

Re: Amendment to Commonwealth Court Internal Operating Procedures 414, 211, 123, 126, 201, 221, 223, 242, 243, 291, 311, 321, 331 and 442

The Commonwealth Court has amended multiple sections of its Internal Operating Procedures. Effective January 1, 2011, there is a change in the status of unreported panel decisions; Internal Operating Procedure (IOP) section 414 is revised to permit a party to also cite an unreported panel decision issued after January 15, 2008 for its persuasive value but not as binding precedent. Revised section 211, 210 Pa. Code § 67.13, authorizes the Chief Clerk to grant a 30-day extension of time for a petitioner to perfect an appellate petition for review, effective immediately. The changes to sections 123, 126, 201, 221, 223, 242, 243, 291, 311, 321, 331 and 442, also effectively immediately, revise the IOPs to recognize changes in staff assignments.

§ 414. Citing Judicial Opinions

An unreported opinion of this court may be cited and relied upon when it is relevant under the doctrine of law of the case, *res judicata* or collateral estoppel. Parties may also cite an unreported panel decision of this court issued after January 15, 2008, for its persuasive value, but not as binding precedent. A single-judge opinion of this court, even if reported, shall be cited only for its persuasive value, not as a binding precedent.

§ 211. Petition for review; clarification

When the chief clerk receives a written communication that evidences an intention to appeal an adjudication of a state administrative agency but does not conform to the rules for an appellate petition for review, the chief clerk shall time-stamp the written communication with the date of receipt. The chief clerk shall advise the party by letter (1) of the procedures necessary to perfect the appeal and (2) that the date of receipt of the communication will be preserved as the date of filing of the appeal if that party files a fully conforming petition for review within 30 days of the date of the chief clerk's letter. If the party fails to file a fully conforming petition for review within that period, the chief clerk shall advise the party by letter that the court will take no further action in the matter.

§ 123. Duty rosters; availability [210 Pa. Code § 67.6]

Each duty judge shall be present or available in Harrisburg throughout the week and shall make the prothonotary and chief clerk aware of where he or she can be reached when not at the Pennsylvania Judicial Center during regular hours. The duty judge shall be in charge of making administrative decisions when the president judge is not available by telephone communication, but the president judge shall be consulted if major decision making is required.

§ 126. Emergency applications [210 Pa. Code § 67.9]

1. An emergency application is defined as an application filed during non-business hours, including holidays and weekends. Filing of emergency applications outside of normal business hours will be allowed only when both of the following conditions are present:

- (a) The application will be moot unless a ruling is obtained prior to noon of the next business day; and
- (b) The application is being filed within two business days of the filing of the order sought to be reviewed.

2. *Contents of emergency applications.* An emergency application shall include the following:

- (a) An explanation of why an order of this Court is necessary, time sensitive and satisfies the threshold requirements set forth in (a)(1)—(2);
- (b) An explanation of how service has been perfected upon the opposing party or, if service has not been made, a summary of the efforts to perfect service or explanation of why service is impossible or impracticable;
- (c) Unless already docketed with this Court, a stamped “filed” copy of the relevant common pleas court order being appealed, as well as a copy of the notice of appeal that will be filed with this Court;
- (d) Unless already docketed with this Court, a copy of the relevant petition for review, whether addressed to this Court’s appellate or original jurisdiction;
- (e) The appropriate filing fee or a sufficient pauper’s affidavit.

3. Each duty judge shall be available from 12:01 a.m. on the Monday commencing his or her duty week and remain available until 12:00 midnight on the Sunday concluding the duty week. The duty judge shall be available in Harrisburg Monday through Friday or shall advise the prothonotary and chief clerk of a telephone number at which he or she may be reached when not present in the Court's Harrisburg offices. The assigned duty judge shall make decisions in all emergency applications.

4. The filing of an emergency application should be made by contacting this Court's prothonotary, the chief clerk, or a deputy prothonotary who will accept the papers by the most expeditious means available, including fax or e-mail attachment, and assign the matter a docket number, if needed.

(a) The Court officer accepting the filing shall contact the emergency judge to make arrangements for consideration and disposition of the emergency application.

(b) If the duty week judge is not available, the emergency application shall be referred to the president judge and then to the associate judges in descending order of seniority, if the president judge is not available.

(c) The telephone number of the court officer accepting the filing of emergency applications shall be made available through the Court's after hours telephone message system (717-255-1600 or 717-649-5153).

§ 201. Permission to appeal; interlocutory orders
[210 Pa. Code § 67.11]

The prothonotary shall present each petition for permission to appeal, together with opposing briefs and any recommendation, to the duty judge for appropriate action. In the absence of a recommendation by the prothonotary, the disposition of such petitions shall follow the procedure for petitions for reargument, stated in § 291.

**§ 221. Preargument matters; applications, motions and petitions
[210 Pa. Code § 67.14]**

The chief clerk shall promptly, after filing, submit preargument applications, motions and petitions requiring consideration by a judge to the prothonotary. The prothonotary shall daily confer with the president judge or the duty judge on such matters, who shall act by order granting or denying the relief or remedy sought, directing the matter to be decided on submitted briefs, or listing the matter for argument before, or in conjunction with, argument on the merits of the appeal. When required by law or rule, the judge shall defer acting upon the matter pending filing of an answer or until the time for answer has expired.

§ 223. Preargument matters; extensions of time [210 Pa. Code § 67.16]

The chief clerk may grant a written request for an extension of time to file briefs, or to file the reproduced record, where the requested extension is (1) for thirty days or less, (2) the first one sought, and (3) unopposed by all other parties. If any of the three enumerated requirements does not exist, the party shall submit the request by formal application upon which the prothonotary, chief clerk or deputy prothonotary may act for the court.

§ 242. Arguments; preparation of lists [210 Pa. Code § 67.21]

To aid the president judge in the allocation of cases to be heard by the court en banc or by panels, the chief clerk shall submit an analysis of the procedural posture and issues raised in each case ready for argument. The prothonotary shall review the list of cases, and present to the president judge recommendations as to cases on the list to be heard by the court en banc or by a panel. The president judge shall review the proposed argument list and make any changes deemed necessary. As approved or as modified by the president judge, the chief clerk shall proceed to publish the argument list and give notice to litigants. The argument list as published shall disclose a day certain for argument of each case listed.

§ 243. Arguments; number of cases [210 Pa. Code § 67.22]

The president judge, the prothonotary and the chief clerk shall determine the number of cases to be listed at a regular argument session before the court en banc and before panels, on the basis of expediting the disposition of cases ready for argument, to the maximum extent feasible.

§ 291. Rearguments; petitions for reargument [210 Pa. Code § 67.35]

The president judge shall distribute petitions for reargument and answers to them, involving cases decided by a panel of the court or the court en banc, to all judges of the court. After consideration pursuant to such circulation, the vote of the majority of the commissioned judges of the court to grant or deny the petition for reargument shall govern, although comments from the court's senior judges shall be solicited. Where a party files a petition for reargument of an order issued by a single judge, the prothonotary shall submit the petition, together with any answer, to that judge for disposition.

§ 311. Pretrial matters; applications, motions, petitions and praecipes [210 Pa. Code § 67.42]

The chief clerk shall promptly, after filing papers in original jurisdiction cases, submit pretrial applications, praecipes for trial after a case is at issue, petitions for summary judgment or for judgment on the pleadings, statutory enforcement proceedings requiring a hearing before a judge, praecipes for hearing in matters under Pa.R.A.P. 1571, and all other motions and matters requiring the consideration of a judge before trial or argument on the merits, to the prothonotary, who shall, on a daily basis, confer with the president judge or duty judge on such matters. Depending upon the nature of the matter, the president judge or the duty judge shall by order set the matter down for evidentiary hearing or formal trial, for argument before a single judge in cases in which a single judge may dispose of the matter, for argument before the court en banc or a panel, or for other disposition consistent with the applicable Rules of Appellate Procedure or Rules of Civil Procedure.

§ 321. Proceedings; election cases [210 Pa. Code § 67.45]

Proceedings under the Pennsylvania Election Code within the court's original jurisdiction (petitions for review in the nature of mandamus and objections to nomination petitions and papers) shall be under the direct supervision of the president judge, the prothonotary and the chief clerk. The president judge, to dispose of such cases, shall establish a special election court schedule, assign judges to hear cases or, when necessary, convene a special court en banc or panel to hear the same promptly.

**§ 331. Reconsideration; petitions for reconsideration
[210 Pa. Code § 67.47]**

When a party files a petition for reconsideration of an order issued by a single judge, the prothonotary shall submit the petition, together with any answer, to the judge for action, in accordance with Pa.R.A.P. 123(e).

**§ 412. Reporting of opinions; determination as to reporting
[210 Pa. Code § 67.53]**

Opinions of a single judge shall be filed but not reported unless, because of the unique character of the case, the prothonotary or the authoring judge shall recommend that the opinion be reported and a two-thirds majority of the commissioned members of the court shall concur with the recommendation.