

**CHAPTER 13. INTERLOCUTORY APPEALS BY PERMISSION**

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**Rule 1301. Form of Documents. Number of Copies to be Filed.**

All documents filed under this chapter may be produced on a word processor/ computer or typewriter. To determine the number of copies to be filed, see Pa.R.A.P. 124(c) and its Official Note.

**Source**

The provisions of this Rule 1301 amended December 26, 1986, effective January 31, 1987, and shall govern all matters thereafter commenced and, insofar as just and practicable, matters then pending, 16 Pa.B. 4951; amended June 26, 2007, effective immediately, 37 Pa.B. 3222; amended October 28, 2021, effective April 1, 2022, 51 Pa.B. 7050. Immediately preceding text appears at serial page (401621).

**Rule 1311. Interlocutory Appeals by Permission.**

(a) *General rule.*—An appeal may be taken by permission from an interlocutory order:

- (1) certified under 42 Pa.C.S. § 702(b) or for which certification pursuant to 42 Pa.C.S. § 702(b) was denied; *see* Pa.R.A.P. 312;
- (2) for which certification pursuant to Pa.R.A.P. 341(c) was denied; or
- (3) that determined that a defendant's motion to dismiss on the basis of double jeopardy is frivolous.

(b) *Petition for Permission to Appeal.* Permission to appeal from an interlocutory order listed in subdivision (a) may be sought by filing a petition for permission to appeal with the prothonotary of the appellate court within 30 days after entry of such order or the date of deemed denial in the trial court or other government unit with proof of service on all other parties to the matter in the trial court or other government unit and on the government unit or clerk of the trial court, who shall file the petition of record in such trial court. An application for an amendment of an interlocutory order to set forth expressly either the statement specified in 42 Pa.C.S. § 702(b) or the one in Pa.R.A.P. 341(c) shall be filed with the trial court or other government unit within 30 days after the entry of such interlocutory order, and permission to appeal may be sought within 30 days after entry of the order as amended. Unless the trial court or other government unit acts on the application within 30 days after it is filed, the trial court or other government unit shall no longer consider the application and it shall be deemed denied. If the petition for permission to appeal is transmitted to the prothonotary of the appellate court by means of first class, express, or priority United States Postal Service mail, the petition shall be deemed received by the prothonotary for the

purposes of Pa.R.A.P. 121(a) (filing) on the date deposited in the United States mail, as shown on a United States Postal Service Form 3817 Certificate of Mailing, Form 3800 Receipt for Certified Mail, Form 3806 Receipt for Registered Mail, or other similar United States Postal Service form from which the date of deposit can be verified. The certificate of mailing or other similar Postal Service form from which the date of deposit can be verified shall be cancelled by the Postal Service, shall show the docket number of the matter in the trial court or other government unit, and shall be either enclosed with the petition or separately mailed to the prothonotary. The petitioner must file the original and one copy. Upon actual receipt of the petition for permission to appeal, the prothonotary of the appellate court shall immediately stamp it with the date of actual receipt. That date, or the date of earlier deposit in the United States mail as prescribed in this subdivision, shall constitute the date when permission to appeal was sought, which date shall be shown on the docket. The prothonotary of the appellate court shall immediately note the appellate docket number assignment upon the petition for permission to appeal and give notice of the docket number assignment to the government unit or clerk of the trial court, to the petitioner, and to the other persons named in the proof of service accompanying the petition.

(c) *Fee.*—The petitioner upon filing the petition for permission to appeal shall pay any fee therefor prescribed by Chapter 27 (fees and costs in appellate courts and on appeal).

(d) *Entry of appearance.*—Upon the acceptance for filing of the petition for permission to appeal, the prothonotary of the appellate court shall note on the record as counsel for the petitioner the name of counsel, if any, set forth in or endorsed upon the petition for permission to appeal, and, as counsel for other parties, counsel, if any, named in the proof of service. Unless that party is entitled by law to be represented by counsel on a petition for permission to appeal, the prothonotary shall upon *praecipe* of any such counsel for other parties, filed at any time within 30 days after filing of the petition, strike off or correct the record of appearance. If entry of appearance in the trial court extends through appeals, counsel's appearance for a party may not be withdrawn without leave of court. Leave of court to withdraw is also required for any other counsel who have not filed a *praecipe* to correct appearance within the first 30 days after the petition is docketed, unless another lawyer has entered or simultaneously enters an appearance for the party.

**Comment:**

Pa.R.A.P. 1311 originally implemented only 42 Pa.C.S. § 702(b) (interlocutory appeals by permission). The accompanying note provided that an order refusing to certify an order as meeting the requirements of 42 Pa.C.S. § 702(b) was reviewed by filing of a petition for review under Chapter 15. The rule was amended in 2020 to expand the use of a petition for permission to appeal to requests for review of interlocutory orders that were not certified for immediate review pursuant to 42 Pa.C.S. § 702(b) or Pa.R.A.P. 341(c) and of interlocutory orders that found a criminal defendant's claim that further proceedings would cause the defendant to be placed in double jeopardy to be frivolous.

See the Comment to Pa.R.A.P. 1112 (appeals by allowance) for an explanation of the procedure when Form 3817, Form 3800, Form 3806, or other similar United States Postal Service form from which the date of deposit can be verified is used.

The Rules of Criminal Procedure require counsel appointed by the trial court to continue representation through direct appeal. Pa.R.Crim.P. 120(A)(4) and Pa.R.Crim.P. 122(B)(2). Similarly, the Rules

of Criminal Procedure require counsel appointed in post-conviction proceedings to continue representation throughout the proceedings, including any appeal from the disposition of the petition for post-conviction collateral relief. Pa.R.Crim.P. 904(F)(2) and Pa.R.Crim.P. 904(H)(2)(b). The same is true when counsel enters an appearance on behalf of a juvenile in a delinquency matter or on behalf of a child or other party in a dependency matter. Pa.R.J.C.P. 150(B), 151, Pa.R.J.C.P. 1150(B), 1151(B), (E). It would be rare for counsel in such cases to consider withdrawing by *praecipe*, but the 2020 amendment to the rule avoids any possibility of confusion by clarifying that withdrawal by *praecipe* is available only in matters that do not otherwise require court permission to withdraw.

With respect to appearances by new counsel following the initial docketing of appearances pursuant to paragraph (d) of this rule, please note the requirements of Pa.R.A.P. 120.

#### Source

The provisions of this Rule 1311 amended through December 16, 1983, effective January 1, 1984, 13 Pa.B. 3998; amended March 12, 1992, effective July 6, 1992, and shall govern all matters thereafter commenced, 22 Pa.B. 1354; amended May 6, 1992, effective July 6, 1992, 22 Pa.B. 2675; amended July 7, 1997, effective in 60 days, 27 Pa.B. 3503; amended March 15, 2004, effective 60 days after adoption, 34 Pa.B. 1670; amended September 10, 2008, effective December 1, 2008, 38 Pa.B. 5257; amended January 7, 2020, effective May 1, 2020, 50 Pa.B. 535; amended January 7, 2020, effective August 1, 2020, 50 Pa.B. 505; amended September 11, 2023, effective January 1, 2024, 53 Pa.B. 5877. Immediately preceding text appears at serial pages (408509) to (408510) and (401623).

### Rule 1312. Content of the Petition for Permission to Appeal.

(a) *General rule.*—The petition for permission to appeal need not be set forth in numbered paragraphs in the manner of a pleading, and shall contain the following (which shall, insofar as practicable, be set forth in the order stated):

(1) A statement of the basis for the jurisdiction of the appellate court.

(2) The text of the order in question, or the portions thereof sought to be reviewed, the text of any order ruling on any subsequent request for certification, and the date of their entry in the trial court or other government unit. If the order(s) are voluminous, it may, if more convenient, be appended to the petition.

(3) A concise statement of the case containing the facts necessary to an understanding of the basis for the order of the trial court or other government unit.

(4) The proposed questions presented for review, expressed in the terms and circumstances of the case but without unnecessary detail. The statement of questions presented will be deemed to include every subsidiary question fairly comprised therein. Only the questions set forth in the petition, or fairly comprised therein, will ordinarily be considered by the court in the event permission to appeal is granted.

(5) A concise statement of the reasons for an immediate appeal:

(i) For a petition for permission to appeal an order certified pursuant to 42 Pa.C.S. § 702(b), a statement of the reasons why the order involves a controlling question of law as to which there is a substantial ground for difference of opinion and that an appeal from the order may materially advance the ultimate termination of the matter;

(ii) For a petition for permission to appeal an order for which certification pursuant to 42 Pa.C.S. § 702(b) was denied or deemed denied, a statement of reasons why the order involves a controlling question of law as to which there is substantial ground for difference of opinion, that an appeal from the order may materially advance the ultimate termination of the matter, and why the refusal of certification was an abuse of the trial court's or other government unit's discretion that is so egregious as to justify prerogative appellate correction;

(iii) For a petition for permission to appeal an order for which certification pursuant to Pa.R.A.P. 341(c) was denied or deemed denied, the petition must contain a statement of reasons why an immediate appeal would facilitate resolution of the entire case and why the refusal of certification was an abuse of the trial court's or other government unit's discretion that is so egregious as to justify prerogative appellate correction;

(iv) For a petition for permission to appeal pursuant to Pa.R.A.P. 1311(a)(3), the petition must set forth why the claim of double jeopardy is colorable.

(6) There shall be appended to the petition a copy of any opinions delivered relating to the order sought to be reviewed, as well as all opinions of trial courts or other government units in the case, and, if reference thereto is necessary to ascertain the grounds of the order, opinions in companion cases. If whatever is required by this paragraph to be appended to the petition is voluminous, it may, if more convenient, be separately presented.

(7) There shall be appended to the petition the verbatim texts of the pertinent provisions of constitutional provisions, statutes, ordinances, regulations, or other similar enactments which the case involves, and the citation to the volume and page where they are published, including the official edition, if any.

(8) The certificate of compliance required by Pa.R.A.P. 127.

(b) *Caption and parties.*—All parties to the proceeding in the trial court or other government unit other than petitioner shall be named as respondents, but respondents who support the position of the petitioner shall meet the time schedule for filing papers which is prescribed in this chapter for the petitioner, except that any response by such respondents to the petition shall be filed as promptly as possible after receipt of the petition.

(c) *No supporting brief.*—All contentions in support of a petition for permission to appeal shall be set forth in the body of the petition as prescribed under subparagraph (a)(5). Neither the briefs below nor any separate brief in support of a petition for permission to appeal will be received, and the prothonotary of the appellate court will refuse to file any petition for permission to appeal to which is annexed or appended any brief below or supporting brief.

(d) *Essential requisites of petition.*—The failure of a petitioner to present with accuracy, brevity, and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration will be a sufficient reason for denying the petition.

(e) *Multiple petitioners.*—Where permitted by Pa.R.A.P. 512, multiple petitioners may file a single petition for permission to appeal.

**Source**

The provisions of this Rule 1312 amended December 11, 1978, effective December 30, 1978, 8 Pa.B. 3802; amended January 5, 2018, effective January 6, 2018, 48 Pa.B. 461; amended January 7, 2020, effective August 1, 2020, 50 Pa.B. 505. Immediately preceding text appears at serial pages (400761) to (400762).

**Rule 1313. Effect of Filing Petition.**

A petition for permission to appeal shall not stay the proceedings before the lower court or other government unit, unless the lower court or other government unit, or the appellate court or a judge thereof shall so order.

**Official Note:** Based on Based on (1) 42 Pa.C.S. § 702(c) (supersedes), and (2) former Commonwealth Court Rule 114.

**Source**

The provisions of this Rule 1313 amended December 11, 1978, effective December 30, 1978, 8 Pa.B. 3802; Immediately preceding text appears at serial page (27926).

**Rule 1314. Answer to the Petition for Permission to Appeal.**

Within 14 days after service of a petition for permission to appeal an adverse party may file an answer. The answer shall be deemed filed on the date of mailing if first class, express, or priority United States Postal Service mail is utilized. The answer need not be set forth in numbered paragraphs in the manner of a pleading, shall set forth any procedural, substantive, or other argument or ground why the interlocutory order involved should not be reviewed by the appellate court, and shall comply with Pa.R.A.P. 1312(a)(7) (content of petition for permission to appeal). An answer to a petition for permission to appeal shall contain the certificate of compliance required by Pa.R.A.P. 127. No separate motion to dismiss a petition for permission to appeal will be received. A party entitled to file an answer under this rule who does not intend to do so shall, within the time fixed by these rules for filing an answer, file a letter stating that an answer to the petition for permission to appeal will not be filed. The failure to file an answer will not be construed as concurrence in the request for permission to appeal.

**Source**

The provisions of this Rule 1314 amended September 10, 2008, effective December 1, 2008, 38 Pa.B. 5257; amended January 5, 2018, effective January 6, 2018, 48 Pa.B. 461. Immediately preceding text appears at serial pages (382580) to (382581).

**Rule 1316. Incorrect Use of Petition for Permission to Appeal.**

(a) *General Rule.*—The appellate court shall treat a request for discretionary review of an order that is immediately appealable as a notice of appeal if a party has filed a timely petition for permission to appeal pursuant to Pa.R.A.P. 1311.

(b) *Additional Requirements.*—The appellate court may require any additional actions necessary to perfect the appeal.

**Official Note:** This rule requires the appellate court to treat a timely petition for permission to appeal pursuant to Pa.R.A.P. 1311 from an order that is instead immediately appealable as of right as a timely notice of appeal. This rule supersedes *Thermo-Guard, Inc. v. Cochran*, 596 A.2d 188, 192 (Pa. Super. 1991), which stated, as *dictum*, that “ where a petition for permission

to appeal seeking review of a final order, appealable as of right, or of an interlocutory order made appealable as of right under Pa.R.A.P. 311, is filed, this court should simply deny the petition.”

Use of the term “notice of appeal” in this rule is not intended to preclude treatment of the petition for permission to appeal as a petition for review if the proper method of appeal as of right would be a petition for review addressed to the Commonwealth Court’s appellate jurisdiction pursuant to 42 Pa.C.S. § 763.

#### Source

The provisions of this Rule 1316 adopted December 8, 2004, effective 60 days after adoption, 34 Pa.B. 6764; amended January 7, 2020, effective August 1, 2020, 50 Pa.B. 505. Immediately preceding text appears at serial pages (400763) to (400764).

### **Rule 1321. Transmission of Papers to and Action by the Court.**

Upon receipt of the answer to the petition for permission to appeal, or a letter stating that no answer will be filed, from each party entitled to file such, the petition and the answer, if any, shall be distributed by the prothonotary to the appellate court for its consideration. Permission to appeal may be limited to one or more of the questions presented in the petition, in which case the order granting permission to appeal shall specify the question or questions which will be considered by the court.

#### Source

The provisions of this Rule 1321 amended September 10, 2008, effective December 1, 2008, 38 Pa.B. 5257. Immediately preceding text appears at serial page (308916).

### **Rule 1322. Permission to Appeal and Transmission of Record.**

If permission to appeal is granted, the prothonotary of the appellate court shall immediately give written notice in person or by ordinary mail of the entry of the order granting permission to appeal to the government unit or clerk of the lower court and to each party who has appeared in the appellate court. The notice shall specify the question or questions which will be considered by the appellate court, if permission to appeal has been granted as to less than all questions presented. If subsequent proceedings will be governed by Chapter 15 (judicial review of governmental determinations) and if under the applicable law the questions raised by the petition for permission to appeal may be determined in whole or in part upon the record made before the appellate court, the notice shall direct the petitioner to serve and file an appropriate petition for review. The clerk of the lower court shall docket the notice in the same manner as a notice of appeal. The record shall be transmitted and filed in accordance with Chapter 19 (preparation and transmission of the record and related matters). The times fixed by those provisions for transmitting the record shall run from the date of the entry of the order granting permission to appeal. A notice of appeal need not be filed.

#### Source

The provisions of this Rule 1322 amended December 11, 1978, effective December 30, 1978, 8 Pa.B. 3802; amended May 16, 1979, effective September 30, 1979, 9 Pa.B. 1740. Immediately preceding text appears at serial page (39586).

**Rule 1323. Denial of Permission to Appeal.**

If the petition for permission to appeal is denied, the prothonotary of the appellate court shall immediately give written notice in person or by first class mail of entry of the order denying permission to appeal to the government unit or clerk of the trial court and to each party who has appeared in the appellate court. A party wishing to seek review of the denial in the Supreme Court must file a timely petition for allowance of appeal.

**Source**

The provisions of this Rule 1323 amended December 11, 1978, effective December 30, 1978, 8 Pa.B. 3802; amended January 7, 2020, effective August 1, 2020, 50 Pa.B. 505. Immediately preceding text appears at serial page (400765).

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