

Rule 102. Definitions.

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Petition for allowance of appeal.—(a) A petition under Rule 1112 (appeals **to the Supreme Court** by allowance); or (b) a statement pursuant to Rule 2119(f) (discretionary aspects of sentence). See 42 Pa.C.S. § 9781.

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Rule 341. Final Orders; Generally.

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Official Note:

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[Criminal Law Proceedings—Discretionary Aspects of Sentencing—Section 9781 of the Sentencing Code (42 Pa.C.S. § 9781) states that the defendant or the Commonwealth may “petition for allowance of appeal” of the discretionary aspects of a sentence for a felony or a misdemeanor. The practice under these rules is to file a notice of appeal. See note to Rule 902 (manner of taking appeal). If the defendant has a right to an appeal with respect to the discretionary aspects of a sentence, the appellate court must, of course, entertain the appeal. Otherwise, such an appeal may be entertained by an appellate court if, but only if, it appears to the court that there is a substantial question that the sentence imposed is not appropriate under the applicable guidelines.]

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Rule 902. Manner of Taking Appeal.

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Official Note:

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Section 9781 of the Sentencing Code (42 Pa.C.S. § 9781) provides that the defendant or the Commonwealth may file a “petition for allowance of appeal” of the

discretionary aspects of a sentence for a felony or a misdemeanor. The notice of appeal under this chapter (see Rule 904 (content of the notice of appeal)), **in conjunction with the requirements set forth in Pa.R.A.P. 2116(b) and 2119(f),** operates as the “petition for allowance of appeal” under the Sentencing Code. **[It automatically raises all possible questions under 42 Pa.C.S. § 9781 and is available and appropriate even where no issue relating to guilt or the legality of the sentence (in the sense that the sentence falls outside of the range of discretion vested by law in the sentencing court) is presented.]** No additional wording is required or appropriate in the notice of appeal.

In effect, the filing of the “petition for allowance of appeal” contemplated by the statute is deferred by these rules until the briefing stage, where the question of the appropriateness of the discretionary aspects of the sentence may be briefed and argued in the usual manner. See **[Rule 2116 (statement of questions involved)]Pa.R.A.P. 2116(b) and the note thereto; Pa.R.A.P. 2119(f) [and Rule 2119 (argument)] and the note thereto.**

[42 Pa.C.S. § 9781(f) provides that “No appeal of the discretionary aspects of the sentence shall be permitted beyond the appellate court that has initial jurisdiction of such appeals.”]

Rule 1112. Appeals by Allowance.

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Official Note:

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With regard to subdivision (f) and withdrawal of appearance without leave of the appellate court, counsel may nonetheless be subject to trial court supervision pursuant to Pa.R.Crim.P. 904 (Entry of Appearance and Appointment of Counsel; *In Forma Pauperis*).

With respect to appearances by new counsel following the initial docketing of appearances pursuant to Subdivision (f) of this rule, please note the requirements of Rule 120[0].

Where an appellant desires to challenge the discretionary aspects of a sentence of a trial court, the “petition for allowance of appeal” referred to 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. See note to Pa.R.A.P. 902; note to Pa.R.A.P. 1115; Pa.R.A.P. 2116(b) and the note thereto; Pa.R.A.P. 2119(f) and the note thereto.

Rule 1115. Content of the Petition for Allowance of Appeal.

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Official Note:

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Where an appellant desires to challenge the discretionary aspects of a sentence of a trial court [no “petition for allowance of appeal”, as that term is used in these rules, may be filed and the practice is governed by Chapter 9 (appeals from lower courts).] the “petition for allowance of appeal” referred to 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. *Commonwealth v. Tuladziecki*, 522 A.2d 17, 18 (Pa. 1987). See note to [Rule] Pa.R.A.P. 902 [(manner of taking appeal)]; Pa.R.A.P. 2116(b) and the note thereto; Pa.R.A.P. 2119(f) and the note thereto.

Rule 2116. Statement of Questions Involved

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(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 [Subdivision] paragraph (a). Failure to comply with this [subdivision] 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 [Rules] 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.

Rule 2119. Argument

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(f) *Discretionary aspects of sentence.*—An appellant who challenges the discretionary aspects of a sentence in a criminal matter shall set forth in **[his brief] 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:

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[In some circumstances an appellant may have a right to appellate review of the discretionary aspects of a sentence. See Official Note to Pa.R.A.P. 341. In such cases a citation to the controlling authority will suffice for purposes of paragraph (f).] **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.**