THE COURTS

Title 210—APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

[210 PA. CODE CHS. 9 AND 19]

Proposed Amendments to Pa.R.A.P. 905, 1922 and 1925

In 2007, the Pennsylvania Supreme Court enacted significant amendments to Pa.R.A.P. 1925. In the ensuing years, the Appellate Court Procedural Rules Committee has monitored the development of the case law under that rule and has listened to the comments from the bench and the bar. Because various aspects of the rule present potential and actual waiver concerns, the Committee proposes to amend Pa.R.A.P. 1925, with corollary amendments to Pa.R.A.P. 905 and 1922.

The Committee is proposing four significant changes, three to Pa.R.A.P. 1925 and one to Pa.R.A.P. 1922. *First*, the Committee proposes to amend Pa.R.A.P. 1925(b) so that in cases where a party has been ordered to file a statement of errors complained of on appeal ("Statement") but cannot do so accurately because a transcript has not been prepared despite the party's timely and proper request for its preparation, that party can secure an extension to file the Statement until the transcript is entered on the docket by filing a single request for an extension. *Second*, the Committee proposes to remove the requirement in Pa.R.A.P. 1925(b) to serve the Statement on the trial judge. *Third*, for all appeals except criminal appeals, the Committee proposes changing the standard for waiver in Pa.R.A.P. 1925(b), so that waiver will not occur unless a deficiency in a Statement "interferes with or effectively precludes appellate review." *Fourth*, the Committee proposes to amend Pa.R.A.P. 1922 to require that transcripts be entered on the docket as soon as completed and paid for, with notice of that entry sent to all parties. The Committee also proposes a process for correcting errors in the transcript as well as raising objections to the transcript, and proposes to remove the five-day deadline for objections. The changes described above require a slight modification to Pa.R.A.P. 905.

The Committee invites all interested persons to submit comments, suggestions, or objections.

Comments should be provided to:

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All communications in reference to the proposal should be received by October 21, 2016. E-mail is the preferred method for submitting comments, suggestions, or objections; any emailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

An Explanatory Comment precedes 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

KEVIN J. McKEON,
Chair

Annex A

TITLE 210. APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

ARTICLE II. APPELLATE PROCEDURE

CHAPTER 9. APPEALS FROM LOWER COURTS

Rule 905. Filing of Notice of Appeal.

(a) *Filing with clerk.*

(1) Two copies of the notice of appeal, the order for transcript, if any, and the proof of service required by **[Rule 906 (service of notice of appeal)] Pa.R.A.P. 906**, shall be filed with the clerk of the trial court. If the appeal is to the Supreme Court, the jurisdictional statement required by **[Rule] Pa.R.A.P.** 909 shall also be filed with the clerk of the trial court.

(2) If the appeal is a children's fast track appeal, **[the] a** concise statement of errors complained of on appeal as described in **[Rule] Pa.R.A.P.** 1925(a)(2) shall be filed with the notice of appeal and served **on the trial judge** in accordance with **[Rule 1925(b)(1)] Pa.R.A.P. 906(a)(2)**.

(3) Upon receipt of the notice of appeal**,** the clerk shall immediately stamp it with the date of receipt, and that date shall constitute the date when the appeal was taken, which date shall be shown on the docket.

(4) If a notice of appeal is mistakenly filed in an appellate court, or is otherwise filed in an incorrect office within the unified judicial system, the clerk shall immediately stamp it with the date of receipt and transmit it to the clerk of the court which entered the order appealed from, and upon payment of an additional filing fee the notice of appeal shall be deemed filed in the trial court on the date originally filed.

(5) A notice of appeal filed after the announcement of a determination but before the entry of an appealable order shall be treated as filed after such entry and on the day thereof.

(b) *Transmission to appellate court.***—**The clerk shall immediately transmit to the prothonotary of the appellate court named in the notice of appeal a copy of the notice of appeal **[showing the date of receipt, the related proof of service]** and **all attachments, as well as** a receipt showing collection of any docketing fee in the appellate court required under **[Subdivision] paragraph** (c). If the appeal is a children's fast track appeal, the clerk shall stamp the notice of appeal with a "Children's Fast Track" designation in red ink, advising the appellate court that the appeal is a children's fast track appeal**,** and **the clerk** shall **also** transmit to the prothonotary of the appellate court named in the notice of appeal the concise statement of errors complained of on

appeal required by **[Subdivision] paragraph** (a)(2) of this rule. The clerk shall also transmit with such papers:

1. **[a copy of any order for transcipt;] copies of all orders for transcripts relating to orders on appeal;**

2. a copy of any verified statement, application**,** or other document filed under **[Rule 551 through Rule 561] Pa.R.A.P. 551—561** relating to *in forma pauperis*; and

3. if the appeal is to the Supreme Court, the jurisdictional statement required by **[Rule] Pa.R.A.P.** 909.

(c) *Fees*.**—**The appellant upon filing the notice of appeal shall pay any fees therefor (including docketing fees in the appellate court) prescribed by Chapter 27 **[(fees and costs in appellate courts and on appeal)]**.

***Official Note*:** Insofar as the clerk or prothonotary of the **[lower] trial** court is concerned, the notice of appeal is for all intents and purposes a writ in the nature of *certiorari* in the usual form issued out of the appellate court named therein and returnable thereto within the time prescribed by Chapter 19 **[(preparation and transmission of record and related matters)]**.

To preserve a mailing date as the filing date for an appeal as of right from an order of the Commonwealth Court, *see* **[Rule] Pa.R.A.P.** 1101(b).

As to number of copies, *see* **[note to Rule 124 (form of papers; number of copies)] Pa.R.A.P. 124, note**. The appellate court portion of the filing fee will be transmitted pursuant to regulations adopted under 42 Pa.C.S. § 3502 **[(financial regulations)]**.

[Pending adoption of such rules the subject is regulated by Paragraph 4 of the Order amending this rule, which provides as follows:

"4. Pending adoption of initial regulations under 42 Pa.C.S. § 3502 (financial regulations), the docketing fee (currently $12 in the Supreme Court and the Superior Court and $25 in the Commonwealth Court) paid through the clerk or prothonotary of the lower court pursuant to Rule 905(c) (fees) of the Pennsylvania Rules of Appellate Procedure shall be transmitted as follows:

(a) If the docketing fee is tendered by check payable to the appellate prothonotary, the clerk or prothonotary of the lower court shall transmit the check pursuant to Rule 905(b).

(b) If the docketing fee is tendered by check payable to the clerk of prothonotary of the lower court he or she shall endorse it without recourse to the appropriate appellate prothonotary and transmit the check pursuant to Rule 905(b).

(c) If the docketing fee is tendered in cash the clerk or prothonotary of the lower court shall draw a check in like amount on the account of such clerk or prothonotary to the order of such clerk or prothonotary to the order of the appropriate appellate prothonotary and transmit the check pursuant to Rule 905(b).

(d) In matters arising under 42 Pa.C.S. § 723 (appeals from the Commonwealth Court), the appellant shall tender the docketing fee in the Supreme Court to the Prothonotary of the Commonwealth Court by check payable to the order of the Prothonotary of the Supreme Court, which shall be transmitted pursuant to Rule 905(b)."]

The better practice will be to pay the fee for filing the notice of appeal in the **[lower] trial** court and the docketing fee in the appellate court by separate checks payable to the respective clerks or prothonotaries.

[The 1982 amendment to Subdivision (a) corrects deficiencies in previous practice which were illustrated in *State Farm Mutual Auto. Ins. Co. v. Schultz*, 281 Pa. Super. 212, 421 A.2d 1224 (1980).]

CHAPTER 19. PREPARATION AND TRANSMISSION OF RECORD AND RELATED MATTERS

RECORD ON APPEAL FROM LOWER COURT

Rule 1922. Transcription of Notes of Testimony.

[(a) *General rule.*—Upon receipt of the order for transcript and any required deposit to secure the payment of transcript fees the official court reporter shall proceed to have his notes transcribed, and not later than 14 days after receipt of such order and any required deposit shall lodge the transcript (with proof of service of notice of such lodgment on all parties to the matter) with the clerk of the trial court. Such notice by the court reporter shall state that if no objections are made to the text of the transcript within five days after such notice, the transcript will become a part of the record. If objections are made the difference shall be submitted to and settled by the trial court. The trial court or the appellate court may on application or upon its own motion shorten the time prescribed in this subdivision.

(b) *Diminution of transcription.*

(1) In civil cases, an application for an order providing that less than the entire proceedings shall be transcribed may be made to the trial court by any party within two days after the order for transcript is filed. A party shall have the right to require that any specified part of the notes of testimony or recordings be transcribed, subject to the applicable requirements for the payment of transcript fees.

(2) In criminal cases, diminution of transcription shall be in accordance with Rule 115 of the Pennsylvania Rules of Criminal Procedure (recording and transcribing court proceedings).

(3) In any case, untranscribed notes or recordings shall not be part of the record on appeal for any purpose.

(c) *Certification and filing*.—The trial judge shall examine any part of the transcript as to which an objection is made pursuant to subdivision (a) of this rule or which contains the charge to the jury in a criminal proceeding, and may examine any other part of the transcript, and after such examination and notice to the parties and opportunity for objection (unless previously given) shall correct such transcript. If the trial judge examines any portion of the transcript, he shall certify thereon, by reference to the page and line numbers or the

equivalent, which portions thereof he has read and corrected. If no objections are filed to the transcript as lodged, or after any differences have been settled or other corrections have been made by the court, the official court reporter shall certify the transcript, and cause it to be filed with the clerk of the lower court.]

(a) *Request for Transcripts.*—An appellant may file a request for transcripts under Pennsylvania Rule of Judicial Administration 4007 prior to or concurrent with the notice of appeal. If a deposit is required, the appellant shall make the deposit at the time of the request for the transcript unless the appellant is requesting a waiver of the cost because of economic hardship. Unless another Rule of Appellate Procedure provides a shorter time, the court reporter shall provide the trial judge with the transcript within 14 days of the request for transcript. When the appellant receives notice under Rule of Judicial Administration 4007(D)(3) that the transcript has been prepared, the appellant has 14 days to pay the final balance in compliance with that rule.

(b) *Filing of the Transcript*.—When the transcript is delivered to the filing office and the parties under Pennsylvania Rule of Judicial Administration 4007(D)(4), the transcript shall be entered on the docket.

(c) *Corrections to Transcript*.—If a transcript contains an error or is an incomplete representation of the proceedings, the omission or misstatement may be corrected by the following means:

(1) By objection. A party may file a written objection to the filed transcript. Any party may answer the objection. The trial court shall resolve the objections and then direct that the transcript as corrected be made a part of the record and transmitted to the appellate court.

(2) By stipulation of the parties filed in the trial court. If the trial court clerk has already certified the record, the parties shall file in the appellate court a copy of any stipulation filed pursuant to this rule, and the trial court shall direct that the transcript as corrected be made a part of the record and transmitted to the appellate court.

(3) By the trial court or, if the record has already been transmitted to the appellate court by the appellate court or trial court on remand, with notice to all parties and an opportunity to respond.

(d) *Emergency appeals*.—Where the exigency of the case is such as to impel immediate consideration in the appellate court, the trial judge shall take all action necessary to expedite the preparation and transmission of the record notwithstanding the usual procedures prescribed in this chapter **or in the Rules of Judicial Administration**. **[Pending action by the lower court under this subdivision any party may proceed in the appellate court under Rule 1923 (statement in absence of transcript) and may append to any filing in the appellate court as much of the record below as the party desires to bring to the attention of the appellate court.]**

[*Official Note*: Based in part upon former Supreme Court Rule 56, former Superior Court Rule 46, and former Commonwealth Court Rule 25 and the act of May 11, 1911 (P.L. 279, No. 179), § 4 (12 P.S. § 1199). The 14 day requirement is designed to fix an objective standard to guide the official court reporter and the lower court, so as to permit the settling of any objections by the lower court and the physical preparation and transmission by the clerk of the record within the 40 day period fixed by Rule 1931 (transmission of the record). Although under these rules a writ of certiorari is no longer issued, the requirements of these rules have the effect of a Supreme Court order, and the lower court is expected to give the transcription of notes of testimony under this rule priority over unappealed matters in the lower court.

The certification requirement of subdivision (c) recognizes that in practice the trial judge ordinarily will not actually read the transcript prior to certification unless objection is made by one of the parties. However, the rule requires the judge to review and correct the charge in criminal cases, to avoid the problems which arise when a later attempt is made by the trial judge under Rule 1926 (correction and modification of the record) to conform the transcript to his recollection of events.]

***Official Note*: Depending on the order issued by the trial court a party may wish to seek appellate review of an order under paragraph c by application or in the merits brief. The 2016 amendments addressed changes in the Rules of Judicial Administration. In addition, the amendment eliminated time limits for objections to or requests for correction of the transcript. An objection to a transcript must be raised if, for example, a critical portion of the proceedings was not transcribed.**

Rule 1925. Opinion in Support of Order.

(a) *Opinion in support of order.*

(1) *General rule.*—Except as otherwise prescribed by this rule, upon receipt of the notice of appeal, the judge who entered the order giving rise to the notice of appeal, if the reasons for the order do not already appear of record, shall **[forthwith] within the 60-day period set forth in Pa.R.A.P. 1931(a)(1)** file of record at least a brief opinion of the reasons for the order, or for the rulings or other errors complained of, or shall specify in writing the place in the record where such reasons may be found.

If the case appealed involves a ruling issued by a judge who was not the judge entering the order giving rise to the notice of appeal, the judge entering the order giving rise to the notice of appeal may request that the judge who made the earlier ruling provide an opinion to be filed in accordance with the standards above to explain the reasons for that ruling.

(2) *Children's fast track appeals.*—In a children's fast track appeal:

(i) The concise statement of errors complained of on appeal shall be filed and served with the notice of appeal **[required by Rule 905]**. **[*See* Pa.R.A.P. 905(a)(2).]**

(ii) Upon receipt of the notice of appeal and the concise statement of errors complained of on appeal required by **[Rule] Pa.R.A.P.** 905(a)(2), the judge who entered the order giving rise to the notice of appeal, if the reasons for the order do not already appear of record, shall within 30 days file of record at least a brief opinion of the reasons for the order, or for the rulings or other errors complained of, which may, but need not, refer to the transcript of the proceedings.

(3) *Appeals arising under the Pennsylvania Code of Military Justice.*—In an appeal arising under the Pennsylvania Code of Military Justice, the concise statement of errors complained of on appeal shall be filed and served with the notice of appeal. *See* Pa.R.A.P. 4004(b).

(b) *Direction to file statement of errors complained of on appeal; instructions to the appellant and the trial court.*—If the judge entering the order giving rise to the notice of appeal ("judge") desires clarification of the errors complained of on appeal, the judge may enter an order directing the appellant to file of record in the trial court **[and serve on the judge]** a concise statement of the errors complained of on appeal ("Statement").

(1) *Filing and service.*—**The** Appellant shall file of record the Statement **[and concurrently shall serve the judge]**. **[Filing of record and service on the judge shall be in person or] If filing of record is** by mail as provided in Pa.R.A.P. 121(a) **[and shall] it will** be complete on mailing if appellant obtains a United States Postal Service Form 3817, Certificate of Mailing, or other similar United States Postal Service form from which the date of deposit can be verified, in compliance with the requirements set forth in Pa.R.A.P. 1112(c). Service on parties shall be concurrent with filing and shall be by any means of service specified under Pa.R.A.P. 121(c).

(2) *Time for filing* **[** ***and service*** **].**—

(i) The judge shall allow the appellant at least 21 days from the date of the order's entry on the docket for the filing **[and service]** of the Statement. Upon application of the appellant **or cross-appellant** and for good cause shown, the judge may enlarge the time period initially specified or permit an amended or supplemental Statement to be filed. Good cause includes, but is not limited to, delay in the production of a transcript necessary to develop the Statement so long as the delay is not attributable to a lack of diligence in ordering or paying for such transcript by the party or counsel on appeal. In extraordinary circumstances, the judge may allow for the filing of a Statement or amended or supplemental Statement *nunc pro tunc*.

(ii) If the appellant or cross-appellant has ordered but not received a transcript necessary to develop the Statement, that party may request an extension of the deadline to file the Statement until 21 days following the date of entry on the docket of the transcript in accordance with Pa.R.A.P. 1922(b). The party must attach the transcript purchase order to the motion for the extension. If the motion is filed at least five days before the Statement is due but the trial court does not rule on the motion prior to the original due date, the motion will be deemed to have been granted.

(3) *Contents of order.*—The judge's order directing the filing **[and service]** of a Statement shall specify:

(i) the number of days after the date of entry of the judge's order within which the appellant must file **[and serve]** the Statement;

(ii) that the Statement shall be filed of record;

[(iii) that the Statement shall be served on the judge pursuant to paragraph (b)(1);

(iv) that any issue not properly included in the Statement timely filed and served pursuant to subdivision (b) shall be deemed waived.]

(iii) that any issue not properly included in a timely Statement pursuant to paragraph (b) may be considered waived.

(4) *Requirements; waiver.*

(i) The Statement shall set forth only those **[rulings or]** errors that the appellant intends to challenge.

(ii) The Statement shall concisely identify each **[ruling or]** error that the appellant intends to **[challenge] assert** with sufficient detail to identify **[all pertinent issues] the issue to be raised** for the judge. The judge shall not require the citation to authorities **or the record**; however, appellant may choose to include pertinent authorities **and record citations** in the Statement.

(iii) The judge shall not require **[appellant or appellee] any party** to file a brief, memorandum of law, or response as part of or in conjunction with the Statement.

(iv) The Statement should not be redundant or provide lengthy explanations as to any error. Where non-redundant, non-frivolous issues are set forth in an appropriately concise manner, the number of errors raised will not alone be grounds for finding waiver.

(v) Each error identified in the Statement will be deemed to include every subsidiary issue **[contained therein which] that** was raised in the trial court; this provision does not in any way limit the obligation of a criminal appellant to delineate clearly the scope of claimed constitutional errors on appeal.

(vi) If the appellant **or cross-appellant** in a civil case cannot readily discern the basis for the judge's decision, the appellant **or cross-appellant** shall preface the Statement with an explanation as to why the Statement has identified the errors in only general terms. In such a case, the generality of the Statement will not be grounds for finding waiver.

(vii) **[Issues] On a direct criminal appeal, any issues** not included in the Statement and/or not raised in accordance with the provisions of this **[paragraph] subparagraph** (b)(4) are waived. **In all other appeals, a deficiency in a Statement will not result in waiver unless the deficiency interferes with or effectively precludes appellate review.**

(c) *Remand.*

(1) An appellate court may remand in either a civil or criminal case for a determination as to whether a Statement had been filed **[and/or served]** or timely filed **[and/or served]**.

(2) Upon application of the appellant and for good cause shown, an appellate court may remand in a civil case for the filing *nunc pro tunc* of a Statement or for amendment or supplementation of a timely filed **[and served]** Statement and for a concurrent supplemental opinion.

(3) If an appellant in a criminal case was ordered to file a Statement and failed to do so, such that the appellate court is convinced that counsel has been *per se* ineffective, the appellate court shall remand for the filing of a Statement *nunc pro tunc* and for the preparation and filing of an opinion by the judge.

(4) In a criminal case, counsel may file of record **[and serve on the judge]** a statement of intent to file an *Anders*/**[** ***McClendon*** **]** ***Santiago*** brief in lieu of filing a

Statement. If, upon review of the *Anders*/**[** ***McClendon*** **]** ***Santiago*** brief, the appellate court believes that there are arguably meritorious issues for review, those issues will not be waived; instead, the appellate court may remand for the filing of a Statement, a supplemental opinion pursuant to **[Rule] Pa.R.A.P.** 1925(a), or both. Upon remand, the trial court may, but is not required to, replace appellant's counsel.

(d) *Opinions in matters on petition for allowance of appeal*.—Upon receipt of notice of the filing of a petition for allowance of appeal under **[Rule 1112(c) (appeals by allowance)] Pa.R.A.P. 1112(c)**, the **intermediate** appellate court **[below which] that** entered the order sought to be reviewed, if the reasons for the order do not already appear of record, shall forthwith file of record at least a brief statement, in the form of an opinion, of the reasons for the order.

***Official Note*: [Subdivision (a)] *Paragraph (a)*—** The 2007 amendments clarify that a judge whose order gave rise to the notice of appeal may ask a prior judge who made a ruling in question for the reasons for that judge's decision. In such cases, more than one judge may issue separate **[Rule] Pa.R.A.P.** 1925(a) opinions for a single case. It may be particularly important for a judge to author a separate opinion if credibility was at issue in the pretrial ruling in question. *See*, *e.g*., *Commonwealth v. Yogel*, **[307 Pa. Super. 241, 243-44]**, 453 A.2d 15, 16 (**Pa. Super.** 1982). At the same time, the basis for some pre-trial rulings will be clear from the order and/or opinion issued by the judge at the time the ruling was made, and there will then be no reason to seek a separate opinion from that judge under this rule. *See*, *e.g*., Pa.R.Crim.P. 581(I). Likewise, there will be times when the prior judge may explain the ruling to the judge whose order has given rise to the notice of appeal in sufficient detail that there will be only one opinion under **[Rule] Pa.R.A.P.** 1925(a), even though there are multiple rulings at issue. The time period for transmission of the record is specified in Pa.R.A.P. 1931, and that rule was concurrently amended to expand the time period for the preparation of the opinion and transmission of the record.

[Subdivision (b)] ***Paragraph (b)*—**This **[subdivision] paragraph** permits the judge whose order gave rise to the notice of appeal ("judge") to ask for a statement of errors complained of on appeal ("Statement") if the record is inadequate and the judge needs to clarify the errors complained of. The term "errors" is meant to encourage appellants to use the Statement as an opportunity to winnow the issues, recognizing that they will ultimately need to be refined to a statement that will comply with the requirements of Pa.R.A.P. 2116. Nonetheless, the term "errors" is intended in this context to be expansive, and it encompasses all of the reasons the trial court should not have reached its decision or judgment, including, for example, those that may not have been decisions of the judge, such as challenges to jurisdiction.

[Paragraph (b)(1) This paragraph maintains the requirement that the Statement be both filed of record in the trial court and served on the judge. Service on the judge may be accomplished by mail or by personal service. The date of mailing will be considered the date of filing and of service upon the judge only if counsel obtains a United States Postal Service form from which the date of mailing can be verified, as specified in Pa.R.A.P. 1112(c). Counsel is advised to retain date-stamped copies of the postal forms (or pleadings if served by hand), in case questions arise later as to whether the Statement was timely filed or served on the judge.

Paragraph (b)(2) This paragraph] ***Subparagraph (b)(2)*—This subparagraph** extends the time period for drafting the Statement from 14 days to at least 21 days, with the trial court permitted to enlarge the time period or to allow the filing of an amended or supplemental Statement upon good cause shown. In *Commonwealth v. Mitchell*, **[588 Pa. 19, 41,]** 902 A.2d 430, 444 (**Pa.** 2006), the Court expressly observed that a Statement filed "after several extensions of time" was timely. An enlargement of time upon timely application might be warranted if, for example, there was a serious delay in the transcription of the notes of testimony or in the delivery of the order to appellate counsel. **The 2016 amendments to the rule provide the opportunity to obtain an extension of time to file the Statement until 21 days after the transcript is filed pursuant to Pa.R.A.P. 1922(b). The appellant may file a motion for an extension of time, which, if filed in accordance with the rule, will be deemed granted if not expressly denied before the Statement is due.**

A trial court should **also** enlarge the time or allow for an amended or supplemental Statement when new counsel is retained or appointed. A supplemental Statement may also be appropriate when the ruling challenged was so non-specific—*e.g*., "Motion Denied"—that counsel could not be sufficiently definite in the initial Statement.

In general, *nunc pro tunc* relief is allowed only when there has been a breakdown in the process constituting extraordinary circumstances. *See, e.g*., *In re Canvass of Absentee Ballots of Nov. 4, 2003 Gen. Election*, **[577 Pa. 231, 248-49,]** 843 A.2d 1223, 1234 (**Pa.** 2004) ("We have held that fraud or the wrongful or negligent act of a court official may be a proper reason for holding that a statutory appeal period does not run and that the wrong may be corrected by means of a petition filed *nunc pro tunc*.") Courts have also allowed *nunc pro tunc* relief when "non-negligent circumstances, either as they relate to appellant or his counsel" occasion delay. *McKeown v. Bailey*, 731 A.2d 628, 630 (Pa. Super. 1999). However, even when there is a breakdown in the process, the appellant must attempt to remedy it within a "very short duration" of time. *Id.***[; *Amicone v. Rok*, 839 A.2d 1109, 1113 (Pa. Super. 2003) (recognizing a breakdown in process, but finding the delay too long to justify nunc pro tunc relief).**

Paragraph (b)(3) This paragraph specifies what the judge must advise appellants when ordering a Statement.

Paragraph (b)(4) This paragraph] ***Subparagraph (b)(4)*—This subparagraph** sets forth the parameters for the Statement and explains **[what constitutes waiver. It should help counsel to comply with the concise-yet-sufficiently-detailed requirement and avoid waiver under either *Lineberger v. Wyeth*, 894 A.2d 141, 148-49 (Pa. Super. 2006) or *Kanter v. Epstein*, 866 A.2d 394, 400-03 (Pa. Super. 2004), allowance of appeal denied, 584 Pa. 678, 880 A.2d 1239 (2005), cert. denied sub nom. *Spector Gadon & Rosen, P.C. v. Kanter, 546 U.S. 1092 (2006).* The paragraph explains]** that the Statement should be sufficiently specific to allow the judge to draft the opinion required under **Pa.R.A.P.** 1925(a)**[, and it]. It** provides that the number of issues alone will not constitute

waiver—so long as the issues set forth are non-redundant and non-frivolous. It allows appellants **and cross-appellants** to rely on the fact that subsidiary issues will be deemed included if the overarching issue is identified and if all of the issues have been properly preserved in the trial court. This provision has been taken from the United States Supreme Court rules. *See* Sup. Ct. R. 14(1). This paragraph does not in any way excuse the responsibility of an appellant who is raising claims of constitutional error to raise those claims with the requisite degree of specificity. This **[paragraph] subparagraph** also allows—but does not require—an appellant to state the authority upon which the appellant challenges the ruling in question**[, but it expressly recognizes that a Statement is not a brief and that an appellant shall not file a brief with the Statement] and to identify the place in the record where the basis for the challenge may be found**. **[This paragraph also recognizes that there may be times that a civil appellant cannot be specific in the Statement because of the non-specificity of the ruling complained of on appeal. In such instances, civil appellants may seek leave to file a supplemental Statement to clarify their position in response to the judge's more specific Rule 1925(a) opinion.]**

Neither the number of issues raised nor the length of the Statement alone is enough to find that a Statement is vague or non-concise enough to constitute waiver. *See Astorino v. New Jersey Transit Corp*., 912 A.2d 308, 309 (Pa. Super. 2006). The more carefully the appellant frames the Statement, the more likely it will be that the judge will be able to articulate the rationale underlying the decision and provide a basis for counsel to determine the advisability of appealing that issue. Thus, counsel should begin the winnowing process when preparing the Statement and should articulate specific rulings with which the appellant takes issue and why. Nothing in the rule requires an appellant to articulate the arguments within a Statement. It is enough for an appellant—except except where constitutional error must be raised with greater specificity—to have identified the rulings and issues that comprise the putative trial court errors.

The 2016 amendment to the rule distinguishes between direct criminal appeals and all other appeals concerning waiver for the filing of a deficient Statement. Waiver of issues on appeal because of deficiencies in the Statement that do not interfere with or effectively preclude appellate review is an unnecessary and harsh result. The determination whether a deficiency interferes with or effectively precludes appellate review, however, can be made only on a case-by-case basis. A case-by-case determination is not a suitable rule for direct criminal appeals, where consistency and regularity of application is necessary, in part because federal courts reviewing state court convictions assess whether state rules of procedure are consistently and regularly applied. *See Boyd v. Warden*, 579 F.3d 330, 368 (3d Cir. 2009) (*en banc*) (recognizing that an adequate and independent state ground precludes a federal habeas court from addressing the state court's resolution of a federal law question if the state court decision is on a state law ground that is independent of the federal question and that can support the judgment, which in turn requires the rule to speak in "unmistakable terms;" the state appellate courts all refused to review the claim on the merits; and that refusal was consistent with other state court decisions). Accordingly, in all appeals other than direct criminal appeals, the 2016 amendment revives the case-by-case discretionary review by the appellate court and allows the determination that deficiencies in a Statement do not preclude effective appellate review and thus do not result in waiver.

[Subdivision (c)] ***Paragraph (c)*—**The appellate courts have the right under the Judicial Code to "affirm, modify, vacate, set aside or reverse any order brought before it for review, and may remand the matter and direct the entry of such appropriate order, or require such further proceedings to be had as may be just under the circumstances." 42 Pa.C.S. § 706. **[The following additions to the rule are based upon this statutory authorization.]**

[Paragraph (c)(1) This paragraph] ***Subparagraph (c)(1)*—This subparagraph** applies to both civil and criminal cases and allows an appellate court to seek additional information—whether by supplementation of the record or additional briefing—if it is not apparent whether an initial or supplemental Statement was filed **[and/or served]** or timely filed **[and/or served]**.

[Paragraph (c)(2) This paragraph] ***Subparagraph (c)(2)*—This subparagraph** allows an appellate court to remand a civil case to allow an initial, amended, or supplemental Statement and/or a supplemental opinion. *See also* 42 Pa.C.S. § 706.

[Paragraph (c)(3) This paragraph] ***Subparagraph (c)(3)*—This subparagraph** allows an appellate court to remand in criminal cases only when the appellant has completely failed to respond to an order to file a Statement. It is thus narrower than **subparagraph** (c)(2), above. Prior to **[these]** amendments of this rule, the appeal was quashed if no timely Statement was filed or served; however, because the failure to file **[and serve]** a timely Statement is a failure to perfect the appeal, it is presumptively prejudicial and "clear" ineffectiveness. *See, e.g.*, *Commonwealth v. Halley*, **[582 Pa. 164, 172,]** 870 A.2d 795, 801 (**Pa**. 2005); *Commonwealth v. West*, 883 A.2d 654, 657 (Pa. Super. 2005). ***Per se* ineffectiveness does not apply in situations in which, for example, counsel files a deficient brief; in such cases, prejudice must be proven. *See, e.g., Commonwealth v. Reed*, 971 A.2d 1216, 1227 (Pa. 2009).** Direct appeal rights have typically been restored through a post-conviction relief process, but when the ineffectiveness is apparent and *per se*, the court in *West* recognized that the more effective way to resolve such *per se* ineffectiveness is to remand for the filing of a Statement and opinion. *See West*, 883 A.2d at 657. The procedure set forth in *West* is codified in **[paragraph] subparagraph** (c)(3). As the *West* court recognized, this rationale does not apply when waiver occurs due to the improper filing of a Statement. In such circumstances, relief may occur only through the post-conviction relief process and only upon demonstration by the appellant that, but for the deficiency of counsel, it was reasonably probable that the appeal would have been successful. An appellant must be able to identify *per se* ineffectiveness to secure a remand under this section, and any appellant who is able to demonstrate *per se* ineffectiveness is entitled to a remand. Accordingly, this paragraph does not

raise the concerns addressed in *Johnson v. Mississippi*, 486 U.S. 578, 588-89 (1988) (observing that where a rule has not been consistently or regularly applied, it is not—under federal law—an adequate and independent state ground for affirming petitioner's conviction).

[Paragraph (c)(4)] ***Subparagraph (c)(4)*—**This paragraph clarifies the special expectations and duties of a criminal lawyer. Even lawyers seeking to withdraw pursuant to the procedures set forth in *Anders v. California*, 386 U.S. 738 (1967) and **[*Commonwealth v. McClendon*, 495 Pa. 467, 434 A.2d 1185 (1981)] *Commonwealth v. Santiago*, 978 A.2d 349 (Pa. 2009),** are obligated to comply with all rules**[, including the filing of a Statement]**. **[See *Commonwealth v. Myers*, 897 A.2d 493, 494-96 (Pa. Super. 2006); *Commonwealth v. Ladamus*, 896 A.2d 592, 594 (Pa. Super. 2006).]** However, because a lawyer will not file an *Anders*/**[*McClendon*]** ***Santiago*** brief without concluding that there are no non-frivolous issues to raise on appeal, this amendment allows a lawyer to file, in lieu of a Statement, a representation that no errors **[have been raised] are asserted** because the lawyer is (or intends to be) seeking to withdraw under *Anders*/**[*McClendon*]** ***Santiago***. At that point, the appellate court will reverse or remand for a supplemental Statement and/or opinion if it finds potentially non-frivolous issues during its constitutionally required review of the record.

[Subdivision] Paragraph (d) was formerly (c). **[The text has not been] When the rule was amended in 2007, the text was not** revised, except to update the reference to Pa.R.A.P. 1112(c).

* * * * *

EXPLANATORY COMMENT

Pa.R.A.P. 1925 requires the trial court, upon receipt of a notice of appeal, to provide the appellate court the reasons for its decision. The rule authorizes the trial court to direct the appellant to provide a statement of errors complained of on appeal ("Statement"). The Statement process has given rise to waiver concerns that the Committee is proposing to address with three amendments to Pa.R.A.P. 1925, related amendments to Pa.R.A.P. 1922, and conforming amendments to Pa.R.A.P. 905.

The first waiver concern relates to difficulties experienced in filing a timely and accurate Statement when the trial transcript is not yet available. In order for a Statement to be of assistance to a trial judge, the party authoring the Statement needs to be able to identify errors with specificity, something that is frequently difficult or impossible unless and until counsel (or a party proceeding *pro se*) can review the transcripts associated with the orders in question. Currently, the practice in absence of a transcript varies widely. In some cases, a party files an initial Statement, and then moves to amend or supplement when the transcript(s) become available. In others, a party seeks multiple extensions. In yet others, a party asks for an extension until the transcript is received—although under the current rules, the date that an appellant receives a transcript is not reflected on the docket and thus cannot be readily verified by the trial or appellate courts. In each instance, a party risks waiver of appellate issues for lack of strict compliance. The Committee proposes to modify current practice by amending (1) Pa.R.A.P. 1922 to require entry of the transcript on the docket when transcribed, with notice to be sent to the parties; and (2) Pa.R.A.P. 1925(b) to permit a party to secure an extension to file the Statement until 21 days after the entry of the transcript on the docket, by completing two steps. The first step is for the party to make a timely request the transcript, complying with all necessary requirements. The second is for the party to file a timely (i.e., more than five days prior to the time the Statement is due) request for an extension, explaining that an extension is needed because the transcript has not yet been prepared and attaching the transcript purchase order form. If the trial court does not rule on the extension request by the original Statement due date, the extension will be deemed granted.

The second waiver concern relates to the current rule's requirement that the appellant file the Statement with the trial court and also serve it directly on the trial judge. The courts have found waiver in cases in which both requirements have not been met, even though the record reveals that the appellant attempted to serve the trial judge or the trial judge had actual access to the Statement. The Committee believes that filing is sufficient to assure that the trial judge has access to the Statement. Moreover, the increase in electronic filing should make direct service on the trial judge redundant. Accordingly, this proposal eliminates the requirement to serve the trial judge, *except* in cases such as Children's Fast Track appeals where the Statement is required to be attached to the notice of appeal, and thus will be served on the trial judge automatically pursuant to Pa.R.A.P. 906.

The third waiver concern relates to the harshness of enforcing a bright-line rule that failure to file a timely Statement, or failure to include an issue in a timely-filed Statement, will result in waiver. Although the bright-line waiver rule began in criminal cases, where there is a need for certainty and predictability, and where there is also a remedy for ineffective assistance of counsel, it was quickly applied to all cases. In some contexts, and particularly in parental termination, juvenile delinquency, custody, and civil commitment cases, there is some recognition that counsel can provide ineffective assistance, but there is no collateral review available. The consequences of attorney waiver in those cases are extremely serious, however. Likewise, in civil appeals, a client's recourse for issues not preserved is to incur the cost of prosecuting a separate malpractice case. Accordingly, the Committee is proposing to revise the standard for waiver in all but criminal cases, reimplementing the prior standard and thus limiting the opportunity for waiver. Under the proposed amendment, waiver is appropriate if, and only if, a deficiency in a Statement "interferes with or effectively precludes appellate review."

The Committee is proposing corollary changes to Pa.R.A.P. 905. In addition, the Committee proposes amending Pa.R.A.P. 1922 to reflect the new Rules of Judicial Administration and to set forth a process for correcting the transcript, in addition to modifying the process for filing objections to a transcript.

[Pa.B. Doc. No. 16-1593. Filed for public inspection September 16, 2016, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CH. 5]

Order Revising the Comment to Rule 500 of the Rules of Criminal Procedure; No. 479 Criminal Procedural Rules Doc.

Order

Per Curiam

And Now, this 31st day of August, 2016, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before adoption at 45 Pa.B. 3810 (July 18, 2015), and in the *Atlantic Reporter* (Third Series Advance Sheets, Vol. 114), and a Final Report to be published with this *Order*:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that the revision of the Comment to Pennsylvania Rule of Criminal Procedure 500 is approved in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective October 1, 2016.

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

CHAPTER 5. PRETRIAL PROCEDURES IN COURT CASES

PART A. Preservation of Testimony

Rule 500. Preservation of Testimony After Institution of Criminal Proceedings.

* * * * *

Comment

* * * * *

"May be unavailable," as used in paragraph (A), is intended to include situations in which the court has reason to believe that the witness will be unable to be present or to testify at trial or other proceedings, such as when the witness is dying, or will be out of the jurisdiction and therefore cannot be effectively served with a subpoena, **or is elderly, frail, or demonstrates the symptoms of mental infirmity or dementia,** or may become incompetent to testify for any **other** legally sufficient reason.

* * * * *

***Official Note*: Rule 9015 adopted November 8, 1982, effective January 1, 1983; amended March 22, 1989, effective July 1, 1989; renumbered Rule 500 and amended March 1, 2000, effective April 1, 2001; Comment revised August 31, 2016, effective October 1, 2016**.

Committee Explanatory Reports:

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

Final Report explaining the August 31, 2016 Comment revision refining the definition of "unavailable" to include the elderly published with the Court's Order at 46 Pa.B. 5893 (September 17, 2016).

FINAL REPORT[1]

Revision to the Comment to Pa.R.Crim.P. 500

Availability of the Elderly to Testify

On August 31, 2016, effective October 1, 2016, upon the recommendation of the Criminal Procedural Rules Committee, the Court approved the revision of the Comment to Rule of Criminal Procedure 500 (Preservation of Testimony after Institution of Criminal Proceedings) to clarify that the Rule 500 procedures were available in circumstances where a witness is elderly, frail or demonstrating symptoms of mental infirmity or dementia.

In April 2013, the Court created the Elder Law Task Force to study the issues of access to justice being faced by older Pennsylvanians. In November 2014, the Task Force issued a report with a number of recommendations intended to enhance the way Pennsylvania elders interact with the state court system and are protected in cases involving abuse, neglect, guardianship, conservatorship and other matters.[2] Based on the recommendation of the Task Force, the Court established an Office of Elder Justice in the Courts to implement many of the recommendations in the report as well as an Advisory Council on Elder Justice in the Courts to serve as the judiciary's liaison to the executive and legislative branches. In addition, in May 2015, the Court directed the Committee to consider the recommendations of the Elder Law Task Force that related to criminal procedure.

One of the Task Force's recommendations related to criminal procedural issues is the suggestion that the Comment to Pa.R.Crim.P. 500 (Preservation of Testimony) be revised "to help ensure the testimony of elder victims and witnesses in criminal cases can be preserved."[3] Rule 500 provides procedures for the pre-trial preservation of testimony of those witnesses who may be unavailable to testify for trial or other proceedings or where, due to exceptional circumstances, it is in the interests of justice to preserve the witness' testimony. Consistent with the Task Force's recommendation, the Advisory Council suggested to the Court that the Rule 500 Comment be revised to further define the phrase "exceptional circumstances" to include the circumstances where the victim is an elder, is frail, or demonstrates the symptoms of mental infirmity or dementia, creating the risk that they will not be able to testify in the future.

The Committee considered that the language of the Comment already is broad enough to cover the situation where a victim/witness would be unavailable to testify due to age-related incapacity such as frailty or dementia. However, the Committee concluded that it would be helpful to explicitly state in the Comment that these conditions are contemplated by the rule. Therefore, the language of the third paragraph of the Comment has been revised as follows:

> "May be unavailable," as used in paragraph (A), is intended to include situations in which the court has reason to believe that the witness will be unable to be present or to testify at trial or other proceedings, such as when the witness is dying, or will be out of the jurisdiction and therefore cannot be effectively served with a subpoena, **or is elderly, frail or demonstrating symptoms of mental infirmity or**

[1] The Committee's Final Reports should not be confused with the official Committee Comments to the rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the Committee's explanatory Final Reports.

[2] *See Elder Law Task Force Report,* http://www.pacourts.us/courts/supreme-court/committees/supreme-court-boards/elder-law-task-force.

[3] *See* Recommendation 36, *Elder Law Task Force Report*, page 236.

dementia, or may become incompetent to testify for any **other** legally sufficient reason.

The revision also adds the word "other" before "legally sufficient reason" to the final phrase of the paragraph since mental infirmity and dementia are also "legally sufficient reasons" for determining unavailability.

[Pa.B. Doc. No. 16-1594. Filed for public inspection September 16, 2016, 9:00 a.m.]

Title 249—PHILADELPHIA RULES

No. 01 of 2015, Philadelphia Municipal Court Arraignment Court Magistrates

Order

And Now, this 2nd day of September, 2016, the Order issued June 1, 2015 is amended to read as follows:

Order

And Now, this 1st day of June, 2015, in accordance with the provisions of Act 98 of 2008 which amended Act 187 of 1984, it is hereby *Ordered, Adjudged* and *Decreed* that:

(1) The "Philadelphia Municipal Court Bail Commissioner Rules" shall henceforth be referenced to as the "Philadelphia Municipal Court Arraignment Court Magistrate Rules;"

(2) All references in the current Rules of Criminal Procedure for the Philadelphia Municipal Court, Philadelphia Municipal Court Bail Commissioner Rules to "Bail Commissioner" or "Bail Commissioners" shall be replaced with "Arraignment Court Magistrate" or "Arraignment Court Magistrates;" and

(3) The Philadelphia Municipal Court Arraignment Court Magistrate Rules shall henceforth be cited as "Phila.M.C.R.Crim.P., A.C.M., Sec."

As required by Pa.R.J.A. 103(d), this Administrative Order and the proposed local rule were submitted to the Supreme Court of Pennsylvania Criminal Procedural Rules Committee for review and written notification has been received from the Rules Committee certifying that the proposed local rule is not inconsistent with any general rule of the Supreme Court. This Administrative Order and the attached local rule shall be filed with the Office of Judicial Records (formerly the Prothonotary, Clerk of Courts and Clerk of Quarter Sessions) in a docket maintained for Administrative Orders issued by the First Judicial District of Pennsylvania. As required by Pa.R.J.A. 103(d)(5)(ii), two certified copies of this Administrative Order and the attached local rule, as well as one copy of the Administrative Order and local rule shall be distributed to the Legislative Reference Bureau on a computer diskette for publication in the *Pennsylvania Bulletin*. As required by Pa.R.J.A. 103(d)(6) one certified copy of this Administrative Order and local rule shall be filed with the Administrative Office of Pennsylvania Courts, shall be published on the website of the First Judicial District at http://courts.phila.gov, and shall be incorporated in the compiled set of local rules no later than 30 days following publication in the *Pennsylvania Bulletin*. Copies of the Administrative Order and local rule shall also be published in *The Legal Intelligencer* and will be submitted to American Lawyer Media, Jenkins Memorial Law Library, and the Law Library for the First Judicial District.

By the Court

HONORABLE MARSHA H. NEIFIELD,
President Judge
Philadelphia Municipal Court

[Pa.B. Doc. No. 16-1595. Filed for public inspection September 16, 2016, 9:00 a.m.]

Title 255—LOCAL COURT RULES

BEAVER COUNTY

Local Rules of Orphans' Court; No. 10013 of 2016

Administrative Order

The Juvenile Act, 42 Pa.C.S.A. § 6301, et seq., as more specifically set forth at § 6351(i), authorizes the President Judge to administratively assign a Judge who has adjudicated a child dependent or presided over permanency hearings, to the Orphans' Court Division of the Court for the purpose of hearing proceedings relating to the Involuntary Termination of Parental Rights of a parent of the dependent child and a Petition to Adopt the dependent child.

As authorized by the Juvenile Act, it is hereby Ordered and Decreed that:

Local O.C. Rule 15.1.

The Judges of this Court (the 36th Judicial District), who are, from time to time, assigned by the President Judge to preside over dependency proceedings, are also assigned to preside over proceedings relating to Involuntary Termination of Parental Rights of a parent of any dependent child having been adjudicated by that Judge, as well as any proceedings relating to the Adoption of that dependent child.

This Administrative Order shall be effective thirty (30) days after publication in the *Pennsylvania Bulletin* and posting on the Pennsylvania Judiciary's web application portal.

The District Court Administrator is Directed to:

1. file one (1) certified copy of this Administrative Order with the Administrative Office of Pennsylvania Courts for publication on the Pennsylvania Judiciary's web application portal;

2. submit two (2) certified paper copies of this Administrative Order and a copy on computer diskette or CD-ROM containing the text of the Administrative Order to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*;

3. submit one (1) certified copy of this Administrative Order to the Supreme Court Orphans' Court Procedural Rules Committee;

4. publish a copy of this Administrative Order on the Beaver County Court of Common Pleas website, i.e., http://www.beavercountypa.gov/courts/courts-common-pleas, after publication in the *Pennsylvania Bulletin*;

5. keep a copy of this Administrative Order continuously available for public inspection and copying in the Office of the Clerk of the Orphans' Court of Beaver County; and

6. keep a copy of this Administrative Order continuously available for public inspection and copying in the Beaver County Law Library.

By the Court

JOHN D. McBRIDE,
President Judge

[Pa.B. Doc. No. 16-1596. Filed for public inspection September 16, 2016, 9:00 a.m.]

FAYETTE COUNTY

Local Rule 212; Local Rule 212.1: Pre-Trial Procedure; Certificate of Readiness for Pre-Trial Conference; No. 1702 of 2016 GD

Order

And Now, this 30th day of August, 2016, pursuant to Pennsylvania Rule of Judicial Administration 103(d), it is hereby ordered that Local Rule 212 is rescinded and Local Rule 212.1 is amended to read as follows.

The Prothonotary is directed as follows:

(1) Two copies and CD-ROM of the Local Rule shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

(2) One copy of the Local Rule shall be filed with the Administrative Office of Pennsylvania Courts.

(3) One copy of the Local Rule shall be sent to the Fayette County Law Library and the Editor of the *Fayette Legal Journal*.

The Administrative Office of Fayette County Courts is directed as follows:

(1) Publish a copy of the Local Rule on the website of the Administrative Office of Fayette County Courts.

(2) Thereafter, compile the Local Rule within the complete set of local rules no later than 30 days following the publication in the *Pennsylvania Bulletin*.

Rescinding and amending the previously listed Local Rules shall become effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

By the Court

JOHN F. WAGNER, Jr.,
President Judge

Rule 212.1. Pre-Trial Procedure; Certificate of Readiness for Pre-Trial Conference.

(a) Except in those cases involving compulsory arbitration, there shall be 240 days from the filing of the complaint in which the parties shall complete discovery. Discovery will not be permitted after the 240 day period except by order of Court upon good cause shown.

(b) In those cases where it is apparent that extensive discovery will be required, counsel may present a motion requesting a status conference, or file and present an appropriate motion, with the trial Judge to whom the case has been assigned to establish an alternate discovery time table.

(c) Unless otherwise agreed upon by the parties, or ordered by the Court, all depositions shall be held in Fayette County.

(d) At any time after the close of discovery, the Court may, in its discretion, direct the parties to attend a status conference, or the Court may compel the filing of pre-trial statements, schedule the pre-trial conference, or otherwise intervene to expedite the litigation.

(e) If there is an appeal of the award of arbitrators, this rule shall apply, except that there shall be 60 days from the filing of the appeal in which the parties shall complete discovery.

(f) At the close of discovery and upon the filing of a pre-trial statement by the moving party, the movant shall file a Certificate of Readiness for Pre-trial Conference.

(1) The Certificate of Readiness shall be substantially in the form which follows this rule and shall be served with written notice to all parties.

(2) If a party objects to the Certificate of Readiness as filed by any party, the objecting party is required to file the objection within 20 days; otherwise, all parties will be deemed to be in agreement with the statement contained in the Certificate of Readiness.

(3) Objections to the Certificate of Readiness shall be presented forthwith as a priority motion to the Judge to whom the case is assigned. If an objection to the Certificate of Readiness has been filed, the Prothonotary shall only transmit the docket to the Trial Judge for pre-trial conference after the Judge resolves the objection.

(4) If no objection to the Certificate of Readiness has been filed within 20 days, the Prothonotary shall transmit the docket to the Trial Judge to schedule a pre-trial conference.

(5) In accordance with Local Rule 212.3, the Trial Judge shall schedule the pre-trial conference upon transmission of the docket from the Prothonotary.

(6) A Certificate of Readiness is not required for cases assigned to arbitration.

IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY, PENNSYLVANIA

_____	:	Civil Action
Plaintiff	:	
	:	NO.
vs.	:	
	:	
_____	:	JUDGE _____
Defendant	:	
	:	Jury Trial _____
	:	Non-jury Trial _____
	:	Arbitration _____

CERTIFICATE OF READINESS

I hereby certify, pursuant to Fayette County Rule of Civil Procedure 212.1, that the above-captioned case is ready for trial. All pleadings are closed; all witnesses are presently available to appear at trial; the moving party's pre-trial statement has been filed and served upon the other parties; and discovery is complete, except for those depositions to be taken solely for the purpose of being presented at trial. Any such deposition shall be completed prior to trial and a transcript of the deposition shall be submitted to the Court at least five (5) days prior to trial or all objections will be deemed waived.

I further certify that immediately after filing, I will serve a time-stamped copy of this certificate upon all counsel, and/or any unrepresented party.

Print Name	Signature of Counsel
	Representing
Address	Date
Telephone No.	

[Pa.B. Doc. No. 16-1597. Filed for public inspection September 16, 2016, 9:00 a.m.]

FAYETTE COUNTY

Local Rule 212.2: Pre-Trial Statements; No. 1702 of 2016 GD

Order

And Now, this 30th day of August, 2016, pursuant to Pennsylvania Rule of Judicial Administration 103(d), it is hereby ordered that Local Rule 212.1, Pre-trial Statements, is renumbered Local Rule 212.2, as follows.

The Prothonotary is directed as follows:

(1) Two copies and CD-ROM of the Local Rule shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

(2) One copy of the Local Rule shall be filed with the Administrative Office of Pennsylvania Courts.

(3) One copy of the Local Rule shall be sent to the Fayette County Law Library and the Editor of the *Fayette Legal Journal*.

The Administrative Office of Fayette County Courts is directed as follows:

(1) Publish a copy of the Local Rule on the website of the Administrative Office of Fayette County Courts.

(2) Thereafter, compile the Local Rule within the complete set of local rules no later than 30 days following the publication in the *Pennsylvania Bulletin*.

The renumbering of the previously listed Local Rule shall become effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

By the Court

JOHN F. WAGNER, Jr.,
President Judge

Rule 212.2. Pre-Trial Statements.

(a) *Time tables*:

(1) All plaintiffs, within twenty (20) days after the 240 day period, or the extension thereof, shall file their pre-trial statements with the Prothonotary.

(2) All original defendants, within twenty (20) days of the filing of the plaintiff's pre-trial statements, shall file their pre-trial statements with the Prothonotary.

(3) All other parties, within twenty (20) days of the filing of original defendants' pre-trial statements, shall file their pre-trial statements with the Prothonotary.

(b) The pre-trial statement shall contain:

(1) A brief narrative statement of the essential facts upon which liability is asserted or denied.

(2) The legal issues involved and legal authorities relied upon.

(3) A list of the names and addresses of all witnesses the party expects to call, which witnesses shall be classified as liability or damage witnesses.

(4) A specific description of damages.

(i) Any party seeking to recover damages for personal injuries shall attach to their pre-trial statement, if not previously provided to all parties, a written authorization to inspect and make copies of the records and reports of any physician, hospital or clinic by whom or where said party may have been examined, treated, or hospitalized for the injuries or disabilities complained of, and covering prior injuries or disabilities where the same may be relevant.

(ii) A list of the damages that the party intends to claim and prove at trial.

(5) The settlement status of the case.

(6) A realistic estimate of the trial time required for presentation of their case, as well as total trial time required.

(7) There shall be attached to the pre-trial statement:

(i) A copy of all reports containing findings or conclusions of any physician who has treated or examined the party or has been consulted in connection with any injuries complained of and whom the party expects to call as a witness at the trial of the case. If timely production of any report is not made, the testimony of such physician shall be excluded at the trial except upon consent of all parties or upon express order of the Court.

(ii) A copy of all reports containing findings or conclusions of any expert who has been consulted in connection with the matters involved in the case and whom the party expects to call as a witness at the trial of the case. If timely production of any report is not made, the testimony of such expert shall be excluded at the trial except upon consent of all parties or upon express order of Court.

(8) Upon failure of any party to file a pre-trial statement within the time required, upon motion the Court may impose the sanctions provided in Pa.R.C.P. Sec. 4019(c). Also, the Court may order other appropriate relief including, but not limited to, the barring of testimony, assessment and awarding of attorney fees, and expenses and costs to opposing counsel.

(9) Counsel, upon agreement of all parties, or upon Order of Court, may file a supplemental pre-trial statement up to the time of trial as long as such filing does not delay trial. Supplemental statements may include additional claims for damages, additional damage and/or liability witnesses, expert witnesses, and/or exhibits intended to be used at trial.

[Pa.B. Doc. No. 16-1598. Filed for public inspection September 16, 2016, 9:00 a.m.]

FAYETTE COUNTY

Local Rule 212.3: Pre-Trial Conference; No. 1702 of 2016 GD

Order

And Now, this 30th day of August, 2016, pursuant to Pennsylvania Rule of Judicial Administration 103(d), it is hereby ordered that Local Rule 212.3 is amended to read as follows.

The Prothonotary is directed as follows:

(1) Two copies and CD-ROM of the Local Rule shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

(2) One copy of the Local Rule shall be filed with the Administrative Office of Pennsylvania Courts.

(3) One copy of the Local Rule shall be sent to the Fayette County Law Library and the Editor of the *Fayette Legal Journal*.

The Administrative Office of Fayette County Courts is directed as follows:

(1) Publish a copy of the Local Rule on the website of the Administrative Office of Fayette County Courts.

(2) Thereafter, compile the Local Rule within the complete set of local rules no later than 30 days following the publication in the *Pennsylvania Bulletin*.

The amendment of the previously listed Local Rule shall become effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

By the Court

JOHN F. WAGNER, Jr.,
President Judge

Rule 212.3. Pre-Trial Conference.

(a) When a case is scheduled for pre-trial conference, it shall not be continued except for just cause and upon order of the pre-trial judge.

(b) The pre-trial conference shall be attended by the attorney who will try the case, or by an attorney who is fully prepared and authorized as to all matters which may reasonably be expected to arise during the conference.

(c) Parties must also be present, except when the real party in interest is an insurance company, a common carrier, corporation or other artificial legal entity, in which instance a representative thereof, other than the attorney, must be present with full authority and power to discuss and settle the case.

(d) The Court shall encourage the amicable settlement of the controversy and the parties and their attorneys shall be prepared to discuss settlement.

(e) The judge presiding at the pre-trial conference shall refer to arbitration all cases where the amount in controversy is found not to exceed the jurisdictional limits of arbitration except where title to lands or tenements may come in question.

(f) If there is not an amicable settlement of the controversy at the pre-trial conference, then the pre-trial judge shall issue a pre-trial adjudication which shall, in the discretion of the judge, control the subsequent course of the action.

[Pa.B. Doc. No. 16-1599. Filed for public inspection September 16, 2016, 9:00 a.m.]

FAYETTE COUNTY

Local Rule 212.5: Mediation; No. 1702 of 2016 GD

Order

And Now, this 30th day of August, 2016, pursuant to Pennsylvania Rule of Judicial Administration 103(d), it is hereby ordered that Local Rule 212.5 is amended to read as follows.

The Prothonotary is directed as follows:

(1) Two copies and CD-ROM of the Local Rule shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

(2) One copy of the Local Rule shall be filed with the Administrative Office of Pennsylvania Courts.

(3) One copy of the Local Rule shall be sent to the Fayette County Law Library and the Editor of the *Fayette Legal Journal*.

The Administrative Office of Fayette County Courts is directed as follows:

(1) Publish a copy of the Local Rule on the website of the Administrative Office of Fayette County Courts.

(2) Thereafter, compile the Local Rule within the complete set of local rules no later than 30 days following the publication in the *Pennsylvania Bulletin*.

The amendment of the previously listed rule shall become effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

By the Court

JOHN F. WAGNER, Jr.,
President Judge

Rule 212.5. Mediation.

(a) *Certification of Mediators.*

(1) The President Judge shall certify as many mediators as determined to be necessary.

(2) All mediators will be members of the Fayette County Bar Association.

(3) An attorney may be certified by the President Judge as a mediator if:

(i) he or she has been a member of the Pennsylvania bar for a minimum of ten (10) years;

(ii) he or she has been admitted to practice before the Fayette County Court of Common Pleas;

(iii) he or she has been referred to the President Judge by the Civil Rules Committee of the Fayette County Bar Association. Notwithstanding such referral, the President Judge may nonetheless certify an attorney as a mediator.

(iv) he or she has been determined by the President Judge to be competent to perform the duties of a mediator;

(v) he or she has professional liability insurance in the minimum amount of a $300,000.00 single limit policy.

(4) Each individual certified as a mediator shall take the oath or affirmation prescribed by 42 Pa.C.S.A. § 3151 before serving as a mediator.

(5) A list of all persons certified as mediators shall be maintained in the office of the Court Administrator.

(6) A member of the bar certified as a mediator may be removed from the list of certified mediators by the President Judge for any reason.

(b) *Payment of Mediators.*

(1) The parties shall pay the mediator directly. The court assumes no responsibility for the supervision or enforcement of the parties' agreement to pay for mediation services.

(2) Any charges relating to the mediator's services shall be shared equally by the parties.

(3) The mediator shall be paid a mediation fee of One Hundred and Seventy-Five ($175.00) Dollars per hour, divided equally among all of the parties to the mediation. A deposit of One Hundred and Seventy-Five ($175.00) Dollars shall be paid by each party within twenty (20) days of the order directing mediation. Failure to pay the deposit by all parties shall result in the cancellation of the mediation and shall subject the offending party to sanctions pursuant to Pa.R.Civ.P. 4019. Failure to pay the balance due twenty (20) days after receipt of the mediator's bill shall subject the offending party to sanctions pursuant to Pa.R.Civ.P. 4019.

(4) Except as provided herein, a mediator shall not accept anything of value from any source for services provided under the court-annexed mediation program.

(c) *Types of Cases Eligible for Mediation.*

Every personal injury, medical or professional malpractice, wrongful death or damage to property action filed in the Fayette County Court of Common Pleas is eligible for mediation, except any case which the assigned judge determines, after application by any party or by the mediator, is not suitable for mediation.

(d) *Voluntary Mediation.*

The parties to any civil action, with the exception of arbitration and domestic relations/custody cases, may voluntarily submit the case to mediation by filing a joint motion of all parties with the assigned judge in accordance with the local Motions Court procedure.

(e) *Mandatory Mediation.*

The assigned judge may order a case to mandatory mediation at any time. All cases selected for mandatory mediation by the assigned judge, and which are not settled or referred to arbitration, shall be given preference pursuant to Pa.R.Civ.P. 214(2) on the trial list of the assigned judge.

(f) *Mediation Conference Scheduling.*

(1) When the court makes a determination that referral to mediation is appropriate, it shall issue an order referring the case to mediation, appointing the mediator, directing the mediator to establish the date, time and place for the mediation session and setting forth the name, address, and telephone number of the mediator.

Within ten (10) days of his or her assignment, the mediator shall notify all parties and the Court Administrator of the date, time and place of the mediation, which shall be within forty-five (45) days of the assignment.

(2) The mediation session shall be held before a mediator selected by the assigned judge from the list of mediators certified by the President Judge.

(3) The court administrator shall provide the mediator with a current docket sheet.

(4) The mediator shall advise the court administrator as to which documents in the case file the mediator desires copies of for the mediation session. The clerk shall provide the mediator with all requested copies at no charge to the mediator. However, the assigned Judge, in his or her discretion, may require that the parties share in the cost of providing the necessary copies.

(5) Any continuance of the mediation session beyond the period prescribed in the referral order must be approved by the assigned judge.

(6) A person selected as a mediator shall be disqualified for bias or prejudice as if he or she were a district justice or judge. A party may assert the bias or prejudice of an assigned mediator by filing an affidavit with the assigned judge stating that the mediator has a personal bias or prejudice. The judge may, in his or her discretion, end alternative dispute resolution efforts, refer the case to another mediator, refer the case back to the original mediator or initiate another alternative dispute resolution mechanism.

(g) *The Mediation Session and Confidentiality of Mediation Communications.*

(1) The mediation session shall take place as directed by the court and the assigned mediator. The mediation session shall take place in a neutral setting designated by the mediator.

(2) The parties shall not contact or forward documents to the mediator except as directed by the mediator or the court.

(3) At least ten (10) days prior to the Mediation, the parties and/or their attorneys shall be required to prepare and submit a Confidential Position Paper disclosed only to the mediator in the format attached or as modified by the mediator or the assigned judge. The Confidential position paper shall not become a part of the court record and shall be destroyed at the conclusion of the mediation.

(4) If the mediator determines that no settlement is likely to result from the mediation session, the mediator shall terminate the session and promptly thereafter file a report with the assigned Judge stating that there has been compliance with the requirements of mediation in accordance with the local rules, but that no settlement has been reached.

(5) In the event that a settlement is achieved at the mediation session, the mediator shall file a report with the assigned Judge stating that a settlement has been achieved. The order of referral may direct the mediator to file the report in a specific form.

(6) Unless stipulated in writing by all parties and the mediator or except as required by law or otherwise ordered by the court, all discussions which occur during mediation shall remain strictly confidential and no communication at any mediation session (including, without limitation, any verbal, nonverbal or written communication which refers to or relates to mediation of the pending litigation) shall be disclosed to any person not involved in the mediation process, and no aspect of the mediation session shall be used by anyone for any reason.

(7) No one shall have a recording or transcript made of the mediation session, including the mediator.

(8) The mediator shall not be called to testify as to what transpired in the mediation.

(9) Prior to the beginning of the mediation, all parties and their attorneys shall be required to sign a form developed by the Court wherein the parties agree:

(i) to the terms of the mediation; and

(ii) to waive any professional liability claims that they might assert against the mediator, the assigned Judge, the Court of Common Pleas of the 14th Judicial District, or Fayette County, as a result of their participation in the mediation process.

(h) *Duties of Participants at the Mediation Session.*

(1) *Parties.* All named parties and their counsel are required to attend the mediation session, participate in good faith and be prepared to discuss all liability issues, all defenses and all possible remedies, including monetary and equitable relief. Those in attendance shall possess complete settlement authority, independent of any approval process or supervision, except as set forth in subparagraphs (A) and (B) below.

Unless attendance is excused, willful failure to attend the mediation session will be reported by the mediator to the court and may result in the imposition of sanctions pursuant to Pa.R.Civ.P. 4019.

(A) *Corporation or Other Entity.* A party other than a natural person (e.g., a corporation or association) satisfies this attendance requirement if represented by a person (other than outside counsel) who either has authority to settle or who is knowledgeable about the facts of the case, the entity's position, and the policies and procedures under which the entity decides whether to accept proposed settlements.

(B) *Government Entity.* A unit or agency of government satisfies this attendance requirement if represented by a person who either has authority to settle or who is knowledgeable about the facts of the case, the government unit's position, and the policies and procedures under which the governmental unit decides whether to accept proposed settlements. If the action is brought by or defended by the government on behalf of one or more individuals, at least one such individual also shall attend.

(2) *Counsel.* Each party shall be accompanied at the mediation session by the attorney who will be primarily responsible for handling the trial of the matter.

(3) *Insurers.* Insurer representatives are required to attend in person unless excused, if their agreement would be necessary to achieve a settlement. Insurer representatives shall possess complete settlement authority, independent of any approval process or supervision.

(4) *Request to be Excused.* A person who is required to attend a mediation session may be excused from attending in person only after a showing that personal attendance would impose an extraordinary or otherwise unjustifiable hardship. A person seeking to be excused must submit, no fewer than ten (10) days before the date set for the mediation, a written request to the mediator, simultaneously copying all counsel. The written request shall set forth all considerations that support the request and shall indicate whether the other party or parties join in or object to the request. A proposed order prepared for the signature of the Judge shall be submitted to the mediator with the request. The mediator shall promptly consider the request and shall submit the proposed order to the Judge with a recommendation that the request be granted or denied. In the absence of an order excusing attendance, the person must attend.

Where an individual requests to be excused from personal participation at the mediation, a preference shall be given to attending by telephone at the expense of the excused party rather than complete excusal from the mediation.

(i) *Mediator's Report.*

Within fifteen (15) days of the mediation, the mediator shall send to the assigned judge a mediation report which shall advise that court whether the case has settled. If not, the mediation report shall set forth the following:

(1) plaintiff's final settlement demand;

(2) defendant's final settlement offer;

(3) Mediator's assessment of liability;

(4) Mediator's assessment of damages;

(5) Mediator's opinion regarding potential range of verdict and settlement value of case; and

(6) Mediator's recommendation regarding settlement of case.

The mediator shall provide all parties and the Court Administrator with a copy of the mediation report.

Appendix A: Form for Confidential Position Paper

Confidential Position Paper

Case Caption:

Docket #:

Assigned Judge:

Date of Report:

A. Summary of Critical Facts.

B. Insurance Coverage

C. Prior demands and offers of settlement

D. Issues that may Assist the Mediator, with citations

E. Medical and Expert reports

F. Itemized list of damages

G. succinct statement of position regarding liability and damages

[Pa.B. Doc. No. 16-1600. Filed for public inspection September 16, 2016, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Disbarment

Notice is hereby given that Anne Pope Cataline (# 72535), having been disbarred from the practice of law in the state of New Jersey, the Supreme Court of Pennsylvania issued an Order on September 6, 2016, disbarring Anne Pope Cataline from the Bar of this Commonwealth, effective October 6, 2016. 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*.

JULIA M. FRANKSTON-MORRIS, Esq.,
Secretary
The Disciplinary Board of the
Supreme Court of Pennsylvania

[Pa.B. Doc. No. 16-1601. Filed for public inspection September 16, 2016, 9:00 a.m.]