

# THE COURTS

## Title 210—APPELLATE PROCEDURE

### PART I. RULES OF APPELLATE PROCEDURE

[ 210 PA. CODE CHS. 1, 3, 9, 11 AND 21 ]

**Order Amending Rules 102, 2116 and 2119 and Approving the Revision of Official Notes to Rules 341, 902, 1112 and 1115 of the Rules of Appellate Procedure; No. 243 Appellate Procedural Rules Doc.**

#### Order

*Per Curiam*

And Now, this 28th day of May, 2014, upon the recommendation of the Appellate Court Procedural Rules Committee; the proposal having been published before adoption at 43 Pa.B. 3082 (June 8, 2013):

*It Is Ordered*, pursuant to Article V, Section 10 of the Constitution of Pennsylvania that:

(1) Pennsylvania Rules of Appellate Procedure 102, 2116, and 2119 are amended; and

(2) the Official Notes to Pennsylvania Rules of Appellate Procedure 341, 902, 1112, and 1115 are revised,

in the following form. This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective July 1, 2014.

#### Annex A

### TITLE 210. APPELLATE PROCEDURE

#### PART I. RULES OF APPELLATE PROCEDURE

##### ARTICLE I. PRELIMINARY PROVISIONS

##### CHAPTER 1. GENERAL PROVISIONS

##### IN GENERAL

#### Rule 102. Definitions.

Subject to additional definitions contained in subsequent provisions of these rules which are applicable to specific provisions of these rules, the following words and phrases when used in these rules shall have, unless the context clearly indicates otherwise, the meanings given to them in this rule:

\* \* \* \* \*

*Petition for allowance of appeal—*

(a) A petition under Rule 1112 (appeals to the Supreme Court by allowance)[ . ]; or

(b) a statement pursuant to Rule 2119(f) (discretionary aspects of sentence). See 42 Pa.C.S. § 9781.

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

##### FINAL ORDERS

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

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**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.

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### ARTICLE II. APPELLATE PROCEDURE

#### CHAPTER 9. APPEALS FROM LOWER COURTS

#### Rule 902. Manner of Taking Appeal.

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**Official Note:** 42 Pa.C.S. § 703 (place and form of filing appeals) provides that appeals, petitions for review, petitions for permission to appeal and petitions for allowance of appeal shall be filed in such office and in such form as may be prescribed by general rule.

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Section 9781 of the Sentencing Code (42 Pa.C.S. § 9781) provides that the defendant or the Commonwealth may file a “petition for allowance of appeal” of the discretionary aspects of a sentence for a felony or a misdemeanor. The notice of appeal under this chapter (see Rule 904 (content of the notice of appeal)), in conjunction with the requirements set forth in Pa.R.A.P. 2116(b) and 2119(f), operates as the “petition for allowance of appeal” under the Sentencing Code. [ It automatically raises all possible questions under 42 Pa.C.S. § 9781 and is available and appropriate even where no issue relating to guilt or the legality of the sentence (in the sense that the sentence falls outside of the range of discretion vested by law in the sentencing court) is presented. ] No additional wording is required or appropriate in the notice of appeal.

In effect, the filing of the “petition for allowance of appeal” contemplated by the statute is deferred by these rules until the briefing stage, where the question of the appropriateness of the discretionary aspects of the sen-

tence may be briefed and argued in the usual manner. See [ Rule 2116 (statement of questions involved) and Rule 2119 (argument) ] Pa.R.A.P. 2116(b) and the note thereto; Pa.R.A.P. 2119(f) and the note thereto.

[ 42 Pa.C.S. § 9781(f) provides that: “No appeal of the discretionary aspects of the sentence shall be permitted beyond the appellate court that has initial jurisdiction of such appeals.” ]

**CHAPTER 11. APPEALS FROM COMMONWEALTH COURT AND SUPERIOR COURT**

**PETITION FOR ALLOWANCE OF APPEAL**

**Rule 1112. Appeals by Allowance.**

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**Official Note:** Based on 42 Pa.C.S. § 724(a) (allowance of appeals from Superior and Commonwealth Courts). The notation on the docket by the Prothonotary of the Superior Court or Commonwealth Court of the filing of a petition for allowance of appeal renders universal the rule that the appeal status of any order may be discovered by examining the docket of the court in which it was entered.

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With respect to appearances by new counsel following the initial docketing of appearances pursuant to Subdivision (f) of this rule, please note the requirements of Rule [ 1200 ] 120.

Where an appellant desires to challenge the discretionary aspects of a sentence of a trial court, the “petition for allowance of appeal” referred to in 42 Pa.C.S. § 9781(b) is deferred until the briefing stage, and the appeal is commenced by filing a notice of appeal pursuant to Chapter 9 rather than a petition for allowance of appeal pursuant to Chapter 11. See note to Pa.R.A.P. 902; note to Pa.R.A.P. 1115; Pa.R.A.P. 2116(b) and the note thereto; Pa.R.A.P. 2119(f) and the note thereto.

**Rule 1115. Content of the Petition for Allowance of Appeal.**

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**Official Note:** Former Supreme Court Rule 62 permitted the petitioner in effect to dump an undigested mass of material (i.e., briefs in and opinions of the court below) in the lap of the Supreme Court, with the burden on the individual justices and their law clerks to winnow the wheat from the chaff. This rule, which is patterned after U.S. Supreme Court Rule 23, places the burden on the petitioner to prepare a succinct and coherent presentation of the case and the reasons in support of allowance of appeal.

Where an appellant desires to challenge the discretionary aspects of a sentence of a trial court [ no “petition for allowance of appeal,” as that term is used in these rules, may be filed and the practice is governed by Chapter 9 (appeals from lower courts) ] the “petition for allowance of appeal” referred to in 42 Pa.C.S. § 9781(b) is deferred until the briefing stage, and the appeal is commenced by filing a notice of appeal pursuant to Chapter 9 rather than a petition for allowance of appeal pursuant to Chapter 11. *Commonwealth v. Tuladziecki*, 522 A.2d 17, 18 (Pa. 1987). See note to [ Rule 902 (manner of

taking appeal) ] Pa.R.A.P. 902; Pa.R.A.P. 2116(b) and the note thereto; Pa.R.A.P. 2119(f) and the note thereto.

**CHAPTER 21. BRIEFS AND REPRODUCED RECORD**

**CONTENT OF BRIEFS**

**Rule 2116. Statement of Questions Involved.**

(a) *General rule.*—The statement of the questions involved must state concisely the issues to be resolved, expressed in the terms and circumstances of the case but without unnecessary detail. The statement will be deemed to include every subsidiary question fairly comprised therein. No question will be considered unless it is stated in the statement of questions involved or is fairly suggested thereby. Each question shall be followed by an answer stating simply whether the court or government unit agreed, disagreed, did not answer, or did not address the question. If a qualified answer was given to the question, appellant shall indicate the nature of the qualification, or if the question was not answered or addressed and the record shows the reason for such failure, the reason shall be stated briefly in each instance without quoting the court or government unit below.

(b) *Discretionary aspects of sentence.* An appellant who challenges the discretionary aspects of a sentence in a criminal matter shall include any questions relating to the discretionary aspects of the sentence imposed (but not the issue whether the appellate court should exercise its discretion to reach such question) in the statement required by [ Subdivision ] paragraph (a). Failure to comply with this [ subdivision ] paragraph shall constitute a waiver of all issues relating to the discretionary aspects of sentence.

**Official Note: Paragraph (a)**—In conjunction with the 2013 amendments to [ Rules ] Pa.R.A.P. 2135 (length of briefs) and 2140 (brief on remand or following grant of reargument or reconsideration) adopting an optional word limit in lieu of page limits, the 2013 amendment eliminated the page limit for the statement of questions involved. The word count does, however, include the statement of questions, and a party should draft the statement of questions involved accordingly, with sufficient specificity to enable the reviewing court to readily identify the issues to be resolved while incorporating only those details that are relevant to disposition of the issues. Although the page limit on the statement of questions involved was eliminated in 2013, verbosity continues to be discouraged. The appellate courts strongly disfavor a statement that is not concise.

**Paragraph (b)**—The requirement set forth in Pa.R.A.P. 2116(b) is part of the procedure set forth by the Supreme Court to implement the standard set forth in 42 Pa.C.S. § 9781(b). *Commonwealth v. Tuladziecki*, 522 A.2d 17, 18 (Pa. 1987). See note to Pa.R.A.P. 902; note to Pa.R.A.P. 1115; and Pa.R.A.P. 2119(f) and the note thereto.

**Rule 2119. Argument.**

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(f) *Discretionary aspects of sentence.*—An appellant who challenges the discretionary aspects of a sentence in a criminal matter shall set forth in [ his ] a separate section of the brief a concise statement of the reasons relied upon for allowance of appeal with respect to the discretionary aspects of a sentence. The statement shall

immediately precede the argument on the merits with respect to the discretionary aspects of the sentence.

**Official Note:** Based on former Supreme Court Rule 55, former Superior Court Rule 45 and former Commonwealth Court Rule 95. The requirement for parallel citation to the Atlantic Reporter is extended to the Supreme Court and the Commonwealth Court and the related certificate of nonpublication in the official reports has been omitted. The requirement of former Superior Court Rule 45 that a party print in bold face up to three citations under each head chiefly relied upon, has been omitted. Counsel having available the Atlantic Reporter can readily obtain the official citation from cross-reference sheets ordinarily pasted on the flyleaf of each Atlantic Reporter volume; counsel having the official reports available can obtain the Atlantic Reporter citation from cross-references available in *Shepard's Pennsylvania Citations—Case Edition* or the *National Reporter Blue Book*.

[ In some circumstances an appellant may have a right to appellate review of the discretionary aspects of a sentence. See note to Rule 341 (final orders generally). In such cases a citation to the controlling authority will suffice for purposes of Subdivision (f). ] Where a challenge is raised to the appropriateness of the discretionary aspects of a sentence, the “petition for allowance of appeal” specified in 42 Pa.C.S. § 9781(b) is deferred until the briefing stage, and the appeal is commenced by filing a notice of appeal pursuant to Chapter 9 rather than a petition for allowance of appeal pursuant to Chapter 11.

[Pa.B. Doc. No. 14-1240. Filed for public inspection June 13, 2014, 9:00 a.m.]

## Title 25—LOCAL COURT RULES

### WESTMORELAND COUNTY

#### Promulgation of Rule of Judicial Administration WJ6000.1; No. 3 of 2014

##### Administrative Order

And Now this 22nd day of May, 2014, *It Is Hereby Ordered* that Westmoreland Rule of Judicial Administration WJ6000.1, Court Appointed Counsel, is adopted.

By the Court

RICHARD E. McCORMICK, Jr.,  
*President Judge*

##### Rule WJ6000.1. Court Appointed Counsel.

(a) All attorneys wishing to be appointed by the Court must annually certify to the Court Administrator that the attorney has adequate liability insurance coverage.

(b) Attorneys representing parents or serving as guardian ad litem (GAL) in juvenile and orphans' court for dependency/termination proceedings must, annually receive three (3) hours of CLE credits devoted to dependency/termination proceedings. All attorneys wishing to be added to the court-appointed list to represent parents or to serve as a GAL in juvenile and orphans' court for dependency/termination proceedings must first attend a 6 hour training program presented by the Court

and County Solicitors Office. Proof of these CLE credits must be submitted to the Court Administrator.

##### (c) *Payment of Fees*

###### (1) *Criminal Appointments*

a. *Pre-Adjudication and Adjudication*—Counsel must present the Petition for Attorney's Fees for pre-adjudication and adjudication after completion of the preliminary hearing and, unless otherwise ordered, monthly thereafter for all capital cases and quarterly thereafter for all other cases until representation is concluded. The attorney will indicate the case number, criminal charges and charge disposition on the petition. Invoices submitted more than 120 days after the work is completed will not be paid.

b. *Direct Appeal and PCRA*—Invoices for work done in furtherance of direct appeal or for post-conviction review (PCRA) must be submitted within 120 days of the work completed. Invoices submitted for work done in furtherance of appeal or for assignment of a PCRA beyond the 120 days will not be paid.

c. *Conflict Counsel*—Invoices shall be submitted monthly pursuant to contract.

(2) *Family Court Appointments*—Counsel or GAL in any family court matter must present a Petition for Attorney's Fees within 120 days after each hearing, review hearing, adjudication, or disposition. Please indicate the file number and who (i.e., mother, grandmother, guardian ad litem for the children) you represent. Invoices submitted beyond the 120 day deadline will not be paid.

##### (d) *Rate of Compensation*

The hourly rate of compensation shall be fixed from time to time by Order of Court. Compensation for Conflict Counsel shall be established by contract.

##### (e) *Procedures*

The Court Administrator of Westmoreland County may establish procedures regarding the form of Petitions, copies, subpoenas, postage and telephone, professional services, mileage and travel, witness fees, and other costs and services.

[Pa.B. Doc. No. 14-1241. Filed for public inspection June 13, 2014, 9:00 a.m.]

## DISCIPLINARY BOARD OF THE SUPREME COURT

### Notice of Disbarment

Notice is hereby given that by Order of the Supreme Court of Pennsylvania dated June 2, 2014, Benjamin J. Viloski is Disbarred on Consent from the practice of law in this Commonwealth, to be effective July 2, 2014. 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. 14-1242. Filed for public inspection June 13, 2014, 9:00 a.m.]

**Notice of Suspension**

Notice is hereby given that on June 2, 2014, the Supreme Court of Pennsylvania ordered that Peter C. Ibe be placed on Temporary Suspension from the practice of law pursuant to Rule 214, Pa.R.D.E., to be effective July 2, 2014. 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. 14-1243. Filed for public inspection June 13, 2014, 9:00 a.m.]

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