

THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT [204 PA. CODE CH. 83]

Amendment of Rule 514(b) of the Pennsylvania Rules of Disciplinary Enforcement; No. 92 Disciplinary Rules Doc.

Order

Per Curiam

And Now, this 30th day of November, 2010, upon the recommendation of the Board of the Pennsylvania Lawyers Fund for Client Security; the proposal having been submitted without publication pursuant to Pa.R.J.A. No. 103(a)(3) in the interests of justice and efficient administration:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule 514(b) of the Pennsylvania Rules of Disciplinary Enforcement is amended in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective in thirty days for awards approved by the Board of the Pennsylvania Lawyers Fund for Client Security on or after the effective date.

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

Subpart B. DISCIPLINARY ENFORCEMENT

CHAPTER 83. PENNSYLVANIA RULES OF DISCIPLINARY ENFORCEMENT

Subchapter E. PENNSYLVANIA LAWYERS FUND FOR CLIENT SECURITY

DISHONEST CONDUCT OF ATTORNEY

Rule 514. Reimbursable losses.

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(b) *Maximum recovery.* The maximum amount which may be disbursed from the Fund to any one Claimant with respect to the Dishonest Conduct of any one Covered Attorney shall be [\$75,000] \$100,000.

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[Pa.B. Doc. No. 10-2394. Filed for public inspection December 17, 2010, 9:00 a.m.]

Title 210—APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE [210 PA. CODE CHS. 1, 9, 11 AND 15]

Proposed Amendments to Rules of Appellate Procedure 121, 903, 1113 and 1512

The Appellate Court Procedural Rules Committee proposes to amend the Official Note to Pa.R.A.P. 121 and Pa.R.A.P.s 903, 1113 and 1512. These amendments are being submitted to the bench and bar for comments and suggestions prior to its submission to the Supreme Court.

Proposed new material is bold and deleted material is bracketed and bold.

All communications in reference to the proposed amendment should be sent no later than February 11, 2011 to:

Dean R. Phillips, Counsel
D. Alicia Hickok, Deputy Counsel
Scot Withers, Deputy Counsel
Appellate Court Procedural Rules Committee
Pennsylvania Judicial Center
601 Commonwealth Ave., Suite 6200
P. O. Box 62635
Harrisburg, Pennsylvania 17106-2635
or Fax to (717) 231-9551
or E-Mail to appellaterules@pacourts.us

An Explanatory Comment follows the proposed amendment and has been inserted by this Committee for the convenience of the bench and bar. It will not constitute part of the rule nor will it be officially adopted or promulgated.

By the Appellate Court

Procedural Rules Committee

HONORABLE MAUREEN LALLY-GREEN,
Chair

Annex A

TITLE 210. APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

ARTICLE I. PRELIMINARY PROVISIONS

CHAPTER 1. GENERAL PROVISIONS

DOCUMENTS GENERALLY

Rule 121. Filing and Service.

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Official Note:

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Subdivision (e)—Subdivision (e) of the rule does not apply to the filing of a notice of appeal, a petition for allowance of appeal, a petition for permission to appeal, or a petition for reconsideration or re-argument, since under these rules the time for filing such papers runs from the entry and service of the related order, nor to the

filing of a petition for review, which is governed by similar considerations. However, these rules permit the filing of such notice and petitions (except a petition for reconsideration or re-argument) in the local county (generally in the county court house; otherwise in a post office), thus eliminating a major problem under the prior practice. **The amendments to Rules 903(b), 1113(b) and 1512(a)(2) clarified that subdivision (e) does apply to calculating the deadline for filing cross-appals, cross-petitions for allowance of appeal and additional petitions for review.**

ARTICLE II. APPELLATE PROCEDURE

CHAPTER 9. APPEALS FROM LOWER COURTS

Rule 903. Time for Appeal.

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(b) *Cross appeals.* Except as otherwise prescribed in Subdivision (c) of this rule, if a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 14 days of the date on which the first notice of appeal was [**filed**] **served**, or within the time otherwise prescribed by this rule, whichever period last expires.

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CHAPTER 11. APPEALS FROM COMMONWEALTH COURT AND SUPERIOR COURT

PETITION FOR ALLOWANCE OF APPEAL

Rule 1113. Time for Petitioning for Allowance of Appeal.

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(b) *Cross petitions.*—Except as otherwise prescribed in Subdivision (c) of this rule, if a timely petition for allowance of appeal is filed by a party, any other party may file a petition for allowance of appeal within 14 days of the date on which the first petition for allowance of appeal was [**filed**] **served**, or within the time otherwise prescribed by this rule, whichever period last expires.

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CHAPTER 15. JUDICIAL REVIEW OF GOVERNMENTAL DETERMINATIONS

PETITION FOR REVIEW

Rule 1512. Time for Petitioning for Review.

(a) *Appeals authorized by law.*—Except as otherwise prescribed by Subdivision (b) of this rule:

* * * * *

(2) If a timely petition for review of such an order is filed by a party, any other party may file a petition for review within 14 days of the date on which the first petition for review was [**filed**] **served**, or within the time otherwise prescribed by Subdivision (a)(1) of this rule, whichever period last expires.

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Explanatory Comment

This Recommendation proposes to amend the Official Note to Pa.R.A.P. 121 and Pa.R.A.P.s 903, 1113 and 1512 to make it clear that subdivision 121(e) does apply to calculating the deadline for filing cross appeals, cross petitions for allowance of appeal and additional petitions for review.

This Recommendation arises from an issue identified in *Malt Beverages Distribution Association v. PLCB*, No. 54 MM 2009, 2009 Pa. LEXIS 1613 (Pa. Aug. 6, 2009), where

the Supreme Court entered a *per curiam* order denying a party's petition to file a cross-petition for allowance of appeal *nunc pro tunc*. In a dissent, Justice Todd wrote that the issue before the Court was the timeliness of the cross-petition. A group of parties filed a petition for allowance of appeal, and cross petitioner did not file its cross-petition until 17 days later. Pa.R.A.P. 1113(b) requires that cross-petitions be filed within 14 days after the first petition for allowance of appeal was "filed." Cross petitioner argued that Pa.R.A.P. 121(e) allowed it an additional three days in addition to the 14 described in the rule.

The official comment to Rule 121 includes the following:

Subdivision (e)—Subdivision (e) of the rule does not apply to the filing of a notice of appeal, a petition for allowance of appeal, a petition for permission to appeal, or a petition for reconsideration or re-argument, since under these rules the time for filing such papers runs from the entry and service of the related order, nor to the filing of a petition for review, which is governed by similar considerations. However, these rules permit the filing of such notice and petitions (except a petition for reconsideration or re-argument) in the local county (generally in the county court house; otherwise in a post office), thus eliminating a major problem under the prior practice.

Justice Todd wrote that the interplay between Rule 121, its comment and Rule 1113 creates an ambiguity. She wrote that the comment does not expressly exclude cross-petitions for allowance of appeal, and the rationale for the exclusion (that each enumerated sort of filing is triggered by a court order rather than a filing by another party) is inapplicable.

Justice Todd also cited *Coney Island II, Inc. v. Pottsville Area School District*, 497 Pa. 373, 441 A.2d 747 (1982). In that case, the Court considered the timeliness of a cross-appeal under Pa.R.A.P. 903(b). Although Rule 903(b) uses the same language as Rule 1113(b) (*i.e.* a cross-appeal must be filed "within 14 days of the date on which the first notice of appeal was filed, or within the time otherwise prescribed by this rule, whichever period last expires"), the Court held that the three-day extension in Rule 121(e) applied.

Coney Island II does not discuss the fact that Rule 121(e) refers to "service" and Rule 903(b) (like Rule 1113(b)) refers to "filed." Rule 1512(a)(2), which relates to additional petitions for review, also uses the "filed" terminology.

The Committee believes that it is confusing to apply *Coney Island II's* holding narrowly to cross-appeals and that the three day extension provided in Rule 121(e) should be available to an aggrieved party filing a cross-petition for allowance of appeal or a cross-petition for review.

In order to obviate any potential ambiguity engendered by the interplay of Rules 903(b), 1113(b) and 1512(a)(2) and *Coney Island II*, the committee recommends simply amending those rules to make the triggering event the service rather than the filing of the notice of appeal, the petition for allowance of appeal or the petition for review. The additional time permitted by Rule 121(e) would then unambiguously be permitted in calculating the time for cross-appeals, cross-petitions for allowance of appeal and additional petitions for review. Because Rule 121(b) requires service at the time of filing, the amendment should have no material effect on practice.

[Pa.B. Doc. No. 10-2395. Filed for public inspection December 17, 2010, 9:00 a.m.]

PART I. RULES OF APPELLATE PROCEDURE**[210 PA. CODE CHS. 5 AND 21]****Proposed Amendments to Rules of Appellate Procedure 531, 2113 and 2185**

The Appellate Court Procedural Rules Committee proposes to amend Pennsylvania Rule of Appellate Procedure 2113, 2185 and 531. The amendment is being submitted to the bench and bar for comments and suggestions prior to its submission to the Supreme Court.

Proposed new material is bold and deleted material is bracketed and bold.

All communications in reference to the proposed amendment should be sent no later than February 11, 2011 to:

Dean R. Phillips, Counsel
D. Alicia Hickok, Deputy Counsel
Scot Withers, Deputy Counsel
Appellate Court Procedural Rules Committee
Pennsylvania Judicial Center
601 Commonwealth Ave., Suite 6200
P. O. Box 62635
Harrisburg, Pennsylvania 17106-2635
or Fax to (717) 231-9555
or E-Mail to appellaterules@pacourts.us

An Explanatory Comment follows the proposed amendments and has been inserted by this Committee for the convenience of the bench and bar. It will not constitute part of the rule nor will it be officially adopted or promulgated.

*By the Appellate Court
Procedural Rules Committee*

HONORABLE MAUREEN LALLY-GREEN,
Chair

Annex A**TITLE 210. APPELLATE PROCEDURE****ARTICLE I. PRELIMINARY PROVISIONS****CHAPTER 5. PERSONS WHO MAY TAKE OR PARTICIPATE IN APPEALS****AMICUS CURIAE****Rule 531. Participation by Amicus Curiae.**

(a) *Briefs.*—Anyone interested in the questions involved in any matter pending in an appellate court, excluding Petitions for Allowance of Appeal, although not a party, may, without applying for leave to do so, file a brief amicus curiae in regard to those questions.

(1) Unless otherwise ordered by the court, any amicus curiae shall file and serve its brief in the manner and number required and within the time allowed by these rules with respect to the party whose position as to affirmance or reversal the amicus brief will support, or with respect to the appellant, if the amicus brief does not support the position of any party.

(2) **In an appeal proceeding under Rules 2154(b), 2185(c) and 2187(b), any amicus curiae shall file and serve its brief within the time allowed by these rules for service of the advance text of the brief by the party whose position as to affirmance or reversal the amicus brief will support or, if the amicus brief does not support the position of any party, within the time allowed by these rules for service of the advance text by the appellant. Alternatively, the amicus curiae may, but is not required to, serve**

an advance text and then file and serve a definitive copy of its brief. If the amicus curiae chooses to serve an advance copy and then file and serve a definitive copy, its deadlines for each are the same as for the party whose position as to affirmance or reversal the amicus brief supports or, if the amicus brief does not support the position of any party, as for the appellant.

(b) *Oral argument.*—Oral argument may be presented by amicus curiae only as the appellate court may direct. Requests for leave to present oral argument shall be by application and will be granted only for extraordinary reasons.

Official Note: Where the amicus cannot comply with the requirements of this rule because of ignorance of the pendency of the question, relief may be sought under Rule 105(b). The last eight words of the rule are new. In *Piccirilli Bros. v. Lewis*, 282 Pa. 328, 336, 127 Atl. 832, 835 (1925) the court noted the applicability of this rule to public officers who are represented by official counsel with an adverse position.

The 2011 amendment to the rule clarified when those filing amicus curiae briefs should serve and file their briefs when the appellant has chosen or the parties have been directed to proceed under the rules related to large records (Rule 2154(b)), advance text (Rule 2187(b)) and definitive copies (Rule 2185(c)). Under those rules, the appellant may defer preparation of the reproduced record until after the briefs have been served. The parties serve on one another (but do not file) advance texts of their briefs within the times required by Rule 2187. At the time they file their advance texts, each party includes certified record designations for inclusion in the reproduced record. The appellant must then prepare and file the reproduced record within 21 days of service of the appellee's advance text (Rule 2186(a)(2)). Within 14 days of the filing of the reproduced record, each party that served a brief in advanced text may file and serve definitive copies of their briefs. The definitive copy must include references to the pages of the reproduced record, but it may not otherwise include changes from the advance text other than correction of typographical errors. Those filing amicus curiae briefs may choose to serve an advanced text and then file and serve definitive copies according to the procedure required of the parties or they may choose to file a definitive brief without citations to the reproduced record.

ARTICLE II. APPELLATE PROCEDURE**CHAPTER 21. BRIEFS AND REPRODUCED RECORD****CONTENT OF BRIEFS****Rule 2113. Reply Brief.**

(a) *General rule.*—In accordance with Rule 2185(a) ([service] time for serving and filing [of] briefs), the appellant may file a brief in reply to matters raised by appellee's brief or in any amicus curiae brief and not previously addressed in appellant's brief. If the appellee has cross appealed, the appellee may file a similarly limited reply brief.

(b) *Response to draft or plan.*—A reply brief may be filed as prescribed in Rule 2134 (drafts or plans).

(c) *Other briefs.*—No further briefs may be filed except with leave of court.

Official Note: An appellant now has a general right to file a reply brief. The scope of the reply brief is limited, however, in that such brief may only address matters raised by appellee and not previously addressed in appellant's brief. No subsequent brief may be filed unless authorized by the court.

The length of a reply brief is set by Rule 2135 (length of briefs). The due date for a reply brief is found in Rule 2185(a) (service and filing of briefs).

Where there are cross appeals, the deemed or designated appellee may file a similarly limited reply brief addressing issues in the cross appeal. See also Rule 2136 (briefs in cases involving cross appeals).

The amendment to Rule 2113(a) authorized an appellant to address in a reply brief matters raised in amicus curiae briefs. Before the 2011 amendment, the rule permitted the appellant to address in its reply brief only matters raised in the appellee's brief. The 2011 amendment did not change the requirement that the reply brief must not address matters previously addressed in the appellant's principal brief.

FILING AND SERVICE

Rule 2185. Time for Serving and Filing Briefs.

(a) *Time for serving and filing briefs.*

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(3) Multiple briefs for appellants or appellees.—If the time for filing a brief is established by reference to service of a preceding brief and more than one such preceding brief is filed, the deadline for filing the subsequent brief shall be calculated from the date on which the last timely filed preceding brief is served. If no such preceding brief is filed, the deadline for a subsequent brief shall be calculated from the date on which the preceding brief should have been filed.

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Official Note: The 2002 amendment recognizes that in cross appeals the deemed or designated appellant's second brief is more extensive than a reply brief and, therefore may require more than 14 days to prepare. See Rule 2136 (briefs in cases involving cross appeals).

The addition of subsection (a)(3), clarified practice in an appeal in which there is more than one appellant or appellee and all appellants or all appellees do not file their briefs on the same date. For example, if there are two appellants and one files early or one is granted an extension of time to file, the two briefs for appellants will not be filed or served on the same date. Without subsection (a)(3), it was not clear when the appellee's 30-day period to file its brief began. The same issue can arise with respect to the appellant's time for filing its reply brief when there are two or more appellees. New Subsection (a)(3) clarified the point by starting the period on the date on which the latest, timely filed preceding brief is served.

Explanatory Comment

The proposed amendment to subdivision (a) to Rule 2113 permits appellant to address in a reply brief matters raised in amicus curiae briefs. Currently, the Rule permits appellant to address in a reply brief only matters raised in the appellee's brief. The proposed amendment does not change the requirement that the appellant may not address in the reply brief matters previously addressed in appellant's principal brief.

The proposed addition of paragraph (a)(3) to Rule 2185 addresses two situations: when does appellee's time period to file appellee's brief begins to run when more than one appellant exists; and, when does appellant's time period to file a reply brief begin to run when more than one appellee exists.

The first situation occurs when there is more than one appellant and each appellant does not file its brief on the same date. For example, if there are two appellants and one appellant files early or one is granted an extension of time to file, the two briefs for appellants will not be filed or served on the same date. The proposed addition of paragraph (a)(3) clarifies that the time period begins to run on the date on which the latest, timely filed preceding brief is served (or when a relevant brief should have been filed).

The second situation occurs when there is more than one appellee and each appellee does not file its brief on the same date. The proposed addition of paragraph (a)(3) clarifies that the time period begins to run on the date on which the latest, timely filed preceding brief is served (or when a relevant brief should have been filed).

The proposed amendments contained in this recommendation will be submitted to the Supreme Court in 2011, following expiration of the comment period and further Committee review.

The final situation concerns the filing of amicus curiae briefs under Pa.R.A.P. 531. The proposed amendment to Pa.R.A.P. 531 adds paragraph (a)(2) and would clarify when those filing amicus curiae briefs should serve and file their briefs when the appellant has chosen or the parties have been directed to proceed under the rules related to large records (Rule 2154(b)), advance text (Rule 2187(b)) and definitive copies (Rule 2185(c)). Under those rules, the appellant may defer preparation of the reproduced record until after the briefs have been served. The parties serve on one another (but do not file) advance texts of their briefs within the times required by Rule 2187. At the time they file their advance texts, each party includes certified record designations for inclusion in the reproduced record. The appellant must then prepare and file the reproduced record within 21 days of service of the appellee's advance text (Rule 2186(a)(2)). Within 14 days of the filing of the reproduced record, each party that served a brief in advanced text may file and serve definitive copies of their briefs. The definitive copy must include references to the pages of the reproduced record, but it may not otherwise include changes from the advance text other than correction of typographical errors. Those filing amicus curiae briefs may choose to serve an advanced text and then file and serve definitive copies according to the procedure required of the parties or they may choose to file a definitive brief without citations to the reproduced record.

[Pa.B. Doc. No. 10-2396. Filed for public inspection December 17, 2010, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Disbarment

Notice is hereby given that Alake Johnson-Ford, having been disbarred from the practice of law in the District of Columbia by Opinion and Order of the District of Columbia Court of Appeals decided February 10, 2000, the Supreme Court of Pennsylvania issued an Order on December 6, 2010, disbaring Alake Johnson-Ford, from the Bar of this Commonwealth, effective January 5, 2011. 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. 10-2397. Filed for public inspection December 17, 2010, 9:00 a.m.]

Notice of Suspension

Notice is hereby given that Michael L. Block having been suspended from the practice of law in the State of New Jersey for a period of 6 months by Order of the Supreme Court of New Jersey dated February 9, 2010, the Supreme Court of Pennsylvania issued an Order dated November 23, 2010, suspending Michael L. Block

from the practice of law in this Commonwealth for a period of 6 months. 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. 10-2398. Filed for public inspection December 17, 2010, 9:00 a.m.]

Notice of Suspension

Notice is hereby given that David W. Boyer having been suspended from the practice of law in the State of New Jersey for a period of 3 months by Order of the Supreme Court of New Jersey dated March 2, 2010, the Supreme Court of Pennsylvania issued an Order dated November 23, 2010, suspending David W. Boyer from the practice of law in this Commonwealth for a period of 3 months, effective December 23, 2010. 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. 10-2399. Filed for public inspection December 17, 2010, 9:00 a.m.]