

## Rule 313. Collateral Orders.

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Note: Rule 313 is a codification of existing case law with respect to collateral orders. See *Pugar v. Greco*, 483 Pa. 68, 73, 394 A.2d 542, 545 (1978) (quoting *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541 (1949)). Examples of collateral orders include **[an] orders denying [a] pre-trial motions to dismiss based on double jeopardy in which the court does not find the motion frivolous**, *Commonwealth v. Brady*, 510 Pa. 3[63]36, 508 A.2d 286, 289-91 (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 [makes a finding that motion is not frivolous]**); **if the trial court finds the motion frivolous, the defendant may secure review only by first filing a petition for review under Pa.R.A.P. 1573. See *Commonwealth v. Orie*, 22 A.3d 1021 (Pa. 2011).** Other examples of collateral orders are an order denying a petition to permit the payment of death taxes, *Hankin v. Hankin*, 338 Pa. Super. 442, 487 A.2d 1363 (1985); and an order denying a petition for removal of an executor, *Re: Estate of Georgianna*, 312 Pa. Super. 339, 458 A.2d 989 (1983), *aff'd*, 504 Pa. 510, 475 A.2d 744. Thorough discussions of the collateral order doctrine as it has been applied by Pennsylvania appellate courts are found in the following sources: Darlington, McKeon, Schuckers and Brown, 1 Pennsylvania Appellate Practice Second Edition, §§ 313:1-313:201 (1994) and Byer, Appealable Orders under the Pennsylvania Rules of Appellate Procedures in Practice and Procedures in Pennsylvania Appellate Courts (PBI No. 1994-869); Pines, Pennsylvania Appellate Practice: Procedural Requirements and the Vagaries of Jurisdiction, 91 Dick.L.Rev. 55, 107-115 (1986).

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## Rule 901. Scope of Chapter.

This chapter applies to all appeals from a trial court to an appellate court except:

- (1) An appeal by allowance taken under 42 Pa.C.S. § 724 (allowance of appeals from Superior and Commonwealth Courts). See Rule 1112 (appeals by allowance).

- (2) An appeal by permission taken under 42 Pa.C.S. § 702(b) (interlocutory appeals by permission). See Rule 1311 (interlocutory appeals by permission).

- (3) An appeal which may be taken by petition for review pursuant to Rule 1762(b)(2), which governs applications relating to bail when no appeal is pending.

- (4) An appeal which may be taken by petition for review pursuant to Rule 1770, which governs out of home placement in juvenile delinquency matters.

- (5) Automatic review of sentences pursuant to 42 Pa.C.S. § 9711(h) (review of death sentence). See Rule 1941 (review of death sentences).

- (6) An appeal which may be taken by petition for review pursuant to Rule 3331 (review of special prosecutions or investigations).

- (7) An appeal which may be taken only by a petition for review pursuant to Rule 1573, which governs review when a trial court has denied a motion to dismiss on the basis of double jeopardy as frivolous.**

## **Rule 1516. Other Pleadings Allowed.**

(a) *Appellate jurisdiction petitions for review.*—No answer or other pleading to an appellate jurisdiction petition for review is authorized, unless the petition for review is filed pursuant to the Notes to Rules 341 or 1311 (seeking review of a trial court or other government unit's refusal to certify an interlocutory order for immediate appeal), **Rule 1573 (review of orders finding an assertion of double jeopardy frivolous)**, Rule 1762 (regarding release in criminal matters), Rule 1770 (regarding placement in juvenile delinquency matters), Rule 3321 (regarding appeals from decisions of the Legislative Reapportionment Commission) or Rule 3331 (regarding review of special prosecutions and investigations). Where an answer is authorized, the time for filing an answer shall be as stated in Rule 123(b).

(b) *Original jurisdiction petitions for review.* Where an action is commenced by filing a petition for review addressed to the appellate court's original jurisdiction, the pleadings are limited to the petition for review, an answer thereto, a reply if the answer contains new matter or a counterclaim, a counter-reply if the reply to a counterclaim contains new matter, a preliminary objection, and an answer thereto. Every pleading filed after an original jurisdiction petition for review shall be filed within 30 days after service of the preceding pleading, but no pleading need be filed unless the preceding pleading is endorsed with a notice to plead.

**Note:** The 2004, **[and]** 2012, **and 2013** amendments made clear that, with **[six]** limited exceptions, no answer or other pleading to a petition for review addressed to an appellate court's appellate jurisdiction is proper. With regard to original jurisdiction proceedings, practice is patterned after Rules of Civil Procedure 1017(a) (Pleadings Allowed) and 1026 (Time for Filing. Notice to Plead). The ten additional days in which to file a subsequent pleading are in recognition of the time required for agency coordination where the Commonwealth is a party. See Rule 1762(b)(2) regarding bail applications. See Rule 1770 regarding placement in juvenile delinquency matters.

**REVIEW OF DETERMINATIONS BY A COURT OF COMMON PLEAS  
THAT A CLAIM OF DOUBLE JEOPARDY IS FRIVOLOUS**

**Rule 1573. Review of Orders in Which the Court Finds an Assertion of Double Jeopardy Frivolous.**

**(a) General rule.**—Any party seeking review of a frivolousness determination by a court of common pleas under Pennsylvania Rule of Criminal Procedure 587 shall file a petition for review in the appellate court having jurisdiction over the matter. Review of a frivolousness determination under Pennsylvania Rule of Criminal Procedure 587 shall be governed by this chapter and ancillary provisions of these rules, except as otherwise prescribed by this rule. The time for filing is provided for in Pa.R.A.P. 1512(a)(1).

**(b) Contents.**—The contents of the petition for review are not governed by Pa.R.A.P. 1513. Instead, the petition for review need not be set forth in numbered paragraphs in the manner of a pleading, and shall contain the following (which shall, insofar as practicable, be set forth in the order stated):

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

**(ii)** The text of the order in question, and the date of its entry in the trial court. If the order is voluminous, it may, if more convenient, be appended to the petition.

**(iii)** A concise statement of the case containing the facts necessary to an understanding of the frivolousness issue(s) presented.

**(iv)** The question(s) presented, expressed in the terms and circumstances of the case but without unnecessary detail.

**(v)** A concise statement of the reasons why the trial court erred in its determination of frivolousness.

**(vi)** There shall be appended to the petition a copy of any opinions relating to the order sought to be reviewed, including findings of fact and conclusions of law in support of the frivolousness determination, as well as a copy of any transcripts or other record documents necessary to the appellate court's review.

**(vii)** There shall be appended to the petition the verbatim texts of the pertinent provisions of constitutional provisions, statutes, ordinances, regulations or other similar enactments which the case involves.

**(viii)** There shall be appended to the petition any briefs filed in the trial court in support of the motion to dismiss.

**(c) Caption and parties.**—The parties in the trial court shall be named as parties in the appellate court. If there are multiple defendants but the order for which review is sought adjudicates the motion of only a single defendant, only that defendant may file a petition for review.

**(d) No supporting brief.**—All contentions in support of a petition shall be set forth in the body of the petition as prescribed by subparagraph (b)(v) of this rule. No separate brief in support of the petition for review will be received, and the prothonotary of the appellate court will refuse to file any petition for review to which is annexed or appended any brief other than the briefs filed in the trial court.

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

(f) *Effect of filing petition.*—The filing of a petition for review shall not automatically stay the proceedings before the trial court. A petitioner may file an application for a stay in the trial or appellate court pending the determination of the petition for review, or the trial or appellate court may issue a stay *sua sponte*.

(g) *Answer to petition for review.*—If the Commonwealth does not intend to file an answer under this rule, it shall, within the time fixed by these rules for filing an answer, file a letter stating that it does not intend to file an answer to the petition for review. The failure to file an answer will not be construed as concurrence in the petition for review. The appellate court may, however, direct the Commonwealth to file an answer.

(h) Pa.R.A.P. 1531-1571 do not apply to petitions for review filed under this rule. Pa.R.A.P. 1514 does apply, except that no copy of the petition needs to be served upon the Attorney General.

(i) *Grant of petition for review and transmission of record.*—If the petition for review is granted, the prothonotary of the appellate court shall immediately give written notice of the entry of the order to the clerk of the trial court and to each party who has appeared in the appellate court. The grant of the petition for review shall operate as a stay of all trial court proceedings. The clerk of the trial court shall docket the notice in the same manner as a notice of appeal and shall mail that notice to all parties to the trial court proceeding. The certified record shall be transmitted and filed in accordance with Chapter 19 (preparation and transmission of the record and related matters). The times fixed by those provisions for transmitting the record shall run from the date of the entry of the order granting the petition for review. No party needs to file a separate notice of appeal.

(j) *Denial of petition for review.*—If the petition for review is denied, the prothonotary of the appellate court shall immediately give written notice of the order to the clerk of the trial court and to each party who has appeared in the appellate court.

*Note:* The trial court's determination and the procedure for determining a motion to dismiss on double jeopardy grounds is set forth in Pa.R.Crim.P. 587. If a trial court denies such a motion without expressly finding that the motion is frivolous, the order is immediately appealable by means of a notice of appeal under Pa.R.A.P. 313. If, however, the trial court finds the motion to be frivolous, appellate review can be secured only if the appellate court grants a petition for review. See *Commonwealth v. Orie*, 22 A.3d 1021 (Pa. 2011); *Commonwealth v. Brady*, 510 Pa. 336, 508 A.2d 286 (1986). If the Superior Court does not grant the petition for review, the defendant may file a petition for allowance of appeal with the Supreme Court.

Where the petition for review of the determination of frivolousness is granted, the grant automatically initiates a separate appeal on the merits from the order denying the pretrial motion seeking dismissal of criminal charges on double jeopardy grounds.

A party may seek (or a court may *sua sponte* issue) a stay of the trial court proceedings pending review of the frivolousness determination. Otherwise, the trial court may proceed while the petition for review is pending. See Pa.R.A.P. 1701(d). Where the petition for review of the determination of frivolousness is granted, the grant automatically stays further proceedings in the trial courts.