

THE COURTS

Title 210—APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

[210 PA. CODE CH. 1]

Proposed Amendment of Pa.R.A.P. 120 and 121 with Correlative Amendment of Pa.R.A.P. 102, 907(b), 1112(f), 1311(d), 1514(d) and 1602(d) (omitted)

The Appellate Court Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Pa.R.A.P. 120 and 121 with Correlative Amendment of Pa.R.A.P. 102, 907(b), 1112(f), 1311(d), 1514(d), and 1602(d) (omitted) for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any reports, notes, or comments in the proposal have been inserted by the Committee for the convenience of those using the rules. They will neither constitute a part of the rules nor be officially adopted by the Supreme Court.

Additions to the text of the proposal are bolded and underlined; deletions to the text are bolded and bracketed.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

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Supreme Court of Pennsylvania
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All communications in reference to the proposal should be received by May 28, 2021. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

*By the Appellate Court
Procedural Rules Committee*

PATRICIA A. McCULLOUGH,
Chair

Annex A

TITLE 210. APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

ARTICLE I. PRELIMINARY PROCEDURES

CHAPTER 1. GENERAL PROVISIONS

DOCUMENTS GENERALLY

Rule 120. Entry **and Withdrawal** of Appearance.

[Any counsel filing papers required or permitted to be filed in an appellate court must enter an appearance with the prothonotary of the appellate court unless that counsel has been previously noted

on the docket as counsel pursuant to Pa.R.A.P. 907(b), 1112(f), 1311(d), 1514(d), or 1602(d). New counsel appearing for a party after docketing pursuant to Pa.R.A.P. 907(b), 1112(f), 1311(d), 1514(d), or 1602(d) shall file an entry of appearance simultaneously with or prior to the filing of any papers signed by new counsel. The entry of appearance shall specifically designate each party the attorney represents, and whether the attorney is entering an appearance as substitute or additional counsel. The attorney shall file a certificate of service pursuant to paragraph (d) of Pa.R.A.P. 121 and to Pa.R.A.P. 122. If an attorney enters an appearance as substitute counsel for a party, the original counsel of record for that party may withdraw by *praecipe*, without filing an application for permission to withdraw.

Official Note: For admission *pro hac vice*, see Pa.B.A.R. 301.]

(a) Entry of appearance.

(1) Previous counsel of record.—Unless counsel has been noted on the docket as counsel of record pursuant to Pa.R.A.P. 907(b), 1112(f), 1311(d), 1514(d), or 1602(d), any counsel filing documents required or permitted to be filed in an appellate court shall file an entry of appearance by *praecipe* with the appellate court pursuant to paragraph (a)(2).

(2) Counsel.—After filing pursuant to Pa.R.A.P. 907(b), 1112(f), 1311(d), 1514(d), or 1602(d), any counsel appearing for a party shall file an entry of appearance by *praecipe* with or prior to the filing of any papers signed as new counsel. The entry of appearance shall:

(i) designate each party new counsel represents; and

(ii) indicate whether counsel is new counsel, additional counsel, or substitute counsel.

(3) Counsel for *amicus curiae*.—Counsel for *amicus curiae* shall enter an appearance by *praecipe*.

(b) Withdrawal of appearance when party is entitled by law to be represented by counsel.

(1) If counsel represents a party who is entitled by law to be represented by counsel, counsel may withdraw his or her appearance only with permission of court.

(2) Counsel seeking permission of court to withdraw from representation when a party has a constitutional right to counsel and counsel believes all issues that could be raised on appeal are frivolous shall file:

(i) an application seeking withdrawal with the appellate court; and

(ii) a brief prepared pursuant to Pa.R.A.P. 211.

(3) Counsel seeking permission of court to withdraw from representation when a party has a rule-based or statutory right to counsel and counsel believes all issues sought to be raised by the party on appeal are without merit shall file:

(i) an application seeking withdrawal with the appellate court; and

(ii) a brief prepared pursuant to Pa.R.A.P. 2111.

(4) Counsel seeking permission of court to withdraw pursuant to paragraph (b)(2) or (b)(3) shall serve a copy of the application and brief on the party, accompanied by a letter informing the party that, within 60 days of service of the application and brief, the party has the right to:

(i) self-representation and to address the matters raised in the application or brief; and

(ii) self-representation and to bring any additional points to the court's attention; or

(iii) retain private counsel for representation.

(5) Within 14 days after service of the party's response pursuant to paragraph (b)(4), any other party may file a reply to the party's response.

(6) *Other grounds for withdrawal.*—Counsel may withdraw from representation on appeal on any other basis only with permission of court through an application for relief filed in the appellate court, together with proof of service upon all parties, including the client.

(c) *Withdrawal of appearance when party is not entitled by law to be represented by counsel.*

(1) Within 30 days following the filing pursuant to Pa.R.A.P. 907(b), 1112(f), 1311(d), 1514(d), or 1602(d), counsel for a party not entitled by law to be represented by counsel may withdraw his or her appearance by *praecipe* filed with the appellate court prothonotary, together with proof of service upon all parties, including the party represented by counsel.

(2) After 30 days following the docketing pursuant to Pa.R.A.P. 907(b), 1112(f), 1311(d), 1514(d), or 1602(d), counsel for a party not entitled by law to be represented by counsel may withdraw his or her appearance only with permission of court through an application for relief filed in the appellate court, unless substitute counsel has entered an appearance for the party or other counsel remains to represent the party.

(3) If substitute counsel for a party has entered an appearance or other counsel remains to represent a party, the previous counsel of record for that party may withdraw his or her appearance by *praecipe* filed with the appellate court prothonotary, together with proof of service upon all parties, including the party represented by counsel.

(d) *Substitute counsel.* As used in this rule, "substitute counsel" shall mean counsel who has entered an appearance to assume representation of the party for all relevant appellate purposes.

Official Note: For admission *pro hac vice*, see Pa.B.A.R. 301.

See also Pa.R.A.P. 121(b) for requirement of service on all other parties; Pa.R.A.P. 123 for requirements of application for relief.

Entry of appearance immediately prior to oral argument may result in recusal or postponement if a conflict exists.

The procedures to withdraw as counsel depend on the entitlement of appellant to the right to counsel and grounds for seeking withdrawal. For the substance of the brief filed pursuant to paragraph (b)(2), see *Anders v. California*, 386 U.S. 738 (1967);

Commonwealth v. Santiago, 978 A.2d 349 (Pa. 2009). For the substance of the brief filed pursuant to paragraph (b)(3), see *Commonwealth v. Turner*, 544 A.2d 927 (Pa. 1988); *Commonwealth v. Finley*, 550 A.2d 213 (Pa. Super. 1988).

Briefs required by paragraph (b)(2)(ii) or (b)(3)(ii) should comply with the content requirements of Pa.R.A.P. 2111 notwithstanding that such briefs are not advocating on behalf of an appellant.

For an appellant seeking to respond to counsel's letter in paragraph (b)(3), see Pa.R.A.P. 121(g) (Hybrid Representation).

"Other grounds for withdrawal" pursuant to paragraph (b)(6) include, but are not limited to, an appellant's unilateral intent to proceed *pro se*, an irreconcilable breakdown in the counsel-client relationship, substitute counsel has entered an appearance, or other counsel remain to represent the party.

New or substitute counsel is subject to all existing deadlines. Counsel seeking to withdraw in any case has a responsibility to continue to meet all deadlines and to comply with all applicable law, rules, and orders of the trial and appellate court until the appellate court has granted the application to withdraw.

Rule 121. Filing and Service.

* * * * *

(g) *Hybrid representation.*—Where there is counsel of record, a party may file only the following documents *pro se*: (i) a notice of appeal; (ii) a request to change or remove counsel; (iii) a response to [a motion] an application to withdraw that has been filed by counsel of record; (iv) a complaint that existing counsel has abandoned the party; or (v) an application to file a petition for allowance of appeal *nunc pro tunc*. Any other document that a party attempts to file *pro se* will be noted on the docket but not accepted for filing. This rule is not intended to provide an independent basis for jurisdiction where it does not otherwise exist.

Official Note: Paragraph (a)—The term "related papers" in paragraph (a) of this rule includes any appeal papers required by Pa.R.A.P. 1702 (stay ancillary to appeal) as a prerequisite to an application for a stay or similar relief.

* * * * *

Paragraph (g)—The rule on hybrid representation is premised on *Commonwealth v. Ellis*, 626 A.2d 1137, 1139-40 (Pa. 1993). See 210 Pa. Code § 65.24. If a *pro se* notice of appeal is filed, it will satisfy the timeliness requirement for the filing of a notice of appeal. Counsel of record will, however, be obligated to prosecute that appeal. There are four other instances in which *pro se* documents will be accepted by an appellate court for filing: a request by the party to change or remove counsel; a response to counsel's request to withdraw; a complaint that existing counsel has abandoned the party; and a *pro se* petition for *nunc pro tunc* permission to file a petition for allowance of appeal under Pa.R.A.P. 1113(d). For a response to counsel's application to withdraw, see Pa.R.A.P. 120(b)(4). All other documents will be noted on the docket as received by the appellate court prothonotary's office but will not be accepted for filing; instead, the *pro se* document will be forwarded to counsel of record with, if the court desires, direction for counsel to respond.

PUBLICATION REPORT

The Appellate Court Procedural Rules Committee is considering proposing the amendment of Pennsylvania Rule of Appellate Procedure 120 to rescind and replace the current text governing the entry of appearance, together with the correlative amendment of Pennsylvania Rule of Appellate Procedure 121.

Presently, Pa.R.A.P. 120 requires counsel to file and serve an entry of appearance prior to or simultaneously with the filing of any papers signed by counsel in the appellate court. This requirement is excused if counsel has previously been noted on the docket as counsel pursuant to Pa.R.A.P. 907(b), 1112(f), 1311(d), 1514(d), or 1602(d). The rules also permit the original counsel of record to withdraw by *praecipe* if substitute counsel enters an appearance for the party.

The replacement text would consolidate and codify procedures for the entry of appearance and withdrawal of appearance in the appellate court. Specifically, paragraph (a) retains the operative provisions of the current rule and sets them forth separately. Paragraph (a)(1) sets forth the general requirement of an entry of appearance subject to the exception of when counsel has been previous counsel of record. Paragraph (a)(2) addresses when counsel has not been previous counsel of record and contains the required contents of an entry of appearance. Paragraph (a)(3) is new and clarifies that counsel for *amicus curiae* must also enter an appearance.

Paragraphs (b) and (c) contain procedures for the withdrawal of counsel. The applicability of either paragraph would depend on whether the party for whom counsel represents is entitled by law to be represented by counsel. When such an entitlement exists, counsel is to proceed pursuant to paragraph (b); otherwise, counsel may proceed pursuant to paragraph (c).

Paragraph (b)(1) requires the permission of the court to withdraw in all circumstances when a party is entitled by law to be represented by counsel. Paragraph (b)(2) is intended to address the procedure for filing a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967) and *Commonwealth v. Santiago*, 978 A.2d 349 (Pa. 2009) when the party has a constitutional right to counsel. Paragraph (b)(3) is intended to address the procedure for filing a brief pursuant to *Commonwealth v. Turner*, 544 A.2d 927 (Pa. 1988) and *Commonwealth v. Finley*, 550 A.2d 213 (Pa. Super. 1988) when the party has a statutory or rule-based right to counsel. Notably, paragraph (b)(3)(ii) requires “a brief prepared pursuant to Pa.R.A.P. 2111,” which is intended to preclude the varied use of informal “letter briefs.” Paragraphs (b)(2)(ii) and (b)(3)(ii) standardize the form of filings pursuant to *Anders/Santiago* and *Turner/Finley*. The commentary accompanying the rule text refers readers to the substantive requirements for withdrawal as counsel pursuant to *Anders/Santiago* and *Turner/Finley*.

Paragraph (b)(4) sets forth the procedural requirements counsel must follow when seeking to withdraw pursuant to paragraph (b)(2) or (b)(3). This includes counsel informing the party of the party’s right to proceed *pro se* or retain private counsel. This paragraph is intended to codify procedural requirements found in case law, including *Commonwealth v. Muzzy*, 141 A.3d 509, 512 (Pa. Super. 2016) (party possesses a right to proceed *pro se* upon counsel’s filing of an application and brief to

withdraw). A 60-day deadline for action by the party is contained in paragraph (b)(4). Any other party is provided 14 days in paragraph (b)(5) to reply to the party’s response permitted by paragraph (b)(4). These deadlines are intended to establish a point in time in which the appellate court may proceed with disposition of the application to withdraw.

Paragraph (b)(6) addresses other grounds for withdrawal of counsel, that require permission of the court. An application to withdraw pursuant to paragraph (b)(6) also requires service on the party whom counsel represents in addition to all other parties. Because the reasons for withdrawal on other grounds may vary, this catch-all paragraph is non-specific as to further steps after the filing of an application with the appellate court. For example, some circumstances may require remand to the trial court, *e.g.*, irreconcilable conflict, and others may be addressed by the appellate court, *e.g.*, other counsel remain to represent the party.

In a change from prior practice, paragraph (b) permits withdrawal of counsel through substitution only with permission of the court, rather than by *praecipe*. The Committee believes this change is necessary to ensure that substitute counsel will assume representation of the party for all relevant appellate purposes and to minimize delays or disruptions of scheduling. Corollary amendments to Pa.R.A.P. 102 (defining “counsel of record”), 907(b), 1112(f), 1311(d), 1514(d), and 1602(d) will be required to reflect this change, if adopted.

Paragraph (c) governs the withdrawal procedures when counsel seeking to withdraw represents a party that is not entitled by law to be represented by counsel. Whether withdrawal of counsel may proceed by *praecipe* pursuant to paragraph (c)(1) or counsel is required to obtain permission of the court pursuant to paragraph (c)(2) depends upon the length of time following the docketing of the initiating action. The 30-day window in paragraphs (c)(1) and (c)(2) is derived from Pa.R.A.P. 907(b), 1112(f), 1311(d), 1514(d), and 1602(d). Unlike paragraph (b)(6), if a party is not entitled by law to be represented by counsel, then counsel may withdraw via *praecipe* pursuant to paragraph (c)(3) when substitute counsel has entered an appearance.

The Committee also proposes a definition of “substitute counsel” in paragraph (d) to ensure that counsel, who has entered an appearance for a limited purpose, is not considered “substitute counsel.”

Pa.R.A.P. 121(g) generally prohibits hybrid representation, but permits a party to file a *pro se* response to an application by counsel to withdraw as counsel of record. The Committee proposes revising the Official Note to Pa.R.A.P. 121(g) to add a reference to Pa.R.A.P. 120(b)(4). This commentary was not intended to suggest that a party’s opportunity to respond is limited to only merit-based reasons in Pa.R.A.P. 120(b)(4); a party may also respond when counsel seeks to withdraw on other grounds, as permitted in Pa.R.A.P. 120(b)(5).

All comments, concerns, and suggestions concerning this proposal are welcome.

[Pa.B. Doc. No. 21-504. Filed for public inspection April 2, 2021, 9:00 a.m.]

**Title 210—APPELLATE
PROCEDURE**

PART I. RULES OF APPELLATE PROCEDURE

[210 PA. CODE CHS. 1, 19 AND 21]

**Proposed Amendment of Pa.R.A.P. 102, 1926, 1931,
1951, 1952, 2132 and 2151**

The Appellate Court Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Pa.R.A.P. 102, 1926, 1931, 1951, 1952, 2132, and 2151 for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any reports, notes, or comments in the proposal have been inserted by the Committee for the convenience of those using the rules. They will neither constitute a part of the rules nor be officially adopted by the Supreme Court.

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All communications in reference to the proposal should be received by May 28, 2021. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

*By the Appellate Court
Procedural Rules Committee*

PATRICIA A. McCULLOUGH,
Chair

Annex A

TITLE 210. APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

ARTICLE I. PRELIMINARY PROCEDURES

CHAPTER 1. GENERAL PROVISIONS

IN GENERAL

Rule 102. Definitions.

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Appropriate security.—Security that meets the requirements of Pa.R.A.P. 1734 (appropriate security).

Certified Record.—**The original record certified by the clerk as the record on appeal.**

Children’s fast track appeal.—Any appeal from an order involving dependency, termination of parental rights, adoptions, custody, or paternity. See 42 Pa.C.S. §§ 6301

et seq.; 23 Pa.C.S. §§ 2511 *et seq.*; 23 Pa.C.S. §§ 2101 *et seq.*; 23 Pa.C.S. §§ 5321 *et seq.*; 23 Pa.C.S. §§ 5102 *et seq.*

Clerk.—[**Includes prothonotary**] **The filing office of the trial court or other government unit.**

* * * * *

Order.—Includes judgment, decision, decree, sentence, and adjudication.

Original Record.—**The original documents, exhibits, determinations, and transcripts filed with the clerk.**

Petition for allowance of appeal.—

(a) A petition under Pa.R.A.P. 1112 (appeals to the Supreme Court by allowance); or

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

* * * * *

Reargument.—Includes reconsideration and rehearing, and is requested through an application filed in accordance with Pa.R.A.P. 2541—2547.

Record on Appeal.—**The certified record transmitted by the clerk to the appellate court.**

Reproduced record.—That portion of the record which has been reproduced for use in an appellate court. The term includes any supplemental reproduced record.

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ARTICLE II. APPELLATE PROCEDURE

**CHAPTER 19. PREPARATION AND
TRANSMISSION OF RECORD AND RELATED
MATTERS**

RECORD ON APPEAL FROM LOWER COURT

Rule 1926. Correction or Modification of the **Certified Record.**

(a) If any difference arises as to whether the record truly discloses what occurred in the trial court, the difference shall be submitted to and settled by that court after notice to the parties and opportunity for objection, and the record made to conform to the truth.

* * * * *

Rule 1931. **Certification and** Transmission of the Record.

(a) *Time for transmission.*

(1) *General rule.*—Except as otherwise prescribed by this rule, the **original record [on appeal]**, including the transcript and exhibits necessary for the determination of the appeal, shall be **certified and transmitted by the clerk** to the appellate court within 60 days after the filing of the notice of appeal. If an appeal has been allowed or if permission to appeal has been granted, the record shall be transmitted as provided by Pa.R.A.P. 1122 (allowance of appeal and transmission of record) or by Pa.R.A.P. 1322 (permission to appeal and transmission of record), as the case may be. The appellate court may shorten or extend the time prescribed by this paragraph for a class or classes of cases.

(2) *Children’s fast track appeals.*—In a children’s fast track appeal, the **original record [on appeal]**, including the transcript and exhibits necessary for the determination of the appeal, shall be **certified and transmitted by the clerk** to the appellate court within 30 days after the filing of the notice of appeal. If an appeal has been allowed or if permission to appeal has been granted, the

record shall be transmitted as provided by Pa.R.A.P. 1122 (allowance of appeal and transmission of record) or by Pa.R.A.P. 1322 (permission to appeal and transmission of record), as the case may be.

(b) *Duty of trial court.*—After a notice of appeal has been filed, the judge who entered the order appealed from shall:

(1) comply with Pa.R.A.P. 1925 (opinion in support of order) [, shall];

(2) cause the official court reporter to comply with Pa.R.A.P. 1922 (transcription of notes of testimony) or shall otherwise [settle] approve a statement of the evidence or proceedings as prescribed by [this chapter,] Pa.R.A.P. 1923 (statement in absence of transcript) and Pa.R.A.P. 1924 (agreed statement of record); and [shall]

(3) take any other action necessary to enable the clerk to assemble and transmit the record as prescribed by this rule.

(c) *Duty of clerk to certify and transmit the original record.*

(1) *Certification.* When the original record is complete for purposes of the appeal, the clerk [of the trial court] shall [transmit it to the prothonotary of the appellate court] assemble and certify its contents.

(2) *Numbering and list of documents.* The clerk [of the trial court] shall number the documents comprising the original record. Thereafter, the clerk shall prepare and transmit with the certified record a list of the documents correspondingly numbered and identified with sufficient specificity to allow the parties on appeal to identify each document and whether it is marked as confidential, so as to determine whether the record on appeal is complete.

(3) *PACFile transmission requirements.* If the certified record is to be transmitted using PACFile, then the entire record shall be consecutively paginated and compiled into the fewest number of PDF files as practicable. The PDF files shall be text searchable and paginated so that the page numbers displayed by the PDF reader exactly match the pagination of the certified record.

(4) *Confidential information.* Any Confidential Information Forms and the “Unredacted Version” of any pleadings, documents, or other legal papers where a “Redacted Version” was also filed shall be separated either physically or electronically and transmitted to the [appellate court] prothonotary. Whatever is confidential shall be labeled as such. If any case records or documents were sealed in the [lower] trial court, the list of documents comprising the certified record shall specifically identify such records or documents as having been sealed in the [lower] trial court.

(5) *Exhibits of unusual bulk or weight.* Documents of unusual bulk or weight and physical exhibits other than documents shall not be transmitted by the clerk unless [he or she is] directed to do so by a party or by the prothonotary [of the appellate court]. A party must make advance arrangements with the clerk for the transportation and receipt of exhibits of unusual bulk or weight.

[Transmission of the record is effected when the clerk mails or otherwise forwards the record to the prothonotary.]

(6) *Transmission.* The clerk shall transmit the certified record to the prothonotary by mail, PACFile, or other means deemed acceptable by the prothonotary. The clerk [of the trial court] shall indicate, by endorsement on the face of the certified record or otherwise, the date upon which the certified record is transmitted to the [appellate court] prothonotary.

(d) [*Service*] *Notice of the list of [record] documents.*—[The clerk of the trial court shall, at the time of the transmittal of the record to the appellate court prothonotary,] At the time of transmission pursuant to paragraph (c)(6), the clerk shall [mail] send a copy of the list of [record] documents to all counsel of record, or if unrepresented by counsel, to the parties at the address they have provided to the clerk. The clerk shall note on the docket the giving of such notice.

(e) *Multiple appeals.*—Where more than one appeal is taken from the same order, it shall be sufficient to transmit a single certified record, without duplication.

(f) *Inconsistency between list of [record] documents and documents actually transmitted.*—If the clerk [of the trial court] fails to transmit to the [appellate court] prothonotary all of the documents identified in the list of [record] documents, such failure shall be deemed a breakdown in the processes of the court. Any omission shall be corrected promptly pursuant to Pa.R.A.P. 1926 (correction or modification of the certified record) and shall not be the basis for any [penalty] sanction against a party.

(g) *Transmission and remand of records through PACFile.*—Records may be transmitted and remanded through PACFile. The applicable general rules of court and court policies that implement the rules shall continue to apply to the transmission and remand of records on appeal regardless of whether a record is transmitted or remanded through PACFile. The transmission of a record through PACFile by a court or other government unit to an appellate court shall not excuse the court or other government unit from submitting a paper version of the record transmitted through PACFile to the appellate court should the appellate court require it.

(1) The transmission or remand of a record through PACFile by a court or other government unit shall constitute the transmission or remand of the record under the Pennsylvania Rules of Appellate Procedure.

(2) The transmission or remand of a record through PACFile is effectuated when a court or other government unit utilizes PACFile to transmit or give notice of the remand or remittal of the record to a court or other government unit.

(3) The date of the transmission or remand of a record through PACFile by a court or other government unit shall be noted on the docket of the transmitting or remanding court or other government unit, and on the docket of the receiving court or other government unit.

(4) Upon the transmission or remand of a record through PACFile, the record shall be considered to be in the possession of the receiving court or other government unit until the record is transmitted through PACFile to another court or government unit, or notice of remand or remittal to another court or other government unit is given.

(5) If a Rule of Appellate Procedure or court policy requires that a court transmit, or remand or remit a record to another court or other government unit, the transmission or notice of remand or remittal to the receiving court or other government unit may also be effectuated through PACFile.

(6) Any documents sealed in a court or other government unit may be transmitted or remanded through PACFile only in a manner that restricts access to the sealed documents or filings to the court or other government unit and registered users of PACFile who are authorized to view the sealed documents.

(7) The appellate courts shall retain control over access to records transmitted through PACFile, and may permit such electronic access in whole or in part.

Official Note: Pa.R.A.P. 1926 provides the means to resolve any disagreement between the parties as to what should be included in the record on appeal.

When PACFile is used to transmit the certified record, paragraph (c)(3) requires the certified record to be consecutively pagination and compiled into the fewest number of .pdf files, as practicable. A single .pdf file containing the entire certified record is preferred; however, the entire record may require multiple .pdf files to accommodate file-size limitations, to separate confidential information, or to transmit belated items, e.g., transcribed notes of testimony, Pa.R.A.P. 1925(a) opinions, supplemental record. If the certified record is divided into several .pdf files for transmission, then pagination must continue from one .pdf filed to the next so that the entire certified record is consecutively paginated across the several .pdf files.

Paragraph (c)(4)—For the definition of “case records,” see the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* available at www.pacourts.us/public-records.

Notice of electronic remand of the record is for jurisdictional purposes.

RECORD ON PETITION FOR REVIEW OF ORDERS OF GOVERNMENT UNITS OTHER THAN COURTS

Rule 1951. Original Record [Below] in Proceedings on Petition for Review.

(a) *Composition of the record.*—Where under the applicable law the questions raised by a petition for review may be determined by the court in whole or in part upon the **original** record before the government unit, such record shall consist of:

- (1) The order or other determination of the government unit sought to be reviewed.
- (2) The findings or report on which such order or other determination is based.
- (3) The pleadings, evidence and proceedings before the government unit.

(b) *Omissions from or misstatements of the original record [below].*—If anything material to any party is omitted from the **original** record or is misstated therein, the parties may at any time supply the omission or correct the misstatement by stipulation, or the court may at any time direct that the omission or misstatement be corrected and, if necessary, that a supplemental **original** record be prepared and filed. Failure of the agency to transmit part of the record of agency proceedings to the appellate court shall not be the basis for a finding of waiver.

(c) *Reasons for order.*—The government unit shall comply with the provisions of Rule 1925 (opinion in support of order) where the petition for review relates to a quasijudicial order.

Official Note: This rule and [Rule] Pa.R.A.P. 1952 (filing of record in response to petition for review) are also applicable when permission to appeal from an order of a government unit other than a court has been granted. See [Rule] Pa.R.A.P. 1322 (permission to appeal and transmission of record).

Rule 1952. Filing **Certification, and Transmission of Original Record** in Response to Petition for Review.

(a) *Time and notice.*—Where under the applicable law the question raised by a petition for review may be determined in whole or in part upon the **original** record before the government unit, the government unit shall **certify and file the original** record with the prothonotary of the court named in the petition for review within 40 days after service upon it of the petition. The court may shorten or extend the time prescribed in this paragraph. The prothonotary shall give notice to all parties of the date on which the record is filed.

(b) *Certificate of record.*—The government unit shall certify the contents of the **original** record and a list of all documents, transcripts of testimony, exhibits and other material comprising the record. The government unit shall (1) arrange the documents to be certified in chronological order, (2) number them, and (3) affix to the right or bottom edge of the first page of each document a tab showing the number of that document. These shall be bound and shall contain a table of contents identifying each document in the record. If any documents or case records were maintained as confidential in the government unit, the list of documents that comprise the record shall specifically identify such documents or the entire record as having been maintained as confidential, and the government unit shall either physically or electronically separate such documents. The certificate shall be made by the head, chairman, deputy, or secretary of the government unit. The government unit may file the entire record or such parts thereof as the parties may designate by stipulation filed with the government unit. The original [papers] **documents** in the government unit or certified copies thereof may be filed.

Instead of filing the **certified** record or designated parts thereof, the government unit may file a certified list of all documents, transcripts of testimony, exhibits, and other material comprising the **original** record, or a certified list of such parts thereof as the parties may designate, adequately describing each, and the filing of the certified list shall constitute filing of the record. If any documents or case records were maintained as confidential in the government unit, the list of documents that comprise the **certified** record shall specifically identify such documents or the entire record as having been maintained as confidential. The parties may stipulate

that neither the record nor a certified list be filed with the court. The stipulation shall be filed with the prothonotary of the court, and the date of its filing shall be deemed the date on which the record is filed. If a certified list is filed, or if the parties designate only parts of the original record for filing **and certification**, or stipulate that neither the **original** record nor a certified list be filed, the government unit shall retain the **original** record or parts thereof. Upon request of the court or the request of a party, the **original** record or any part thereof thus retained shall be [**transmitted to**] **certified and filed with** the court notwithstanding any prior stipulation. All parts of the **original** record retained by the government unit shall be a part of the record on [**review**] **appeal** for all purposes.

(c) *Notice to counsel of contents of certified record.*—At the time of transmission of the **certified** record to the appellate court, the government unit shall send a copy of the list of the contents of the certified record to all counsel of record, or, if a party is unrepresented by counsel, to that party at the address provided to the government unit.

(d) *PACFile transmission requirements.* **Transmission of the certified record using PACFile shall be in accordance with Pa.R.A.P. 1931(g).**

[*Official Note:* The addition of paragraph (c) in 2012 requires government units other than courts to notify counsel of the contents of the certified record. This is an extension of the requirement in Pa.R.A.P. 1931 (transmission of the record) that trial courts give such notice.]

CHAPTER 21. BRIEFS AND REPRODUCED RECORD

CONTENT OF BRIEFS

Rule 2132. References in Briefs to the Record.

[(a) *General rule.*—References in the briefs to parts of the record appearing in a reproduced record filed with the brief of the appellant (see Rule 2154(b) (large records)) shall be to the pages in the reproduced record where those parts appear, e.g.: “(R. 26a).” If the record is reproduced after the briefs are served in advance typewritten or page proof form (see Rule 2185(c) (definitive copies)), the brief may also contain references to the pages of the parts of the original record, e.g.: “(Tr. 279-280; R. 26a-27a).”

(b) *References to unreproduced record.*—If references are made in the briefs to parts of the original record not reproduced, the references shall be to the parts of the record involved, e.g., “(Answer p. 7),” “(Motion for Summary Judgment p. 2),” “(Transcript p. 279-280),” “(Notes of Testimony p. 24-26).” Where the court or other government unit below has numbered the original record for purposes of certification to the appellate court, the references shall be to such certified record pages, e.g., “(Certified Record pp. 26-27).” Intelligible abbreviations may be used. Any relevant reference in the briefs to unreproduced pleadings, evidence, rulings or charge shall be directly quoted, with the page reference to the original record.

Official Note: Based in part upon former Superior Court Rule 52 and former Commonwealth Court Rule 111B.]

(a) *Reference to reproduced record.*—Unless otherwise directed by an appellate court, reference in the briefs to parts of the record appearing in a reproduced record filed with the brief of the appellant shall be to the pages in the reproduced record where those parts appear, e.g., “(R.R. 26a).”

(b) *Large records.*—If the record is reproduced after the briefs are served in advance text of briefs, as provided for in Pa.R.A.P. 2185(c), the brief may also contain references to the pages of the parts of the unreproduced record, e.g., “(R. 26a-27a; N.T., 4/20/2020, at 48-49).”

(c) *Reference to certified record.*—Where the clerk has paginated the original record for purposes of certification, reference shall be to such certified record pages, e.g. “C.R., at 26-27.” Otherwise, reference shall be to the documents contained in the original record, e.g., “(Answer at 7, ¶ 3),” “(Tr. Ct. Op. at 2),” “(N.T., 4/20/2020, at 48-49).” Intelligible abbreviations may be used.

(d) *Parallel reference.*—An appellate court, by rule or specific order, may direct that reference in the briefs to parts of the record contain both reference to the reproduced record and the certified record. In the absence of such direction, a party may include parallel references to the certified record in addition to the references to the reproduced record.

Official Note: In matters involving large records, Pa.R.A.P. 2185(c) requires the filing of definitive copies of briefs within 14 days after the filing of the reproduced record. For the deferred filing of a reproduced record for large records, see Pa.R.A.P. 2154(b). Those briefs must include references to the reproduced record and may contain parallel references to the certified record.

Where the reproduced record has been dispensed with pursuant to Pa.R.A.P. 2151, reference to the record should be made to the certified record, as specified in paragraph (c).

An appellate court may direct the use of parallel references to the reproduced and the certified record pursuant to paragraph (d). Without direction, a party may elect to use parallel citations, provided that any referenced part of the certified record is also contained in the reproduced record.

CONTENT OF REPRODUCED RECORD

Rule 2151. Consideration of Matters on the [**Original**] **Certified** Record Without the Necessity of Reproduction.

[(a) *General rule.*—An appellate court may by rule of court applicable to all cases, or to classes of cases, or by order in specific cases under Subdivision (d) of this rule, dispense with the requirement of a reproduced record and permit appeals and other matters to be heard on the original record, with such copies of the record, or relevant parts thereof, as the court may require.

(b) *In forma pauperis.*—If leave to proceed *in forma pauperis* has been granted to a party, such party shall not be required to reproduce the record.

(c) *Original hearing cases.*—When under the applicable law the questions presented may be determined in whole or in part upon the record made

before the appellate court, a party shall not be required to reproduce the record.

(d) *On application to the court.*—Any appellant may within 14 days after taking an appeal file an application to be excused from reproducing the record for the reason that the cost thereof is out of proportion to the amount involved, or for any other sufficient reason. Ordinarily leave to omit reproduction of the record will not be granted in any case where the amount collaterally involved in the appeal is not out of proportion to the reproduction costs.

Official Note: Based on former Supreme Court Rules 35D, 35E and 61(f), former Superior Court Rules 51 (last sentence) and 52, and former Commonwealth Court Rules 81, 110B and 111A. Subdivision (a) is new and is included in recognition of the developing trend toward sole reliance on the original record.

See Rule 2189 for procedure in cases involving the death penalty.]

(a) General rule.— By rule of court applicable to all cases, or to classes of cases, or by order in specific cases under paragraph (d), an appellate court may dispense with the requirement of a reproduced record and permit appeals and other matters to be heard on the certified record.

(b) In forma pauperis.—A party shall not be required to reproduce the record if the party has been granted leave to proceed in forma pauperis.

(c) Original hearing cases.—A party shall not be required to reproduce the record when, under the applicable law, the questions presented may be determined in whole or in part upon the record made before the appellate court.

(d) On application to the court.—Any appellant may file an application within 14 days after taking an appeal to be excused from reproducing the record for sufficient reason.

(e) PACFile.—A party shall not be required to reproduce the record when the original record was transmitted by the clerk using PACFile in accordance with the requirements of Pa.R.A.P. 1931.

Official Note: For reference to the record in briefs, see Pa.R.A.P. 2132.

For paragraph (d), sufficient reasons may include, but are not limited to, reproductions costs disproportionate to the amount in dispute or when the certified record is otherwise compiled, paginated, and electronically accessible to the appellate court and parties.

For paragraph (e), a party has the option of filing a reproduced record. If the party elects to rely upon the certified record, the party should cite the record pursuant to Pa.R.A.P. 2132(c).

For procedure in cases involving the death penalty, see Pa.R.A.P. 2189.

PUBLICATION REPORT

The Appellate Court Procedural Rules Committee is considering proposing the amendment of Pennsylvania Rules of Appellate Procedure 102, 1926, 1931, 1951, 1952, 2132, and 2151 to facilitate reference to the certified record transmitted to the appellate court using PACFile. This alternative form of reference to the record is in-

tended to allow a party to forgo the necessity of preparing and filing a reproduced record.

The Committee was asked to consider whether there was a need for a separate reproduced record when an appellate court may have access to a digital version of the original record via PACFile. Preliminarily, the Committee observed that the reproduced record, when properly prepared, allows the parties to organize materials, is easier to use than the original record, and is often smaller in volume than the original record. However, there are instances where the reproduced record is packed with irrelevant materials and essentially replicates the original record, or fails to include the pertinent documents necessary to effectuate appellate review. The obvious benefits of removing the reproduced record requirement is greater overall efficiency by eliminating duplicative materials being transmitted, together with savings in time and costs. Accordingly, the Committee favored eliminating the reproduced record when there is a digital version of the original record transmitted through PACFile.

Two attributes of a sufficient substitute are the location of documents and the reference to documents. Concerns with using a digital original record include the overall volume of material that is included, but might not be relevant to the issue on appeal. The size of the record can be challenging for users to locate information through perusal. There must also be a unique reference to each location so that parties and the court can cite to the same record. The Committee concluded that a substitute for the reproduced record needs to be paginated to permit quick location of specified documents and a universal reference for that location.

Currently, there is no requirement that the digital original record be paginated. The record is often transmitted to the appellate courts in parts and by different departments of the trial court or other government unit. Thus, the Committee proposes to amend Pa.R.A.P. 1931(c) to require that the entire record be consecutively paginated, converted into the fewest number of PDF files as practicable, and that the “PDF files shall be text searchable and paginated so that the page numbers displayed by the PDF reader exactly match the pagination of the certified record.” To improve readability of the rule, paragraph (c) is further delineated into subparagraphs (1)—(6). The Committee specifically invites comments from affected stakeholders on this aspect of the proposal.

Included within Pa.R.A.P. 1931 is proposed new paragraph (g). The paragraph is part of another, larger proposal concerning rules implementing PACFile in the appellate courts being contemporaneously published for comment. Paragraph (g) is included in this proposal to provide additional context for the reader.

The Committee also proposes the definitions of “original record,” “certified record,” and “record on appeal.” These terms have been used inconsistently and, at times, interchangeably. The definitions are intended to enhance uniformity. Further, the rules are revised to clarify that the certified record is transmitted by the trial court or other government to the appellate court; it is not filed.

With pagination of the certified record transmitted via PACFile, the Committee proposes amendment of Pa.R.A.P. 2132 (Reference to the Record in Briefs). Paragraphs (a) and (b) have been revised as new paragraphs (a)—(c). Paragraph (d) is new and permits the appellate court to require parallel references to both the reproduced record and the certified record. This paragraph is intended to accommodate current practice of appellate court jurists who may rely solely on the certified record rather

than the reproduced record. The paragraph also permits the parties to provide parallel references.

The Committee proposes amending Pa.R.A.P. 2151 by restating the substance of paragraphs (a)-(d) and adding new paragraph (e). The new paragraph will relieve a party of the requirement of filing a reproduced record when the certified record has been transmitted using PACFile in accordance with Pa.R.A.P. 1931. The proffered reasons for seeking relief from filing a reproduced record have been removed from paragraph (d) and placed in the Official Note. Added to that commentary is the ability to seek relief pursuant to paragraph (d) if a party is directed to file a reproduced record.

All comments, concerns, and suggestions concerning this proposal are welcome.

[Pa.B. Doc. No. 21-505. Filed for public inspection April 2, 2021, 9:00 a.m.]

Title 210—APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

[210 PA. CODE CHS. 1, 19, 21 AND 27]

Proposed Amendment of Pa.R.A.P. 102, 121, 122, 125, 1921, 1931, 2173, 2174 and 2701 with Correlative Amendment of 120, 123, 124, 551, 554, 556, 902, 906, 907, 908, 1101, 1102, 1111, 1115, 1121, 1301, 1311, 1312, 1321, 1571, 1734, 1932, 1934, 1941, 1952, 1973, 2152, 2153, 2156, 2171, 2176, 2541, 2546, 2571, 3101, 3114 and 3901 (omitted)

The Appellate Court Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Proposed Amendment of Pa.R.A.P. 102, 121, 122, 125, 1921, 1931, 2173, 2174, and 2701 with Correlative Amendment of 120, 123, 124, 551, 554, 556, 902, 906, 907, 908, 1101, 1102, 1111, 1115, 1121, 1301, 1311, 1312, 1321, 1571, 1734, 1932, 1934, 1941, 1952, 1973, 2152, 2153, 2156, 2171, 2176, 2541, 2546, 2571, 3101, 3114, and 3901 (omitted) for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any reports, notes, or comments in the proposal have been inserted by the Committee for the convenience of those using the rules. They will neither constitute a part of the rules nor be officially adopted by the Supreme Court.

Additions to the text of the proposal are bolded and underlined; deletions to the text are bolded and bracketed.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

Karla M. Shultz, Counsel
Appellate Court Procedural Rules Committee
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
PO Box 62635
Harrisburg, PA 17106-2635
FAX: 717-231-9551
appellaterules@pacourts.us

All communications in reference to the proposal should be received by May 28, 2021. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

*By the Appellate Court
Procedural Rules Committee*

PATRICIA A. McCULLOUGH,
Chair

Annex A

TITLE 210. RULES OF 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:

Action.—Any action or proceeding at law or in equity.

Argument.—Where required by the context, the term includes submission on briefs.

Administrative office.—The Administrative Office of Pennsylvania Courts.

Appeal.—Any petition or other application to a court for review of subordinate governmental determinations. The term includes an application for *certiorari* under 42 Pa.C.S. § 934 (writs of *certiorari*) or under any other provision of law. Where required by the context, the term includes proceedings on petition for review and petition for specialized review.

[Official Note: Under these rules a “subordinate governmental determination” includes an order of a trial court. The definition of “government unit” includes courts, and the definition of “determination” includes action or inaction by (and specifically an order entered by) a court or other government unit. In general, any appeal now extends to the whole record, with like effect as upon an appeal from a judgment entered upon the verdict of a jury in an action at law and the scope of review of an order on appeal is not limited as on broad or narrow *certiorari*. See 42 Pa.C.S. § 5105(d) (scope of appeal).]

Appellant.—Includes petitioner for review or specialized review.

Appellate court.—The Supreme Court, the Superior Court, or the Commonwealth Court.

Appellee.—Includes a party named as respondent in a petition for review or specialized review.

Application.—Includes a petition or a motion.

Appropriate security.—Security that meets the requirements of Pa.R.A.P. 1734 (appropriate security).

Children’s fast track appeal.—Any appeal from an order involving dependency, termination of parental rights, adoptions, custody, or paternity. See 42 Pa.C.S. §§ 6301 *et*

seq.; 23 Pa.C.S. §§ 2511 *et seq.*; 23 Pa.C.S. §§ 2101 *et seq.*; 23 Pa.C.S. §§ 5321 *et seq.*; 23 Pa.C.S. §§ 5102 *et seq.*

Clerk.—[Includes prothonotary] The filing office of the trial court or other government unit.

Counsel of record.—All attorneys who were counsel of record in the trial court at the time of the filing of the notice of appeal will be counsel of record in the appellate courts. For a criminal defendant, the representation extends up to and including the filing of a petition for allowance of appeal and the handling of such an appeal if granted, unless (1) substitute counsel has entered an appearance and is expressly identified in the *praecipe* as substitute, rather than additional, counsel; (2) the Court of Common Pleas has entered on the docket an order permitting the attorney to withdraw; or (3) an application for withdrawal is granted by the appellate court.

Determination.—Action or inaction by a government unit which action or inaction is subject to judicial review by a court under Section 9 of Article V of the Constitution of Pennsylvania or otherwise. The term includes an order entered by a government unit.

Docket entries.—Includes the schedule of proceedings of a government unit.

Document.—A submission to the court, including applications, briefs, reproduced records, or other filings, that is required or permitted; court orders, opinions, and notices; but excluding any submission related to:

(1) Appeals pursuant to the Abortion Control Act under Pa.R.A.P. 3801—3814; and

(2) Applications pursuant to the Wiretap Act under 210 Pa. Code §§ 65.51—65.78.

Electronic filing.—The electronic submission of documents and the acceptance of documents by the prothonotary through PACFile.

Filing party.—An authorized participant who files a document through PACFile.

General rule.—A rule or order promulgated by or pursuant to the authority of the Supreme Court.

Government unit.—The Governor and the departments, boards, commissions, officers, authorities, and other agencies of the Commonwealth, including the General Assembly and its officers and agencies and any court or other officer or agency of the unified judicial system, and any political subdivision or municipal or other local authority or any officer or agency of any such political subdivision or local authority. The term includes a board of arbitrators whose determination is subject to review under 42 Pa.C.S. § 763(b) (awards of arbitrators).

Hybrid representation.—An attempt to act as counsel for oneself when one has counsel of record.

Judge.—Includes a justice of the Supreme Court.

Matter.—Action, proceeding, or appeal. The term includes a petition for review or petition for specialized review.

Order.—Includes judgment, decision, decree, sentence, and adjudication.

Original document.—A document filed either as a paper document or electronically shall be deemed the original document.

PACFile.—The system for electronic filing with the appellate courts as developed and administered by the Administrative Office.

Petition for allowance of appeal.—

(a) A petition under Pa.R.A.P. 1112 (appeals to the Supreme Court by allowance); or

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

Petition for permission to appeal.—A petition under Pa.R.A.P. 1311 (interlocutory appeals by permission).

Petition for review.—A petition under Chapter 15.

Petition for specialized review.—A petition under Chapter 16.

President judge.—When applied to the Supreme Court, the term means the Chief Justice of Pennsylvania.

Prothonotary.—The filing office of the appellate court.

Pro se.—A party representing himself or herself without counsel.

Proof of service.—Includes acknowledgment of service endorsed upon a pleading.

Quasijudicial order.—An order of a government unit, made after notice and opportunity for hearing, which is by law reviewable solely upon the record made before the government unit, and not upon a record made in whole or in part before the reviewing court.

Reargument.—Includes reconsideration and rehearing, and is requested through an application filed in accordance with Pa.R.A.P. 2541—2547.

Reproduced record.—That portion of the record [**which**] **that** has been reproduced for use in an appellate court. The term includes any supplemental reproduced record.

Rule of court.—A rule promulgated by a court regulating practice or procedure before the promulgating court(s).

Trial court.—The court from which an appeal is first taken or to be taken.

Verified [statement] document.—A document filed with a **prothonotary or clerk** under these rules containing statements of fact and a statement by the signatory that it is made subject to the penalties of 18 Pa.C.S. § 4904 (unsworn falsification to authorities).

Official Note: Based on 42 Pa.C.S. § 102 (definitions). The definition of “determination” is not intended to affect the scope of review provided by 42 Pa.C.S. § 5105(d) (scope of appeal) or other provision of law.

Under these rules a “subordinate governmental determination” includes an order of a trial court. The definition of “government unit” includes courts, and the definition of “determination” includes action or inaction by (and specifically an order entered by) a court or other government unit. In general, any appeal now extends to the whole record, with like effect as upon an appeal from a judgment entered upon the verdict of a jury in an action at law and the scope of review of an order on appeal is not limited as on broad or narrow certiorari. See 42 Pa.C.S. § 5105(d) (scope of appeal).

DOCUMENTS GENERALLY

Rule 121. Filing and Service.

(a) **Filing.**—[**Papers**] **Documents** required or permitted to be filed in an appellate court shall be filed with

the prothonotary. Filing may be accomplished by mail addressed to the prothonotary, but except as otherwise provided by these rules, filing shall not be timely unless the [**papers**] **documents** are received by the prothonotary within the time fixed for filing. If an application under these rules requests relief [**which**] **that** may be granted by a single judge, a judge in extraordinary circumstances may permit the application and any related [**papers**] **documents** to be filed with that judge. In that event the judge shall note thereon the date of filing and shall thereafter transmit such [**papers**] **documents** to the [**clerk**] **prothonotary**.

(b) *Service of [all papers required] documents.*—Copies of all [**papers**] **documents** filed by any party and not required by these rules to be served by the prothonotary shall, concurrently with their filing, be served by a party or person acting on behalf of that party or person on all other parties to the matter. Service on a party represented by counsel shall be made on counsel.

(c) *Manner of service.*—Service may be **by the following**:

(1) eService through PACFile pursuant to Pa.R.A.P. 125(d);

[**(1) by**] **(2)** personal service, which includes delivery of the copy to a [**clerk or other**] responsible person at the office of the person served, but does not include inter-office mail;

[**(2) by**] **(3)** first class, express, or priority United States Postal Service mail; which service by mail is complete on mailing;

[**(3) by**] **(4)** commercial carrier with delivery intended to be at least as expeditious as first class mail if the carrier can verify the date of delivery to it; **or**

[**(4) by**] **(5)** facsimile or [**e-mail**] **email** with the agreement of the party being served as stated in the certificate of service[;];

(d) *Proof of service.*—[**Papers presented**] **Documents submitted** for filing shall contain an acknowledgement of service by the person served[,] or proof of service certified by the person who made service. Acknowledgement or proof of service may appear on or be affixed to the [**papers**] **documents** filed. The [**clerk**] **prothonotary** may permit [**papers**] **documents** to be filed without acknowledgement or proof of service but shall require such to be filed promptly thereafter.

(e) *Additional time after service of documents in paper format by mail and commercial carrier.*—Whenever a party is required or permitted to do an act within a prescribed period after service of a [**paper**] **document** upon that party (other than an order of a court or other government unit) and the [**paper**] **document** is served by United States mail or by commercial carrier, three days shall be added to the prescribed period.

(f) *Date of filing for incarcerated persons.*—A *pro se* filing submitted by a person incarcerated in a correctional facility is deemed filed as of the date of the prison postmark or the date the filing was delivered to the prison authorities for purposes of mailing as documented by a properly executed prisoner cash slip or other reasonably verifiable evidence.

(g) *Hybrid representation.*—Where there is counsel of record, a party may file only the following documents *pro se*:

[**(i)**] **(1)** a notice of appeal;

[**(ii)**] **(2)** a request to change or remove counsel;

[**(iii)**] **(3)** a response to a motion to withdraw that has been filed by counsel of record;

[**(iv)**] **(4)** a complaint that existing counsel has abandoned the party; or

[**(v)**] **(5)** an application to file a petition for allowance of appeal *nunc pro tunc*.

Any other document that a party attempts to file *pro se* will be noted on the docket but not accepted for filing. This rule is not intended to provide an independent basis for jurisdiction where it does not otherwise exist.

Official Note: Paragraph (a)—The term “related [**papers**] **documents**” in paragraph (a) of this rule includes any appeal [**paper**] **document** required by Pa.R.A.P. 1702 (stay ancillary to appeal) as a prerequisite to an application for a stay or similar relief.

Paragraph (c)—An acknowledgement of service may be executed by an individual other than the person served, *e.g.*, by a [**clerk or other**] responsible person.

Paragraph (d)—**For the necessity of a proof of service for documents filed through PACFile, see Pa.R.A.P. 125(d).** With respect to appearances by new counsel following the initial docketing of appearances pursuant to paragraph (d) of this rule, [**please note**] **see** the requirements of Pa.R.A.P. 120 (entry of appearance).

Paragraph (e)—Paragraph (e) of the rule does not apply to the filing of a notice of appeal, a petition for allowance of appeal, a petition for permission to appeal, or a petition for reconsideration or re-argument, since under these rules the time for filing such [**papers**] **documents** runs from the entry and service of the related order, nor to the filing of a petition for review or a petition for specialized review, which are governed by similar considerations. However, these rules permit the filing of such notice and petitions (except a petition for reconsideration or re-argument) in the local county (generally in the county court house; otherwise in a post office), thus eliminating a major problem under the prior practice. The amendments to Pa.R.A.P. 903(b), 1113(b) and 1512(a)(2) clarified that paragraph (e) does apply to calculating the deadline for filing cross-appeals, cross-petitions for allowance of appeal, and additional petitions for review or specialized review.

Paragraph (f)—This recognizes the holding in *Smith v. Board of Probation and Parole*, 683 A.2d 278, 281 (Pa. 1996) (adopting the prisoner mailbox rule to determine date of filing of a petition for review). *Smith* adopted the reasoning of the United States Supreme Court in *Houston v. Lack*, 487 U.S. 266, 270-71 (1988). *See also Commonwealth v. Jones*, 700 A.2d 423, 426 (Pa. 1997) (extending prisoner mailbox rule to filing of a notice of appeal).

Paragraph (g)—The rule on hybrid representation is premised on *Commonwealth v. Ellis*, 626 A.2d 1137, 1139-40 (Pa. 1993). *See* 210 Pa. Code § 65.24. If a *pro se* notice of appeal is filed, it will satisfy the timeliness requirement for the filing of a notice of appeal. Counsel of record will, however, be obligated to prosecute that appeal. There are four other instances in which *pro se*

documents will be accepted by an appellate court for filing; a request by the party to change or remove counsel; a response to counsel's request to withdraw; a complaint that existing counsel has abandoned the party; and a *pro se* petition for *nunc pro tunc* permission to file a petition for allowance of appeal under Pa.R.A.P. 1113(d). All other documents will be noted on the docket as received by the [**appellate court prothonotary's office**] **prothonotary** but will not be accepted for filing; instead, the *pro se* document will be forwarded to counsel of record with, if the court desires, direction for counsel to respond.

Rule 122. Content and Form of Proof of Service of Documents Filed in an Appellate Court.

(a) *Content.*—A proof of service shall contain a statement of the date and manner of service and of the names of the persons served.

(b) *Form.*—Each name and address shall be separately set forth in the form of a mailing address, including applicable zip code, regardless of the actual method of service employed. The proof of service shall also show the telephone number, the party represented, and, where applicable, an [**e-mail**] **email** or facsimile address. The name, address, and telephone number of the serving party shall be similarly set forth, followed by the attorney's registration number. A proof of service may be in substantially the following form:

I hereby certify that I am this day serving the foregoing document upon the persons and in the manner indicated below, which service satisfies the requirements of Pa.R.A.P. 121:

eService by PACFile on the following:

Name
Email address
Telephone number
Mailing address
(Party represented)

Service by first class mail addressed as follows:

Name
 Telephone number
 Mailing address
 (Party represented)

Acceptance of service endorsed by the following:

Name[,]
 Telephone number
 Mailing address
 (Party represented)

Service in person as follows:

Name[,]
 Telephone number
 Street address
 Mailing address (if different)
 (Party represented)

Service by commercial carrier as follows:

Name of commercial carrier
 Addressee's name[,]
 Telephone number
 Street address
 Mailing address (if different)
 (Party represented)

Service by [**e-mail**] **email** at **the** following:

[**E-mail**] **Email** address, with agreement of:
 Name[,]
 Telephone number
 Mailing address
 (Party represented)

Service by facsimile at **the** following:

Fax number with the agreement of:
 Name[,]
 Telephone number
 Mailing address
 (Party represented)

Date:

(S) _____
 Name[,]
 Telephone number
 (Attorney Registration No. 00000)
 Mailing address
 (Party represented)

Official Note: Under 18 Pa.C.S. § 4904 (unsworn falsification to authorities) a knowingly false proof of service constitutes a misdemeanor of the second degree.

Practitioners are advised that email service and eService through PACFile are not the same. Email service pursuant to Pa.R.A.P. 121(c)(5) is permitted upon the agreement between the parties to accept such service and is completed when the document is emailed by a party. For eService through PACFile pursuant to Pa.R.A.P. 125(d), PACFile provides electronic notification to attorneys and other parties participating via PACFile. EService is complete for purposes of Pa.R.A.P. 121(c)-(d) when that document has been submitted.

Rule 125. [**Electronic**] Filing and Service of Documents **through PACFile.**

[**Electronic filing of documents in the appellate courts shall be through the PACFile appellate court electronic filing system. Electronic filing of documents shall be governed by Administrative Orders of the Supreme Court of Pennsylvania, which may be found at <http://ujportal.pacourts.us/refdocuments/judicialorder.pdf>.**

Official Note: This is an interim rule permitting electronic filing of documents in the Pennsylvania appellate courts. Initially, electronic filing will be available only in the Supreme Court. Subsequently, electronic filing will become available in the Superior and Commonwealth Courts. After experience is gained with electronic filing, the Pennsylvania Rules of Appellate Procedure will be amended where needed and as appropriate.]

(a) Participation in PACFile.

(1) Participation by attorneys.

(i) Unless otherwise prohibited, an attorney shall be permitted to participate in PACFile by establishing an account through procedures established by the Administrative Office.

(ii) Effective _____, _____, participation by attorneys in PACFile, unless otherwise prohibited, is mandatory. Upon application and a showing of good cause, an appellate court may exempt an attorney from mandatory participation.

(2) Participation by non-attorneys.

(i) Unless otherwise prohibited, a non-attorney shall be permitted to participate in PACFile through an authorization process established by the Administrative Office of Pennsylvania Courts.

(ii) Participation by non-attorneys in PACFile is optional.

(3) To participate in PACFile, an attorney shall establish an account or a non-attorney shall obtain authorization from the Administrative Office of Pennsylvania Courts. Participation includes acceptance of service electronically of any document filed in PACFile and the email service of advance text of briefs under Pa.R.A.P. 2185(a) and (c), and 2187(b), if the record is being reproduced under Pa.R.A.P. 2154(b) (large records).

(4) An attorney or non-attorney who participates in PACFile, including *amicus curiae*, is authorized to file a permitted document in an electronic format. Service upon an attorney or non-attorney who participates in PACFile shall be done electronically.

(5) Participation in PACFile shall not include access via PACFile to documents submitted to a court *in camera*, and may not include access to confidential information and documents.

(b) Filing.

(1) When a document is to be electronically filed, it shall be submitted to PACFile at the Unified Judicial System web portal at <http://ujportal.pacourts.us>, in accordance with this rule and any instructions that may be otherwise be provided at the web portal site.

(2) Documents may be submitted through PACFile at any time, except during times of periodic maintenance. The electronic submission must be completed by 11:59:59 p.m. EST/EDT to be considered filed that day.

(3) The time and date on which a document is submitted to PACFile shall be recorded by PACFile. PACFile shall provide an acknowledgement to the filing party that the document has been submitted.

(4) The time and date on which the document is accepted by the prothonotary also shall be recorded by PACFile. PACFile shall provide an acknowledgement to the filing party that the document has been accepted.

(5) A document shall be considered filed upon submission of the document to PACFile and acceptance of the document by the prothonotary. If the prothonotary determines that the requirements for filing have been met, the time and date of filing shall be the time and date that the document was submitted to PACFile. If the prothonotary finds that the requirements for filing are not met, the prothonotary may reject the document.

(6) A filing party shall be responsible for any delay, disruption, and interruption of the electronic signals and legibility of the document electronically filed, except when caused by the failure of PACFile's website.

(7) PACFile shall attribute the filing of an electronic document to the party whose account is used to log onto PACFile and file the document.

(8) Documents shall be filed in portable document format (".pdf"). When possible, documents should be electronically converted to .pdf. The applicable general rules of court and court policies that implement the rules shall continue to apply to all documents.

(9) Any document submitted for filing to the prothonotary in a paper format shall be accepted by the prothonotary in that format and shall be retained by the prothonotary as may be required by applicable rules of court and record retention policies. The prothonotary shall convert such document in a paper format to .pdf and add it to PACFile. However, those submissions excluded from the definition of "document" under Pa.R.A.P. 102 shall not be converted and added to PACFile.

(10) Applicable filing fees shall be paid electronically through procedures established by the appellate courts and the Administrative Office of Pennsylvania Courts. Filing fees shall be paid at the same time and in the same amount as required by statute, rule of court, or order. In addition to the filing fees now applicable, a fee for use of PACFile shall be imposed.

(c) Signature.

(1) Except as provided in paragraph (c)(3), an electronic signature of the filer, as provided for in PACFile, is permitted in the following form: /S/ *Chris L. Doe*.

(2) Any application that, pursuant to Pa.R.A.P. 123(c), avers facts not of record and requires a verification shall be created in a paper form, have a signature placed on the application, and then be converted to .pdf before the application may be electronically filed.

(3) The original of any verified document shall be maintained by the filing party until two years after the entry of a final order and made available upon direction of the court or reasonable request of the signatory or opposing party.

(d) Service.

(1) Upon the submission of a document through PACFile, PACFile shall provide electronic notification to attorneys and other parties to the case who are participating in PACFile that the document has been submitted. This notification upon submission shall satisfy the manner and proof of service requirements of Pa.R.A.P. 121(c)-(d) on any attorney or party who has established a PACFile account, *i.e.*, eService.

(2) Upon the acceptance by the prothonotary of a document submitted through PACFile, PACFile shall provide electronic notification to attorneys and other parties to the case who are participating in PACFile that the document has been accepted.

(3) Service of document filed through PACFile on any attorney or party who has not established a UJS web portal account or who is unable to file or receive documents through PACFile, or is otherwise unable to access PACFile shall be made by the manner of service permitted under Pa.R.A.P. 121(c)(2)–(5) with proof of service required by Pa.R.A.P. 121(d).

(4) A party serving a document on a prospective party seeking to intervene or a non-party shall not serve that document through PACFile, but shall serve the document by any manner of service under Pa.R.A.P. 121(c)(2)–(5).

(5) Original process shall be served in accordance with the general rules that authorize such service in a matter commenced in an appellate court.

(e) Submission of paper version of a document filed through PACFile. Within 7 days of the submission of any document filed through PACFile, the filer shall submit to the appellate court a paper copy of the electronically time-stamped document and as many additional copies as the court requires. The paper copy of the document filed through PACFile shall be considered the original for archival purposes only. To determine the number of copies required for filing, see Pa.R.A.P. 124(c).

Official Note: To provide a uniform system for electronic filing, the Administrative Office has developed the PACFile electronic filing system. This is the only authorized system for electronic filing of documents in appellate court proceedings. PACFile can be accessed on the Unified Judiciary System web portal (“UJS Portal”) at www.ujportal.pacourts.us. The UJS Portal contains other automated services besides PACFile. There may be circumstances when an attorney, who has registered as a user on another service of the UJS Portal, may have an established account that would be usable for PACFile. Any questions about the requirements of registration or accessibility to PACFile should be referred to the Administrative Office. Questions about filing a document pursuant to this rule should be directed to the prothonotary of the appellate court in which the document is to be filed.

PACFile permits a user to designate other users as proxies on individual cases. These proxies all receive notice of any document in the case. An attorney is responsible for the actions of other individuals whom the attorney authorizes to use the attorney’s account.

Documents in certain appeals may not be filed using PACFile. See Pa.R.A.P. 102 for the definition of “document” (excluding documents related to appeals pursuant to the Abortion Control Act and applications pursuant to the Wiretap Act); see also paragraph (b)(9).

Upon submission of a document, PACFile shall automatically send notice of the filing to all participating parties. If PACFile sends notice of such filing, the party filing the document must serve only those parties who are not served by PACFile.

Regarding paragraph (b)(6), see Pa.R.A.P. 123 for the procedure regarding how to file an application for relief if a document is rejected by PACFile. Practitioners may find written instructions and obtain technical assistance through the UJS Portal Help Center for help to correct the filing of a rejected document.

Paragraph (b)(8) expresses a preference that documents presented for filing through PACFile be electronically converted to .pdf rather than scanned to .pdf, when possible. There are two ways to create a .pdf: one is to scan a document on a commercial copier or stand-alone scanner; the other is to convert the document to .pdf electronically with the word processing program itself or using .pdf conversion software.

In addition to the filing fees now applicable, an online payment convenience fee for use of PACFile may be imposed. See 204 Pa. Code § 207.3.

Paragraph (d)(1) describes the service requirements for documents filed through PACFile known

as eService. See also Pa.R.A.P. 121-122 the manner and proof of service for eService.

Paragraph (d)(4) is intended to alert practitioners to the necessity of serving documents filed through PACFile on a would-be intervenor or a non-party pursuant to Pa.R.A.P. 121 rather than through PACFile. Practitioners may file their documents via PACFile, but must serve those seeking to intervene by methods other than service by PACFile.

Paragraph (d)(5) is intended to prevent the possibility of default judgments due to a lack of monitoring of an account in PACFile. See, for example, Pa.R.A.P. 1514(c) and 3761(b).

ARTICLE II. APPELLATE PROCEDURE

CHAPTER 19. PREPARATION AND TRANSMISSION OF RECORD AND RELATED MATTERS

RECORD ON APPEAL FROM LOWER COURT

Rule 1921. Composition of Record on Appeal.

The original [papers] documents and exhibits filed in the [lower] trial court, [paper] copies of [legal papers] documents filed with the prothonotary through PACFile, the transcript of proceedings, if any, and a certified copy of the docket entries prepared by the clerk [of the lower court] shall constitute the record on appeal in all cases. Unless otherwise ordered by the appellate court in accordance with Pa.R.A.P. 1931(g), in any appeal in which the record is electronically filed or transmitted through PACFile, the documents and filings electronically filed or transmitted thereby shall constitute original documents and exhibits.

Official Note: An appellate court may consider only the facts which have been duly certified in the record on appeal. *Commonwealth v. Young*, [456 Pa. 102, 115,] 317 A.2d 258, 264 (Pa. 1974). All involved in the appellate process have a duty to take steps necessary to assure that the appellate court has a complete record on appeal, so that the appellate court has the materials necessary to review the issues raised on appeal. Ultimate responsibility for a complete record rests with the party raising an issue that requires appellate court access to record materials. See, e.g., *Commonwealth v. Williams*, [552 Pa. 451, 460,] 715 A.2d 1101, 1106 (Pa. 1998) (addressing obligation of appellant to purchase transcript and ensure its transmission to the appellate court). [Rule] Pa.R.A.P. 1931(c) and (f) afford a “safe harbor” from waiver of issues based on an incomplete record. Parties may rely on the list of documents transmitted to the appellate court and served on the parties. If the list shows that the record transmitted is incomplete, the parties have an obligation to supplement the record pursuant to [Rule] Pa.R.A.P. 1926 (correction or modification of the record) or other mechanisms in Chapter 19. If the list shows that the record transmitted is complete, but it is not, the omission shall not be a basis for the appellate court to find waiver. This principle is consistent with the Supreme Court’s determination in *Commonwealth v. Brown*, [____ Pa. ____,] 52 A.3d 1139, 1145 n.4 (Pa. 2012) that where the accuracy of a pertinent document is undisputed, the [Court] court could consider that document if it was in the Reproduced Record, even though it was not in the record that had been transmitted to the [Court] court. Further, if the appellate court

determines that something in the original record or otherwise presented to the trial court is necessary to decide the case and is not included in the certified record, the appellate court may, upon notice to the parties, request it from the trial court *sua sponte* and supplement the certified record following receipt of the missing item. See [**Rule**] **Pa.R.A.P.** 1926 (correction or modification of the record).

Rule 1931. Transmission of the Record.

(a) *Time for transmission.*

(1) *General rule.*—Except as otherwise prescribed by this rule, the record on appeal, including the transcript and exhibits necessary for the determination of the appeal, shall be transmitted to the appellate court within 60 days after the filing of the notice of appeal. If an appeal has been allowed or if permission to appeal has been granted, the record shall be transmitted as provided by Pa.R.A.P. 1122 (allowance of appeal and transmission of record) or by Pa.R.A.P. 1322 (permission to appeal and transmission of record), as the case may be. The appellate court may shorten or extend the time prescribed by this paragraph for a class or classes of cases.

(2) *Children's fast track appeals.*—In a children's fast track appeal, the record on appeal, including the transcript and exhibits necessary for the determination of the appeal, shall be transmitted to the appellate court within 30 days after the filing of the notice of appeal. If an appeal has been allowed or if permission to appeal has been granted, the record shall be transmitted as provided by Pa.R.A.P. 1122 (allowance of appeal and transmission of record) or by Pa.R.A.P. 1322 (permission to appeal and transmission of record), as the case may be.

(b) *Duty of trial court.*—After a notice of appeal has been filed, the judge who entered the order appealed from shall:

(1) comply with Pa.R.A.P. 1925 (opinion in support of order) [, shall];

(2) cause the official court reporter to comply with Pa.R.A.P. 1922 (transcription of notes of testimony) or shall otherwise [**settle**] **approve** a statement of the evidence or proceedings as prescribed by [**this chapter,**] **Pa.R.A.P. 1923 (statement in absence of transcript) and Pa.R.A.P. 1924 (agreed statement of record);** and [**shall**]

(3) take any other action necessary to enable the clerk to assemble and transmit the record as prescribed by this rule.

(c) *Duty of clerk to transmit the record.*—When the record is complete for purposes of the appeal, the clerk [**of the trial court**] shall transmit it to the prothonotary [**of the appellate court**]. The clerk [**of the trial court**] shall number the documents comprising the record and shall transmit with the record a list of the documents correspondingly numbered and identified with sufficient specificity to allow the parties on appeal to identify each document and whether it is marked as confidential, so as to determine whether the record on appeal is complete. Any Confidential Information Forms and the "Unredacted Version" of any pleadings, documents, or other legal papers where a "Redacted Version" was also filed shall be separated either physically or electronically and transmitted to the appellate court. Whatever is confidential shall be labeled as such. If any case records or documents were sealed in the [**lower**]

trial court, the list of documents comprising the record shall specifically identify such records or documents as having been sealed in the [**lower**] **trial** court. Documents of unusual bulk or weight and physical exhibits other than documents shall not be transmitted by the clerk unless [**he or she is**] directed to do so by a party or by the prothonotary [**of the appellate court**]. A party must make advance arrangements with the clerk for the transportation and receipt of exhibits of unusual bulk or weight. Transmission of the record is effected when the clerk [**of the trial court**] mails or otherwise forwards the record to the prothonotary [**of the appellate court**]. The clerk [**of the trial court**] shall indicate, by endorsement on the face of the record or otherwise, the date upon which the record is transmitted to the appellate court.

(d) [**Service**] *Notice of the list of record documents.*—The clerk [**of the trial court**] shall, at the time of the transmittal of the record to the appellate court, [**mail**] **send** a copy of the list of record documents to all counsel of record, or if unrepresented by counsel, to the parties at the address they have provided to the clerk. The clerk shall note on the docket the giving of such notice.

(e) *Multiple appeals.*—Where more than one appeal is taken from the same order, it shall be sufficient to transmit a single record, without duplication.

(f) *Inconsistency between list of record documents and documents actually transmitted.*—If the clerk [**of the trial court**] fails to transmit to the appellate court all of the documents identified in the list of record documents, such failure shall be deemed a breakdown in the processes of the court. Any omission shall be corrected promptly pursuant to Pa.R.A.P. 1926 (correction or modification of the record) and shall not be the basis for any penalty against a party.

(g) Transmission and remand of records through PACFile.—Records may be transmitted and remanded through PACFile. The applicable general rules of court and court policies that implement the rules shall continue to apply to the transmission and remand of records on appeal regardless of whether a record is transmitted or remanded through PACFile. The transmission of a record through PACFile by a court or other government unit to an appellate court shall not excuse the court or other government unit from submitting a paper version of the record transmitted through PACFile to the appellate court should the appellate court require it.

(1) The transmission or remand of a record through PACFile by a court or other government unit shall constitute the transmission or remand of the record under the Pennsylvania Rules of Appellate Procedure.

(2) The transmission or remand of a record through PACFile is effectuated when a court or other government unit utilizes PACFile to transmit or give notice of the remand or remittal of the record to a court or other government unit.

(3) The date of the transmission or remand of a record through PACFile by a court or other government unit shall be noted on the docket of the transmitting or remanding court or other government unit, and on the docket of the receiving court or other government unit.

(4) Upon the transmission or remand of a record through PACFile, the record shall be considered to be in the possession of the receiving court or other government unit until the record is transmitted through PACFile to another court or government unit, or notice of remand or remittal to another court or other government unit is given.

(5) If a Rule of Appellate Procedure or court policy requires that a court transmit, or remand or remit a record to another court or other government unit, the transmission or notice of remand or remittal to the receiving court or other government unit may also be effectuated through PACFile.

(6) Any documents sealed in a court or other government unit may be transmitted or remanded through PACFile only in a manner that restricts access to the sealed documents or filings to the court or other government unit and registered users of PACFile who are authorized to view the sealed documents.

(7) The appellate courts shall retain control over access to records transmitted through PACFile, and may permit such electronic access in whole or in part.

Official Note: Pa.R.A.P. 1926 (correction or modification of the record) provides the means to resolve any disagreement between the parties as to what should be included in the record on appeal.

Paragraph (c)—For the definition of “case records,” see the Case Records Public Access Policy of the Unified Judicial System of Pennsylvania available at www.pacourts.us/public-records.

Notice of electronic remand of the record is for jurisdictional purposes.

CHAPTER 21. BRIEFS AND REPRODUCED RECORD

FORMS OF BRIEFS AND REPRODUCED RECORD

Rule 2173. Numbering of Pages.

[Except as provided in Rule 2174 (tables of contents and citations), the] All pages of briefs, the reproduced record, and any supplemental reproduced record shall be numbered [separately] consecutively, starting with the cover page. The pages shall be numbered in Arabic figures [and not in Roman numerals]: thus 1, 2, 3, etc., followed in the reproduced record by a small a, thus 1a, 2a, 3a, etc., and followed in any supplemental reproduced record by a small b, thus 1b, 2b, 3b, etc. Where the reproduced record is bound in more than one volume, there shall be one continuous paging, regardless of the division into volumes.

[Official Note: Based on former Supreme Court Rules 37 (part) and 38 (first clause), former Superior Court Rules 29 (part) and 30 (first clause), and former Commonwealth Court Rules 83 (part) and 84, without change in substance.]

Rule 2174. Tables of Contents and Citations.

(a) *Tables of contents.*—The briefs and the reproduced record shall each contain a full and complete table of contents, set forth [either on the inside of the front cover or on the first and immediately succeeding pages] on the page or pages immediately following the cover. The table of contents of the reproduced record, in addition to the material otherwise specified in

this chapter, shall include a reference to all reproduced exhibits, indicating what each is, and the names of witnesses, indicating where the examination, cross-examination, and re-examination of each begin. Where the reproduced record is bound in more than one volume, there shall be but one table of contents which shall indicate in which volume each particular part of the record will be found. The combined table of contents ordinarily shall be set forth in full at the front of each volume, but where the combined table of contents is itself voluminous, a cross reference at the front of the second and subsequent volumes to the combined table of contents at the front of the first volume may be substituted for the text of the combined table of contents.

(b) *Tables of citations.*—All briefs shall contain a table of citations therein, arranged alphabetically, which shall be set forth immediately following the table of contents.

[(c) *Paging of introductory tables.*—The pages of the tables specified in this rule need not be numbered, but if numbered shall be numbered in Roman numerals: thus i, ii, iii, etc.

***Official Note:* Based on former Supreme Court Rule 37, former Superior Court Rule 29 and former Commonwealth Court Rule 83. The rule substitutes the term “table of contents” for the incorrect term “index,” authorizes the optional practice of beginning the table of contents on the face-up page (rather than inside the front cover) and authorizes Roman numbering the introductory pages.]**

CHAPTER 27. FEES AND COSTS IN APPELLATE COURTS AND ON APPEAL

FEES

Rule 2701. Payment of Fees Required.

(a) *General rule.*—A person upon filing any [**paper**] document shall pay any fee therefor prescribed by law.

(b) *Appeals by allowance or permission; petitions for review.*—The fee for filing a petition for allowance of appeal, a petition for permission to appeal [**or**], a petition for review, or a petition for specialized review shall, except as otherwise required by statute, be the same as the fee payable under [**Rule**] **Pa.R.A.P. 907** (docketing of appeal). Where a petition for allowance of appeal or a petition for permission to appeal has been filed under these rules and is granted, no additional fee, except as otherwise required by statute, shall be payable upon docketing the appeal in the appellate court.

(c) *Temporary fee for filing notice of appeal.*—Until otherwise provided by law, the clerk, upon filing a notice of appeal under [**Rule**] **Pa.R.A.P. 905** (filing of notice of appeal), shall be entitled to receive an amount equal to the fee otherwise payable, if any, upon the filing of a writ issued out of the Supreme Court of Pennsylvania evidencing the fact that an appeal has been taken to the Supreme Court.

***Official Note:* Former Supreme Court Rule 70 (first sentence), former Superior Court Rule 61 and former Commonwealth Court Rule 117 (first sentence) literally required the payment of the fee in advance of filing. In view of the filing by mail procedures instituted by these rules, a limited opportunity is afforded to permit the prompt correction of the failure to include a check with the letter of transmittal or the failure to draw the check in the proper amount.**

A party who intends to proceed *in forma pauperis* should transmit a copy of [his] **the** application under [**Rule**] **Pa.R.A.P.** 552 (application to [**lower**] **trial** court for leave to appeal *in forma pauperis*) to the [**appellate**] prothonotary so that [**Rule**] **Pa.R.A.P.** 554(b) (appeal taken before application acted on) will operate to defer the requirement for fees in the appellate court.

[The fees in appellate courts are temporarily continued by Section 24(a) of the Judiciary Act of 1976, act of July 9, 1976 (P.L. 586, No. 142), by reference to the former provisions of law, which were as follows: The fees of the Commonwealth Court were prescribed by 204 Pa. Code § 155.203. The docketing fee in the Supreme and Superior Court was fixed at \$12 by the act of May 19, 1897 (P.L. 67, No. 53), § 3 (former 12 P.S. § 1135), and the fee for issuing writs for the enforcement of the duty to file the records in such courts and the fee for filing a petition for allowance of appeal from the Superior Court was fixed by § 18 (second and third sentences) of the act (former 12 P.S. § 1156) at \$3.]

PUBLICATION REPORT

The Appellate Court Procedural Rules Committee is considering proposing the amendment of Pennsylvania Rules of Appellate Procedure 102, 121, 122, 125, 1921, 1931, 2173, 2174, and 2701 to codify procedures for the use of PACFile in the appellate courts. A prior version of PACFile rules was published for comment at 49 Pa.B. 825 (February 23, 2019).

Currently, the use of PACFile in the appellate courts is generally governed by Pa.R.A.P. 125, which relies upon various administrative orders. From a procedural perspective, PACFile is used for two processes. The first process is the filing and service of documents by the parties, which is subject to the Amended Order of January 6, 2014, Judicial Admin. Dkt. 418. The second process is the transmission and remand of the record on appeal, which is subject to the Order of November 13, 2015, Judicial Admin. Dkt. 450. Both of these processes are operationalized through online user guidance and instruction provided by the Administrative Office of Pennsylvania Courts.

Regarding the filing and service of documents by the parties, the Committee originally published a proposal for new rules Pa.R.A.P. 130–136 to primarily govern that process. Since publication, the proposal has been substantially revised. The rule governing PACFile, as it relates to format, filing, service, and signature of documents, is Pa.R.A.P. 125 and largely modeled after Pa.R.Crim.P. 576.1; Pa.R.J.C.P. 205; Pa.R.J.C.P. 1205 with modifications specific to appellate court procedures.

As with the prior proposal, Pa.R.A.P. 125(a)(ii) provides for a not-yet determined date upon which attorney participation in PACFile will become mandatory, but for good cause shown. Comments are specifically invited as to reader's opinion about a sufficient lead time, *e.g.*, 6 months, 12 months, before mandatory participation. The response to the COVID-19 pandemic has demonstrated a wide acceptance of PACFile and the capacity for an increased volume of documents to be filed via PACFile.

Regarding the transmission and remand of the record on appeal, Pa.R.A.P. 1931(g) substantially reflects the

requirements of the Order of November 13, 2015. The proposed language has been further clarified to replace references to “file” with “transmit.” In addition, commentary was added to the Official Note to alert readers that the definition of “case record” in paragraph (c) can be found in the UJS Public Access Policy on the UJS website.

To distinguish between the use of “clerk” and “prothonotary” throughout the rules, Pa.R.A.P. 102 is proposed to be amended to define those terms. Additional terms, such as “Document,” “Electronic Filing,” “Filing Party,” “Original Document,” and “PACFile,” are also defined. Pa.R.A.P. 121 is proposed to be amended to reflect “eService” through PACFile as a method of service. Similarly, Pa.R.A.P. 122 provides a suggested form for proof of service through PACFile.

Pa.R.A.P. 2173 is proposed to be amended so that numbering begins with the cover page and Pa.R.A.P. 2174 is proposed to be amended so that the table of contents appears on the page or pages immediately following the cover. These proposals are intended to correlate the page numbers of briefs and reproduced records with the numbering of images by .pdf reader.

During its review, the Committee also identified that “petition for specialized review” appeared to have been omitted from Pa.R.A.P. 2701 concerning the payment of fees. That form of a petition has been added to paragraph (b) and historical content removed from the Official Note.

In its entirety, this proposal involves 46 rules spanning 68 pages. The majority of the rules will be amended as a result of definitional changes and stylistic revisions. To illuminate operative portions and reduce the burden on readers, the proposal published for comment includes the nine rules containing substantive amendments and omits those containing only correlative amendments. Further, should this proposal ultimately be adopted by the Supreme Court, the Committee intends to also recommend that the administrative orders governing PACFile in the appellate courts be rescinded.

All comments, concerns, and suggestions concerning this proposal are welcome.

[Pa.B. Doc. No. 21-506. Filed for public inspection April 2, 2021, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

PART II. ORPHANS' COURT RULES

[231 PA. CODE PART II]

Proposed Adoption of Rule 10.7 of the Pennsylvania Orphans' Court Rules

The Orphans' Court Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the adoption of Rule 10.7 of the Pennsylvania Orphans' Court Rules cross-referencing 20 Pa.C.S. § 3908 related to procedures to obtain disclosure of a decedent's digital assets for the reasons set forth in the accompanying Publication Report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any reports, notes, or comments in the proposal have been inserted by the Committee for the convenience of those using the rules. They neither will constitute a part of the rules nor be officially adopted by the Supreme Court.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

Pamela S. Walker, Counsel
Orphans' Court Procedural Rules Committee
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
PO Box 62635
Harrisburg, PA 17106-2635
FAX: 717-231-9546
orphanscourtproceduralrules@pacourts.us

All communications in reference to the proposal should be received by May 10, 2021. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

*By the Orphans' Court
Procedural Rules Committee*

KENNETH G. POTTER, Esq.,
Chair

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART II. ORPHANS' COURT RULES

CHAPTER X. REGISTER OF WILLS

(Editor's Note: The following text is proposed to be added and is printed in regular type to enhance readability.)

Rule 10.7. Affidavit for Disclosure of Digital Assets.

The procedure for a personal representative to file an affidavit to obtain disclosure of the digital assets of a decedent is set forth at 20 Pa.C.S. § 3908.

Explanatory Comment: This rule was adopted in 20__ to cross-reference provisions of the Revised Uniform Fiduciary Access to Digital Assets Act relating to the disclosure of the digital assets of a decedent to a personal representative. *See* 20 Pa.C.S. §§ 3901—3917. The term “digital asset,” as used in this rule, means an electronic record in which a decedent had a right or interest, but not an underlying asset or liability unless the asset or liability is itself an electronic record. 20 Pa.C.S. § 3902.

While registers of wills are not subject to the *Case Records Public Access Policy of the Unified Judicial System*, they are encouraged to ensure the confidentiality of identifying information related to the decedent's digital assets.

PUBLICATION REPORT

Proposed Adoption of Rule 10.7 of the Pennsylvania Orphans' Court Rules

The Orphans' Court Procedural Rules Committee (“Committee”) is considering proposing to the Supreme Court of Pennsylvania the adoption of Rule 10.7 of the Pennsylvania Orphans' Court Rules (“Rules”). Proposed Rule 10.7 would provide a cross-reference to 20 Pa.C.S. § 3908 and relates to the filing of an affidavit with the register of wills for the purpose of obtaining access to a decedent's digital assets.

On July 23, 2020, the Governor signed into law Act 72 of 2020, the Revised Uniform Fiduciary Access to Digital Assets Act (“Act”). *See* 20 Pa.C.S. §§ 3901—3917. A digital asset is defined as “an electronic record in which an individual has a right or interest. The term does not include an underlying asset or liability unless the asset or liability is itself an electronic record.” *See id.* § 3902. The Act sets forth methods for individuals to plan for the management and disposition of their digital assets upon death. If a decedent did not plan for the distribution of their digital assets, *e.g.*, through the custodian of the digital assets or in a will, the decedent's court-appointed fiduciary can gain access to the digital assets as provided in 20 Pa.C.S. § 3908.

Unless the decedent prohibited the disclosure of the digital assets or a court directs otherwise, the Act establishes the requirements for a personal representative to obtain disclosure of a decedent's digital assets from the custodian. *See id.* The Act provides for the filing of an affidavit with the register of wills to obtain disclosure of the digital assets in lieu of a court finding pursuant to § 3908(a)(4)(iv). *See id.* § 3908(b). To utilize the affidavit procedure, the personal representative must file an affidavit with the register setting forth information related to the decedent's digital assets, such account numbers, usernames, address, or other unique subscriber information assigned by the custodian, evidence linking the account to the user, and an averment that disclosure of the decedent's digital assets is reasonably necessary for administration of the estate. *See id.* § 3908(b)(1). The personal representative must file the affidavit with or supplemental to a petition for grant of letters. *See id.* § 3908(c)(2). The personal representative may then utilize a copy of the executed affidavit as set forth in the Act. *See id.* § 3908(b).

The Committee considered other approaches to incorporating the relevant provisions of § 3908 into the Rules, either by a detailed rule or changes to the petition for grant of letters. However, upon review of § 3908, the Committee believed the procedures contained in the statute were adequate. The practice of incorporation by reference of statutory procedures through rulemaking exists in rules governing the determination of incapacity. *See* Pa. O.C. Rule 14.6(a).

The Committee did not favor changes to the form petition for grant of letters because an averment in the petition or an affidavit for access to the decedent's digital assets can be filed either at the time of filing the petition or as a supplement to the petition. Such a revised form may suggest that the digital assets affidavit must be filed concurrently with the petition, even though the petitioner may not have identified the digital assets at the time of filing the petition. Additionally, access by filing an affidavit is only one method by which the personal representative can obtain disclosure of the decedent's digital assets—such assets can also be accessed when the decedent has provided for access in a will, has made prior arrangements with the custodian of the assets, or upon a court finding as set forth in the Act.

The Committee invites all comments, concerns, and suggestions regarding this rulemaking proposal.

[Pa.B. Doc. No. 21-507. Filed for public inspection April 2, 2021, 9:00 a.m.]

Title 255—LOCAL COURT RULES

MONTGOMERY COUNTY

Amendment to Local Rule of Civil Procedure 2039(a)*—Minor's Compromise.; No. 2021-00001

Order

And Now, this 12th day of March, 2021, the Court hereby Amends Montgomery County Local Rule of Civil Procedure 2039(a)*—Minor's Compromise. This Amended Rule shall become effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

The Court Administrator is directed to publish this Order once in the *Montgomery County Law Reporter* and in *The Legal Intelligencer*. In conformity with Pa.R.J.A. 103, one (1) certified copy of this Order shall be filed with the Administrative Office of Pennsylvania Courts. Two (2) certified copies shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*. One (1) copy shall be filed with the Law Library of Montgomery County, and one (1) copy with each Judge of this Court. This Order shall also be published on the Court's website and incorporated into the complete set of the Court's Local Rules.

By the Court

THOMAS M. DeRICCI,
President Judge

Rule 2039(a)*. Minor's Compromise.

No personal injury action in which a minor has an interest shall be settled without court approval.

1. Contents of Petition, Exhibits, and Proposed [*Decrees*] *Decree*:

(A) *Petition*. A petition for approval of settlement shall set forth:

(1) The date of birth, **last four digits of the** social security number, and address of the minor plaintiff, the name and address of the minor's parent(s) or guardian(s);

(2) The facts out of which the cause of action arose;

(3) The elements and items of damages sustained;

(4) A list of all expenses incurred or to be incurred, whether or not they have been paid, by whom payment was made, and arrangements for payment of unpaid bills;

(5) Any limits on the financial responsibility of the defendant(s);

(6) A statement as to whether or not a lien or claim has been raised on behalf of any health care supplier, medical supplier, health insurer, worker's compensation carrier or government entity, including the Department of Public Welfare;

(7) The fees of counsel, which shall not exceed 25% of the present value of a structured settlement, or 25% of the gross recovery of any other settlement, unless counsel has rendered extraordinary services;

(8) The present status of the minor's health and injuries; and

(9) Any other circumstances relevant to the propriety of granting the petition.

(B) *Exhibits*. The petition shall also contain the following exhibits:

(1) A written report from attending health care providers stating the extent of the injury, the treatment given and the prognosis for the injured minor, except that in cases where the gross settlement does not exceed [**\$5,000**] **\$25,000**, or in other cases where the Court is satisfied that the treating physician's office notes and/or records set forth adequately the injury, the treatment given and the prognosis, such notes and/or records may be provided in lieu of a written report;

(2) The written consent of the minor, if (s)he is sixteen (16) years of age or older; and

(3) Copies of counsel's time sheets and other supporting documentation showing the nature and extent of services rendered, if counsel is claiming fees in excess of 25%.

(C) [*Decrees*. If the gross settlement exceeds **\$10,000.00**, counsel shall submit both a preliminary decree setting a hearing date and a proposed final decree setting forth the proposed distribution of the settlement proceeds. If the gross settlement is **\$10,000.00** or less, counsel need submit only the] *Decree*. Counsel shall submit a proposed final decree.

2. *Filing of Petition*. In any action where a civil suit has been initiated by writ of summons or complaint, the petition shall be filed with the Prothonotary under the caption of the civil suit. No motions court cover sheet is required. In any action where no civil suit has been initiated, the petition shall be filed with the Clerk of the Orphans' Court under the caption "ABC, a minor."

3. *Hearing*. [**All petitions for gross settlements in excess of \$10,000.00 shall be set for hearing before a Judge of the Orphans' Court Division. The minor's presence is required at the hearing, unless (s)he is excused by the Court for cause shown.**] Petitions for settlements [**of \$10,000.00 or less**] **affecting minors** may be approved without hearing, unless the Judge assigned to the matter, in his or her discretion, determines that a hearing is necessary. **The Court, in its discretion, may require the presence of the minor at the hearing.**

4. *Affidavit of Deposit*. When a [**compromise**] settlement **in which a minor has an interest** is approved by the Court, an Affidavit of Deposit of Minor's Funds shall be filed with the division of the Court where the petition was filed within 30 days of the date of the order approving the settlement. The Affidavit shall be substantially in the following form:

SEE FORMS INDEX

[Pa.B. Doc. No. 21-508. Filed for public inspection April 2, 2021, 9:00 a.m.]