

**CHAPTER 3. ORDERS FROM WHICH APPEALS
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IN GENERAL

Rule 301. Requisites for an Appealable Order.

(a) *Entry upon docket below.*

(1) Except as provided in subparagraph (2) of this paragraph, no order of a court shall be appealable until it has been entered upon the appropriate docket in the trial court. Where under the applicable practice below an order is entered in two or more dockets, the order has been entered for the purposes of appeal when it has been entered in the first appropriate docket.

(2) In a criminal case in which no post-sentence motion has been filed, a judgment of sentence is appealable upon the imposition of sentence in open court.

(b) *Separate document required.*—Every order shall be set forth on a separate document.

(c) *Nonappealable orders.*—Except as provided in subparagraph (a)(2), a direction by the trial court or other government unit that a specified judgment, sentence or other order shall be entered, unaccompanied by actual entry of the specified order in the docket, does not constitute an appealable order. Any such order shall be docketed before an appeal is taken.

(d) *Entry of appealable orders.*—Subject to any inconsistent general rule applicable to particular classes of matters, the clerk of the trial court shall, on *praecipe* of any party (except a party who by law may not *praecipe* for entry of an adverse order), forthwith prepare, sign, and enter an appropriate order, judgment, or final decree in the docket, evidencing any action from which an appeal lies either as of right or upon permission to appeal or allowance of appeal or by petition for specialized review.

(e) *Emergency appeals.*—Where the exigency of the case is such as to impel an immediate appeal and the party intending to appeal an adverse action is unable to secure the formal entry of an appealable order pursuant to the usual proce-

dures, the party may file in the trial court and serve a *praecipe* for entry of an adverse order, which action shall constitute entry of an appealable order for the purposes of these rules. The interlocutory or final nature of the action shall not be affected by this paragraph.

Official Note: See Pa.R.A.P. 311 authorizing interlocutory appeals as of right, 312 authorizing interlocutory appeals by permission, 313 authorizing appeals from collateral orders, and 341 to 343 authorizing appeals from final orders.

See also Pa.R.A.P. 903 governing time for filing notice of appeal, 1113 governing time for filing petition for allowance of appeal, 1311(b) governing time for filing petition for permission for appeal, 1512 governing time for filing petition for review, and 1602(a) governing time for filing specialized petition for review.

The 1986 amendment to Pa.R.A.P. 301 stated that no order shall be appealable until entered in the docket and deleted reference to reduction of an order to judgment as a prerequisite for appeal in every case. This deletion does not eliminate the requirement of reduction of an order to judgment in an appropriate case. Due to the variety of orders issued by courts in different kinds of cases, no single rule can delineate the requirements applicable in all cases. If the applicable practice or case law requires that an order be reduced to judgment or final decree before it becomes final, that requirement must still be met before the order can be appealed, and parties are cautioned that an appellate court may remand or take other steps under Pa.R.A.P. 902 if the prerequisites are not satisfied. Pa.R.C.P. 3021 sets forth the orders that the prothonotary is to enter in the judgment index and Pa.R.C.P. 227.4 provides a mechanism for parties to *praecipe* for judgment in certain circumstances. See also Pa.R.C.P. 236 and 237.

The filing in the trial court required by paragraph (e) may be accompanied by an application to the trial court for relief such as a stay or *supersedeas* under Chapter 17.

See Pa.R.A.P. 108(d), Pa.R.A.P. 903(c)(3), and Pa.R.Crim.P. 462(G), 720, and 721 governing criminal appeals.

Explanatory Comment—1976

Language clarified to conform to *Stotsenburg v. Frost*, 465 Pa. 187, 348 A.2d 418 (1975).

Source

The provisions of this Rule 301 amended through December 10, 1986, effective January 31, 1987, and shall govern all matters thereafter commenced and, insofar as just and practicable, matters then pending, 16 Pa.B. 4591; amended January 18, 2007, effective August 1, 2007, 37 Pa.B. 521; amended January 7, 2020, effective August 1, 2020, 50 Pa.B. 505. Immediately preceding text appears at serial pages (381031) to (381033).

Rule 302. Requisites for Reviewable Issue.

(a) *General rule.*—Issues not raised in the trial court are waived and cannot be raised for the first time on appeal.

(b) *Charge to jury.*—A general exception to the charge to the jury will not preserve an issue for appeal. Specific exception shall be taken to the language or omission complained of.

Official Note: *Paragraph (a)*—See *Commonwealth v. Piper*, 328 A.2d 845, 847 (Pa. 1974) (“[I]ssues not raised in the court below are waived and cannot be raised for the first time on appeal. . .”).

Paragraph (b)—In the civil context, the Supreme Court held in *Jones v. Ott*, 191 A.3d 782, 791 n.13 (Pa. 2018), that “in order to preserve a jury-charge challenge under Pa.R.C.P. 227.1 by filing proposed points for charge with the prothonotary, a party must make requested points for charge part of the record pursuant to Pa.R.C.P. 226(a), obtain an explicit trial court ruling upon the challenged instruction, and raise the issue in a post-trial motion. See Pa.R.A.P. 302(a); Pa.R.C.P. 226(a), 227, 227.1.” See *Dilliaine v. Lehigh Valley Trust Co.*, 322 A.2d 114 (Pa. 1974) (specific exception to trial court’s jury instruction must be made in order to preserve a point for appellate review).

In the criminal context, the procedure for raising and preserving objections to a jury charge is found in Pa.R.Crim.P. 647(B) and (C). *See also Commonwealth v. Pressley*, 887 A.2d 220, 225 (Pa. 2005) (“[M]ere submission and subsequent denial of proposed points for charge that are inconsistent with or omitted from the instructions actually given will not suffice to preserve an issue, absent a specific objection or exception to the charge or the trial court’s ruling respecting the points.”); *Commonwealth v. Light*, 326 A.2d 288 (Pa. 1974) (plurality opinion) (failure to take a specific exception to the language complained of in a jury charge forecloses review by the appellate court).

Failure to follow the appropriate procedure may result in waiver of this issue.

Cross references—Pa.R.A.P. 2117(c) (statement of place of raising or preservation of issues) and Pa.R.A.P. 2119(e) (statement of place of raising or preservation of issues) require that the brief, in both the statement of the case and in the argument, expressly refer to the place in the record where the issue presented for decision on appeal has been raised or preserved below. *See* Pa.R.A.P. 1551 (scope of review) as to requisites for reviewable issues on petition.

Source

The provisions of this Rule 302 amended February 27, 1980, 10 Pa.B. 1038, effective as set forth at 10 Pa.B. 1038; amended October 7, 2020, effective immediately, 50 Pa.B. 5839. Immediately preceding text appears at serial pages (401596) to (401597).

INTERLOCUTORY APPEALS

Rule 311. Interlocutory Appeals as of Right.

(a) *General Rule.* An appeal may be taken as of right and without reference to Pa.R.A.P. 341(c) from the following types of orders:

(1) *Affecting Judgments.* An order refusing to open, vacate, or strike off a judgment. If orders opening, vacating, or striking off a judgment are sought in the alternative, no appeal may be filed until the court has disposed of each claim for relief.

(2) *Attachments, etc.* An order confirming, modifying, dissolving, or refusing to confirm, modify or dissolve an attachment, custodianship, receivership, or similar matter affecting the possession or control of property, except for orders pursuant to 23 Pa.C.S. §§ 3323(f), 3505(a).

(3) *Change of Criminal Venue or Venire.* An order changing venue or venire in a criminal proceeding.

(4) *Injunctions.* An order that grants or denies, modifies or refuses to modify, continues or refuses to continue, or dissolves or refuses to dissolve an injunction unless the order was entered:

(i) Pursuant to 23 Pa.C.S. §§ 3323(f), 3505(a); or

(ii) After a trial but before entry of the final order. Such order is immediately appealable, however, if the order enjoins conduct previously permitted or mandated or permits or mandates conduct not previously mandated or permitted, and is effective before entry of the final order.

(5) *Peremptory Judgment in Mandamus.* An order granting peremptory judgment in mandamus.

- (6) *New Trials*. An order in a civil action or proceeding awarding a new trial, or an order in a criminal proceeding awarding a new trial where the defendant claims that the proper disposition of the matter would be an absolute discharge or where the Commonwealth claims that the trial court committed an error of law.
- (7) *Partition*. An order directing partition.
- (8) *Other Cases*. An order that is made final or appealable by statute or general rule, even though the order does not dispose of all claims and of all parties.
- (b) *Order Sustaining Venue or Personal or In Rem Jurisdiction*. An appeal may be taken as of right from an order in a civil action or proceeding sustaining the venue of the matter or jurisdiction over the person or over real or personal property if:
- (1) the plaintiff, petitioner, or other party benefiting from the order files of record within ten days after the entry of the order an election that the order shall be deemed final; or
 - (2) the court states in the order that a substantial issue of venue or jurisdiction is presented.
- (c) *Changes of Venue, etc.* An appeal may be taken as of right from an order in a civil action or proceeding changing venue, transferring the matter to another court of coordinate jurisdiction, or declining to proceed in the matter on the basis of *forum non conveniens* or analogous principles.
- (d) *Commonwealth Appeals in Criminal Cases*. In a criminal case, under the circumstances provided by law, the Commonwealth may take an appeal as of right from an order that does not end the entire case where the Commonwealth certifies in the notice of appeal that the order will terminate or substantially handicap the prosecution.
- (e) *Orders Overruling Preliminary Objections in Eminent Domain Cases*. An appeal may be taken as of right from an order overruling preliminary objections to a declaration of taking and an order overruling preliminary objections to a petition for appointment of a board of viewers.
- (f) *Administrative Remand*. An appeal may be taken as of right from:
- (1) an order of a common pleas court or government unit remanding a matter to an administrative agency or hearing officer for execution of the adjudication of the reviewing tribunal in a manner that does not require the exercise of administrative discretion; or
 - (2) an order of a common pleas court or government unit remanding a matter to an administrative agency or hearing officer that decides an issue that would ultimately evade appellate review if an immediate appeal is not allowed.
- (g) *Waiver of Objections*.
- (1) Except as provided in subdivision (g)(1), failure to file an appeal of an interlocutory order does not waive any objections to the interlocutory order:
 - (i) [Rescinded].

(ii) Failure to file an appeal from an interlocutory order under subdivision (b)(1) or subdivision (c) of this rule shall constitute a waiver of all objections to jurisdiction over the person or over the property involved or to venue, etc., and the question of jurisdiction or venue shall not be considered on any subsequent appeal.

(iii) Failure to file an appeal from an interlocutory order under subdivision (e) of this rule shall constitute a waiver of all objections to such an order.

(iv) Failure to file an appeal from an interlocutory order refusing to compel arbitration, appealable under 42 Pa.C.S. § 7320(a)(1) and subdivision (a)(8) of this rule, shall constitute a waiver of all objections to such an order.

(2) Where no election that an interlocutory order shall be deemed final is filed under subdivision (b)(1) of this rule, the objection may be raised on any subsequent appeal.

(h) *Further Proceedings in the Trial Court.* Pa.R.A.P. 1701(a) shall not be applicable to a matter in which an interlocutory order is appealed under subdivisions (a)(2) or (a)(4) of this rule.

Comment:

Authority—This rule implements 42 Pa.C.S. § 5105(c), which provides:

(c) *Interlocutory appeals.* There shall be a right of appeal from such interlocutory orders of tribunals and other government units as may be specified by law. The governing authority shall be responsible for a continuous review of the operation of section 702(b) (relating to interlocutory appeals by permission) and shall from time to time establish by general rule rights to appeal from such classes of interlocutory orders, if any, from which appeals are regularly permitted pursuant to section 702(b).

The appeal rights under this rule and under Pa.R.A.P. 312, Pa.R.A.P. 313, Pa.R.A.P. 341, and Pa.R.A.P. 342 are cumulative, and no inference shall be drawn from the fact that two or more rules may be applicable to an appeal from a given order. Pa.R.A.P. 902 addresses whether separate notices of appeal are required to be filed where an order appealable under this rule is entered on more than one docket.

Subdivision (a)—If an order falls under Pa.R.A.P. 311, an immediate appeal may be taken as of right simply by filing a notice of appeal. The procedures set forth in Pa.R.A.P. 341(c) and 1311 do not apply to an appeal under Pa.R.A.P. 311.

Subdivision (a)(3)—Change of venire is authorized by 42 Pa.C.S. § 8702. Pa.R.Crim.P. 584 treats changes of venue and venire the same. Thus, an order changing venue or venire is appealable by the defendant or the Commonwealth, while an order refusing to change venue or venire is not. *See also* Pa.R.A.P. 903(c)(1) regarding time for appeal.

Subdivision (a)(4)—This subdivision does not apply to an order granting or denying an application filed with a trial court under Pa.R.A.P. 1732(a) (stays or injunctions pending appeal). Any further relief may be sought directly from the appellate court under Pa.R.A.P. 1732(b). *See In re Passarelli Trust*, 231 A.3d 969 (Pa. Super. 2020).

Subdivision (a)(5) authorizes an interlocutory appeal as of right from an order granting a motion for peremptory judgment in mandamus without the condition precedent of a motion to open the peremptory judgment in mandamus. An order denying a motion for peremptory judgment in mandamus remains unappealable.

Subdivision (a)(6)—See *Commonwealth v. Wardlaw*, 249 A.3d 937 (Pa. 2021) (holding that an order declaring a mistrial only is not “an order in a criminal proceeding awarding a new trial”).

Subdivision (a)(8) recognizes that orders that are procedurally interlocutory may be made appealable by statute or general rule. For example, see 27 Pa.C.S. § 8303. The Pennsylvania Rules of Civil Procedure, the Pennsylvania Rules of Criminal Procedure, etc., should also be consulted. See Pa.R.A.P. 341(f) for appeals of Post Conviction Relief Act orders.

Subdivision (b) is based in part on the Act of March 5, 1925, P.L. 23. The term “civil action or proceeding” is broader than the term “proceeding at law or in equity” under the prior practice and is intended to include orders entered by the orphans’ court division. *Cf. In the Matter of Phillips*, 370 A.2d 307, 308 (Pa. 1977).

In subdivision (b)(1), a plaintiff is given a qualified option to gamble that the venue of the matter or personal or *in rem* jurisdiction will be sustained on appeal because it can be overridden by petition for and grant of permission to appeal under Pa.R.A.P. 312. Subdivision (g)(1)(ii) provides that if the plaintiff timely elects final treatment, the failure of the defendant to appeal constitutes a waiver. The appeal period under Pa.R.A.P. 903 ordinarily runs from the entry of the order, and not from the date of filing of the election, which procedure will ordinarily afford at least 20 days within which to appeal. See Pa.R.A.P. 903(c)(2) as to treatment of special appeal times. If the plaintiff does not file an election to treat the order as final, the case will proceed to trial unless (1) the trial court makes a finding under subdivision (b)(2) of the existence of a substantial question of venue or jurisdiction and the defendant elects to appeal, (2) an interlocutory appeal is permitted under Pa.R.A.P. 312, or (3) another basis for appeal appears, for example, under subdivision (a)(1), and an appeal is taken. Presumably, a plaintiff would file such an election where plaintiff desires to force the defendant to decide promptly whether the objection to venue or jurisdiction will be seriously pressed. Subdivision (b) does not cover orders that do not sustain jurisdiction because they are, of course, final orders appealable under Pa.R.A.P. 341.

Subdivision (c) is based in part on the Act of March 5, 1925, P.L. 23. The term “civil action or proceeding” is broader than the term “proceeding at law or in equity” under the prior practice and is intended to include orders entered by the orphans’ court division. *Cf. In the Matter of Phillips*, 370 A.2d 307, 308 (Pa. 1977). Subdivision (c) covers orders that do not sustain venue, such as orders under Pa.R.Civ.P. 1006(d) and (e).

However, the subdivision does not relate to a transfer under 42 Pa.C.S. § 933(c)(1), 42 Pa.C.S. § 5103, or any other similar provision of law, because such a transfer is not to a “court of coordinate jurisdiction” within the meaning of this rule; it is intended that there shall be no right of appeal from a transfer order based on improper subject matter jurisdiction. Such orders may be appealed by permission under Pa.R.A.P. 312, or an appeal as of right may be taken from an order dismissing the matter for lack of jurisdiction. See *Balshy v. Rank*, 490 A.2d 415, 416 (Pa. 1985).

Other orders relating to subject matter jurisdiction (which for this purpose does not include questions as to the form of action, such as between law and equity, or divisional assignment, see 42 Pa.C.S. § 952) will be appealable under Pa.R.A.P. 341 if jurisdiction is not sustained, and otherwise will be subject to Pa.R.A.P. 312.

Pursuant to subdivision (d), the Commonwealth has a right to take an appeal from an interlocutory order provided that the Commonwealth certifies in the notice of appeal that the order terminates or substantially handicaps the prosecution. See Pa.R.A.P. 904(e). This rule supersedes *Commonwealth v. Dugger*, 486 A.2d 382, 386 (Pa. 1985). *Commonwealth v. Dixon*, 907 A.2d 468, 471 n.8 (Pa. 2006).

Pursuant to subdivision (f), there is an immediate appeal as of right from an order of a common pleas court or government unit remanding a matter to an administrative agency or hearing officer for execution of the adjudication of the reviewing tribunal in a manner that does not require the exercise of administrative discretion. Examples of such orders include: a remand by a court of common pleas to the Department of Transportation for removal of points from a driver's license; and an order of the Workers' Compensation Appeal Board reinstating compensation benefits and remanding to a referee for computation of benefits.

Subdivision (f) further permits immediate appeal from an order of a common pleas court or government unit remanding a matter to an administrative agency or hearing officer that decides an issue that would ultimately evade appellate review if an immediate appeal is not allowed. *See Lewis v. Sch. Dist. of Philadelphia*, 690 A.2d 814, 816 (Pa. Cmwlth. 1997).

Subdivision (g)(1)(iv) addresses waiver in the context of appeals from various classes of arbitration orders. All six types of arbitration orders identified in 42 Pa.C.S. § 7320(a) are immediately appealable as of right. Differing principles govern these orders, some of which are interlocutory and some of which are final. The differences affect whether an order is appealable under this rule or Pa.R.A.P. 341(b) and whether an immediate appeal is necessary to avoid waiver of objections to the order.

- Section 7320(a)(1)—An interlocutory order refusing to compel arbitration under 42 Pa.C.S. § 7320(a)(1) is immediately appealable pursuant to Pa.R.A.P. 311(a)(8). Failure to appeal the interlocutory order immediately waives all objections to it. *See* Pa.R.A.P. 311(g)(1)(iv). This supersedes the holding in *Cooke v. Equitable Life Assurance Soc'y*, 723 A.2d 723, 726 (Pa. Super. 1999). Pa.R.A.P. 311(a)(8) and former Pa.R.A.P. 311(g)(1)(i) require a finding of waiver based on failure to appeal the denial order when entered.
- Section 7320(a)(2)—Failure to appeal an interlocutory order granting an application to stay arbitration under 42 Pa.C.S. § 7304(b) does not waive the right to contest the stay; an aggrieved party may appeal such an order immediately under Pa.R.A.P. 311(a)(8) or challenge the order on appeal from the final judgment.
- Section 7320(a)(3)—(a)(6)—If an order is appealable under 42 Pa.C.S. § 7320(a)(3), (4), (5), or (6) because it is final, that is, the order disposes of all claims and of all parties, see Pa.R.A.P. 341(b), failure to appeal immediately waives all issues. If the order does not dispose of all claims or of all parties, then the order is interlocutory. An aggrieved party may appeal such an order immediately under Pa.R.A.P. 311(a)(8) or challenge the order on appeal from the final judgment.

Subdivision (h)—*See* note to Pa.R.A.P. 1701(a).

Source

The provisions of this Rule 311 amended June 28, 1985, effective July 20, 1985, 15 Pa.B. 2635; 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 March 31, 1989, effective July 1, 1989, 19 Pa.B. 1721; 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 April 10, 1996, effective April 27, 1996, 26 Pa.B. 1985; amended June 29, 2005, effective 60 days after publication, 35 Pa.B. 3897; amended October 14, 2009, effective 30 days after publication 39 Pa.B. 6324; amended December 29, 2011, effective and applicable to all Orphans' Court orders entered forty-five days after adoption, 42 Pa.B. 374; amended December 29, 2011, effective and applicable to all Orphans' Court orders entered forty-five days after adoption, 42 Pa.B. 4693; amended December 14, 2015, effective April 1, 2016, for all orders entered on or after that date, 46 Pa.B. 8; amended March 9, 2021, effective July 1, 2021, 51 Pa.B. 1501; amended September 8, 2022, effective January 1, 2023, 52 Pa.B. 6036; amended May 18, 2023, effective immediately, 53 Pa.B. 2940. Immediately preceding text appears at serial pages (411407) to (411411).

Rule 312. Interlocutory Appeals by Permission.

An appeal from an interlocutory order may be taken by permission pursuant to Chapter 13 (interlocutory appeals by permission).

Comment:

This rule does not apply to an order granting or denying an application filed with the trial court under Pa.R.A.P. 1732(a) (stays or injunctions pending appeal). Any further relief may be sought directly from the appellate court under Pa.R.A.P. 1732(b). *See In re Passarelli Trust*, 231 A.3d 969 (Pa. Super. 2020).

Source

The provisions of this Rule 312 amended September 8, 2022, effective January 2, 2023, 52 Pa.B. 6036. Immediately preceding text appears at serial page (404392).

Rule 313. Collateral Orders.

(a) *General Rule.* An appeal may be taken as of right from a collateral order of a trial court or other government unit.

(b) *Definition.* A collateral order is an order separable from and collateral to the main cause of action where the right involved is too important to be denied review and the question presented is such that if review is postponed until final judgment in the case, the claim will be irreparably lost.

Comment:

If an order meets the definition of a collateral order, it is appealed by filing a notice of appeal or petition for review.

Pa.R.A.P. 313 is a codification of existing case law with respect to collateral orders. *See Pugar v. Greco*, 394 A.2d 542, 545 (Pa. 1978) (quoting *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541 (1949)).

Pennsylvania appellate courts have found a number of classes of orders to fit the collateral order definition. Collateral order cases are collected and discussed in Darlington, McKeon, Schuckers and Brown, *Pennsylvania Appellate Practice 2015-2016 Edition*, §§ 313:1—313:201. Examples include an order denying a petition to permit the payment of death taxes, *Hankin v. Hankin*, 487 A.2d 1363 (Pa. Super. 1985), and an order denying a petition for removal of an executor, *Re: Estate of Georgiana*, 458 A.2d 989 (Pa. Super. 1983), *aff'd*, 475 A.2d 744 (Pa. 1984), and an order denying a pre-trial motion to dismiss on double jeopardy grounds if the trial court does not also make a finding that the motion to dismiss is frivolous. *See Commonwealth v. Brady*, 508 A.2d 286, 289—91 (Pa. 1986) (allowing an immediate appeal from denial of double jeopardy claim under collateral order doctrine where trial court does not make a finding of frivolousness); *Commonwealth v. Orié*, 22 A.3d 1021 (Pa. 2011). An order denying a pre-trial motion to dismiss on double jeopardy grounds that also finds that the motion to dismiss is frivolous is not appealable as of right as a collateral order, but may be appealable by permission under Pa.R.A.P. 1311(a)(3).

Pa.R.A.P. 902 addresses whether separate notices of appeal are required to be filed where an order appealable under this rule is entered on more than one docket.

Source

The provisions of this Rule 313 adopted March 12, 1992, effective July 6, 1992, and shall govern all matters thereafter commenced; amended May 6, 1992, effective July 6, 1992, 22 Pa.B. 2675; amended July 7, 1997, effective in 60 days, 27 Pa.B. 3503; corrected August 8, 1997, 27 Pa.B. 3995; amended June 4, 2013, effective July 4, 2013, 43 Pa.B. 3327; amended January 7, 2020, effective August 1, 2020, 50 Pa.B. 505; amended May 18, 2023, effective immediately, 53 Pa.B. 2940. Immediately preceding text appears at serial page (411412).

FINAL ORDERS**Rule 341. Final Orders; Generally.**

(a) *General Rule.* Except as prescribed in subdivisions (d) and (e) of this rule, an appeal may be taken as of right from any final order of a government unit or trial court.

(b) *Definition of Final Order.* A final order:

- (1) disposes of all claims and of all parties;
- (2) [Rescinded];
- (3) is entered as a final order pursuant to subdivision (c) of this rule; or
- (4) is an order pursuant to subdivision (f) of this rule.

(c) *Determination of Finality.* When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the trial court or other government unit may enter a final order as to one or more but fewer than all of the claims and parties only upon an express determination that an immediate appeal would facilitate resolution of the entire case. Such an order becomes appealable when entered. In the absence of such a determination and entry of a final order, any order or other form of decision that adjudicates fewer than all the claims and parties shall not constitute a final order. In addition, the following conditions shall apply:

(1) An application for a determination of finality under subdivision (c) must be filed within 30 days of entry of the order. During the time an application for a determination of finality is pending, the action is stayed.

(2) 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.

(3) A notice of appeal may be filed within 30 days after entry of an order as amended unless a shorter time period is provided in Pa.R.A.P. 903(c). Any denial of such an application is reviewable only through a petition for permission to appeal under Pa.R.A.P. 1311.

(d) *Superior Court and Commonwealth Court Orders.* Except as prescribed by Pa.R.A.P. 1101 no appeal may be taken as of right from any final order of the Superior Court or of the Commonwealth Court.

(e) *Criminal Orders.* An appeal may be taken by the Commonwealth from any final order in a criminal matter only in the circumstances provided by law.

(f) *Post Conviction Relief Act Orders.*

(1) An order granting, denying, dismissing, or otherwise finally disposing of a petition for post-conviction collateral relief shall constitute a final order for purposes of appeal.

(2) An order granting sentencing relief, but denying, dismissing, or otherwise disposing of all other claims within a petition for post-conviction collateral relief, shall constitute a final order for purposes of appeal.

Comment:

Related Constitutional and statutory provisions—Section 9 of Article V of the Constitution of Pennsylvania provides that “there shall be a right of appeal from a court of record or from an administrative agency to a court of record or to an appellate court.” The constitutional provision is implemented by 2 Pa.C.S. § 702, 2 Pa.C.S. § 752, and 42 Pa.C.S. § 5105.

Criminal law proceedings—Commonwealth appeals—Orders that do not dispose of the entire case that were formerly appealable by the Commonwealth in criminal cases under Pa.R.A.P. 341 are appealable as interlocutory appeals as of right under Pa.R.A.P. 311(d).

Final orders—pre- and post-1992 practice—The 1992 amendment generally eliminated appeals as of right under Pa.R.A.P. 341 from orders that do not end the litigation as to all claims and as to all parties. Prior to 1992, there were cases that deemed an order final if it had the practical effect of putting a party out of court, even if the order did not end the litigation as to all claims and all parties.

A party needs to file only a single notice of appeal to secure review of prior non-final orders that are made final by the entry of a final order. *See, e.g., K.H. v. J.R.*, 826 A.2d 863, 870-71 (Pa. 2003) (notice of appeal following trial); *Betz v. Pneumo Abex LLC*, 44 A.3d 27, 54 (Pa. 2012) (notice of appeal of summary judgment); *Laster v. Unemployment Comp. Bd. of Rev.*, 80 A.3d 831, 832 n.2 (Pa.Cmwlth. 2013) (petition for review of agency decision). Where, however, one or more orders resolves issues arising on more than one docket or relating to more than one judgment, separate notices of appeal must be filed. *Malanchuk v. Tsimura*, 137 A.3d 1283, 1288 (Pa. 2016) (“[C]omplete consolidation (or merger or fusion of actions) does not occur absent a complete identity of parties and claims; separate actions lacking such overlap retain their separate identities and require distinct judgments”); *Commonwealth v. C.M.K.*, 932 A.2d 111, 113 & n.3 (Pa. Super. 2007) (quashing appeal taken by single notice of appeal from order on remand for consideration under Pa.R.Crim.P. 607 of two persons’ judgments of sentence).

The 1997 amendments to subdivisions (a) and (c), substituting the conjunction “and” for “or,” are not substantive. The amendments merely clarify that by definition any order that disposes of all claims will dispose of all parties and any order that disposes of all parties will dispose of all claims.

Rescission of subdivision (b)(2)—Former subdivision (b)(2) provided for appeals of orders defined as final by statute. The 2015 rescission of subdivision (b)(2) eliminated a potential waiver trap created by legislative use of the adjective “final” to describe orders that were procedurally interlocutory but nonetheless designated as appealable as of right. Failure to appeal immediately an interlocutory order deemed final by statute waived the right to challenge the order on appeal from the final judgment. Rescinding subdivision (b)(2) eliminated this potential waiver of the right to appeal. If an order designated as appealable by a statute disposes of all claims and of all parties, it is appealable as a final order pursuant to Pa.R.A.P. 341. If the order does not meet that standard, then it is interlocutory regardless of the statutory description. Pa.R.A.P. 311(a)(8) provides for appeal as of right from an order that is made final or appealable by statute or general rule, even though the order does not dispose of all claims or of all parties and, thus, is interlocutory. Pa.R.A.P. 311(g) addresses waiver if no appeal is taken immediately from such interlocutory order.

One of the further effects of the rescission of subdivision (b)(2) is to change the basis for appealability of orders that do not end the case but grant or deny a declaratory judgment. *See Nationwide Mut. Ins. Co. v. Wickett*, 763 A.2d 813, 818 (Pa. 2000); *Pa. Bankers Ass’n v. Pa. Dep’t of Banking*, 948 A.2d 790, 798 (Pa. 2008). The effect of the rescission is to eliminate waiver for failure to take an immediate appeal from such an order. A party aggrieved by an interlocutory order granting or denying a declaratory judgment, where the order satisfies the criteria for “finality” under *Pennsylvania Bankers Association*, may elect to proceed under Pa.R.A.P. 311(a)(8) or wait until the end of the case and proceed under subdivision (b)(1) of this rule.

An arbitration order appealable under 42 Pa.C.S. § 7320(a) may be interlocutory or final. If it disposes of all claims and all parties, it is final, and, thus, appealable pursuant to Pa.R.A.P. 341. If the order does not dispose of all claims and all parties, that is, the order is not final, but rather interlocutory, it is appealable pursuant to Pa.R.A.P. 311. Failure to appeal an interlocutory order appealable as of right may result in waiver of objections to the order. *See* Pa.R.A.P. 311(g).

Subdivision (c)—Determination of finality—Subdivision (c) permits an immediate appeal from an order dismissing less than all claims or parties from a case only upon an express determination that

an immediate appeal would facilitate resolution of the entire case. Factors to be considered under subdivision (c) include, but are not limited to:

- (1) whether there is a significant relationship between adjudicated and unadjudicated claims;
- (2) whether there is a possibility that an appeal would be mooted by further developments;
- (3) whether there is a possibility that the court or government unit will consider issues a second time; and
- (4) whether an immediate appeal will enhance prospects of settlement.

The failure of a party to apply to the government unit or trial court for a determination of finality pursuant to subdivision (c) shall not constitute a waiver and the matter may be raised in a subsequent appeal following the entry of a final order disposing of all claims and all parties.

Where the government unit or trial court refuses to amend its order to include the express determination that an immediate appeal would facilitate resolution of the entire case and refuses to enter a final order, a petition for permission to appeal under Pa.R.A.P. 1311 of the unappealable order of denial is the exclusive mode of review. The filing of such a petition does not prevent the trial court or other government unit from proceeding further with the matter pursuant to Pa.R.A.P. 1701(b)(6). Of course, as in any case, the appellant may apply for a discretionary stay of the proceeding below.

Subdivision (c)(2) provides for a stay of the action pending determination of an application for a determination of finality. If the application is denied, and a petition for permission to appeal is filed challenging the denial, a stay or *supersedeas* will issue only as provided under Chapter 17 of these rules.

In the event that a trial court or other government unit enters a final order pursuant to subdivision (c) of this rule, the trial court or other government unit may no longer proceed further in the matter, except as provided in Pa.R.A.P. 1701(b)(1)—(5).

Subdivision (f)—Post Conviction Relief Act Orders—A failure to timely file an appeal pursuant to subdivision (f)(2) shall constitute a waiver of all objections to such an order.

Pa.R.A.P. 902 addresses whether separate notices of appeal are required to be filed where an order appealable under this rule is entered on more than one docket.

Source

The provisions of this Rule 341 amended through April 26, 1982, effective September 12, 1982, 12 Pa.B. 1536; amended March 12, 1992, effective July 6, 1992, and shall govern all matters thereafter commenced, 22 Pa.B. 1354; corrected May 1, 1992, effective July 6, 1992, and shall govern all matters thereafter commenced, 22 Pa.B. 2315; 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 October 13, 2006, effective 60 days after adoption, 36 Pa.B. 6507; amended April 16, 2013, effective to appeals and petitions for review filed 30 days after adoption, 43 Pa.B. 2423; amended May 28, 2014, effective July 1, 2014, 44 Pa.B. 3493; amended December 14, 2015, effective April 1, 2016, for all orders entered on or after that date, 46 Pa.B. 8; amended January 7, 2020, effective August 1, 2020, 50 Pa.B. 505; amended March 9, 2021, effective July 1, 2021, 51 Pa.B. 1501; amended May 18, 2023, effective immediately, 53 Pa.B. 2940. Immediately preceding text appears at serial pages (404393) to (404395).

Rule 342. (Rescinded).

Source

The provisions of this Rule 342 amended December 11, 1978, effective December 30, 1978, 8 Pa.B. 3802; amended December 20, 2000, effective January 1, 2001, 31 Pa.B. 7; amended June 29, 2005, effective 60 days after adoption, 35 Pa.B. 3897; rescinded December 29, 2011, effective and applicable to all Orphans' Court orders entered forty-five days after adoption, 42 Pa.B. 374; amended December 29, 2011, effective and applicable to all Orphans' Court orders entered forty-five days after adoption, 42 Pa.B. 4693. Immediately preceding text appears at serial page (360244).

Rule 342. Appealable Orphans' Court Orders.

(a) *General rule.* An appeal may be taken as of right from the following orders of the Orphans' Court Division:

- (1) An order confirming an account, or authorizing or directing a distribution from an estate or trust;
- (2) An order determining the validity of a will or trust;
- (3) An order interpreting a will or a document that forms the basis of a claim against an estate or trust;
- (4) An order interpreting, modifying, reforming or terminating a trust;
- (5) An order determining the status of fiduciaries, beneficiaries, or creditors in an estate, trust, or guardianship;
- (6) An order determining an interest in real or personal property;
- (7) An order issued after an inheritance tax appeal has been taken to the Orphans' Court pursuant to either 72 Pa.C.S. § 9186(a)(3) or 72 Pa.C.S. § 9188, or after the Orphans' Court has made a determination of the issue protested after the record has been removed from the Department of Revenue pursuant to 72 Pa.C.S. § 9188(a); or
- (8) An order otherwise appealable as provided by Chapter 3 of these rules.

(b) *Definitions.* As used in this rule:

- (1) "estate" includes the estate of a decedent, minor, incapacitated person, or principal under Chapters 33, 35, 51, 55 and 56 of Title 20 of the Pennsylvania Consolidated Statutes ("Probate, Estates and Fiduciaries Code") ("PEF Code");
- (2) "trust" includes inter vivos and testamentary trusts and the "custodial property" under Chapters 53 and 77 of the PEF Code; and
- (3) "guardianship" includes guardians of the person for both minors and incapacitated persons under Chapters 51 and 55 of the PEF Code.

(c) *Waiver of objections.* Failure to appeal an order that is immediately appealable under paragraphs (a)(1)—(7) of this rule shall constitute a waiver of all objections to such order and such objections may not be raised in any subsequent appeal.

Official Note: In 1992, the Supreme Court amended Rule 341 to make clear that, as a general rule, a final order is an order that ends a case as to all claims and all parties. Because of this amendment, many Orphans' Court orders that may have been considered constructive final orders prior to 1992 became unappealable interlocutory orders. Although some Orphans' Court orders were construed by case law to be appealable as collateral orders, *see Estate of Petro*, 694 A.2d 627 (Pa. Super. 1997), the collateral order doctrine was neither consistently applied nor was it applicable to other Orphans' Court orders that previously had been considered final under the "final aspect" doctrine. *See, e.g. Estate of Habazin*, 679 A.2d 1293 (Pa. Super. 1996).

In response, the Supreme Court revised Rule 342 that initially permitted appeals from Orphans' Court orders concerning distribution even if the order was not considered final under the definition of Rule 341(b). In 2001, Rule 342 was amended to also allow appeals from orders determining an interest in realty or personalty or the status of individuals or entities, in addi-

tional to orders of distribution, if the Orphans' Court judge made a determination that the particular order should be treated as final. In 2005, the Supreme Court amended Rule 342 again, adding subdivision (2) to clarify that Rule 342 was not the exclusive method of appealing Orphans' Court orders.

Also, in 2005, the Supreme Court amended Rule 311 to provide for an interlocutory appeal as of right from an order determining the validity of a will or trust. *See* former Rule 311(a)(8). Such an order needed to be immediately appealable and given finality so that the orderly administration of the estate or trust could proceed appropriately.

Since 2005, it has become apparent that other adversarial disputes arise during the administration of an estate, trust or guardianship, and that orders adjudicating these disputes also must be resolved with finality so that the ordinary and routine administration of the estate, trust or guardianship can continue. *See Estate of Stricker*, 602 Pa. 54, 63-64, 977 A.2d 1115, 1120 (2009) (Saylor, J., concurring). Experience has proven that the determination of finality procedure in subdivision (1) of Rule 342 is not workable and has been applied inconsistently around the Commonwealth. *See id.* (citing *Commonwealth v. Castillo*, 585 Pa. 395, 401, 888 A.2d 775, 779 (2005) (rejecting the exercise of discretion in permitting appeals to proceed)).

Experience has also proven that it is difficult to analogize civil litigation to litigation arising in estate, trust and guardianship administration. The civil proceeding defines the scope of the dispute, but the administration of a trust or estate does not define the scope of the litigation in Orphans' Court. Administration of a trust or an estate continues over a period of time. Litigation in Orphans' Court may arise at some point during the administration, and when it does arise, the dispute needs to be determined promptly and with finality so that the guardianship or the estate or trust administration can then continue properly and orderly. Thus, the traditional notions of finality that are applicable in the context of ongoing civil adversarial proceedings do not correspond to litigation in Orphans' Court.

In order to facilitate orderly administration of estates, trusts and guardianships, the 2011 amendments list certain orders that will be immediately appealable without any requirement that the Orphans' Court make a determination of finality. Orders falling within subdivisions (a)(1)—(7) no longer require the lower court to make a determination of finality.

Subdivisions (a)(1)—(7) list orders that are unique to Orphans' Court practice, but closely resemble final orders as defined in Rule 341(b). Subdivision (a)(1) provides that the adjudication of any account, even an interim or partial account, is appealable. Previously, only the adjudication of the final account would have been appealable as a final order under Rule 341. The prior limitation has proven unworkable for estate administration taking years and trusts established for generations during which interim and partial accounts may be adjudicated and confirmed. The remainder of subdivision (a)(1) permits appeals from orders of distribution as Rule 342 always has permitted since its initial adoption. Subdivision (a)(2) is a new placement for orders determining the validity of a will or trust that previously were appealable as interlocutory appeals as of right following the 2005 amendment to Rule 311. *See* prior Rule 311(a)(8). Subdivision (a)(3) is a new provision that allows an immediate appeal from an order interpreting a will or other relevant document that forms the basis of a claim asserted against an estate or trust. Such orders can include, among other things, an order determining that a particular individual is or is not a beneficiary or determining if an underlying agreement executed by the decedent during life creates rights against the estate. Subdivision (a)(4) addresses trusts and is similar to subdivision (a)(3), but also permits immediate appeals from orders modifying, reforming or terminating a trust since such judicial actions are now permitted under 20 Pa.C.S. § 7740 et seq. Subdivision (a)(5) is intended to clarify prior Rule 342 in several respects: First, an appealable Orphans' Court order concerning the status of individuals or entities means an order determining if an individual or entity is a fiduciary, beneficiary or creditor, such as an order determining if the alleged creditor has a valid claim against the estate. Second, such orders include orders

pertaining to trusts and guardianships as well as estates. Finally, this subdivision resolves a conflict in prior appellate court decisions by stating definitively that an order removing or refusing to remove a fiduciary is an immediately appealable order. Subdivision (a)(6) retains the same language from prior Rule 342. Subdivision (a)(7) permits appeals of an Orphans' Court order concerning an inheritance tax appraisal, assessment, allowance or disallowance when such order is issued separately and not in conjunction with the adjudication of an account. Sections 9186 and 9188 of Chapter 72 provide three procedures, outside the context of an accounting, whereby either the personal representative or the Department of Revenue may bring before the Orphans' Court a dispute over inheritance taxes imposed. *See also Estate of Gail B. Jones*, 796 A.2d 1003 (Pa. Super. 2002) (analogizing a petition regarding the apportionment of inheritance taxes to a declaratory judgment petition given that an estate account had not yet been filed). A decision concerning inheritance taxes issued in conjunction with the adjudication of an account would be appealable under subdivision (a)(1).

In keeping with the 2005 amendment that added subdivision (2) to prior Rule 342, subdivision (a)(8) tracks subdivision (2) of former Rule 342. Subdivision (2) was adopted in response to *Estate of Sorber*, 2002 Pa. Super. 226, 803 A.2d 767 (2002), a panel decision holding that Rule 342 precluded immediate appeals from orders that would have otherwise been appealable as collateral orders under Rule 313 unless the Orphans' Court judge made a determination of finality under Rule 342. Subdivision (a)(8) makes clear that Rule 342, as amended, is still not the sole method of appealing an Orphans' Court order and an order not otherwise immediately appealable under Rule 342 may still be immediately appealable if it meets the criteria under another rule in Chapter 3 of these rules. Examples would include injunctions appealable under Rule 311(a)(4), Interlocutory Orders Appealable by Permission under Rules 312 and 1311, Collateral Orders appealable under Rule 313, and an order approving a final accounting which is a true final order under Rule 341. Whether or not such orders require certification or a further determination of finality by the trial court depends on the applicable rule in Chapter 3. *Compare* Rules 311(a)(4), 313 and 341(c) with Rules 312 and 1311.

Failure to appeal an order that is immediately appealable under subdivisions (a)(1)—(7) of this rule shall constitute a waiver of all objections to such order and may not be raised in any subsequent appeal. *See* Subdivision (c) of this Rule. The consequences of failing to appeal an Orphans' Court order under (a)(8) will depend on whether such order falls within Rules 311, 312, 313, 1311 or 341.

Source

The provisions of this Rule 342 adopted December 29, 2011, effective and applicable to all Orphans' Court orders entered forty-five days after adoption, 42 Pa.B. 374; amended December 29, 2011, effective and applicable to all Orphans' Court orders entered forty-five days after adoption, 42 Pa.B. 4693. Immediately preceding text appears at serial pages (360244) to (360246).

Rule 343. (Rescinded).

Official Note: The Supreme Court rescinded this Rule in 1997 as obsolete in view of the changes to the Rules of Criminal Procedure rescinding Pa.R.Crim.P. 321 and adopting new Pa.R.Crim.P. 1410, effective as to cases in which the determination of guilt occurs on or after January 1, 1994. *See* Criminal Procedural Rules Committee Final Report at 620—621 A.2d (Pennsylvania Reporter Series) pages CVIII—CXXXIII.

Source

The provisions of this Rule 343 adopted June 29, 1977, effective September 1, 1977, 7 Pa.B. 2112, amended May 22, 1978, effective July 1, 1978, 8 Pa.B. 1612; amended July 7, 1997, effective in 60 days, 27 Pa.B. 3503. Immediately preceding text appears at serial pages (214295) to (214296).

[Next page is 5-1.]