

THE COURTS

Title 210—APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

[210 PA. CODE CH. 13]

Order Adopting Pa.R.A.P. No. 1316 and Note; No. 161 Appellate Procedural Rules; Doc. No. 1

Order

Per Curiam:

And Now, this 8th day of December, 2004, upon the recommendation of the Appellate Court Procedural Rules Committee, the proposal having been published before adoption at 32 Pa.B. 3075 (June 29, 2002);

It Is Ordered, pursuant to Article V, Section 10 of the Constitution of Pennsylvania, that Pennsylvania Rule of Appellate Procedure 1316, and Note thereto, is adopted in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective 60 days after adoption.

Annex A

TITLE 210. APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

ARTICLE II. APPELLATE PROCEDURE

CHAPTER 13. INTERLOCUTORY APPEALS BY PERMISSION

Rule 1316. Incorrect Use of Petition for Permission to Appeal or Petition for Review.

(a) *General Rule.* The appellate court shall treat a request for discretionary review of an order which is immediately appealable as a notice of appeal under the following circumstances:

(1) where a party has filed a timely petition for permission to appeal pursuant to Pa.R.A.P. 1311; or

(2) where a party has filed a timely petition for review from a trial court's refusal of a timely application pursuant to Pa.R.A.P. 1311 to amend the order to set forth expressly the statement specified in 42 Pa.C.S. § 702(b).

(b) *Additional Requirements.* The appellate court may require any additional actions necessary to perfect the appeal.

Official Note: This Rule requires the appellate court to treat a timely, but erroneous, petition for permission to appeal pursuant to Pa.R.A.P. 1311 from an order which is, in fact, immediately appealable as of right, as a timely notice of appeal. See *Commonwealth v. Shull*, 811 A.2d 1 (Pa.Super. 2002). This Rule supersedes *Thermo-Guard, Inc. v. Cochran*, 596 A.2d 188, 192 (Pa. Super. 1991), which stated, as dictum, that "... in the future, where a petition for permission to appeal seeking review of a final order, appealable as of right, or of an interlocutory order made appealable as of right ... is filed, this court should simply deny the petition." Also, pursuant to subdivision (a)(2) of this Rule, where the trial court refuses an application to amend an order to set forth expressly the statement specified in 42 Pa.C.S. § 702(b), and that order was in fact appealable as of right, the appellate court shall treat a Chapter 15 petition for review of the trial court's refusal to amend as a notice of appeal.

Use of the term "notice of appeal" in this Rule is not intended to preclude treatment of the petition for permission to appeal as a petition for review if the proper method of appeal as of right would be a petition for review addressed to the Commonwealth Court's appellate jurisdiction found at 42 Pa.C.S. § 763.

[Pa.B. Doc. No. 04-2279. Filed for public inspection December 23, 2004, 9:00 a.m.]