CHAPTER 19. PREPARATION AND TRANSMISSION OF RECORD AND RELATED MATTERS

RECORD ON APPEAL FROM LOWER COURT

REVIEW OF DEATH SENTENCES

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

DISPOSITION WITHOUT REACHING THE MERITS

RECORD ON APPEAL FROM LOWER COURT

Rule 1911. Request for Transcript.

(a) *General rule*.—The appellant shall request any transcript required under this chapter in the manner and make any necessary payment or deposit therefor in the amount and within the time prescribed by Rules 4001 et seq. of the Pennsylvania Rules of Judicial Administration.

(b) *Cross-appeals*.—Where a cross-appeal has been taken, the cross-appellant shall also have a duty to pay for and cause the transcript to be filed and shall share the initial expense equally with all other appellants.

(c) *Form*.—The request for transcript may be endorsed on, incorporated into, or attached to the notice of appeal or other document and shall be in substantially the following form:

[Caption]

A (notice of appeal) (petition for review) (petition for specialized review) (other appellate paper, as appropriate) having been filed in this matter, the official court reporter is hereby requested to produce, certify and file the transcript in this matter in conformity with Rule 1922 of the Pennsylvania Rules of Appellate Procedure.

_____

Signature

(d) *Effect of failure to comply*.—If the appellant fails to take the action required by these rules and the Pennsylvania Rules of Judicial Administration for the preparation of the transcript, the appellate court may take such action as it deems appropriate, which may include dismissal of the appeal.

Official Note: For the Uniform Rules Governing Court Reporting and Transcripts, see Pa.R.J.A. No. 4001—4016. Local rules should also be consulted as to deposit requirements, fees, and additional procedures.

Source

The provisions of this Rule 1911 adopted April 26, 1982, effective July 15, 1981, 12 Pa.B. 1536; amended July 7, 1997, effective in 60 days, 27 Pa.B. 3503; amended December 2, 2016, effective January 1, 2017, 46 Pa.B. 7801; amended January 7, 2020, effective August 1, 2020, 50 Pa.B. 505. Immediately preceding text appears at serial pages (385479) to (385480).

Rule 1921. Composition of Record on Appeal.

The original papers and exhibits filed in the lower court, paper copies of legal papers filed with the prothonotary by means of electronic filing, 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.

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 (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 (1998) (addressing obligation of appellant to purchase transcript and ensure its transmission to the appellate court). Rule 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 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 (2012) that where the accuracy of a pertinent document is undisputed, the 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. 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 1926 (correction or modification of the record).

Source

The provisions of this Rule 1921 amended August 13, 2008, effective immediately, 38 Pa.B. 5422; amended May 9, 2013, effective to appeals and petitions for review filed 30 days after adoption, 43 Pa.B. 2810. Immediately preceding text appears at serial pages (338832) and (338833).

Rule 1922. Transcription of Notes of Testimony.

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

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

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

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

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

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

(d) *Emergency appeals*.—Where the exigency of the case is such as to impel immediate consideration in the appellate court, the trial judge shall take all action necessary to expedite the preparation and transmission of the record notwithstanding the usual procedures prescribed in this chapter or in the Rules of Judicial Administration.

Official Note: Depending on the order issued by the trial court, a party may wish to seek appellate review of an order under paragraph (c) by application or in the merits brief. The 2017 amendments addressed changes in the Rules of Judicial Administration. In addition, the amend-

ment eliminated time limits for objections to or requests for correction of the transcript. An objection to a transcript must be raised if, for example, a critical portion of the proceedings was not transcribed.

Source

The provisions of this Rule 1922 amended through April 26, 1982, effective July 15, 1981, 12 Pa.B. 1536; amended June 24, 2019, effective October 1, 2019, 49 Pa.B. 3867. Immediately preceding text appears at serial pages (385481) to (385482).

Rule 1923. Statement in Absence of Transcript.

If no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including his recollection. The statement shall be served on the appellee, who may serve objections or propose amendments thereto within ten days after service. Thereupon the statement and any objections or proposed amendments shall be submitted to the lower court for settlement and approval and as settled and approved shall be included by the clerk of the lower court in the record on appeal.

Official Note: Based on the statute of 13 Edw. 1, c. 31, 1 Ruffhead 99 (see *Commonwealth v. Anderson*, 441 Pa. 483, 493, 272 A.2d 877, 882 (1971)), which is suspended by these rules insofar as applicable in this Commonwealth.

Rule 1924. Agreed Statement of Record.

In lieu of the record on appeal as defined in Rule 1921 (composition of record on appeal), the parties may prepare and sign a statement of the case showing how the issues presented by the appeal arose and were decided in the lower court and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the issues presented. If the statement conforms to the truth, it, together with such additions as the lower court may consider necessary fully to present the issues raised by the appeal, shall be approved by the lower court and shall then be certified to the appellate court as the record on appeal and transmitted thereto by the clerk of the lower court within the time prescribed by Rule 1931 (transmission of the record). Copies of the agreed statement and the order from which the appeal is taken may be filed as the reproduced record.

Official Note: Based on former Supreme Court Rule 45, former Superior Court Rule 37, and former Commonwealth Court Rule 89.

Source

The provisions of this Rule 1924 amended December 11, 1978, effective December 30, 1978, 8 Pa.B. 3802. Immediately preceding text appears at serial page (25443).

Rule 1925. Opinion in Support of Order.

(a) *Opinion in support of order.*

(1) *General rule.*—Except as otherwise prescribed by this rule, upon receipt of the notice of appeal, the judge who entered the order giving rise to the notice of appeal, if the reasons for the order do not already appear of record, shall within the period set forth in Pa.R.A.P. 1931(a)(1) file of record at least a brief opinion of the reasons for the order, or for the rulings or other

errors complained of, or shall specify in writing the place in the record where such reasons may be found.

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

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

(i) The concise statement of errors complained of on appeal shall be filed and served with the notice of appeal.

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

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

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

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

(2) *Time for filing and service.*—

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

circumstances, the judge may allow for the filing of a Statement or amended or supplemental Statement *nunc pro tunc*.

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

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

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

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

(iii) that the Statement shall be served on the judge pursuant to paragraph (b)(1) and both the place the appellant can serve the Statement in person and the address to which the appellant can mail the Statement. In addition, the judge may provide an email, facsimile, or other alternative means for the appellant to serve the Statement on the judge; and

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

(4) *Requirements; waiver.*

(i) The Statement shall set forth only those errors that the appellant intends to assert.

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

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

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

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

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

(vii) Issues not included in the Statement and/or not raised in accordance with the provisions of this paragraph (b)(4) are waived.

(c) *Remand.*

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

(2) Upon application of the appellant and for good cause shown, an appellate court may remand in a civil case for the filing or service *nunc pro tunc* of a Statement or for amendment or supplementation of a timely filed and served Statement and for a concurrent supplemental opinion. If an appellant has a statutory or rule-based right to counsel, good cause shown includes a failure by counsel to file or serve a Statement timely or at all.

(3) If an appellant represented by counsel in a criminal case was ordered to file and serve a Statement and either failed to do so, or untimely filed or served a Statement, such that the appellate court is convinced that counsel has been per se ineffective, and the trial court did not file an opinion, the appellate court may remand for appointment of new counsel, the filing or service of a Statement *nunc pro tunc*, and the preparation and filing of an opinion by the judge.

(4) If counsel intends to seek to withdraw in a criminal case pursuant to *Anders/Santiago* or if counsel intends to seek to withdraw in a post-conviction relief appeal pursuant to *Turner/Finley*, counsel shall file of record and serve on the judge a statement of intent to withdraw in lieu of filing a Statement. If the appellate court believes there are arguably meritorious issues for review, those issues will not be waived; instead, the appellate court shall remand for the filing and service of a Statement pursuant to Pa.R.A.P. 1925(b), a supplemental opinion pursuant to Pa.R.A.P. 1925(a), or both. Upon remand, the trial court may, but is not required to, replace an appellant's counsel.

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

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

Paragraph (b): This paragraph permits the judge whose order gave rise to the notice of appeal (''judge'') to ask for a statement of errors complained of on appeal (''Statement'') if the record

is inadequate and the judge needs to clarify the errors complained of. The term ''errors'' is meant to encourage appellants to use the Statement as an opportunity to winnow the issues, recognizing that they will ultimately need to be refined to a statement that will comply with the requirements of Pa.R.A.P. 2116. Nonetheless, the term ''errors'' is intended in this context to be expansive, and it encompasses all of the reasons the trial court should not have reached its decision or judgment, including, for example, those that may not have been decisions of the judge, such as challenges to jurisdiction.

Subparagraph (b)(1): This subparagraph maintains the requirement that the Statement be both filed of record in the trial court and served on the judge. Service on the judge may be accomplished by mail, by personal service, or by any other means set forth by the judge in the order. The date of mailing will be considered the date of filing only if counsel obtains a United States Postal Service form from which the date of mailing can be verified, as specified in Pa.R.A.P. 1112(c). Counsel is advised both when filing and when serving the trial judge to retain date-stamped copies of postal forms (or other proofs of timely service), in case questions of waiver arise later, to demonstrate that the Statement was timely filed or served on the judge. This subparagraph was amended in 2019 to permit the increasingly frequent preference of judges to receive electronic or facsimile copies of filings.

Subparagraph (b)(2): This subparagraph extends the time period for drafting the Statement from 14 days to at least 21 days, with the trial court permitted to enlarge the time period or to allow the filing of an amended or supplemental Statement upon good cause shown. In *Commonwealth v. Mitchell*, 902 A.2d 430, 444 (Pa. 2006), the Court expressly observed that a Statement filed ''after several extensions of time'' was timely. An enlargement of time upon timely application might be warranted if, for example, there was a serious delay in the transcription of the notes of testimony or in the delivery of the order to appellate counsel. The 2019 amendments to the rule provided the opportunity to obtain an extension of time to file the Statement until 21 days after the transcript is filed pursuant to Pa.R.A.P. 1922(b). The appellant may file a motion for an extension of time, which, if filed in accordance with the rule, will be deemed granted if not expressly denied before the Statement is due.

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

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

Subparagraph (b)(3): This subparagraph specifies what the judge must advise appellants when ordering a Statement.

Subparagraph (b)(4): This subparagraph sets forth the parameters for the Statement and explains what constitutes waiver. It should help counsel to comply with the concise-yet-sufficiently-detailed requirement and avoid waiver under either *Lineberger v. Wyeth*, 894 A.2d 141, 148-49 (Pa. Super. 2006) or *Kanter v. Epstein*, 866 A.2d 394, 400-03 (Pa. Super. 2004), allowance of appeal denied, 880 A.2d 1239 (Pa. 2005), cert. denied sub nom. *Spector Gadon & Rosen, P.C. v. Kanter*, 546 U.S. 1092 (2006). The paragraph explains that the Statement should be sufficiently specific to allow the judge to draft the opinion required under Pa.R.A.P. 1925(a), and it provides that the number of issues alone will not constitute waiver—so long as the issues set forth are non-redundant and non-frivolous. It allows appellants to rely on the fact that subsidiary issues will be deemed included if the overarching issue is identified and if all of the issues have been properly preserved in the trial court. This provision has been taken from the United States Supreme Court rules. *See* Sup. Ct. R. 14(1). This subparagraph does not in any

way excuse the responsibility of an appellant who is raising claims of constitutional error to raise those claims with the requisite degree of specificity. This subparagraph also allows—but does not require—an appellant to state the authority upon which the appellant challenges the ruling in question and to identify the place in the record where the basis for the challenge may be found.

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

Paragraph (c): The appellate courts have the right under the Judicial Code to ''affirm, modify, vacate, set aside or reverse any order brought before it for review, and may remand the matter and direct the entry of such appropriate order, or require such further proceedings to be had as may be just under the circumstances.'' 42 Pa.C.S. § 706.

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

Subparagraph (c)(2): This subparagraph allows an appellate court to remand a civil case to allow an initial, amended, or supplemental Statement and/or a supplemental opinion. *See also* 42 Pa.C.S. § 706. In 2019, the rule was amended to clarify that for those civil appellants who have a statutory or rule-based right to counsel (such as appellants in post-conviction relief, juvenile, parental termination, or civil commitment proceedings) good cause includes a failure of counsel to file a Statement or a timely Statement.

Subparagraph (c)(3): This subparagraph allows an appellate court to remand in criminal cases only when an appellant, who is represented by counsel, has completely failed to respond to an order to file and serve a Statement or has failed to do so timely. It is thus narrower than subparagraph (c)(2). *See, e.g., Commonwealth v. Burton*, 973 A.2d 428, 431 (Pa. Super. 2009); *Commonwealth v. Halley*, 870 A.2d 795, 801 (Pa. 2005); *Commonwealth v. West*, 883 A.2d 654, 657 (Pa. Super. 2005). *Per se* ineffectiveness applies in all circumstances in which an appeal is completely foreclosed by counsel's actions, but not in circumstances in which the actions narrow or serve to foreclose the appeal in part. *Commonwealth v. Rosado*, 150 A.3d 425, 433-35 (Pa. 2016). *Pro se* appellants are excluded from this exception to the waiver doctrine as set forth in *Commonwealth v. Lord*, 719 A.2d 306 (Pa. 1998).

Direct appeal rights have typically been restored through a post-conviction relief process, but when the ineffectiveness is apparent and *per se*, the court in *West* recognized that the more effective way to resolve such *per se* ineffectiveness is to remand for the filing of a Statement and opinion. *See West*, 883 A.2d at 657; *see also Burton* (late filing of Statement is *per se* ineffective assistance of counsel). The procedure set forth in *West* is codified in subparagraph (c)(3). As the *West* court recognized, this rationale does not apply when waiver occurs due to the improper filing of a Statement. In such circumstances, relief may occur only through the post-conviction relief process and only upon demonstration by the appellant that, but for the deficiency of counsel, it was reasonably probable that the appeal would have been successful. An appellant must be able to identify *per se* ineffectiveness to secure a remand under this section, and any appellant who is able to demonstrate *per se* ineffectiveness is entitled to a remand. Accordingly, this subparagraph does not raise the concerns addressed in *Johnson v. Mississippi*, 486 U.S. 578, 588-89 (1988) (observing that where a rule has not been consistently or regularly applied, it is not—under federal law—an adequate and independent state ground for affirming petitioner's conviction.)

Subparagraph (c)(4): *See Anders v. California*, 386 U.S. 738 (1967) and *Commonwealth v. Santiago*, 978 A.2d 349 (Pa. 2009); *Commonwealth v. Turner*, 544 A.2d 927 (Pa. 1988) and *Commonwealth v. Finley*, 550 A.2d 213 (Pa. Super. 1988). These procedures do not relieve counsel of the obligation to comply with all other rules.

Source

The provisions of this Rule 1925 amended May 16, 1979, effective September 30, 1979, 9 Pa.B. 1740; amended December 30, 1987, effective January 16, 1988 and shall govern all matters thereafter commence and, insofar as just and practicable, matters then pending, 18 Pa.B. 245; amended May 10, 2007, effective 60 days after adoption, 37 Pa.B. 2405; amended January 13, 2009, effective as to all appeals filed 60 days or more after adoption, 39 Pa.B. 1094; amended November 15, 2013, effective in 30 days, 43 Pa.B. 7071; amended March 18, 2014, effective April 18, 2014, 44 Pa.B. 2053; amended June 24, 2019, effective October 1, 2019, 49 Pa.B. 3867; amended December 17, 2021, effective April 1, 2022, 52 Pa.B. 9. Immediately preceding text appears at serial pages (396950) to (396956).

Rule 1926. Correction or Modification of the 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.

(b) If anything material to a party is omitted from the record by error, breakdown in processes of the court, or accident or is misstated therein, the omission or misstatement may be corrected by the following means:

(1) by the trial court or the appellate court upon application or on its own initiative at any time; in the event of correction or modification by the trial court, that court shall direct that a supplemental record be certified and transmitted if necessary; or

(2) by the parties by stipulation filed in the trial court, in which case, if the trial court clerk has already certified the record, the parties shall file in the appellate court a copy of any stipulation filed pursuant to this rule, and the trial court clerk shall certify and transmit as a supplemental record the materials described in the stipulation.

(c) The trial court clerk shall transmit any supplemental record required by this rule within 14 days of the order or stipulation that requires it.

(d) All other questions as to the form and content of the record shall be presented to the appellate court.

Official Note: The stipulation described in this rule need not be approved by the trial court or the appellate court, but both courts retain the authority to strike any stipulation that does not correct an omission or misstatement in the record.

Source

The provisions of this Rule 1926 amended December 11, 1978, effective December 30, 1978, 8 Pa.B. 3802; amended May 9, 2013, effective to appeals and petitions for review filed 30 days after adoption, 43 Pa.B. 2810. Immediately preceding text appears at serial pages (342234) to (342235).

Rule 1931. Transmission of the Record.

(a) *Time for Transmission*.

(1) *General Rule*. Except as otherwise prescribed by this rule or if an extension has been granted pursuant to Pa.R.A.P. 1925(b)(2), 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 or by Pa.R.A.P. 1322, as the case may be. The appellate court may shorten or extend the time prescribed by this subparagraph 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 or by Pa.R.A.P. 1322, 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 comply with Pa.R.A.P. 1925, shall cause the official court reporter to comply with Pa.R.A.P. 1922 or shall otherwise settle a statement of the evidence or proceedings as prescribed by this chapter, and shall 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 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 court, the list of documents comprising the record shall specifically identify such records or documents as having been sealed in the lower 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 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 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 processes of the court. Any omission shall be corrected promptly pursuant to Pa.R.A.P. 1926 and shall not be the basis for any penalty against a party.

Comment: 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.

Paragraph (c)—On January 1, 2022, the *Case Records Public Access Policy of the Unified Judicial System* was amended to require the filing of the Confidential Information Form and eliminate the filing of ''Redacted Versions'' and ''Unredacted Versions'' of pleadings, documents, or other legal papers. Section 9.0(H) of the amended Policy continues to protect ''Unredacted Versions'' that were filed under the prior version of the Policy. For any ''Unredacted Version,'' the clerk of the trial court should continue to comply with the requirements of paragraph (c) when transmitting the record to the appellate court.

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.

Source

The provisions of this Rule 1931 amended December 11, 1978, effective December 30, 1978, 8 Pa.B. 3802; amended April 1, 2004, effective in 60 days, 34 Pa.B. 2064; amended May 10, 2007, effective 60 days after adoption, 37 Pa.B. 2408; amended January 13, 2009, effective as to all appeals filed 60 days or more after adoption, 39 Pa.B. 1094; amended May 9, 2013, effective to appeals and petitions for review filed 30 days after adoption, 43 Pa.B. 2810; amended January 5, 2018, effective January 6, 2018, 48 Pa.B. 461; amended June 24, 2019, effective October 1, 2019, 49 Pa.B. 3867; amended December 1, 2021, effective January 1, 2022, 51 Pa.B. 7618. Immediately preceding text appears at serial pages (406869) to (406870).

Rule 1932. Retention of Record in Lower Court.

(a) *Temporary retention*.—Notwithstanding the provisions of Rule 1931 (transmission of the record), on praecipe of a party the clerk of the lower court shall temporarily retain the record for use by the parties in preparing appellate papers. In that event, the clerk of the lower court shall nevertheless cause the record to be filed within the time fixed or allowed for transmission of the record by transmitting to the prothonotary of the appellate court a partial record in the form of a copy of the docket entries, accompanied by a certificate, reciting that the record, including the transcript or parts thereof designated for inclusion and all necessary exhibits, is complete for purposes of the appeal. The filing of a partial record under this rule shall constitute the filing of the record for the purposes of Rule 2185 (time for serving and filing briefs) and Rule 2186 (time for serving and filing reproduced record). Upon receipt of the brief of the appellee, or at such earlier time as the parties may agree or the court may order, the appellant shall request the clerk of the lower court to transmit the record.

(b) *Retention by order of court.*

(1) The appellate court may provide by order that a certified copy of the docket entries shall be transmitted in lieu of the entire record, subject to the right of any party to request at any time during the pendency of the appeal that designated parts of the record be transmitted.

(2) If the record or any part thereof is required in the lower court for use there pending the appeal, the lower court may make an order to that effect, and the clerk of the lower court shall retain the record or parts thereof subject to the request of the appellate court, and shall transmit a copy of the order and of the docket entries together with such parts of the original record as the lower court shall allow and copies of such parts as the parties may designate.

(c) *Stipulation of parties that parts of the record be retained in the lower court.*—The parties may agree by written stipulation filed in the lower court that designated parts of the record shall be retained in the lower court unless thereafter the appellate court shall order or any party shall request their transmittal. The parts thus designated shall nevertheless be a part of the record on appeal for all purposes.

Rule 1933. Record for Preliminary Hearing in Appellate Court.

If prior to the time the record is transmitted a party desires to make in the appellate court a motion for dismissal, an application for release, for a stay pending appeal, for modification of security on appeal, or for any intermediate order, the clerk of the lower court at the request of the party shall transmit to the appellate court such parts of the original record as any party shall designate.

Rule 1934. Filing of the Record.

Upon receipt of the record (or of papers authorized to be filed in lieu of the record under the provisions of these rules) by the prothonotary of the appellate court after the appeal has been docketed, the prothonotary shall file the record in the appellate court. The prothonotary of the appellate court shall immediately give notice to all parties and the Administrative Office of the date on which the record was filed and shall give notice to all parties of the date, if any, specially fixed by the prothonotary pursuant to Rule 2185(b) (notice of deferred briefing schedule) for the filing of the brief of the appellant.

Official Note: Based in part on former Commonwealth Court Rule 32A (second sentence).

Rule 1935. Notices and Reports Concerning Delinquent Transmission of Record.

(a) *Notice to trial court judge.*—The prothonotary of the appropriate appellate court, within ten days after the date for filing the record in that court under Rule 1931, shall give written notice to the trial court judge of any delinquency in the transmission of the record. A copy of this notice shall also be forwarded to the president judge of the judicial district.

(b) *Report to Supreme Court.*—If the record is further delayed and satisfactory explanation of the delay is not given, the appellate court prothonotary shall

inform the Administrative Office, and where appropriate, the Court Administrator shall report any such case of neglect or refusal to comply with this chapter to the Supreme Court, which may consider and act on the matter as provided by Rule 506(b) of the Rules of Judicial Administration.

Official Note: It is intended that the prothonotaries of the appellate courts monitor appeals in which the record is not timely filed under Rule 1931, and bring to the attention of the trial court judge any delinquency in such filing. Where the reminder from the prothonotary is unavailing, the matter is referred to the Administrative Office for further action.

The trial court has direct control over the official court reporter and staff, and it is appropriate, therefore, that notice of delinquency in filing the record on appeal be sent to the trial court judge. See e.g. *Commonwealth v. Morgan*, 469 Pa. 35, n.2, 364 A.2d 891, 892 n.2 (1976).

Authority

The provisions of this Rule 1935 issued under Article V, section 10, of the Constitution of Pennsylvania.

Source

The provisions of this Rule 1935 amended through April 30, 1981, effective June 15, 1981, 11 Pa.B. 1625. Immediately preceding text appears at serial pages (45546) and (45547).

REVIEW OF DEATH SENTENCES

Rule 1941. Review of Sufficiency of the Evidence and the Propriety of the Penalty in Death Penalty Appeals.

(a) *Procedure in trial court.*—Upon the entry of a sentence subject to 42 Pa.C.S. § 9711(h) (review of death sentence) the court shall direct the official court reporter and the clerk to proceed under this chapter as if a notice of appeal had been filed 20 days after the date of entry of the sentence of death, and the clerk shall immediately give written notice of the entry of the sentence to the Supreme Court Prothonotary's Office. The clerk shall insert at the head of the list of documents required by Pa.R.A.P. 1931(c) a statement to the effect that the papers are transmitted under this rule from a sentence of death.

(b) *Filing and docketing in the Supreme Court.*—Upon receipt by the Prothonotary of the Supreme Court of the record of a matter subject to this rule, the Prothonotary shall immediately:

1. Enter the matter upon the docket as an appeal, with the defendant indicated as the appellant and the Commonwealth indicated as the appellee.
2. File the record in the Supreme Court.
3. Give written notice of the docket number assignment in person or by first class mail to the clerk of the trial court.
4. Give notice to all parties of the docket number assignment and the date on which the record was filed in the Supreme Court, and give notice to all parties of the date, if any, specially fixed by the Prothonotary pursuant to Pa.R.A.P. 2185(b) for the filing of the brief of the appellant.

(c) *Further proceedings.*—Except as required by Pa.R.A.P. 2189 or by statute, a matter subject to this rule shall proceed after docketing in the same manner as other appeals in the Supreme Court.

Official Note: Formerly the Act of February 15, 1870 (P. L. 15, § 2) required the appellate court to review the sufficiency of the evidence in certain homicide cases regardless of the failure of the appellant to challenge the matter. *See, e.g., Commonwealth v. Santiago*, 382 A.2d

1200, 1201 (Pa. 1978). Pa.R.A.P. 302 now provides otherwise with respect to homicide cases generally. However, under paragraph (c) of this rule the procedure for automatic review of capital cases provided by 42 Pa.C.S. § 9711(h) (review of death sentence) will permit an independent review of the sufficiency of the evidence in such cases. In capital cases, the Supreme Court has jurisdiction to hear a direct appeal and will automatically review (1) the sufficiency of the evidence "to sustain a conviction for first-degree murder in every case in which the death penalty has been imposed;" (2) the sufficiency of the evidence to support the finding of at least one aggravating circumstance set forth in 42 Pa.C.S. § 9711(d); and (3) the imposition of the sentence of death to ensure that it was not the product of passion, prejudice, or any other arbitrary factor. *Commonwealth v. Mitchell*, 902 A.2d 430, 444, 468 (Pa. 2006); 42 Pa.C.S. § 722(4); 42 Pa.C.S. § 9711(h)(1), (3). Any other issues from the proceedings that resulted in the sentence of death may be reviewed only if they have been preserved and if the defendant files a timely notice of appeal.

Likewise, although Pa.R.A.P. 702(b) vests jurisdiction in the Supreme Court over appeals from sentences imposed on a defendant for lesser offenses as a result of the same criminal episode or transaction where the offense is tried with the capital offense, the appeal from the lesser offenses is not automatic. Thus the right to appeal the judgment of sentence on a lesser offense will be lost unless all requisite steps are taken, including preservation of issues (such as by filing post-trial motions) and filing a timely notice of appeal.

See Pa.R.A.P. 2189 for provisions specific to the production of a reproduced record in cases involving the death penalty.

Source

The provisions of this Rule 1941 amended December 1, 1982, effective December 1, 1982, 12 Pa.B. 4332; amended March 22, 1989, effective immediately, 19 Pa.B. 1524; amended September 19, 2014, effective immediately, 44 Pa.B. 6223; amended October 19, 2017, effective immediately, 47 Pa.B. 6804. Immediately preceding text appears at serial pages (373750) to (373751).

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

Rule 1951. 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 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 record below*.—If anything material to any party is omitted from the 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 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 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 1322 (permission to appeal and transmission of record).

Source

The provisions of this Rule 1951 amended May 9, 2013, effective to appeals and petitions for review filed 30 days after adoption, 43 Pa.B. 2810. Immediately preceding text appears at serial pages (346881) to (346882).

Rule 1952. Filing of 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 record before the government unit, the government unit shall file the 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 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 in the government unit or certified copies thereof may be filed.

Instead of filing the 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 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 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 record for filing or stipulate that neither the record nor a certified list be filed, the government unit shall retain the record or parts thereof. Upon request of the court or the request of a party, the record or any part thereof thus retained shall be transmitted to the court notwithstanding any prior stipulation. All parts of the record retained by the government unit shall be a part of the record on review for all purposes.

(c) *Notice to counsel of contents of certified record.*—At the time of transmission of the 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.

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.

Source

The provisions of this Rule 1952 amended May 16, 1979, effective September 30, 1979, 9 Pa.B. 1740; amended December 30, 1987, effective January 16, 1988 and shall govern all matters thereafter commenced and, insofar as just and practicable, matters then pending, 18 Pa.B. 245; amended May 9, 2013, effective to appeals and petitions for review filed 30 days after adoption, 43 Pa.B. 2810; amended January 5, 2018, effective January 6, 2018, 48 Pa.B. 461. Immediately preceding text appears at serial pages (388598) and (376719).

DISPOSITION WITHOUT REACHING THE MERITS

Rule 1971. [Rescinded].

Source

The provisions of this Rule 1971 amended May 16, 1979, effective September 30, 1979, 9 Pa.B. 1740. Immediately preceding text appears at serial page (39628).

Rule 1972. Dispositions on Motion.

(a) Except as otherwise prescribed by this rule, subject to Pa.R.A.P. 123, any party may move:

(1) To transfer the record of the matter to another court because the matter should have been commenced in, or the appeal should have been taken to, such other court. *See* Pa.R.A.P. 741.

(2) To transfer to another appellate court under Pa.R.A.P. 752.

(3) To dismiss for want of jurisdiction in the unified judicial system of this Commonwealth.

(4) To dismiss for mootness.

(5) To dismiss for failure to preserve the question below, or because the right to an appeal has been otherwise waived. *See* Pa.R.A.P. 302 and Pa.R.A.P. 1551(a).

(6) To continue generally or to quash because the appellant is a fugitive.

(7) To quash for any other reason appearing on the record.

Any two or more of the grounds specified in this rule may be joined in the same motion. Unless otherwise ordered by the appellate court, a motion under this rule shall not relieve any party of the duty of filing his or her briefs and reproduced records within the time otherwise prescribed therefor. The court may grant or refuse the motion, in whole or in part; may postpone consideration thereof until argument of the case on the merits; or may make such other order as justice may require.

(b) In a children's fast track appeal, a dispositive motion filed under subparagraphs (a)(1), (a)(2), (a)(5), (a)(6) or (a)(7) of this rule shall be filed within 10 days of the filing of the statement of errors complained of on appeal required by Pa.R.A.P. 905(a)(2), or within 10 days of the lower court's filing of a Pa.R.A.P. 1925(a)(2) opinion, whichever period expires last, unless the basis for seeking to quash the appeal appears on the record subsequent to the time limit provided herein, or except upon application and for good cause shown.

Official Note: Pa.R.A.P. 1933 makes clear the right of a moving party to obtain immediate transmission of as much of the record as may be necessary for the purposes of a motion under this rule. *See* Pa.R.A.P. 123(c).

Source

The provisions of this Rule 1972 amended May 16, 1979, effective September 30, 1979, 9 Pa.B. 1740; amended February 27, 1980, 10 Pa.B. 1038, effective date as set forth at 10 Pa.B. 1038; amended September 10, 2008, effective December 1, 2008, 38 Pa.B. 5257; amended January 13, 2009, effective as to all appeals filed 60 days or more after adoption, 39 Pa.B. 1094; amended April 1, 2015, effective May 1, 2015, 45 Pa.B. 1943. Immediately preceding text appears at serial pages (366922) and (369573).

Rule 1973. Discontinuance.

(a) *General rule*.—An appellant may discontinue an appeal or other matter as to all appellees as a matter of course until 14 days after the date on which the appellee's principal brief is due, or thereafter by leave of court upon application. A discontinuance may not be entered by appellant as to less than all appellees except by stipulation for discontinuance signed by all the parties, or by leave of court upon application. Discontinuance by one appellant shall not affect the right of any other appellant to continue the appeal.

(b) *Filing of discontinuance*.—If an appeal has not been docketed, the appeal may be discontinued in the lower court. Otherwise all papers relating to the discontinuance shall be filed in the appellate court and the appellate prothonotary shall give written notice of the discontinuance in person or by first class mail to the prothonotary or clerk of the lower court or to the clerk of the government

unit, to the persons named in the proof of service accompanying the appeal or other matter and to the Administrative Office. If an appeal has been docketed in the appellate court, the prothonotary or clerk of the lower court or the clerk of the government unit shall not accept a *praecipe* to discontinue the action until it has received notice from the appellate court prothonotary or certification of counsel that all pending appeals in the action have been discontinued.

Official Note: When leave of court is required for discontinuance, the appellant must file an application for relief pursuant to Pa.R.A.P. 123. Prompt discontinuance of an appeal once there is a reason to do so promotes efficient use of judicial resources.

Source

The provisions of this Rule 1973 amended December 30, 1987, effective January 16, 1988 and shall govern all matters thereafter commenced and, insofar as just and practicable, matters then pending, 18 Pa.B. 245; amended November 19, 2013, effective December 20, 2013, 43 Pa.B. 7074. Immediately preceding text appears at serial page (368243).

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