The adoption of Chapter Fifteen of the Pennsylvania Rule of Appellate Procedure marked a significant departure from past Practice where a party sought judicial review of a Governmental determination at the appellate court level. The chapter introduced the petition for review, a generic pleading that replaced the appeal and the original jurisdiction common law causes of action in the context of reviewing governmental determinations."

Pursuant to Chapter Fifteen, the petition for review is used to commence an appeal from an administrative agency to an appellate court. The petition for review is also the document that is used to commence an original jurisdiction action in the nature of equity, mandamus, quo warranto, declaratory judgment and prohibition in an appellate court, against a government unit.

The dual use of the petition for review has been the source of much confusion to the occasional practitioner in the appellate courts. The use of the petition for review to commence an appeal has not created the confusion because it is clear that, when counsel files an appellate jurisdiction petition for review, counsel is invoking the appellate jurisdiction of the court and seeking review of a

<sup>1</sup> Chapter 9 (Appeals from Lower Courts) generally covers appeals from lower courts to the Superior Court and Commonwealth Court. Chapter 11 (Appeals from Commonwealth Court and Superior Court) includes both "Appeals as of Right from Commonwealth Court" and "Petitions for Allowance of Appeal" from Superior and Commonwealth Court. Chapter 13 governs "Interlocutory Appeals by Permission." There are also rules applying to miscellaneous groups of cases which include Rule 1941 (Automatic Review of Death Sentences) and Rule 3331 (Review of Special Prosecutions or Investigations).

determination or adjudication of an administrative agency. Thus, the court is clearly reviewing a governmental determination.

When, however, counsel seeks to enjoin governmental action (equity), compel governmental action (mandamus), declare rights between citizens or corporations and government (declaratory judgment) or seeks other traditional remedies in a court's original jurisdiction, counsel is not seeking a "review" of governmental determination as that term is generally defined. Nevertheless, if the original jurisdiction action is within the scope of Chapter Fifteen, the document that counsel files to commence the original jurisdiction action in the appellate court is a petition for review.

The second major source of confusion created by Chapter Fifteen is the chapter's poor organization. It is often not clear whether a particular rule in Chapter Fifteen applies to an original jurisdiction petition for review, an appellate jurisdiction petition for review, or both. Succeeding sections in Chapter Fifteen of Pennsylvania Appellate Practice attempt to dispel the confusion.

The greatest impact of Chapter Fifteen is in the Commonwealth Court because that court is vested with both original and appellate jurisdiction involving governmental determinations. In the Commonwealth Court, the petition for review is also used as the vehicle to review a trial court's or agency's refusal to certify an interlocutory order for appellate review.

In the Supreme Court, the petition for review is the document that is filed to commence an appeal from a Legislative Reapportionment Commission, a review of certain special prosecutions or investigations, and certain matters within the Supreme Court's original jurisdiction.

In the Superior Court, the primary use of the petition for review is to seek review of a trial court order granting or denying release or modifying the conditions of release of a criminal defendant before sentencing. In the Superior Court, the petition for review is also used to review a trial court's refusal to certify an interlocutory order for appellate review.

The proposed Recommendation is the result of a comprehensive review of Chapter 15. Its primary purpose is to make the chapter more user-friendly and to conform the chapter to statutory amendments as well as making certain technical changes.

### Summary of Proposed Amendments

The following is a summary of the amendments:

*Rule 1501.* Subsection (a)(4) would be added to recognize the references in various appellate rules and accompanying notes to petition for review practice. For example, the Notes to Rules 1311 and 341 direct counsel to file a petition for review of a trial court or government agency order refusing to certify an interlocutory order for immediate appeal. Similarly, Rule 1762 directs the filing of a petition for review when a party seeks release on bail before judgment of sentence is rendered. A petition for review is also the proper method by which to seek judicial review pursuant to Rule 3321 (regarding legislative reapportionment commission) and Rule 3331 (regarding special prosecutions or investigations). The 2003 amendments clarify the use of petitions for review in these special situations.

The Note to Rule 1501 referring to Subdivision (c) would be amended to expressly recognize that some statutory procedures are not replaced by the adoption of the generally comprehensive nature of petition for review practice.

The Note to Rule 1501 would also be amended to state that the proposed amendments to Chapter 15 petition for review practice address the evolution of judicial responses to governmental actions. The Note would explain that when the Rules of Appellate Procedure were initially adopted, there was a "long history in the Commonwealth . . . of relatively complete exercise of the judicial review function under the traditional labels of equity, mandamus, certiorari and prohibition." While such original jurisdiction forms of action are still available, their proper usage is now the exception rather than the rule because appellate proceedings have become the norm. Thus, the need to rely on Rule 1503 to convert an appellate proceeding to an original jurisdiction action and vice versa is less common. Moreover, the emphasis on a petition for review as a generic pleading that permits the court to simultaneously consider all aspects of the controversy shifted to making the practice for appellate proceedings more apparent to the occasional appellate practitioner. Accordingly, the rules have been amended to more clearly separate procedures for appellate proceedings from those applicable to original jurisdiction proceedings.

The proposed amendment to the Note would further explain that the responsibility of identifying the correct type of proceeding to be used to challenge a governmental action is initially that of counsel. Where precedent makes the choice clear, counsel can proceed with confidence. Where the choice is more problematic, then counsel should draft the petition for review so as to satisfy the directives for both appellate and original jurisdiction proceedings. Then the court can designate the proper course of action regardless of counsel's earlier assessment.

*Rule 1512.* Subdivision (b)(4) is added to provide that pursuant to statute, an appeal shall be filed within fifteen days of the mailing date of a determination of a Commonwealth agency denying a protest under Section 1711 of the Commonwealth Procurement Code, 62 Pa.C.S. § 1711.

*Rule 1513.* The proposed amendments to this rule would clarify what must be included in a petition for review addressed to an appellate court's appellate jurisdiction and what must be included in a petition for review addressed to an appellate court's original jurisdiction. Where it is not readily apparent whether a "determination" (defined in Rule 102 as "[a]ction or inaction of a government unit) is reviewable in the court's appellate or original jurisdiction, compliance with the requirements of Subdivisions (d) and (e) is appropriate.

Subdivisions (a) and (b) reflect the provisions of Rule 501 (Any Aggrieved Party May Appeal), Rule 503 (Description of Public Officers), Section 702 of the Administrative Agency Law, 2 Pa.C.S. § 702 (Appeals), and Pa.R.C.P. 1094, regarding parties defendant in mandamus actions.

Government units that are usually disinterested in appellate jurisdiction petitions for review of their determinations include: the Board of Claims, the Department of Education (with regard to teacher tenure appeals from local school districts pursuant to section 1132 of the Public School Code of 1949, 24 P.S. § 11-1123), the Environmental Hearing Board, the State Civil Service Commission, and the Workers' Compensation Appeal Board. The provision for joinder of indispensable parties in original jurisdiction actions reflects the last sentence of section 761(c) of the Judicial Code, 42 Pa.C.S. § 761(c), providing for the implementation of ancillary jurisdiction of the Commonwealth Court by general rule.

Subdivisions (d) and (e) reflect the differences in proceeding in a court's original and appellate jurisdiction, while preserving the need for sufficient specificity to permit the conversion of an appellate document to an original jurisdiction pleading and vice versa should such action be necessary to assure proper judicial disposition. See also the notes to Rules 1501 and 1502. The paragraph regarding the notice to participate was formerly found in Rule 1514(c).

*Rule 1514.* The amendment to the Note to Rule 1514 clarifies that the petition for review must be served on the government unit that made the determination in question. Rule 102 defines "government unit" as including "any court or other officer or agency of the unified judicial system." Thus, a petition for review of a trial court order must be served on the judge who issued the order. Service on the Attorney General shall be made at: Strawberry Square, Harrisburg, PA 17120.

*Rule 1515.* The Recommendation would rescind Rule 1515. Rule 1515 formerly provided for an answer to a petition for review addressed to an appellate court's original jurisdiction. Answers to such petitions are now discussed in Rule 1516.

*Rule 1516.* The 2003 amendments would rescind old Rule 1516 and replace it with a new Rule clearly explaining that, with five limited exceptions, no answer or other pleading to a petition for review addressed to an appellate court's appellate jurisdiction is proper. With regard to original jurisdiction proceedings, practice is patterned after Rules of Civil Procedure 1017(a) (Pleadings Allowed) and 1026 (Time for Filing Notice to Plead). The ten additional days in which to file a subsequent pleading are in recognition of the time required for agency coordination where the Commonwealth is a party.

*Rule 1517.* Rule 1517 would be amended to state that unless otherwise prescribed in these Rules, the Rules of Civil Procedure apply to original jurisdiction petition for review practice.

*Rule 1531.* Rule 1531 would be amended so that it is clear that Subdivision (a) prescribes the procedure for intervention in appellate jurisdiction petition for review proceedings. Subdivision (a) would delete the following: "In the case of a person for whom an appearance has been entered pursuant to Rule 1514(d) (entry of appearance) the failure to file a timely notice of intervention under this rule shall operate to strike off the appearance of such person in the appellate court." Subdivision (a) would also provide that: "After 30 days after notice of filing of an appellate petition for review, permission to intervene may be sought by application pursuant to Rule 123."

Subdivision (b) would be amended to make it clear that it applies to intervention in original jurisdiction review proceedings.

*Rule 1532.* The Note to Subdivision (b) would be amended to explain that it authorizes immediate disposition of a petition for review, similar to the type of relief envisioned by the Pennsylvania Rules of Civil Procedure regarding judgment on the pleadings and peremptory and summary judgment. However, such relief may be requested before the pleadings are closed where the right of the applicant is clear.

*Rule 1541. Certification of the Record.* Rule 102 defines "government unit" to include "any court or other officer or agency of the unified judicial system." Thus, if the order to be reviewed was filed by a trial court, that court shall certify the record. This occurs when the petition for

review was filed pursuant to Rule 1762, 3321 or 3331, or the note to Rules 341 or 1311.

*Rule 1542. Evidentiary Hearing.* This is a technical amendment making it clear that Pa.R.C.P. 1034 and 1035 are available where a petition for review involving the appellate court's original jurisdiction has been filed.

*Rule 1551.* This Rule governs scope of review. Subdivision (a) would be amended to change the title from "Review of Quasijudicial Orders" to "Appellate Jurisdiction Petitions for Review."

Subdivision (b) would be amended to change the title from "Other Matters" to "Original Jurisdiction Petition for Review." Subdivision (b) is further amended to provide that the scope of judicial review in original jurisdiction matters as provided in Chapter 15 is not intended to modify, enlarge or abridge the rights of any party to an original jurisdiction petition for review.

*Rule 1561.* This Rule governs "Disposition of Petition for Review." The title to Subdivision (a) is amended to clarify that it applies to "Appellate Jurisdiction for Review." The title to Subdivision (b) is amended to clarify that it applies to "Original Jurisdiction Petitions for Review."

*Rule 1571.* The proposed revision to Rule 1571 contains technical amendments only.

[Pa.B. Doc. No. 03-867. Filed for public inspection May 9, 2003, 9:00 a.m.]

## Title 249—PHILADELPHIA RULES

### PHILADELPHIA COUNTY

#### Deferment of White Hall Insurance Company and Its Insureds by Reason of Order of Liquidation; Administrative Doc. 01 of 2003

##### Order

*And Now,* this 22nd day of April, 2003, upon consideration of the Order of Liquidation entered by the Commonwealth Court of Pennsylvania dated April 10, 2003, *Koken v. White Hall Mutual Insurance Company*, 231 M.D. 2003, it is hereby *Ordered* and *Decreed* that all cases in which White Hall Mutual Insurance Company is a named party shall be placed in deferred status.

It is further *Ordered* and *Decreed* that all actions currently pending against an insured of White Hall Insurance Company shall be placed in deferred status.

*By the Court*

JAMES J. FITZGERALD, III,  
*Administrative Judge*

This Administrative Docket is promulgated in accordance with the April 11, 1986 Order of the Supreme Court of Pennsylvania, Eastern District, No. 55, Judicial Administration, Docket No. 1, Phila. Civ. ★51 and Pa.R.C.P. 239, and shall become effective immediately. As required by Pa.R.C.P. 239, the original Administrative Docket shall be filed with the Prothonotary in a docket maintained for Administrative Dockets issued by the Administrative Judge of the Trial Division and copies shall be submitted to the Administrative Office of Pennsylvania Courts, The Legislative Reference Bureau and the Civil Procedural

Rules Committee. Copies of the Administrative Docket shall also be submitted to American Lawyer Media, *The Legal Intelligencer*, Jenkins Memorial Law Library and the Law Library for the First Judicial District. The Administrative Docket is also available on the Court's web site at <http://courts.phila.gov>.

[Pa.B. Doc. No. 03-868. Filed for public inspection May 9, 2003, 9:00 a.m.]

# Title 25—LOCAL COURT RULES

## CARBON COUNTY

### Adoption of Exhibit D for Addition to the Administrative Criminal Case Management Plan as Referenced in Local Rules of Criminal Procedure; No. 103 MI 00

#### Administrative Order 10-2003

And Now, this 22nd day of April, 2003, it is hereby

Ordered and Decreed that, effective May 1, 2003, the Carbon County Court of Common Pleas hereby *Adopts* Exhibit "D," *Nolo Contendere Colloquy*, for addition to the Administrative Criminal Case Management Plan referenced in Carbon County's Local Rules of Criminal Procedure.

The Carbon County District Court Administrator is Ordered and Directed to do the following:

1. File seven (7) certified copies of this Administrative Order with the Administrative Office of Pennsylvania Courts.
2. File two (2) certified copies and one (1) diskette with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
3. File one (1) certified copy with the Pennsylvania Criminal Procedural Rules Committee.
4. Forward one (1) copy for publication in the *Carbon County Law Journal*.
5. Forward one (1) copy to the Carbon County Law Library.
6. Keep continuously available for public inspection copies of the Order and Rule in the Clerk of Court's Office.

By the Court

RICHARD W. WEBB,  
*President Judge*

COMMONWEALTH OF PENNSYLVANIA : IN THE COURT OF COMMON PLEAS  
 : CARBON COUNTY, PENNSYLVANIA  
 VS :  
 :  
 : NO.

#### NOLO CONTENDERE COLLOQUY

You are present before this Court because you or your lawyer have stated that you wish to plead nolo Contendere to some or all of the criminal offenses with

which you have been charged. Please answer fully all the questions on this document. If you do not understand any explanations given to you on this document, say so by putting the word "no" in the blank provided after the questions. If you do understand the questions, you should write in the word "yes." None of the lines should be left blank.

After you have finished reading this and filling it out, you should sign it on the last page, on the line that says "Defendant." You should also initial each page at the bottom, but only if you have read and have understood that page. If there is anything that you do not understand, you should say so in writing on this form. You should also tell your lawyer and the Judge who hears your case, so that they can explain it to you fully, to make sure you understand all your rights.

Most of these questions are designed to be answered "yes" or "no." Where general information is asked for, however, please answer fully.

1. What is your full name? \_\_\_\_\_
2. Are you known by any other name or alias? \_\_\_\_\_
3. If the answer to Number 2 is "yes" state the other names or aliases. \_\_\_\_\_
4. What is your date of birth? \_\_\_\_\_
5. What was the last grade completed in school? \_\_\_\_\_
6. Can you read, write and understand the English language? \_\_\_\_\_
7. As you appear before the Court today to enter a guilty plea, are you under the influence of alcohol or any kind of drugs? \_\_\_\_\_
8. Have you ever been a patient in a mental institution or have you ever been treated for a mental illness? \_\_\_\_\_
9. If the answer to Number 8 is "yes," please explain the details. \_\_\_\_\_
10. Are you currently being treated for a mental illness? \_\_\_\_\_
11. If the answer to Number 10 is "yes," explain the details. \_\_\_\_\_
12. If you are presently being treated for a mental illness, do you feel that you have sufficient mental capacity to understand what you are doing today, and to understand these questions and answer them correctly? \_\_\_\_\_
13. Do you understand that you are here today to enter a plea of nolo Contendere to some or all of the charges against you? \_\_\_\_\_
14. Do you understand the nature of the offenses to which you are pleading nolo Contendere? \_\_\_\_\_
15. Has your lawyer explained to you the elements of the criminal offenses to which you are pleading? \_\_\_\_\_
16. Do you admit to committing the offenses to which you are pleading nolo Contendere and to the legal elements explained to you making up those offenses? \_\_\_\_\_
17. Do you understand that you have a right to a trial by jury? \_\_\_\_\_
18. Do you understand that the right to trial by jury means that you can participate in the selection of a jury with your attorney; that the jury is randomly selected from the voter registration list of Carbon County and a cross-section of the citizens of Carbon County, and that

the jury has to agree unanimously on your guilt before you can be convicted of the offenses with which you are charged? \_\_\_\_\_

19. Do you understand that you are presumed innocent until found guilty? In other words, do you understand that the Commonwealth must prove your guilt beyond a reasonable doubt before you can be convicted of the offenses charged? \_\_\_\_\_

20. Do you understand that the Commonwealth has the burden of proving you guilty beyond a reasonable doubt, which means you can remain silent and nothing can be held against you for refusing to testify in your own defense? \_\_\_\_\_

21. Do you understand that you have a right to confront and cross-examine all Commonwealth witnesses in your case who are necessary to prove your guilt? \_\_\_\_\_

22. Do you understand that by pleading nolo Contendere you are waiving that right of confrontation and cross-examination? \_\_\_\_\_

23. Do you realize that by pleading nolo Contendere you are giving up your right to present any pre-trial motions for consideration to this or a higher Court in the event those motions are denied? \_\_\_\_\_

24. Do you realize that if you were convicted after a trial you could appeal the verdict to a higher Court and raise any errors that were committed in the trial Court, and that this could result in your being awarded a new trial or discharged, and that by pleading nolo Contendere you are giving up this right? \_\_\_\_\_

25. Do you realize that if you were convicted after a trial you could appeal the verdict to a higher Court and you could also challenge whether the Commonwealth had presented enough evidence to prove you guilty beyond a reasonable doubt? \_\_\_\_\_

26. Are you aware that the Court is not bound by the terms of any plea agreement entered into between you, your counsel and the Attorney for the Commonwealth, until the Court accepts such plea agreement? \_\_\_\_\_

27. Do you understand that the Court is not a party to any agreement or recommendation made by the parties and that any recommendation and/or stipulation regarding sentence is not binding on the Court and you knowingly waive the right to withdraw this plea if the Court does not concur in the recommended sentence? \_\_\_\_\_

28. Are you aware of the permissible range of sentence and/or fines that can be imposed for the offenses to which you are pleading nolo Contendere? \_\_\_\_\_

29. Are you aware of the maximum sentence and/or fine which the Court could impose upon you for each of the offenses to which you are pleading nolo Contendere? \_\_\_\_\_

30. Do you understand that any sentence imposed upon you for any of the offenses to which you are pleading nolo Contendere can be imposed consecutively to either (a) any sentence imposed upon you for any other offense for which you are pleading nolo Contendere in this case; or (b) any sentence imposed upon you in any other case? \_\_\_\_\_

31. Do you understand that "consecutive" sentences means that one sentence will follow after another and that "consecutive" sentences do not run at the same time? \_\_\_\_\_

32. Do you understand that the aggregate maximum sentence you could receive if you are pleading nolo

Contendere to multiple offenses is the total of all maximum sentences for all the offenses added together? \_\_\_\_\_

33. Do you understand that you have a right to have witnesses present at your nolo Contendere plea hearing to testify for you? Are you willing to give up that right and have the Attorney for the Commonwealth summarize the facts against you? \_\_\_\_\_

34. After you enter your nolo Contendere plea and it is accepted by the Court, you still have a right to appeal your conviction. The appeal from a nolo Contendere plea is limited, however, to four grounds. They are:

(a) that your nolo Contendere plea was not knowing, intelligent and voluntary;

(b) that the Court did not have jurisdiction to accept your plea (in other words, the offenses for which you are pleading nolo Contendere did not occur in Carbon County);

(c) that the Court's sentence is beyond the maximum penalty authorized by law; and

(d) that your attorney was incompetent in representing you and advising you to enter a plea of nolo Contendere

Do you understand these four areas of appeal and what they mean? \_\_\_\_\_

In order to appeal your conviction by a plea of nolo Contendere, you must within ten (10) days file a written motion to withdraw your nolo Contendere plea and state any of the four above grounds as the basis for your petition to withdraw your nolo Contendere plea. This must be done within ten (10) days from the date you are sentenced. If you cannot afford a lawyer to represent you or you are contending that your attorney, who represented you at your nolo Contendere plea, was incompetent, you have the right to have other counsel appointed for you to raise those four claims. If your petition to withdraw your nolo Contendere plea is denied, you then have thirty (30) days to file an appeal from that denial with the Superior Court of Pennsylvania.

If you do not file your petition within ten (10) days of your sentence or do not file a Notice of Appeal to the Superior Court within thirty (30) days after your petition to withdraw your nolo Contendere plea is denied, you give up your right to ever complain again of any of those four areas, including incompetent counsel.

Do you understand the meaning of the various appeal rights that have just been explained to you? \_\_\_\_\_

35. Has anybody forced you to enter this plea of nolo Contendere? \_\_\_\_\_

36. Are you doing this of your own free will? \_\_\_\_\_

37. Have any threats been made to you to enter a plea of nolo Contendere? \_\_\_\_\_

38. Have any promises been made to you to enter a plea of nolo Contendere other than any plea agreement that has been negotiated for you by your attorney? \_\_\_\_\_

39. Do you understand that the decision to enter a plea of nolo Contendere is yours and yours alone; that you do not have to enter a plea of nolo Contendere and give up all your rights, as previously explained to you and that no one can force you to enter a nolo Contendere plea? \_\_\_\_\_

40. Do you understand that if your plea is accepted by this Honorable Court, you would have the right to have a Pre-Sentence Report prepared on your behalf to aid the Judge in determining the appropriate sentence to be imposed upon you? Since this is a plea bargain, are you

willing to waive the preparation of the pre-sentence investigation? \_\_\_\_\_ (if applicable)

41. Are you presently on probation or parole? \_\_\_\_\_

42. If you are on probation or parole, do you realize that your plea of nolo Contendere will mean a violation of that probation or parole and you can be sentenced to prison as a result of that violation caused by your nolo Contendere plea today? \_\_\_\_\_

43. Are you satisfied with the representation of your attorney? \_\_\_\_\_

44. Have you had ample opportunity to consult with your attorney before reading this document and entering your plea of nolo Contendere? \_\_\_\_\_

45. Has your attorney gone over with you the meaning of the terms in this document? \_\_\_\_\_

I affirm that I have read the above document in its entirety and I understand its full meaning, and I am still nevertheless willing to enter a plea of nolo Contendere to the offenses specified. I further affirm that my signature and initials on each page of this document are true and correct.

\_\_\_\_\_  
Defendant

I, \_\_\_\_\_, Esquire, Attorney for \_\_\_\_\_, state that I have advised my client of the contents and meaning of this document; that it is my belief that he/she comprehends and understands that is set forth above; that I am prepared to try this case; and that the defendant understands what he/she is doing by pleading nolo contendere.

\_\_\_\_\_  
Attorney for the Defendant

[Pa.B. Doc. No. 03-869. Filed for public inspection May 9, 2003, 9:00 a.m.]

## FRANKLIN AND FULTON COUNTIES Amendment of Local Civil Action Rule 19

### Order of Court

April 23, 2003, Civil Action Rule 39-1915.3 is hereby amended as follows. This amendment is adopted for the Court of Common Pleas of the 39th Judicial District of Pennsylvania, both the Franklin and Fulton County Branches, and will be effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

By the Court

JOHN R. WALKER,  
President Judge

### Rule 39-1915.3. Commencement of Action. Complaint. Order.

(a) *Commencement of Action.*

(1) *Filing and Service Generally.* All Complaints and/or Petitions to Modify relating to custody of minor children shall be presented to the Court Administrator for assignment, after filing, in accordance with these rules. Filing shall be accompanied by the payment of the designated filing and administration fees. After the signing of a Temporary Order, the Order shall be filed in the Office of the Prothonotary and the Complaint and Order served in accordance with the Pennsylvania Rules of Civil Procedure governing the service of Custody Complaints.

(2) *Contents of Complaint.* The Complaint shall specifically designate the relief sought by the party who filed the pleading and shall include specific terms of legal custody, physical custody, partial custody or visitation sought by the Moving Party as well as the factual basis therefore. In addition to those averments required by the Pennsylvania Rules of Civil Procedure governing actions relating to Custody, the Complaint shall also contain (1) an averment as to the Moving Party's knowledge of the Non-Moving Party's representation or non-representation by counsel and, if represented, an averment as to the Non-Moving Party's counsel's name; (2) an averment as to the form and time and manner of furnishing a copy of the Complaint to the Non-Moving party and whether it was furnished directly to the named Non-Moving party or to legal counsel; and (3) if a Temporary Order is requested, the Proposed Temporary Order shall be stated as a paragraph in the complaint.

(3) *Time for Furnishing a Copy of the Complaint and Proposed Order to the Non-Moving Party; Record Proof.* When a Non-Moving Party is represented, a true, attested copy of the Complaint and Proposed Order shall be furnished to the Non-Moving Party's counsel not less than forty-eight (48) hours prior to its anticipated presentation to the Court. In the case of an unrepresented Non-Moving Party, a true, attested copy of the Complaint and Proposed Order shall be furnished directly to the Non-Moving Party not later than forty-eight (48) hours prior to its anticipated presentation to the Court; or it shall be furnished to the Non-Moving Party by regular First Class U.S. mail not later than the end of business five (5) actual days preceding the date of its anticipated presentation. The Moving Party shall allege in his/her Complaint the form and manner of providing service to the Non-Moving Party and whether said service was made directly to the named Non-Moving Party or to named legal counsel.

(4) *Scheduling Presentations; Pleadings Delivered to Court Administrator.* To facilitate the proper giving of notice of the presentation of Custody Complaints, the Court Administrator shall establish a regular time each week for the presentation of Custody Complaints and the entry of Orders establishing temporary custody arrangements pending a full hearing. Counsel may obtain the specific time for presentation of Complaints from the Court Administrator's Office and shall deliver a copy of the filed Complaint to the Court Administrator a minimum of five (5) days in advance of the scheduled time of any planned presentations of Custody Complaints and Proposed Orders of Court.

(5) *Formal Presentation to the Court Not Necessary.* Certain Complaints and Petitions may be presented in the same manner and at the same times as all other petitions and need not be presented in open Court at the time assigned for presentation of Custody Complaints and Petitions in these cases:

a. When the Proposed Temporary Order and Directive for Conciliation makes no provision at all for interim custody of the child or children.

b. When the Proposed Temporary Order and Directive for Conciliation simply maintains the status quo as evidenced by a prior Court Order, a copy of which must be attached to the Complaint or Petition.

c. When all parties have stipulated in writing to the entry of a Temporary Order and Directive for Conciliation, without respect to whether any party is represented by counsel. However, if counsel represents any party, they

shall be so identified by name, and counsel's signature shall be required on the Stipulation.

(b) *Reference to Conciliator*

(1) *Assignment*—The Court Administrator shall assign all child custody actions to a Conciliator designated by the Court, who shall conduct a Conciliation Conference with both legal counsel and the parties. Further, the Court Administrator shall assign the Conciliator, date, time and place for the Conciliation Conference after the Order has been signed by the Court. The Order of Court and directive for Conciliation shall be in a form similar to Sample Form "A." A copy of the signed Order shall be deposited with the Court Administrator. (See Sample Form "A")

(2) *Conciliator*—The Conciliator shall be a member of the Bar of this Court who, along with any other members of his/her professional practice, shall not be engaged in the practice of law in the field of Domestic Relations. The Conciliator shall not be subject to the subpoena power of this Court to force testimony regarding information revealed during the Conciliation Conference.

(3) *Service*—Counsel for the Moving Party shall serve a copy of the Complaint and Order for Conciliation upon the Non-Moving Party in accordance with the Pennsylvania Rules of Court. The Court Administrator shall notify the Conciliator of the list of cases scheduled for conciliation and shall provide a copy of the Complaint and Order to the Conciliator.

(4) *Administrative Fee*—The Moving Party shall deposit a nonrefundable administrative fee of \$200.00 with the Office of the Prothonotary upon the filing of the Complaint. The Conciliator shall be compensated at the rate of \$200.00 for each custody conciliation scheduled. Each conference is expected to last one (1) hour. In the event the Conciliation lasts more than one hour, the Conciliator may petition the Court for additional compensation at the rate of \$100.00 per hour. This additional fee shall be added to the cost of the action and shall be collected by the Prothonotary as directed by the Court. The fee may be changed from time to time upon direction from the Court without the necessity for amending these Rules. The Prothonotary shall post the administrative fee for such filings in its office. The fee shall be paid to the Conciliator by the Prothonotary upon receipt of the conciliator's billing statement.

In the event the Moving Party is unable to pay the administrative fee, such party may apply for an Order to Proceed In Forma Pauperis. If the Court authorized In Forma Pauperis status, the administrative fee shall be paid by the County of Franklin.

In the event a party files a request for an additional Conciliation, the party shall pay an additional administrative fee for such Conciliation Conference which must be paid prior to the scheduling of an additional Conciliation Conference.

(5) *Authority of Conciliator*—The Conciliator shall have the following authority and responsibility:

a. To conciliate custody cases which specifically includes meeting with the parties and children, if appropriate. If a party desires the children to be present at the Conciliation Conference, he/she shall make said request of the Conciliator no later than seven days prior to the scheduled conference. The Conciliator shall determine the appropriateness of the request on a case-by-case factual basis after consultation with counsel for both parties or with a pro se party;

b. To address the need for home studies, as appropriate;

c. To address the issue of utilization of expert witnesses, as appropriate; and

d. To recommend a resolution of the custody conflict which recommendation shall be included in the Summary Report and submitted to the Court for further action.

If the parties are not able to agree upon the need for home studies and/or the need for any other expert witness, either party may petition the Court pursuant to Pa.R.C.P. 1915.8 for the appointment of an expert and the payment of his or her fees.

(6) *Memorandum by Parties*—At least two (2) days prior to the scheduled Conciliation Conference, the Conciliator and counsel for the opposing party, or the pro se party individually, shall receive a Memorandum addressing the following:

a. Factual background including a brief history of the case.

b. Names and ages of the children.

c. A Proposed Order for resolution of matters.

d. Issues, both factual and legal, for resolution.

e. Whether a home study is requested.

f. Whether the party will agree to a particular psychologist/psychiatrist for evaluation or request psychological evaluations.

The parties are directed to supplement the Memorandum from time to time if new information becomes available prior to conciliation.

(7) *Summary by Conciliator*—Following the conclusion of each conference and within three (3) business days, the Conciliator shall prepare a Summary Report together with a Proposed Order of Court for signature. In the event the parties are unable to reach an agreement at the Conciliation Conference, the Proposed Order of Court shall address only the need for home studies and the need for psychological evaluations. In the event the parties reach an agreement at the Conciliation Conference, the Proposed Order of Court shall reflect the terms of the agreement and shall be submitted to the Court for entry of a Final Order in the matter. Said Report and Proposed Order shall be submitted in its original form along with two (2) copies to the Prothonotary's Office for forwarding to the Court for its approval. Said Order of Court shall specifically designate the names of the parties and their addresses or in lieu thereof, the names and addresses of the parties' legal counsel, to which the conformed copies of the Order of Court shall be forwarded by the Prothonotary's Office.

If no final agreement has been achieved, a Summary Report and Proposed Order shall be submitted to the Court and filed of record. The Summary Report shall include the following:

a. Custody status at the time of conciliation;

b. Summary of the parties' positions;

c. Identification of legal and factual issues before the Court; and

d. Conciliator's recommendation and the reasons therefore.

Copies of the Summary Report and Order of Court shall be provided to the parties and their legal counsel.

(c) *Entry of Court Order*.

Upon review of the conciliator's Summary, the Court may issue an Order addressing the appropriate issues. A copy of said Order of Court shall be furnished to legal counsel for the parties or in the event a party is unrepresented, to the party directly, according to the procedures outlined in 39-1915.3(b)(7).

(d) *Scheduling of Pre-Trial Conferences and Hearings.*

Upon the completion of home studies and psychological evaluations (if applicable) and at any time after the entry of the Order of Court approving the Conciliator's Summary, either party may present a Motion and Proposed Order for scheduling a Pre-Trial Conference with the Court. (See Sample Form "B") Every effort shall be made by the Court Administrator to schedule a Pre-Trial Conference within thirty (30) days of the submission of a Motion by either party requesting said conference taking into consideration the availability of the Court. Each party's presentation at the Pre-Trial Conference shall not exceed a time limit of fifteen (15) minutes. At least two (2) days prior to the scheduled Pre-Trial Conference, a Pre-Trial Memorandum containing the following matters shall be filed of record:

- a. Statement of the case.
- b. Issues to be resolved.
- c. Stipulated issues and facts.
- d. Names and addresses of all factual witnesses, and a brief summary concerning the anticipated testimony of each listed witness and a certification by counsel that all witnesses listed have been directly contacted by counsel or by pro se party to confirm the substance of the testimony proffered.
- e. Names and addresses of all expert witnesses.
- f. Identification of exhibits for trial.
- g. Expected length of trial.

Failure to produce the information set forth in this Rule may be grounds for imposition of sanctions upon legal counsel or the party directly if appearing pro se.

At the scheduled Pre-Trial Conference, both counsel shall be present and the parties shall be personally present. In the event that neither legal counsel nor a party appears, the Pre-Trial Conference shall be held in that party's absence upon proof of service of the Order of Court for Pre-Trial Conference in accordance with the Pennsylvania Rules of Civil Procedure. Although the Court may not discuss the case with represented parties, they are directed to be present in the event issues arise where the parties' input may be beneficial.

In the event that an agreement is not reached at the Pre-Trial Conference, a hearing date shall be established by the Court Administrator at the conclusion of said conference.

IN THE COURT OF COMMON PLEAS OF THE 39TH JUDICIAL DISTRICT OF PENNSYLVANIA—FRANKLIN/FULTON COUNTY BRANCH

,	:	Civil Action—Law
Plaintiff	:	
	:	
vs.	:	No. F.R.
	:	
,	:	Custody
Defendant	:	

ORDER OF COURT AND DIRECTIVE FOR CONCILIATION

Now this \_\_\_\_ day of \_\_\_\_, 20 \_\_\_\_, This order will notify \_\_\_\_, Defendant, that you have been sued in court to obtain custody of the child(ren): \_\_\_\_ date of birth \_\_\_\_, \_\_\_\_ date of birth \_\_\_\_ .

It is ordered and directed that \_\_\_\_, Esquire, the Court's child Custody Conciliation Officer, is hereby directed to conduct a Conciliation Conference on \_\_\_\_, 20 \_\_\_\_, at the Assigned Room, Third Floor, Franklin County Courthouse, Chambersburg, Pennsylvania. The anticipated length of the Conciliation Conference is one (1) hour. The parties along with their legal counsel shall appear in person at the designated time for the Conciliation Conference. A Memorandum shall be furnished to the Conciliator at least two (2) days prior to the scheduled Conciliation Conference pursuant to 39th Judicial District Civil Rule No. 1915.3(b)(8). Failure to provide said Memorandum may result in the imposition of sanctions.

At the Conciliation Conference, an effort will be made to see if the issues can be resolved by an agreement between the parties. If an agreement cannot be reached, the Conciliator will assist in defining and narrowing the issues to reduce the time required for hearing by the Court. At the conclusion of the conference, the Conciliator will prepare a Conference Summary Report for further action by the Court.

You have the right to be represented by an attorney who may attend the Conciliation Conference with you. If you have not secured an attorney by the date of the scheduled Conciliation Conference, you shall nonetheless personally appear at the time scheduled for the Conciliation Conference without an attorney.

The Plaintiff has deposited the nonrefundable sum of \$200.00 with the Prothonotary for the cost of the Conciliation Conference and the Court reserves the right to further assign or divide these costs.

SAMPLE FORM "A"

\_\_\_\_, Defendant, is notified that if you fail to appear as provided by this Order, an Order of Court for custody, partial custody or visitation may be entered against you or the Court may issue a warrant for your arrest.

Pending the hearing, with emphasis placed on the arrangements for the six (6) months preceding the filing of this Complaint and with particular attention paid to the role of primary caretaker, the Court hereby establishes the following Temporary Order for custody pending a hearing; (the appropriate language should be inserted at this point detailing the custody arrangements sought by the Plaintiff keeping in mind the emphasis to be placed upon the prior six (6) months and the role of a primary caretaker.) (It is suggested one (1) inch of blank space be left for judge's comments or changes to the proposed Order)

Defendant is hereby notified that if (s)he disputes the Plaintiff's averments regarding the current status of the custody arrangements and this Order entered on the basis of those averments, (s)he has the right to request a prompt conference with the Court. If the matter of the temporary custody arrangements is not resolved at the conference, the Court may in atypical factual situations and its sole discretion schedule a brief hearing limited to the issues of determining temporary custody arrangements pending the schedule Conciliation Conference.

The parties and their legal counsel, if applicable, are hereby directed to engage in meaningful negotiations to resolve this matter prior to the Conciliation Conference.



YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Pennsylvania Bar Association
Lawyer Referral Service
1-800-692-7375 (PA only) or 1-717-238-6715

AMERICANS WITH DISABILITIES ACT OF 1990

The Court of Common Pleas of Franklin County is required by law to comply with the Americans with Disabilities Act of 1990. For information about accessible facilities and reasonable accommodations available to disabled individuals having business before the court, please contact our office. All arrangements must be made at least 72 hours prior to any hearing or business before the court.

BY THE COURT,
\_\_\_\_\_
J.

IN THE COURT OF COMMON PLEAS OF THE 39TH JUDICIAL DISTRICT OF PENNSYLVANIA—FRANKLIN/FULTON COUNTY BRANCH

, : Civil Action—Law
Plaintiff :
vs. : No. F.R.
, :
Defendant : Custody

ORDER OF COURT FOR PRE-TRIAL CONFERENCE

AND NOW, this \_\_\_\_ day of \_\_\_\_, 20 \_\_, upon consideration of the within Motion,

IT IS HEREBY ORDERED, that a Pre-Trial Conference in the above-captioned custody matter is hereby scheduled for \_\_\_\_ at \_\_\_\_ o'clock \_\_.m. in the Chambers of the Honorable \_\_\_\_, Franklin County Courthouse, Chambersburg, Pennsylvania.

A Pre-Trial Memorandum shall be furnished to the Court at least two (2) days prior to the scheduled Pre-Trial Conference pursuant to 39th Judicial District Civil Rule No. 1915.3(d). Failure to provide said Pre-Trial Memorandum may be grounds for imposition of sanctions.

Failure of a party or legal counsel to appear upon proper notice shall result in the holding of the conference in absentia and the entry of an Order of Court that may be to the detriment of the absent party.

BY THE COURT,
\_\_\_\_\_
J.

SAMPLE FORM "B"
IN THE COURT OF COMMON PLEAS OF THE 39TH JUDICIAL DISTRICT OF PENNSYLVANIA—FRANKLIN/FULTON COUNTY BRANCH

, : Civil Action—Law
Plaintiff :
vs. : No. F.R.
, :
Defendant : Custody

MOTION FOR SCHEDULING OF A PRE-TRIAL CONFERENCE

AND NOW comes \_\_\_\_, Esquire, legal counsel for the above-captioned (Plaintiff/Defendant) and moves the Court as follows:

- 1. A Conciliation Conference in the above-captioned matter was held on \_\_\_\_ .
2. A Summary Report and Proposed Order of Court was prepared by the Conciliator and filed or record on \_\_\_\_ .
3. An Order of Court was signed on \_\_\_\_ containing further directives in this matter.
4. The undersigned legal counsel hereby certifies that all court-ordered directives have been complied with and the matter is now ready for a hearing.
5. Notification of this Motion has been given to \_\_\_\_, Esquire, attorney for (Plaintiff/Defendant) who (concur with/opposes) the request.

WHEREFORE, it is respectfully requested that an Order be entered by the Court establishing a date and time for a Pre-Trial Conference.

Date: By \_\_\_\_\_
(Signature, Esquire
Counsel for (Plaintiff/Defendant))

I verify that the statements made in this Motion are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities.

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

[Pa.B. Doc. No. 03-870. Filed for public inspection May 9, 2003, 9:00 a.m.]

## DISCIPLINARY BOARD OF THE SUPREME COURT

### Notice of Transfer of Attorneys to Inactive Status

Notice is hereby given that the following attorneys have been transferred to inactive status by Order of the Supreme Court of Pennsylvania dated March 25, 2003, pursuant to Rule 111(b) Pa.R.C.L.E., which requires that every active lawyer shall annually complete, during the compliance period for which he or she is assigned, the continuing legal education required by the Continuing Legal Education Board. The Order became effective April 24, 2003 for Compliance Group 2 due August 31, 2002.

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.

William Paul Agee  
Boston, MA

Philip Steven Aronow  
Mount Laurel, NJ

Adam Lawrence Block  
Maple Shade, NJ

Michael L. Block  
Burlington, NJ

Kay Millicent Brown  
Prince Frederick, MD

Joseph E. Campbell  
Edgewood, NM

Evan Barrett Caplan  
Cherry Hill, NJ

Lisa Carol Cohen  
Cherry Hill, NJ

Caroline Ferguson Corum  
Bellevue, WA

Donald Richard Daines  
Princeton, NJ

Kelly Anne Daly  
Washington, DC

Rebecca J. Davis  
Riverton, UT

Joseph J. DiBenedetto  
Long Island City, NY

Robert Paul Dougherty  
Atlanta, GA

Bernadette Fallows  
Trenton, NJ

David Scott Florig  
Mount Laurel, NJ

Alison L. Galer  
Somerville, NJ

Robert L. Gaynor  
Succasunna, NJ

Richard Goldstein  
Pleasantville, NJ

Terry Lee Haines  
Washington, DC

Kenneth J. Hall  
Newark, NJ

William Andrew Haumann  
Cherry Hill, NJ

Michael C. Heyden  
Wilmington, DE

George C. Hopkins  
Washington, DC

Zerell S. Johnson-Welch  
Laurel, MD

David Peter Krivoshik  
Princeton, NJ

Scott Jeffrey Lubar  
Atlanta, GA

John Michael Makowski  
Voorhees, NJ

Roxane Sokolove Marenberg  
Washington, DC

Richard Alexander Maroko  
Metuchen, NJ

Edward F. Martin  
Hilton Head Island, SC

Michael Joseph McLaughlin  
Austin, TX

Drew A. Molotsky  
Haddonfield, NJ

Linda E. Mosakowski  
Silver Spring, MD

Therese A. Nestor  
Trenton, NJ

Ellen Mary Nicholson  
Sea Isle City, NJ

Robert Leon Oswald  
Washington, DC

John T. Owens  
Wilmington, DE

John Robert Pegan  
Boise, ID

Morton Daniel Perskie  
Northfield, NJ

A. Victoria Pinette  
Haddon Township, NJ

Stephanie Marie Pompey  
Woolwich Township, NJ

Jeffrey Stuart Respler  
Cherry Hill, NJ

David Rios  
Boston, MA

William A. Robbins  
Chattanooga, TN

Davis S. Rochman  
Voorhees, NJ

Francis Scott Seiler  
Andover, NJ

Robert Charles Shea  
Toms River, NJ

Gary Scott Silverman  
Rockville, MD

Krishnan Somasundaram  
Franklin Park, NJ

John Joseph Soroka  
Arlington, VA

Kirk I. Spencer  
Grand Rapids, MI

Kent Randall Stevens  
Washington, DC

Wayne William Suojanen  
Aliso Viejo, CA

Steve Topoulos  
Greece

Julie Van Embden  
Gibbstown, NJ

Joseph E. Voelker  
Washington, DC

Carol A. Weiser  
Washington, DC

Patrick J. Whalen  
Flemington, NJ

Eugene C. Wong  
San Francisco, CA

Steven Neal Yermish  
Miami, FL

Kimberly A. Zarish-Becknell  
Washington, DC

ELAINE M. BIXLER,  
*Executive Director and Secretary*  
*The Disciplinary Board of the*  
*Supreme Court of Pennsylvania*

[Pa.B. Doc. No. 03-871. Filed for public inspection May 9, 2003, 9:00 a.m.]