

# THE COURTS

## Title 210—APPELLATE PROCEDURE

### PART I. RULES OF APPELLATE PROCEDURE

[ 210 PA. CODE CHS. 5 AND 21 ]

#### Amendment of Rules 531, 2113 and 2185 of the Rules of Appellate Procedure; No. 215 Appellate Procedural Rules Doc.

##### Order

##### *Per Curiam*

*And Now*, this 3rd day of October, 2011, upon the recommendation of the Appellate Court Procedural Rules Committee; the proposal having been published for public comment at 40 Pa.B. 7209 (December 18, 2010):

*It Is Ordered* pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rules 531, 2113 and 2185 of the Pennsylvania Rules of Appellate Procedure are 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.

##### Annex A

#### TITLE 210. APPELLATE PROCEDURE

### PART I. RULES OF 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 advance 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 advance 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 2011 amendment to subdivision (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.*

(1) *General rule.*—Except as otherwise provided by this rule, the appellant shall serve and file appellant's brief not later than the date fixed pursuant to Subdivision (b) of this rule, or within 40 days after the date on which the record is filed, if no other date is so fixed. The appellee shall serve and file appellee's brief within 30 days after service of appellant's brief and reproduced record if proceeding under Rule 2154(a) (**general rule**). A party may serve and file a reply brief permitted by these rules within 14 days after service of the preceding brief but, except for good cause shown, a reply brief must be served and filed so as to be received at least three days before argument. In cross appeals, the second brief of the deemed or designated appellant shall be served and filed within 30 days of service of the deemed or designated appellee's first brief. Except as prescribed by Rule 2187(b) (advance text of briefs), each brief shall be filed not later than the last day fixed by or pursuant to this rule for its service. Briefs shall be deemed filed on the date of mailing if first class, express, or priority United States Postal Service mail is utilized.

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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.

(b) *Notice of deferred briefing schedule.*—When the record is filed the prothonotary of the appellate court shall estimate the date on which the matter will be argued before or submitted to the court, having regard for the nature of the case and the status of the calendar of the court. If the prothonotary determines that the matter will probably not be reached by the court for argument or submission within 30 days after the latest date on which the last brief could be filed under the usual briefing schedule established by these rules, the prothonotary shall fix a specific calendar date as the last date for the

filing of the brief of the appellant in the matter, and shall give notice thereof as required by these rules. The date so fixed by the prothonotary shall be such that the latest date on which the last brief in the matter could be filed under these rules will fall approximately 30 days before the probable date of argument or submission of the matter.

(c) *Definitive copies.*—If the record is being reproduced pursuant to Rule 2154(b) (large records) the brief served pursuant to Subdivision (a) of this rule may be typewritten or page proof copies of the brief, with appropriate references to pages of the parts of the original record involved. Within 14 days after the reproduced record is filed each party who served briefs in advance form under this subdivision shall serve and file definitive copies of his or her brief or briefs containing references to the pages of the reproduced record in place of or in addition to the initial references to the pages of the parts of the original record involved (see Rule 2132 (references in [the] briefs to the record)). No other changes may be made in the briefs as initially served, except that typographical errors may be corrected.

**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 paragraph (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 paragraph (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 paragraph (a)(3) clarified the point by starting the period on the date on which the latest, timely filed preceding brief is served.**

[Pa.B. Doc. No. 11-1786. Filed for public inspection October 21, 2011, 9:00 a.m.]

## DISCIPLINARY BOARD OF THE SUPREME COURT

### Current Schedule of Continuing Legal Education Courses Required for Reinstatement Under §§ 89.275 and 89.279 of the Disciplinary Board Rules

Disciplinary Board Rule § 89.279 provides that a formerly admitted attorney who has been disbarred or suspended for more than 1 year or on administrative suspension, retired status or inactive status for more than 3 years shall within 1 year preceding the filing of the petition for reinstatement take courses meeting the requirements of the current schedule published by the Office of the Secretary.

Evidence that a formerly admitted attorney has attended the required courses and lectures or has viewed videotapes of them shall be considered in determining

whether the formerly admitted attorney possesses the required competency and learning in law, but shall not be conclusive on the issue.

*Schedule*

Every formerly admitted attorney who petitions for reinstatement under these rules shall take the following:

A minimum of thirty-six (36) hours of accredited PA CLE courses with a minimum twelve (12) of those hours in the area of Ethics. Twelve (12) credits may be taken in pre-approved, interactive, Internet or computer based CLE programs.

Any petitions filed on or after December 1, 2011, by formerly admitted attorneys who have been disbarred or suspended for more than one year shall include the Bridge the Gap course taken through an accredited PA CLE provider as part of the thirty-six hours of credits.

*Note:* Accredited PA CLE courses taken for reinstatement may be used to meet CLE requirements once reinstated.

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

[Pa.B. Doc. No. 11-1787. Filed for public inspection October 21, 2011, 9:00 a.m.]

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