CHAPTER 21. BRIEFS AND REPRODUCED RECORD

IN GENERAL

CONTENT OF BRIEFS

CONTENT OF REPRODUCED RECORD

FORM OF BRIEFS AND REPRODUCED RECORD

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FILING AND SERVICE

IN GENERAL

Rule 2101. Conformance with Requirements.

Briefs and reproduced records shall conform in all material respects with the requirements of these rules as nearly as the circumstances of the particular case will admit, otherwise they may be suppressed, and, if the defects are in the brief or reproduced record of the appellant and are substantial, the appeal or other matter may be quashed or dismissed.

Official Note: Based on former Supreme Court Rule 39, former Superior Court Rule 31 and former Commonwealth Court Rule 85, and makes no change in substance.

Rule 2102. Intervenors.

For purposes of briefing and argument, intervenors shall be subject to those provisions of these rules applicable to the party on whose side the intervenor is principally aligned. An intervenor may adopt by reference any part of the brief of another party.

CONTENT OF BRIEFS

Rule 2111. Brief of the Appellant.

(a) *General rule*.—The brief of the appellant, except as otherwise prescribed by these rules, shall consist of the following matters, separately and distinctly entitled and in the following order:

(1) Statement of jurisdiction.

(2) Order or other determination in question.

(3) Statement of both the scope of review and the standard of review.

(4) Statement of the questions involved.

(5) Statement of the case.

(6) Summary of argument.

(7) Statement of the reasons to allow an appeal to challenge the discretionary aspects of a sentence, if applicable.

(8) Argument for appellant.

(9) A short conclusion stating the precise relief sought.

(10) The opinions and pleadings specified in paragraphs (b) and (c) of this rule.

(11) In the Superior Court, a copy of the statement of errors complained of on appeal, filed with the trial court pursuant to Pa.R.A.P. 1925(b), or an aver-

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ment that no order requiring a statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b) was entered.

(12) The certificates of compliance required by Pa.R.A.P. 127 and 2135(d).

(b) *Opinions below*.—There shall be appended to the brief a copy of any opinions delivered by any trial court, intermediate appellate court, or other government unit relating to the order or other determination under review, if pertinent to the questions involved. If an opinion has been reported, that fact and the appropriate citation shall also be set forth.

(c) *Pleadings*.—When pursuant to Pa.R.A.P. 2151(c) (original hearing cases) the parties are not required to reproduce the record, and the questions presented involve an issue raised by the pleadings, a copy of the relevant pleadings in the case shall be appended to the brief.

(d) *Brief of the Appellant*.—In the Superior Court, there shall be appended to the brief of the appellant a copy of the statement of errors complained of on appeal, filed with the trial court pursuant to Pa.R.A.P. 1925(b). If the trial court has not entered an order directing the filing of such a statement, the brief shall contain an averment that no order to file a statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b) was entered by the trial court.

Official Note: The 1999 amendment requires a statement of the scope and standard of review. "'Scope of review' refers to 'the confines within which an appellate court must conduct its examination.' (Citation omitted.) In other words, it refers to the matters (or 'what') the appellate court is allowed to examine. In contrast, 'standard of review' refers to the manner in which (or 'how') that examination is conducted.'' *Morrison v. Commonwealth, Dept. of Public Welfare*, 646 A.2d 565, 570 (Pa. 1994). This amendment incorporates the prior practice of the Superior Court pursuant to Pa.R.A.P. 3518 which required such statements. Accordingly, Pa.R.A.P. 3518 has been rescinded and its requirement is now subsumed under paragraph (a)(2) of this Rule.

Pa.R.A.P. 2119(f) requires a separate statement of reasons that an appellate court should allow an appeal to challenge the discretionary aspects of a sentence. The 2008 amendments recognize that, while Pa.R.A.P. 2119(f) does not apply to all appeals, an appellant must include the reasons for allowance of appeal as a separate enumerated section immediately before the Argument section if he or she desires to challenge the discretionary aspects of a sentence.

Source

The provisions of this Rule 2111 amended December 11, 1978, effective December 30, 1978, 8 Pa.B. 3802; 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 January 14, 1999, effective January 14, 1999, 29 Pa.B. 544; amended March 20, 2003, effective immediately, 33 Pa.B. 1711; amended April 14, 2003, effective immediately, 33 Pa.B. 2044; amended October 15, 2004, effective 60 days thereafter, 34 Pa.B. 5888; amended May 10, 2007, effective 60 days after adoption, 37 Pa.B. 2409; amended June 5, 2008, effective 30 days after adoption, 38 Pa.B. 3355; amended January 5, 2018, effective January 6, 2018, 48 Pa.B. 461. Immediately preceding text appears at serial pages (338842) and (366925).

Rule 2112. Brief of the Appellee.

The brief of the appellee, except as otherwise prescribed by these rules, need contain only a summary of argument and the complete argument for appellee, and may also include counter-statements of any of the matters required in the appellant's brief as stated in Pa.R.A.P. 2111(a). Unless the appellee does so, or the brief of the appellee otherwise challenges the matters set forth in the appellant's brief,

it will be assumed the appellee is satisfied with them, or with such parts of them as remain unchallenged. The brief of the appellee shall contain the certificates of compliance required by Pa.R.A.P. 127 and 2135(d).

Official Note: *See* Pa.R.A.P. 2111 and 2114—2119.

Source

The provisions of this Rule 2112 amended December 11, 1978, effective December 30, 1978, 8 Pa.B. 3802; amended May 1, 2013, effective to appeals and petitions for review filed 30 days after adoption, 43 Pa.B. 2704; amended January 5, 2018, effective January 6, 2018, 48 Pa.B. 461. Immediately preceding text appears at serial pages (366925) to (366926).

Rule 2113. Reply Brief.

(a) *General rule*.—In accordance with Pa.R.A.P. 2185(a) (time for serving and filing briefs), the appellant may file a brief in reply to matters raised by appellee's brief or in any *amicus curiae* brief and not previously addressed in appellant's brief. If the appellee has cross appealed, the appellee may file a similarly limited reply brief. A reply brief shall contain the certificates of compliance required by Pa.R.A.P. 127 and 2135(d).

(b) *Response to draft or plan*.—A reply brief may be filed as prescribed in Pa.R.A.P. 2134 (drafts or plans).

(c) *Other briefs*.—No further briefs may be filed except with leave of court.

Official Note: An appellant now has a general right to file a reply brief. The scope of the reply brief is limited, however, in that such brief may only address matters raised by appellee and not previously addressed in appellant's brief. No subsequent brief may be filed unless authorized by the court.

The length of a reply brief is set by Pa.R.A.P. 2135 (length of briefs). The due date for a reply brief is found in Pa.R.A.P. 2185(a) (service and filing of briefs).

Where there are cross appeals, the deemed or designated appellee may file a similarly limited reply brief addressing issues in the cross appeal. *See also* Pa.R.A.P. 2136 (briefs in cases involving cross appeals).

The 2011 amendment to paragraph (a) authorized an appellant to address in a reply brief matters raised in *amicus curiae* briefs. Before the 2011 amendment, the rule permitted the appellant to address in its reply brief only matters raised in the appellee's brief. The 2011 amendment did not change the requirement that the reply brief must not address matters previously addressed in the appellant's principal brief.

Source

The provisions of this Rule 2113 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 October 18, 2002, effective December 2, 2002, 32 Pa.B. 5402; amended January 30, 2009, effective as to all appeals filed 60 days or more after adoption, 39 Pa.B. 1094; amended October 3, 2011, effective in thirty days, 41 Pa.B. 5620; amended January 5, 2018, effective January 6, 2018, 48 Pa.B. 461. Immediately preceding text appears at serial page (366926).

Rule 2114. Statement of Jurisdiction.

The statement of jurisdiction shall contain a precise citation to the statutory provision, general rule or other authority believed to confer on the appellate court jurisdiction to review the order or other determination in question.

Official Note: Based on former Supreme Court Rule 51 and extends the rule to the Superior and Commonwealth Courts.

Rule 2115. Order or Other Determination in Question.

(a) *General Rule*.—The text of the order or other determination from which an appeal has been taken or which is otherwise sought to be reviewed shall be set forth verbatim immediately following the statement of jurisdiction. See Rule 2111(b) (opinion below), however, for the placement of the text of any related opinions.

(b) *Failure to act*.—If the matter relates to the failure of the trial court or other government unit to act, a statement of that fact and a brief citation of the statute or other authority under which it is claimed such action is required, will be sufficient.

Source

The provisions of this Rule 2115 adopted May 16, 1979, effective September 30, 1979, 9 Pa.B. 1740.

Rule 2116. Statement of Questions Involved.

(a) *General rule.*—The statement of the questions involved must state concisely the issues to be resolved, expressed in the terms and circumstances of the case but without unnecessary detail. The statement will be deemed to include every subsidiary question fairly comprised therein. No question will be considered unless it is stated in the statement of questions involved or is fairly suggested thereby. Each question shall be followed by an answer stating simply whether the court or government unit agreed, disagreed, did not answer, or did not address the question. If a qualified answer was given to the question, appellant shall indicate the nature of the qualification, or if the question was not answered or addressed and the record shows the reason for such failure, the reason shall be stated briefly in each instance without quoting the court or government unit below.

(b) *Discretionary aspects of sentence.* An appellant who challenges the discretionary aspects of a sentence in a criminal matter shall include any questions relating to the discretionary aspects of the sentence imposed (but not the issue whether the appellate court should exercise its discretion to reach such question) in the statement required by paragraph (a). Failure to comply with this paragraph shall constitute a waiver of all issues relating to the discretionary aspects of sentence.

Official Note: *Paragraph (a)*—In conjunction with the 2013 amendments to Pa.R.A.P. 2135 (length of briefs) and 2140 (brief on remand or following grant of reargument or reconsideration) adopting an optional word limit in lieu of page limits, the 2013 amendment eliminated the page limit for the statement of questions involved. The word count does, however, include the statement of questions, and a party should draft the statement of questions involved accordingly, with sufficient specificity to enable the reviewing court to readily identify the issues to be resolved while incorporating only those details that are relevant to disposition of the issues. Although the page limit on the statement of questions involved was eliminated in 2013, verbosity continues to be discouraged. The appellate courts strongly disfavor a statement that is not concise.

Paragraph (b)—The requirement set forth in Pa.R.A.P. 2116(b) is part of the procedure set forth by the Supreme Court to implement the standard set forth in 42 Pa.C.S. § 9781(b). *Commonwealth v. Tuladziecki*, 522 A.2d 17, 18 (Pa. 1987). *See* note to Pa.R.A.P. 902; note to Pa.R.A.P. 1115; and Pa.R.A.P. 2119(f) and the note thereto.

Source

The provisions of this Rule 2116 amended May 16, 1979, effective September 30, 1979, 9 Pa.B. 1740; amended May 16, 1979, effective June 2, 1979, 9 Pa.B. 1753; amended July 11, 2008, effective 30 days after adoption and shall apply to all briefs filed after the effective date; amended March 27, 2013, effective and applies to all appeals and petitions for review filed 60 days after adoption, 43 Pa.B. 2007; amended May 28, 2014, effective July 1, 2014, 44 Pa.B. 3493. Immediately preceding text appears at serial page (366453).

Rule 2117. Statement of the Case.

(a) *General rule*.—The statement of the case shall contain, in the following order:

(1) A statement of the form of action, followed by a brief procedural history of the case.

(2) A brief statement of any prior determination of any court or other government unit in the same case or estate, and a reference to the place where it is reported, if any.

(3) The names of the judges or other officials whose determinations are to be reviewed.

(4) A closely condensed chronological statement, in narrative form, of all the facts which are necessary to be known in order to determine the points in controversy, with an appropriate reference in each instance to the place in the record where the evidence substantiating the fact relied on may be found. See Rule 2132 (references in briefs to the record).

(5) A brief statement of the order or other determination under review.

(b) *All argument to be excluded.*—The statement of the case shall not contain any argument. It is the responsibility of appellant to present in the statement of the case a balanced presentation of the history of the proceedings and the respective contentions of the parties.

(c) *Statement of place of raising or preservation of issues.*—Where under the applicable law an issue is not reviewable on appeal unless raised or preserved below, the statement of the case shall also specify:

(1) The stage of the proceedings in the court of first instance, and in any appellate court below, at which, and the manner in which, the questions sought to be reviewed were raised.

(2) The method of raising them (e.g. by a pleading, by a request to charge and exceptions, etc.).

(3) The way in which they were passed upon by the court.

(4) Such pertinent quotations of specific portions of the record, or summary thereof, with specific reference to the places in the record where the matter appears (e.g. ruling or exception thereto, etc.) as will show that the question was timely and properly raised below so as to preserve the question on appeal.

Where the portions of the record relied upon under this subdivision are voluminous, they shall be included in an appendix to the brief, which may, if more convenient, be separately presented.

(d) *Appeals from cases submitted on stipulated facts.*—When the appeal is from an order on a case submitted on stipulated facts, the statement of the case may consist of the facts as stipulated by the parties.

Official Note: Based on former Supreme Court Rules 46 and 53, former Superior Court Rules 38 and 43 and former Commonwealth Court Rule 94. This misnomer ''history of the case'' has been abandoned in favor of the more accurate term ''statement of the case,'' since the matter called for in Paragraph (a)(4) is not strictly a history of events, but a statement of facts, or of contentions as to facts.

Where the appeal raises issues of pleading, such as on appeal from an order on preliminary objections, the procedural history should detail the relevant sequence of pleadings.

The former flat prohibition against quotation from the testimony has been omitted in light of the second sentence of Subdivision (b), which is new.

Subdivision (c) is new. Rule 2119(e) (statement of place of raising or preservation of issues) requires that the argument contain a reference to the manner of raising or preservation of an

issue in immediate connection with the argument relating thereto. See also Rule 302 (requisites for reviewable issue), and Rule 1551(a) (review of quasijudicial orders).

The 2004 amendment replaces references in subdivision (d) to appeals from a ''case stated'' because this procedure was abolished pursuant to Pa.R.C.P. 1038.2. In its place, the Supreme Court adopted Pa.R.C.P. 1038.1 providing for a ''case submitted on stipulated facts.'' The statement of the case under subdivision (a)(4) of this rule may now only consist of those facts stipulated to by the parties.

Source

The provisions of this Rule 2117 amended May 16, 1979, effective September 30, 1979, 9 Pa.B. 1740; amended February 18, 2004, effective immediately, 34 Pa.B. 1320; amended February 18, 2004, effective immediately, 34 Pa.B. 2688. Immediately preceding text appears at serial pages (302925) to (302927).

Rule 2118. Summary of Argument.

The summary of argument shall be a concise, but accurate, summary of the arguments presented in support of the issues in the statement of questions involved.

Official Note: In conjunction with 2013 amendments to Rules 2135 (length of briefs) and 2140 (brief on remand or following grant of reargument or reconsideration) adopting an optional word limit in lieu of page limits, the 2013 amendment eliminated the page limit for the summary of argument. Although the page limit on the summary of the argument was eliminated in 2013, verbosity continues to be discouraged. The appellate courts strongly disfavor a summary that is not concise.

Source

The provisions of this Rule 2118 amended May 16, 1979, effective September 30, 1979, 9 Pa.B. 1740; amended March 27, 2013, effective and applies to all appeals and petitions for review filed 60 days after adoption, 43 Pa.B. 2007. Immediately preceding text appears at serial page (231699).

Rule 2119. Argument.

(a) *General rule*.—The argument shall be divided into as many parts as there are questions to be argued; and shall have at the head of each part—in distinctive type or in type distinctively displayed—the particular point treated therein, followed by such discussion and citation of authorities as are deemed pertinent.

(b) *Citations of authorities*.—Citations of authorities in briefs shall be in accordance with Pa.R.A.P. 126 governing citations of authorities.

(c) *Reference to record*.—If reference is made to the pleadings, evidence, charge, opinion or order, or any other matter appearing in the record, the argument must set forth, in immediate connection therewith, or in a footnote thereto,

a reference to the place in the record where the matter referred to appears (*see* Pa.R.A.P. 2132).

(d) *Synopsis of evidence*.—When the finding of, or the refusal to find, a fact is argued, the argument must contain a synopsis of all the evidence on the point, with a reference to the place in the record where the evidence may be found.

(e) *Statement of place of raising or preservation of issues*.—Where under the applicable law an issue is not reviewable on appeal unless raised or preserved below, the argument must set forth, in immediate connection therewith or in a footnote thereto, either a specific cross-reference to the page or pages of the statement of the case which set forth the information relating thereto as required by Pa.R.A.P. 2117(c), or substantially the same information.

(f) *Discretionary aspects of sentence*.—An appellant who challenges the discretionary aspects of a sentence in a criminal matter shall set forth in a separate section of the brief a concise statement of the reasons relied upon for allowance of appeal with respect to the discretionary aspects of a sentence. The statement shall immediately precede the argument on the merits with respect to the discretionary aspects of the sentence.

Official Note: Where a challenge is raised to the appropriateness of the discretionary aspects of a sentence, the ''petition for allowance of appeal'' specified in 42 Pa.C.S. § 9781(b) is deferred until the briefing stage, and the appeal is commenced by filing a notice of appeal pursuant to Chapter 9 rather than a petition for allowance of appeal pursuant to Chapter 11.

Source

The provisions of this Rule 2119 amended May 16, 1979, effective September 30, 1979, 9 Pa.B. 1740, amended May 16, 1979, effective June 2, 1979, 9 Pa.B. 1753; amended February 27, 1980, 10 Pa.B. 1038, effective date as set forth at 10 Pa.B. 1038; amended April 14, 2014, effective immediately, 44 Pa.B. 2510; amended May 28, 2014, effective July 1, 2014, 44 Pa.B. 3493; amended November 24, 2015, effective January 1, 2016, 45 Pa.B. 6971. Immediately preceding text appears at serial pages (372665) to (372666).

Rule 2131. References in Briefs to Parties.

Counsel will be expected in their briefs and oral arguments to keep to a minimum references to parties by such designations as ''appellant'' and ''appellee''. It promotes clarity to use the designations used in the court or other government unit below, or the actual names of the parties, or descriptive terms such as ''the employe,'' ''the injured person,'' ''the taxpayer,'' ''the electric company,'' ''the bank,'' etc.

Rule 2132. References in Briefs to the Record.

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

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

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

Source

The provisions of this Rule 2132 amended February 27, 1980, effective as set forth at 10 Pa.B. 1038; amended July 7, 1997, effective in 60 days, 27 Pa.B. 3503. Immediately preceding text appears at serial page (124482).

Rule 2133. Citations in Opinions Below.

Whenever an opinion or other determination of the court or other government unit below, required to be reproduced under these rules, refers to and relies upon some other published opinion or other determination, the place of publication of which is not stated, the brief of appellant shall set forth the place of publication thereof and of any dissenting opinion in the cited case; if not published, either party may reproduce a copy thereof, giving the name of the judge or other official who rendered the opinion or other determination and the date of its filing.

Official Note: Based on former Supreme Court Rule 50, former Superior Court Rule 41 and former Commonwealth Court Rule 92. The requirement of former Supreme Court Rule 50 that the appellant furnish copies of all unpublished opinions cited below has been omitted.

Rule 2134. Drafts or Plans.

(a) *General rule*.—All maps, plans and drawings used on appeal must conform to the provisions of this rule.

(b) *From the record*.—When on the trial or hearing in the court or other government unit below, there is offered in evidence a draft or plan, which would be of assistance to the appellate court to enable it to understand readily the dispute between the parties, a copy thereof shall be attached to the brief of the appellant, or filed therewith, folded the same size as the brief.

(c) *Prepared specially for argument*.—If a draft or plan is not contained in the record, but would be of assistance to the appellate court as prescribed in Subdivision (a) of this rule, a simple draft, plan or sketch, made by or for the appellant, folded to the same size as the brief, shall be attached to or filed with the brief of the appellant, marked so as to show it was not part of the record. Under like circumstances, the appellee may prepare and attach to or file with the brief for the appellee a draft, plan or sketch made by or for the appellee. Either party may point out, in his brief or reply brief, wherein he considers the one presented by his adversary not to be correct.

Official Note: Based on former Supreme Court Rule 40 and extends the provision to the Commonwealth Court. Former Superior Court Rule 32 was similar to Subdivision (b), but provided that the draft or plan was to be attached to the reproduced record. See also *Piper v. Queeney*, 282 Pa. 135, 147, 127 Atl. 474, 479 (1925).

Rule 2135. Length of Briefs.

(a) Unless otherwise ordered by an appellate court:

(1) A principal brief shall not exceed 14,000 words and a reply brief shall not exceed 7,000 words, except as stated in subparagraphs (a)(2)—(4). A party shall file a certificate of compliance with the word count limit if the principal brief is longer than 30 pages or the reply brief is longer than 15 pages when prepared on a word processor or typewriter.

(2) In cross appeals under Pa.R.A.P. 2136, the first brief of the deemed or designated appellee and the second brief of the deemed or designated appellant shall not exceed 16,500 words. A party shall file a certificate of compliance if the brief is longer than 35 pages when produced on a word processor or typewriter.

(3) In capital direct appeals, the principal brief shall not exceed 17,500 words and a reply brief shall not exceed 8,500 words. A party shall file a certificate of compliance if the principal brief is longer than 38 pages or the reply brief is longer than 19 pages when prepared on a word processor or typewriter.

(4) In the first Capital Post-Conviction Relief Act appeal, the principal brief shall not exceed 22,500 words and a reply brief shall not exceed 11,250 words. A party shall file a certificate of compliance if the principal brief is longer than 49 pages or the reply brief is longer than 24 pages when prepared on a word processor or typewriter.

(b) *Supplementary matter*. Supplementary matters, such as, the cover of the brief and pages containing the table of contents, tables of citations, proof of service and any addendum containing opinions, signature blocks or any other simi-

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lar supplementary matter provided for by these rules shall not count against the word count limitations set forth in paragraph (a) of this rule.

(c) *Size and physical characteristics.* Size and other physical characteristics of briefs shall comply with Pa.R.A.P. 124.

(d) *Certification of compliance.* Any brief in excess of the stated page limits shall include a certification that the brief complies with the word count limits. The certificate may be based on the word count of the word processing system used to prepare the brief.

Official Note: A principal brief is any party's initial brief and, in the case of a cross appeal, the appellant's second brief, which responds to the initial brief in the cross appeal. *See* the note to Pa.R.A.P. 2136. Reply briefs permitted by Pa.R.A.P. 2113 and any subsequent brief permitted by leave of court are subject to the word count limit or page limit set by this rule.

A party filing a certificate of compliance under this rule may rely on the word count of the word processing system used to prepare the brief.

It is important to note that each appellate court has the option of reducing the word count for a brief, either by general rule, see Chapter 33 (Business of the Supreme Court), Chapter 35 (Business of the Superior Court), and Chapter 37 (Business of the Commonwealth Court), or by order in a particular case.

Source

The provisions of this Rule 2135 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 16, 2003, effective 60 days after adoption, 33 Pa.B. 2586; amended March 27, 2013, effective and applies to all appeals and petitions for review filed 60 days after adoption, 43 Pa.B. 2007; amended December 30, 2014, effective in 60 days, 45 Pa.B. 290. Immediately preceding text appears at serial pages (366458) to (366459).

Rule 2136. Briefs in Cases Involving Cross Appeals.

(a) *Designation of parties in cross appeals.* If a cross appeal is filed, the plaintiff or moving party in the court or other government unit below shall be deemed the appellant for the purposes of this chapter and Chapter 23 (sessions and argument), unless the parties otherwise agree or the appellate court otherwise orders. Where the identity of the appellant for the purposes of this chapter and Chapter 23 is not readily apparent, the prothonotary of the appellate court shall designate the appellant for the purposes of those two chapters when giving notice under Rule 1934 (filing of the record).

(b) *Order of briefs.* The deemed or designated appellant shall file its principal brief on the merits of its appeal in accordance with the briefing schedule. The deemed or designated appellee shall then file a brief that addresses (i) the arguments advanced in the appellant's brief and (ii) the merits of the cross appeal. Thereafter, the appellant shall file its second brief, which shall (i) reply to issues raised in the appellee's brief and not previously addressed in appellant's principal brief and (ii) respond to the issues raised by appellee regarding the cross

appeal. The appellee may then file a reply brief limited to issues raised by the appellant that were not previously addressed by the appellee in its principal brief on the merits of the cross appeal.

Source

The provisions of this Rule 2136 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 July 7, 1997, effective in 60 days, 27 Pa.B. 3503; amended October 18, 2002, effective December 2, 2002, 32 Pa.B. 5402. Immediately preceding text appears at serial pages (231702) to (231703).

Rule 2137. Briefs in Cases Involving Multiple Appellants or Appellees.

In cases involving more than one appellant or appellee, including cases consolidated for purposes of the appeal pursuant to Rule 513 (consolidation of multiple appeals), any number of either may join in a single brief, and any appellant or appellee may adopt by reference any part of the brief of another. Parties may similarly join in reply briefs.

Rule 2138. Briefs in Cases Involving Appeals from Multiple Orders.

Appeals from multiple sentences imposed on a defendant arising out of a single criminal transaction or episode and tried together, and multiple orders affecting an appellant entered substantially concurrently in civil matters consolidated for trial, shall be treated as a single matter for purposes of briefing and argument on appeal.

Official Note: This rule governs cases where one party appeals multiple sentences or other orders. For example, where under Rule 702(b) (matters tried with capital offenses) an appeal from a robbery conviction is taken to the Supreme Court in conjunction with an appeal from a death sentence imposed for a homicide committed in connection with the robbery, only a single brief and reproduced record should be prepared in the Supreme Court covering all issues to be presented in the robbery and homicide appeals.

Where more than one party appellant is involved, the consolidation of briefing is governed by Rule 2137 (briefs in cases involving multiple appellants or appellees). Where one party appeals multiple orders, and several parties appeal the same or related orders both Rule 2137 and this rule will be applicable to the matters so that all appellants may file one combined brief as to all orders.

Source

The provisions of this Rule 2138 amended through April 26, 1982, effective September 12, 1982, 12 Pa.B. 1536. Immediately preceding text appears at serial page (43052).

Rule 2139. Briefs on Appeals from the Superior or Commonwealth Courts.

On appeals from the Superior Court or the Commonwealth Court, appellants may prepare new briefs in the Supreme Court according to these rules, setting forth also the order allowing the appeal, or may utilize the briefs, if available, used in the appellate court below (changing the cover, however), and adding

thereto the order allowing the appeal, the opinion and dissenting opinions, if any, of the appellate court below (if reported, stating where) and such additional argument as may be desired. Appellee may also prepare a new brief, or may utilize the one used in the appellate court below, if available, with such additional argument as may be desired.

Official Note: Based on former Supreme Court Rule 49.

Source

The provisions of this Rule 2139 adopted April 26, 1982, effective September 12, 1982, 12 Pa.B. 1536.

Rule 2140. Brief on Remand or Following Grant of Reargument or Reconsideration.

Following remand, or if rearguement, reconsideration, or rehearing is granted, the court shall establish a schedule for further proceedings. If the court does not require further briefing, it shall notify the parties. If further briefing is required, the court shall issue a briefing schedule that includes the order in which briefs shall be submitted, the type and length of brief to be submitted, whether a reproduced record is needed, and the number of copies to be filed.

Source

The provisions of this Rule 2140 adopted March 31, 1989, effective July 1, 1989, 19 Pa.B. 1721; amended July 7, 1997, effective in 60 days, 27 Pa.B. 3503; amended September 22, 2006, effective immediately, 36 Pa.B. 6086; amended March 27, 2013, effective and applies to all appeals and petitions for review filed 60 days after adopted, 43 Pa.B. 2007; amended September 6, 2013, effective October 7, 2013, 43 Pa.B. 5589. Immediately preceding text appears at serial pages (366461) to (366462).

CONTENT OF REPRODUCED RECORD

Rule 2151. Consideration of Matters on the Original Record Without the Necessity of Reproduction.

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

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

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

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

the reason that the cost thereof is out of proportion to the amount involved, or for any other sufficient reason. Ordinarily leave to omit reproduction of the record will not be granted in any case where the amount collaterally involved in the appeal is not out of proportion to the reproduction costs.

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

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

Source

The provisions of this Rule 2151 amended December 1, 1982, effective December 1, 1982, 12 Pa.B. 4332. Immediately preceding text appears at serial page (43053).

Rule 2152. Content and Effect of Reproduced Record.

(a) *General rule*.—The reproduced record shall contain the following:

(1) The relevant docket entries and any relevant related matter (*see* Pa.R.A.P. 2153 (docket entries and related matter)).

(2) Any relevant portions of the pleadings, charge or findings (*see* Pa.R.A.P. 2175(b) (order and opinions) which provides for a cross reference note only to orders and opinions reproduced as part of the brief of appellant).

(3) Any other parts of the record to which the parties wish to direct the particular attention of the appellate court.

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

(b) *Immaterial formal matters*.—Immaterial formal matters (captions, subscriptions, acknowledgments, etc.) shall be omitted.

(c) *Effect of reproduction of record*.—The fact that parts of the record are not included in the reproduced record shall not prevent the parties or the appellate court from relying on such parts.

(d) ''Confidential Information'' and ''Confidential Documents'', as those terms are defined in the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania*, shall appear in the reproduced record in the same manner and format as they do in the original record.

Official Note: The general rule has long been that evidence which has no relation to or connection with the questions involved must not be reproduced. *See* former Supreme Court Rule 44, former Superior Court Rule 36 and former Commonwealth Court Rule 88. *See also*, *e.g.*, *Shapiro v. Malarkey*, 122 A. 341, 342 (Pa. 1923); *Sims v. Pennsylvania R.R. Co.*, 123 A. 676, 679 (Pa. 1924).

See Pa.R.A.P. 2189 for procedure in cases involving the death penalty.

The *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* (''Public Access Policy'') does not apply retroactively to pleadings, documents, or other legal papers filed prior to the effective date of the Public Access Policy. Reproduced records may

therefore contain pleadings, documents, or legal papers that do not comply with the Public Access Policy if they were originally filed prior to the effective date of the Public Access Policy.

Source

The provisions of this Rule 2152 amended through December 1, 1982, effective December 1, 1982, 12 Pa.B. 4332; amended January 5, 2018, effective January 6, 2018, 48 Pa.B. 461; amended June 1, 2018, effecive July 1, 2018, 48 Pa.B. 3517. Immediately preceding text appears at serial pages (389998) to (389999).

Rule 2153. Docket Entries and Related Matter.

(a) *General rule*.—The relevant docket entries of the court or other tribunal below shall be set forth chronologically, in a single column, and shall consist of such parts of the docket entries as are necessary to indicate briefly but clearly:

(1) The character of the proceedings.

(2) The pleadings or papers upon which the case was tried or heard.

(3) The trial or hearing.

(4) The order or other determination to be reviewed.

(5) All later proceedings appertaining to any of them.

(6) All other matters referred to in the statement of questions involved or in the argument.

The docket entries of the court or other tribunal below, so far as they amplify or do not relate to such matters, shall not be reproduced; but the appellee may call attention, at the beginning of his counter-statement of the case, to any omissions which he may deem important.

(b) *Related proceedings*.—If the issue tried in the court or other tribunal below grows out of some other proceeding, in that or any other court or other tribunal, there shall be set forth at the beginning of the reproduced record:

(1) The relevant docket entries in the original case.

(2) The opinion directing the issue to be tried and any dissenting opinions (if reported, stating where).

(3) The directions, if any, sent to the lower court or other tribunal.

(4) The relevant docket entries therein.

(5) The issue framed or ordered to be framed and the pleadings or papers in the nature thereof.

Source

The provisions of this Rule 2153 amended July 7, 1997, effective in 60 days, 27 Pa.B. 3503. Immediately preceding text appears at serial pages (137090) to (137091).

Rule 2154. Designation of Contents of Reproduced Record.

(a) *General rule*.—Except when the appellant has elected to proceed under Subdivision (b) of this rule, or as otherwise provided in Subdivision (c) of this rule, the appellant shall not later than 30 days before the date fixed by or pursuant to Rule 2185 (service and filing of briefs) for the filing of his or her brief, serve and file a designation of the parts of the record which he or she intends to reproduce and a brief statement of issues which he or she intends to present for review. If the appellee deems it necessary to direct the particular attention of the court to parts of the record not designated by the appellant, the appellee shall, within ten days after receipt of the designations of the appellant, serve and file a designation of those parts. The appellant shall include in the reproduced record the parts thus designated. In designating parts of the record for reproduction, the parties shall have regard for the fact that the entire record is always available to the court for reference and examination and shall not engage in unnecessary designation.

(b) *Large records.*—If the appellant shall so elect, or if the appellate court has prescribed by rule of court for classes of matters or by order in specific matters, preparation of the reproduced record may be deferred until after the briefs have been served. Where the appellant desires thus to defer preparation of the reproduced record, the appellant shall, not later than the date on which his or her designations would otherwise be due under Subdivision (a), serve and file notice that he or she intends to proceed under this subdivision. The provisions of Subdivision (a) shall then apply, except that the designations referred to therein shall be made by each party at the time his or her brief is served, and a statement of the issues presented shall be unnecessary.

(c) *Children's fast track appeals*.

(1) In a children's fast track appeal, the appellant shall not later than 23 days before the date fixed by or pursuant to Rule 2185 (service and filing of briefs) for the filing of his or her brief, serve and file a designation of the parts of the record which he or she intends to reproduce and a brief statement of issues which he or she intends to present for review. If the appellee deems it necessary to direct the particular attention of the court to parts of the record not designated by the appellant, the appellee shall, within 7 days after receipt of the designations of the appellant, serve and file a designation of those parts. The appellant shall include in the reproduced record the parts thus designated.

In designating parts of the record for reproduction, the parties shall have regard for the fact that the entire record is always available to the court for reference and examination and shall not engage in unnecessary designation.

(2) In a children's fast track appeal, the provisions of Subdivision (b) shall not apply.

Official Note: Based in part upon former Supreme Court Rule 44, former Superior Court Rule 36 and former Commonwealth Court Rule 88. The prior statutory practice required the lower court or the appellate court to resolve disputes concerning the contents of the reproduced record prior to reproduction. The statutory practice was generally recognized as wholly unsatisfactory and has been abandoned in favor of deferral of the issue to the taxation of costs phase. The uncertainty of the ultimate result on the merits provides each party with a significant incentive to be reasonable, thus creating a self-policing procedure.

Of course, parties proceeding under either procedure may by agreement omit the formal designations and accelerate the preparation of a reproduced record containing the material which the parties have agreed should be reproduced.

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

Explanatory Note—1979

The principal criticism of the new Appellate Rules has been the provisions for deferred preparation of the reproduced record, and the resulting procedure for the filing of advance copies of briefs (since the page citations to the reproduced record pages are not then available) followed by the later preparation and filing of definitive briefs with citations to the reproduced record pages. It has been argued that in the typical state court appeal the record is quite small, with the result that the pre-1976 practice of reproducing the record in conjunction with the preparation of appellant's definitive brief is entirely appropriate and would ordinarily be followed if the rules did not imply a preference for the deferred method. The Committee has been persuaded by these comments, and the rules have been redrafted to imply that the deferred method is a secondary method particularly appropriate for longer records.

Source

The provisions of this Rule 2154 amended through December 1, 1982, effective December 1, 1982, 12 Pa.B. 4332; amended July 7, 1997, effective in 60 days, 27 Pa.B. 3503; amended January 13, 2009, effective as to all appeals filed 60 days or more after adoption, 39 Pa.B. 1094. Immediately preceding text appears at serial pages (338843) to (338844).

Rule 2155. Allocation of Cost of Reproduced Record.

(a) *General rule*.—Unless the parties otherwise agree the cost of reproducing the record shall initially be paid by the appellant, but if the appellant considers that parts of the record designated by the appellee for inclusion are unnecessary for a determination of the issues presented the appellant may so advise the appellee and the appellee shall advance the cost of including such parts. If the appellee fails to advance such costs within ten days after written demand therefor, the appellant may proceed without reproduction of the parts of the record designated by appellee which the appellant considered to be unnecessary.

(b) *Allocation by court*.—The cost of reproducing the record shall be taxed as costs in the case pursuant to Chapter 27 (fees and costs in appellate courts and

on appeal), but if either party shall cause material to be included in the reproduced record unnecessarily, the appellate court may on application filed within ten days after the last brief is filed, in its order disposing of the appeal impose the cost of reproducing such parts on the designating party.

Official Note: This rule reflects the fact that the appellate judge to whom a case is assigned for preparation of an opinion will ordinarily be in the best position to determine whether an excessive amount of the record has been included in the reproduced record by a party.

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

Source

The provisions of this Rule 2155 amended through December 1, 1982, effective December 1, 1982, 12 Pa.B. 4332; amended September 10, 2008, effective December 1, 2008, 38 Pa.B. 5257. Immediately preceding text appears at serial page (231708).

Rule 2156. Supplemental Reproduced Record.

When, because of exceptional circumstances, the parties are not able to cooperate on the preparation of the reproduced record as a single document, the appellee may, in lieu of proceeding as otherwise provided in this chapter, prepare, serve, and file a supplemental reproduced record setting forth the portions of the record designated by the appellee. A supplemental reproduced record shall contain the certificate of compliance required by Pa.R.A.P. 127. ''Confidential Information'' and ''Confidential Documents'', as those terms are defined in the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania*, shall appear in the reproduced record in the same manner and format as they do in the original record.

Official Note: Former Supreme Court Rules 36, 38 and 57, former Superior Court Rules 28, 30, and 47 and former Commonwealth Court Rules 32A, 82, and 84 all inferentially recognized that a supplemental record might be prepared by the appellee, but the former rules were silent on the occasion for such a filing. The preparation of a single reproduced record has obvious advantages, especially where one party designates one portion of the testimony, and the other party designates immediately following testimony on the same subject. However, because of emergent circumstances or otherwise, agreement on the mechanics of a joint printing effort may collapse, without affording sufficient time for the filing and determination of an application for enforcement of the usual procedures. In that case an appellee may directly present the relevant portions of the record to the appellate court.

As the division of the reproduced record into two separate documents will ordinarily render the record less intelligible to the court and the parties, the preparation of a supplemental reproduced record is not favored and the appellate court may suppress a supplemental record which has been separately reproduced without good cause.

The *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* (''Public Access Policy'') does not apply retroactively to pleadings, documents, or other legal papers filed prior to the effective date of the Public Access Policy. Supplemental reproduced records may therefore contain pleadings, documents, or legal papers that do not comply with the Public Access Policy if they were originally filed prior to the effective date of the Public Access Policy.

Source

The provisions of this Rule 2156 amended September 10, 2008, effective December 1, 2008, 38 Pa.B. 5257; amended January 5, 2018, effective January 6, 2018, 48 Pa.B. 461; amended June 1, 2018, effective July 1, 2018, 48 Pa.B. 3517. Immediately preceding text appears at serial pages (390001) to (390002).

FORM OF BRIEFS AND REPRODUCED RECORD

Rule 2171. Method of Reproduction. Separate Brief and Record.

(a) *General Rule*.—Briefs and reproduced records may be reproduced by any duplicating or copying process which produces a clear black image on white paper. Briefs and records shall comply with the requirements of Pa.R.A.P. 124 and shall be firmly bound at the left margin.

(b) *Separate brief and record*.—In all cases the reproduced record may be bound separately, and must be if it and the brief together contain more than 100 pages or if the reproduced record contains ''Confidential Information'' or ''Confidential Documents'', as those terms are defined in the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* (''Public Access Policy''), in any pleadings, documents, or legal papers originally filed after the effective date of the Public Access Policy.

Official Note: See Pa.R.A.P. 124 (form of documents; number of copies) for general provisions on quality, size and format of documents (including briefs and reproduced records) filed in Pennsylvania appellate courts.

Source

The provisions of this Rule 2171 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. 4951; amended May 16, 2003, effective 60 days after adoption, 33 Pa.B. 2586; amended September 10, 2008, effective December 1, 2008, 38 Pa.B. 5257; amended January 5, 2018, effective January 6, 2018, 48 Pa.B. 461; amended June 1, 2018, effective July 1, 2018, 48 Pa.B. 3517; amended October 28, 2021, effective April 1, 2022, 51 Pa.B. 7050. Immediately preceding text appears at serial page (392582).

Rule 2172. Covers.

(a) *Briefs and Petitions for Allowance of or Permission to Appeal*.—On the front cover of the brief there shall appear the following:

(1) the name of the appellate court in which the matter is to be heard;

(2) the docket number of the case in the appellate court;

(3) the caption of the case in the appellate court, as prescribed by these rules;

(4) title of the filing, such as ''Brief for Appellant'' or ''Brief for Respondent.'' If the reproduced record is bound with the brief, the title shall so indicate, for example, ''Brief for Appellant and Reproduced Record,'' or ''Brief for Appellee and Supplemental Reproduced Record,'' such as the case may be;

(5) designation of the order appealed from such as ''Appeal from the Order of'' the court from which the appeal is taken, with the docket number therein.

On appeals from the Superior Court or the Commonwealth Court its docket number shall be given, followed by a statement as to whether it affirmed, reversed or modified the order of the court or tribunal of first instance, giving also the name of the latter and the docket number, if any, of the case therein;

(6) the names of counsel, giving the office address and telephone number of the one upon whom it is desired notices shall be served.

(b) *Children's fast track appeals.*—In a children's fast track appeal, the front cover shall include a statement advising the appellate court that the appeal is a children's fast track appeal.

(c) *Reproduced record.*—If the reproduced record is bound separately, the cover thereof shall be the same as provided in Subdivision (a), except that in place of the information set forth in Paragraph (a)(4) of this rule there shall appear ''Reproduced Record'' or ''Supplemental Reproduced Record,'' as the case may be.

(d) *Repetition in body of document.*—Unless expressly required by these rules, none of the material set forth in Subdivisions (a) through (c) shall be repeated in the brief or reproduced record.

(e) *Cover stock.*—The covers of all briefs and reproduced records must be so light in color as to permit writing in ink thereon to be easily read and so firm in texture that the ink will not run.

Official Note: Based on former Supreme Court Rules 35C and 36, former Superior Court Rules 27C and 28, and former Commonwealth Court Rule 82, without change in substance except that Paragraph (a)(4) is clarified by eliminating the ''Appeal of ...'' heading, which would not conform to the caption on the notice of appeal, and Subdivision (d) is extended to the Commonwealth Court.

Source

The provisions of this Rule 2172 through April 26, 1982, effective September 12, 1982, 12 Pa.B. 1536; 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. Immediately preceding text appears at serial page (338846).

Rule 2173. Numbering of Pages.

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

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

Rule 2174. Tables of Contents and Citations.

(a) *Tables of contents*.—The briefs and the reproduced record shall each contain a full and complete table of contents, set forth either on the inside of the front cover or on the first and immediately succeeding pages. The table of contents of the reproduced record, in addition to the material otherwise specified in this chapter, shall include a reference to all reproduced exhibits, indicating what each is, and the names of witnesses, indicating where the examination, cross-examination and re-examination of each begin. Where the reproduced record is bound in more than one volume, there shall be but one table of contents which shall indicate in which volume each particular part of the record will be found. The combined table of contents ordinarily shall be set forth in full at the front of each volume, but where the combined table of contents is itself voluminous, a cross reference at the front of the second and subsequent volumes to the combined table of contents at the front of the first volume may be substituted for the text of the combined table of contents.

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

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

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

Rule 2175. Sequence of Material in the Reproduced Record.

(a) *General rule*.—The portions of the record which are reproduced pursuant to these rules shall appear in the following order—headed in each case by the title of the particular material in distinctive type or in type distinctively displayed:

(1) The relevant docket entries and related matters. See Rule 2153 (docket entries and related matters).

(2) The other parts of the record, arranged chronologically.

(b) *Orders and opinions*.—The order or other determination in question and the opinions of the court or other tribunal below if reproduced as a part of the brief of the appellant in conformity with Rule 2111 (brief of the appellant), shall not be duplicated in the reproduced record, but in lieu thereof an appropriate cross reference note to the brief shall be set forth at the appropriate place in the reproduced record.

Official Note: A much simplified version of former Supreme Court Rule 41, former Superior Court Rule 33, and former Commonwealth Court Rule 86.

Source

The provisions of this Rule 2175 amended May 16, 1979, effective September 30, 1979, 9 Pa.B. 1740. Immediately preceding text appears at serial page (39640).

Rule 2176. Notes of Testimony and Other Papers.

(a) *Indication of original pagination*.—When material contained in the notes or transcript of testimony is set out in the reproduced record, the page of the original transcript at which such matter may be found shall be clearly indicated.

(b) *Indication of omissions*.—Omissions in the text of papers or in the transcript shall be indicated by asterisks.

(c) *Questions and answers*.—A question and its answer may be contained in a single paragraph.

(d) *Exhibits*.—Exhibits designated for inclusion in the reproduced record may be contained in a separate volume, or volumes, suitably noted in the table of contents of the reproduced record. See Rule 2174 (table of contents and citations).

Official Note: Where the original notes or transcript of testimony is photocopied the original pagination will be evident. Otherwise the original pagination may be shown in brackets or by other equivalent methods.

FILING AND SERVICE

Rule 2185. Time for Serving and Filing Briefs.

(a) *Time for serving and filing briefs*.

(1) *General rule*.—Except as otherwise provided by this rule, the appellant shall serve and file appellant's brief not later than the date fixed pursuant to Subdivision (b) of this rule, or within 40 days after the date on which the record is filed, if no other date is so fixed. The appellee shall serve and file appellee's brief within 30 days after service of appellant's brief and reproduced record if proceeding under Rule 2154(a) (general rule). A party may serve and file a reply brief permitted by these rules within 14 days after service of the preceding brief but, except for good cause shown, a reply brief must be served and filed so as to be received at least three days before argument. In cross appeals, the second brief of the deemed or designated appellant shall be served and filed within 30 days of service of the deemed or designated appellee's first brief. Except as prescribed by Rule 2187(b) (advance text of briefs), each brief shall be filed not later than the last day fixed by or pursuant to this rule for its service. Briefs shall be deemed filed on the date of mailing if first class, express, or priority United States Postal Service mail is utilized.

(2) *Children's fast track appeals.*

(i) In a children's fast track appeal, the appellant shall serve and file appellant's brief within 30 days after the date on which the record is filed, if no other date is so fixed. The appellee shall serve and file appellee's brief within 21 days after service of appellant's brief and reproduced record. A

party may serve and file a reply brief permitted by these rules within 7 days after service of the preceding brief but, except for good cause shown, a reply brief must be served and filed so as to be received at least 3 days before argument. In cross appeals, the second brief of the deemed or designated appellant shall be served and filed within 21 days of service of the deemed or designated appellee's first brief. Briefs shall be deemed filed on the date of mailing if first class, express, or priority United States Postal Service mail is utilized.

(ii) In a children's fast track appeal, the provisions of Subdivisions (b) and (c) of this Rule shall not apply.

(3) *Multiple briefs for appellants or appellees.*—If the time for filing a brief is established by reference to service of a preceding brief and more than one such preceding brief is filed, the deadline for filing the subsequent brief shall be calculated from the date on which the last timely filed preceding brief is served. If no such preceding brief is filed, the deadline for a subsequent brief shall be calculated from the date on which the preceding brief should have been filed.

(b) *Notice of deferred briefing schedule.*—When the record is filed the prothonotary of the appellate court shall estimate the date on which the matter will be argued before or submitted to the court, having regard for the nature of the case and the status of the calendar of the court. If the prothonotary determines that the matter will probably not be reached by the court for argument or submission within 30 days after the latest date on which the last brief could be filed under the usual briefing schedule established by these rules, the prothonotary shall fix a specific calendar date as the last date for the filing of the brief of the appellant in the matter, and shall give notice thereof as required by these rules. The date so fixed by the prothonotary shall be such that the latest date on which the last brief in the matter could be filed under these rules will fall approximately 30 days before the probable date of argument or submission of the matter.

(c) *Definitive copies.*—If the record is being reproduced pursuant to Rule 2154(b) (large records) the brief served pursuant to Subdivision (a) of this rule may be typewritten or page proof copies of the brief, with appropriate references to pages of the parts of the original record involved. Within 14 days after the reproduced record is filed each party who served briefs in advance form under this subdivision shall serve and file definitive copies of his or her brief or briefs containing references to the pages of the reproduced record in place of or in addition to the initial references to the pages of the parts of the original record involved (see Rule 2132 (references in briefs to the record)). No other changes may be made in the briefs as initially served, except that typographical errors may be corrected.

Official Note: The 2002 amendment recognizes that in cross appeals the deemed or designated appellant's second brief is more extensive than a reply brief and, therefore may require more than 14 days to prepare. See Rule 2136 (briefs in cases involving cross appeals).

The addition of paragraph (a)(3) clarified practice in an appeal in which there is more than one appellant or appellee and all appellants or all appellees do not file their briefs on the same date. For example, if there are two appellants and one files early or one is granted an extension of time to file, the two briefs for appellants will not be filed or served on the same date. Without paragraph (a)(3), it was not clear when the appellee's 30-day period to file its brief began. The same issue can arise with respect to the appellant's time for filing its reply brief when there are two or more appellees. New paragraph (a)(3) clarified the point by starting the period on the date on which the latest, timely filed preceding brief is served.

Source

The provisions of this Rule 2185 amended May 16, 1979, effective September 30, 1979, 9 Pa.B. 1740; amended February 27, 1980, 10 Pa.B. 1038, effective as set forth at 10 Pa.B. 1038; amended July 7, 1997, effective in 60 days, 27 Pa.B. 3503; amended October 18, 2002, effective December 2, 2002, 32 Pa.B. 5402; 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 October 3, 2011, effective in thirty days, 41 Pa.B. 5620. Immediately preceding text appears at serial pages (342251) to (342252).

Rule 2186. Service and Filing of Reproduced Record.

(a) *General rule.*—The reproduced record shall be served and filed not later than:

(1) the date of service of the brief; or

(2) 21 days from the date of service of the appellee's brief in advance form, if the record is being reproduced pursuant to Rule 2154(b) (large records).

Reproduced records shall be deemed filed on the date of mailing if first class, express, or priority United States Postal Service mail is utilized.

(b) *Supplemental reproduced record*.—Any supplemental reproduced record shall be served and filed with the brief of the appellee.

Official Note: Former Supreme Court Rule 57, former Superior Court Rule 47 and former Commonwealth Court Rule 32A provided that the appellant was to serve and file the reproduced record with his brief, which continues to be the rule under Paragraph (a)(1) of this rule. The delayed filing of the reproduced record results in the designation and reproduction of the minimum amount of the original record since the parties will then know exactly the portions of the original record mentioned in their briefs and may accordingly limit the amount of record reproduced.

Source

The provisions of this Rule 2186 amended May 16, 1979, effective September 30, 1979, 9 Pa.B. 1740; amended July 7, 1997, effective in 60 days, 27 Pa.B. 3503; amended September 10, 2008, effective December 1, 2008, 38 Pa.B. 5257. Immediately preceding text appears at serial page (328878).

Rule 2187. Number of Copies to be Filed and Served.

(a) *Filing*.—To determine the number of copies to be filed, see Pa.R.A.P. 124(c) and its Official Note.

(b) *Service*.

(1) *General rule*.—A party shall serve one copy of its definitive brief and reproduced record on every other party separately represented.

(2) *In forma pauperis*.—A party proceeding *in forma pauperis* shall only serve one copy of each definitive brief on every other party separately represented. Pursuant to Pa.R.A.P. 2151(b), a party proceeding *in forma pauperis* is not required to reproduce the record.

(3) *Advance text of briefs*.—If the record is being reproduced pursuant to Pa.R.A.P. 2154(b) (large records), one copy of each brief without definitive reproduced record pagination shall be served on each party separately represented. Proof of service showing compliance with this rule, but not including the advance text of the brief, shall be filed with the prothonotary of the appellate court.

Official Note: At the request of the appellate prothonotaries, it will no longer be necessary to file advance copies (*e.g.*, page proof) of the brief when service is made on the opposing party, but the requirement for the filing of a proof of such service is retained.

See Pa.R.A.P. 2189 for procedure in cases involving the death penalty.

Source

The provisions of this Rule 2187 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. 4951; amended July 7, 1997, effective in 60 days, 27 Pa.B. 3503; amended June 26, 2007, effective immediately, 37 Pa.B. 3222; amended October 28, 2021, effective April 1, 2022, 51 Pa.B. 7050. Immediately preceding text appears at serial pages (387883) to (387884).

Rule 2188. Consequence of Failure to File Briefs and Reproduced Records.

If an appellant fails to file his designation of reproduced record, brief or any required reproduced record within the time prescribed by these rules, or within the time as extended, an appellee may move for dismissal of the matter. If an appellee fails to file his brief within the time prescribed by these rules, or within the time as extended, he will not be heard at oral argument except by permission of the court.

Official Note: Based on former Supreme Court Rules 30 (part) and 57 (part) and former Superior Court Rules 22 (part) and 47 (part) and extends these provisions to the Commonwealth Court. Each of the appellate courts has established a procedure for the non prossing of cases where there has been a failure to comply with the applicable rules. Accordingly, counsel are advised to prepare briefs and reproduced records in accordance with all rules applicable thereto (Rules 2111 through 2176) and to comply strictly with Rule 2185 (time for serving and filing briefs) and Rule 2186 (time for serving and filing reproduced record) of these rules.

Source

The provisions of this Rule 2188 amended December 11, 1978, effective December 30, 1978, 8 Pa.B. 3802; amended February 27, 1980, 10 Pa.B. 1038, effective date as set forth at 10 Pa.B. 1038; 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. Immediately preceding text appears at serial pages (115450) to (115451).

Rule 2189. Reproduced Record in Cases Involving the Death Penalty.

(a) *Number of copies.*—Any provisions of these rules to the contrary notwithstanding, in all cases involving the death penalty, the entire record shall be reproduced and filed with the prothonotary of the Supreme Court. To determine the number of copies to be filed, see Pa.R.A.P. 124(c) and its Official Note.

(b) *Costs of reproduction.*—The appellant, or, in cases where the appellant has been permitted to proceed *in forma pauperis*, the county where the prosecution was commenced, shall bear the cost of reproduction.

(c) *Prior rules superseded.*—To the extent that this rule conflicts with provisions of Pa.R.A.P. 2151(a), (b) (relating to necessity of reproduction of records); Pa.R.A.P. 2152 (relating to content of reproduced records); Pa.R.A.P. 2154(a) (relating to designation of contents of reproduced records); and Pa.R.A.P. 2155 (allocating costs of reproduction of records), the same are superseded.

Official Note: The death penalty statute, 42 Pa.C.S. § 9711, provides that the Supreme Court Prothonotary must send a copy of the lower court record to the Governor after the Supreme Court affirms a sentence of death. The statute does not state who is responsible for preparing the copy. This amendment provides for preparation of the Governor's copy of the record before the record is sent to the Supreme Court.

Source

The provisions of this Rule 2189 adopted December 1, 1982, effective December 1, 1982, 12 Pa.B. 4332; amended June 28, 1985, effective July 20, 1985, 15 Pa.B. 2635; amended October 28, 2021, effective April 1, 2022, 51 Pa.B. 7050. Immediately preceding text appears at serial pages (387884) and (342255).

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