

# THE COURTS

## Title 210—APPELLATE PROCEDURE

### PART I. RULES OF APPELLATE PROCEDURE

[210 PA. CODE CH. 3]

Order Adopting Amendments to Pa.R.A.P. 341; No. 175 Appellate Procedural Rules; Doc. No. 1

#### Order

*Per Curiam*

And Now, this 13th day of October, 2006, upon the recommendation of the Appellate Court Procedural Rules Committee, the proposal having been published before adoption at 35 Pa.B. 2602 on April 30, 2005;

It Is Ordered, pursuant to Article V, Section 10 of the Constitution of Pennsylvania that the amendments to the Pennsylvania Rule of Appellate Procedure 341 thereto, are 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 I. PRELIMINARY PROVISIONS

#### CHAPTER 3. ORDERS FROM WHICH APPEALS MAY BE TAKEN

#### FINAL ORDERS

#### Rule 341. Final Orders; Generally.

\* \* \* \* \*

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

- (1) disposes of all claims and of all parties; or
- (2) [any order that] is expressly defined as a final order by statute; or
- (3) [any order] is entered as a final order pursuant to subdivision (c) of this rule.

\* \* \* \* \*

**Official Note: Related Constitutional and Statutory Provisions**—Section 9 of Article V of the Constitution of Pennsylvania provides that “there shall be a right of appeal from a court of record or from an administrative agency to a court of record or to an appellate court.” The term “administrative agency” is not defined in Rule 102 of these rules and as used in this rule is intended to have the same meaning as the term “administrative agency” in Section 9 of Article V of the Constitution of Pennsylvania. The constitutional provision is implemented by 2 Pa.C.S. § 702 (appeals), 2 Pa.C.S. § 752 (appeals), and 42 Pa.C.S. § 5105 (right to appellate review.)

**Criminal Law Proceedings—Discretionary Aspects of Sentencing**—Section 9781 of the Sentencing Code (42 Pa.C.S. § 9781) states that the defendant or the Commonwealth may “petition for allowance of appeal” of the discretionary aspects of a sentence for a felony or a misdemeanor. The practice under these rules is to file a notice of appeal. See note to Rule 902 (manner of taking appeal). If the defendant has a right to an appeal with respect to the discretionary aspects of a sentence, the appellate court must, of course, entertain the appeal. Otherwise, such an appeal may be entertained by an appellate court if, but only if, it appears to the court that there is a substantial question that the sentence imposed is not appropriate under the applicable guidelines.

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

**Final Orders—Pre-and Post-1992 Practice**—The 1992 amendment generally eliminates appeals as of right under Rule 341 from orders not ending the litigation as to all claims and as to all parties. Formerly, there was case law that orders not ending the litigation as to all claims and all parties are final orders if such orders have the practical consequence of putting a litigant out of court.

The 1997 amendments to subdivisions (a) and (c), substituting the conjunction “and” for “or,” are not substantive. The amendments merely clarify that by definition any order which disposes of all claims will dispose of all parties and any order that disposes of all parties will dispose of all claims.

**Final Orders in Declaratory Judgment Matters**—In an action taken pursuant to the Declaratory Judgments Act, 42 Pa.C.S. §§ 7531–7541, orders based on a pre-trial motion or petition are considered “final” within the meaning of this Rule, under subdivision (b)(2), if they affirmatively or negatively declare the rights and duties of the parties. *Nationwide Mut. Ins. Co. v. Wickett*, 563 Pa. 595, 604, 763 A.2d 813, 818 (2000). Thus, an order in a declaratory judgment action sustaining a demurrer and dismissing some, but not all, defendants is considered a final order under subdivision (b)(2) because it is expressly defined as such by statute. Importantly, however, when a court enters an order in a declaratory judgment action that overrules preliminary objections in the nature of a demurrer, the order is not “final” under subdivision (b)(2), because such order merely allows the case to go forward without declaring the rights and duties of the parties. *Safe Harbor Water Power Corp. v. Fajt*, 583 Pa. 234, 876 A.2d 954 (2005).

In order to preserve issues for appeal after a trial in a declaratory judgment action, an aggrieved party must file post-trial motions as required by Pa.R.C.P. No. 227.1. *Motorists Mutual v. Pinkerton*, 574 Pa. 333, 830 A.2d 958 (2003); *Chalkey v. Roush*, 569 Pa. 462, 805 A.2d 491 (2002).

**Orders Appealable Under Other Rules**—Orders which are separable from and collateral to the main cause of action where the right involved is too important to be denied review, and the question presented is such that if

review is postponed until final judgment in the case, the claim will be irreparably lost, previously appealable as final orders under Rule 341, are now appealable under Rule 313. See *Pugar v. Greco*, 483 Pa. 68, 73, 394 A.2d 542, 545 (1978) (quoting *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541 (1949)).

**The following is a partial list of orders that are no longer appealable as final orders pursuant to Rule 341 but which, in an appropriate case, might fall under Rules 312 (Interlocutory Appeals by Permission) or 313 (Collateral Orders) of this Chapter.**

- (1) a decision transferring an equity action to the law side;**
- (2) an order denying a defendant leave to amend his answer to plead an affirmative defense;**
- (3) a pre-trial order refusing to permit a defendant to introduce evidence of an affirmative defense;**
- (4) an order denying a party the right to intervene;**
- (5) an order denying a petition to amend a complaint;**
- (6) an order requiring the withdrawal of counsel;**
- (7) an order denying class certification in a class action case; and**
- (8) an order striking a lis pendens.**

**The dismissal of preliminary objections to a petition for appointment of a board of viewers and the dismissal of preliminary objections to a declaration of taking, formerly appealable as final orders under Rule 341, are now appealable as interlocutory appeals as of right under Rule 311.**

**Subdivision (c)—Determination of Finality**—Subdivision (c) permits an immediate appeal from an order dismissing less than all claims or parties from a case only upon an express determination that an immediate appeal would facilitate resolution of the entire case. Factors to be considered under Subdivision (c) include, but are not limited to:

- (1) whether there is a significant relationship between adjudicated and unadjudicated claims;
- (2) whether there is a possibility that an appeal would be mooted by further developments;
- (3) whether there is a possibility that the court or administrative agency will consider issues a second time;
- (4) whether an immediate appeal will enhance prospects of settlement.

The failure of a party to apply to the administrative agency or lower court for a determination of finality pursuant to subdivision (c), shall not constitute a waiver and the matter may be raised in a subsequent appeal following the entry of a final order disposing of all claims and all parties.

Where the administrative agency or lower court refuses to amend its order to include the express determination that an immediate appeal would facilitate resolution of the entire case and refuses to enter a final order, a petition for review under Chapter 15 of the unappealable order of denial is the exclusive mode of review to determine whether the case is so egregious as to justify prerogative appellate correction of the exercise of discretion by the lower tribunal. See, e.g., Pa.R.A.P. 1311 Official Note. The filing of such a petition for review does

not prevent the lower Court or other government unit from proceeding further with the matter, pursuant to Pa.R.A.P. 1701(b)(6). Of course, as in any case, the appellant could apply for a discretionary stay of the proceeding below.

Subsection (c)(2) provides for stay of the action pending determination of an application for determination of finality. If a petition for review is filed challenging denial, a stay or supersedeas will issue only as provided under Chapter 17 of these Rules.

In the event that a trial court or other governmental unit enters a final order pursuant to subdivision (c) of this rule, the trial court or other governmental unit may no longer proceed further in the matter, except as provided in Pa.R.A.P. 1701(b)(1)—(5).

The following is a partial list of orders previously interpreted by the courts as appealable as final orders under Rule 341 that are no longer appealable as of right unless the trial court or administrative agency makes an express determination that an immediate appeal would facilitate resolution of the entire case and expressly enters a final order pursuant to Rule 341(c):

- (1) an order dismissing one of several causes of action pleaded in a complaint but leaving pending other causes of action;
- (2) an order dismissing a complaint but leaving pending a counterclaim;
- (3) an order dismissing a counterclaim but leaving pending the complaint which initiated the action;
- (4) an order dismissing an action as to less than all plaintiffs or as to less than all defendants but leaving pending the action as to other plaintiffs and other defendants; and
- (5) an order granting judgment against one defendant but leaving pending the complaint against other defendants; and
- (6) an order dismissing a complaint to join an additional defendant or denying a petition to join an additional defendant or denying a petition for late joinder of an additional defendant.

**[ The following is a partial list of orders that are no longer appealable as final orders pursuant to Rule 341 but which in an appropriate case might fall under Rules 312 (Interlocutory Appeals by Permission) or 313 (Collateral Orders) of this Chapter.**

- (1) a decision transferring an equity action to the law side;**
- (2) an order denying a defendant leave to amend his answer to plead an affirmative defense;**
- (3) a pre-trial order refusing to permit a defendant to introduce evidence of an affirmative defense;**
- (4) an order denying a party the right to intervene;**
- (5) an order denying a petition to amend a complaint;**

- (6) an order requiring the withdrawal of counsel;  
 (7) an order denying class certification in a class action case; and  
 (8) an order striking a lis pendens.

The dismissal of preliminary objections to a petition for appointment of a board of viewers and the dismissal of preliminary objections to a declaration of taking, formerly appealable as final orders under Rule 341, are now appealable as interlocutory appeals as of right under Rule 311.

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

The 1997 amendments to subdivisions (a) and (c), substituting the conjunction "and" for "or," are not substantive. The amendments merely clarify that by definition any order which disposes of all claims will dispose of all parties and any order that disposes of all parties will dispose of all claims. ]

The 1997 amendment adding subdivision (c)(3) provides for a deemed denial where the trial court or other governmental unit fails to act on the application within 30 days.

[Pa.B. Doc. No. 06-2102. Filed for public inspection October 27, 2006, 9:00 a.m.]

## Title 255—LOCAL COURT RULES

### ADAMS COUNTY

Adams County Criminal Rule 528; AD-28-06, Administrative Order No. 28 of 2006

#### Order of Court

And Now, 5th day of October, 2006, this Court hereby adopts Adams County Criminal Rule 528 as follows:

#### Rule 528

In addition to the forms of security permitted by Pa.R.Crim.P. 528 to satisfy monetary conditions of bail, a defendant or other surety may deposit the following forms of security in lieu of cash:

- a. Certified Check payable to the Clerk of Courts and issued by a bank with a branch office located in Adams County, when security is being deposited directly with the Clerk of Courts.

b. Money Orders when the Office of the Clerk of Courts is closed for business and security is being deposited at the Adams County Adult Correctional Complex.

This Order shall become effective immediately.

By the Court

JOHN D. KUHN,  
President Judge

[Pa.B. Doc. No. 06-2103. Filed for public inspection October 27, 2006, 9:00 a.m.]

## DISCIPLINARY BOARD OF THE SUPREME COURT

### Notice of Suspension

Notice is hereby given that by Order of the Supreme Court of Pennsylvania dated October 10, 2006, Ruth Ann Price is Suspended on Consent from the Bar of this Commonwealth for a period of six months, to be effective November 9, 2006. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

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

[Pa.B. Doc. No. 06-2104. Filed for public inspection October 27, 2006, 9:00 a.m.]

### Notice of Transfer of Attorneys to Inactive Status

Notice is hereby given that Bernard J. McBride, Jr., having been transferred to disability inactive status in New Jersey by Order of the Supreme Court of New Jersey dated September 21, 2005, the Supreme Court of Pennsylvania issued an Order on October 13, 2006, transferring Bernard J. McBride, Jr., to inactive status, effective immediately, pursuant to Rule 301(c) Pa.R.D.E (relating to disabled attorneys) for an indefinite period and until further Order of the Supreme Court. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside of the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

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

[Pa.B. Doc. No. 06-2105. Filed for public inspection October 27, 2006, 9:00 a.m.]