

Appellate Court Procedural Rules Committee

The Appellate Court Procedural Rules Committee proposes to recommend amendment of Pa.R.A.P. 1941. This proposal is being submitted for public comments, suggestions, and concerns prior to submission to the Supreme Court.

Proposed new material is underlined and in bold face type and deleted material is bracketed and in bold face type.

All communications in reference to the proposed amendment should be sent no later than **July 22, 2013** to:

Appellate Court Procedural Rules Committee

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An Explanatory Comment precedes the proposed amendment and has been inserted by this Committee for the convenience of the bench and bar. It will not constitute part of the rule nor will it be officially adopted or promulgated.

By the Appellate Court Procedural Rules Committee

Honorable Renée Cohn Jubelirer
Chair

EXPLANATORY COMMENT

CLARIFICATION AS TO WHEN TO FILE NOTICES OF APPEAL FOR REVIEW OF A SENTENCE OF DEATH

There is an automatic review of some aspects of a capital conviction and sentence in death penalty cases, and the jurisdiction for that review is in the Supreme Court. The Supreme Court also has jurisdiction over other challenges to the conviction and the sentence and over lesser-included offenses. There has been some confusion as to when a notice of appeal needs to be filed, including cases in which counsel did not file a notice of appeal and then realized that a notice of appeal was needed to raise the issues that counsel wanted to argue on appeal. Accordingly, the Committee proposes revising the title and the note to clarify further that only certain issues are subject to automatic review and that all others must be raised by means of a timely-filed notice of appeal.

Rule 1941. Review of Sufficiency of the Evidence in Death Sentences.

(a) *Procedure in trial court.*—Upon the entry of a sentence subject to 42 Pa.C.S. § 9711(h) (review of death sentence) the court shall direct the official court reporter and the clerk to proceed under this chapter as if a notice of appeal had been filed 20 days after the date of entry of the sentence of death, and the clerk shall immediately give written notice of the entry of the sentence to the Administrative Office and to the Supreme Court [P]rothonotary's [O]ffice. The clerk shall insert at the head of the list of documents required by [Rule]Pa.R.A.P. 1931(c)[(duty of clerk to transmit the record)] a statement to the effect that the papers are transmitted under this rule from a sentence of death.

(b) *Filing and docketing in the Supreme Court.*—Upon receipt by the [P]rothonotary of the Supreme Court of the record of a matter subject to this rule, the [P]rothonotary shall immediately:

[(1)]1. Enter the matter upon the docket as an appeal, with the defendant indicated as the appellant and the Commonwealth indicated as the appellee.

[(2)]2. File the record in the Supreme Court.

[(3)]3. Give written notice of the docket number assignment in person or by first class mail to the clerk of the [lower]trial court.

[(4)]4. Give notice to all parties and the Administrative Office of the docket number assignment and the date on which the record was filed in the Supreme Court, and [shall] give notice to all parties of the date, if any, specially fixed by the [P]rothonotary pursuant to [Rule]Pa.R.A.P. 2185(b)[(notice of deferred briefing schedule)] for the filing of the brief of the appellant.

(c) *Further proceedings.*—Except as required by [Rule]Pa.R.A.P. 2189 or by statute, a matter subject to this rule shall proceed after docketing in the same manner as other appeals in the Supreme Court.

Official Note: [Formerly the act of February 15, 1870 (P.L. 15, No. 6) required the appellate court to review the sufficiency of the evidence in certain homicide cases regardless of the failure of the appellant to challenge the matter. See, e.g., *Commonwealth v. Santiago*, 476 Pa. 340, 382 A.2d 1200 (1978). Rule 302 (requisites for reviewable issue) now provides otherwise with respect to homicide cases generally. However, under Subdivision (c) of this rule the procedure for automatic review of capital cases provided by 42 Pa.C.S. § 9711(h) (review of death sentence) will permit an independent review of the sufficiency of the evidence in such cases.] In capital cases, the Supreme Court has jurisdiction to hear a direct appeal and will automatically review (1) the sufficiency of the evidence “to sustain a conviction for first-degree murder in every case in which the death penalty has been imposed;” (2) the sufficiency of the evidence to support the finding of at least one aggravating circumstance set forth in 42

Pa.C.S. § 9711(d); and (3) the imposition of the sentence of death to ensure that it was not the product of passion, prejudice, or any other arbitrary factor. Commonwealth v. Mitchell, 902 A.2d 430, 444, 468 (Pa. 2005); 42 Pa.C.S. § 722; 42 Pa.C.S. § 9711(h)(1), (3). Any other challenges to the proceedings that resulted in the sentence of death may only be reviewed if they have been preserved and if the defendant files a timely notice of appeal. See Commonwealth v. Dick, 978 A.2d 956, 958-59 (Pa. 2009) (“However, as appellant did not timely file his appeal, any claims unassociated with the statutorily-mandated review of the sufficiency of the evidence have not been previously raised or preserved for appeal, and thus are not properly before this Court. We have already considered and denied appellant’s requests for *nunc pro tunc* relief, and relaxed waiver no longer applies in capital appeals.”).

Likewise, [A]lthough [Rule] Pa.R.A.P. 702(b)[(matters tried with capital offenses)] vests jurisdiction in the Supreme Court over appeals from sentences imposed on a defendant for lesser offenses as a result of the same criminal episode or transaction where the offense is tried with the capital offense, the appeal from the lesser offense is not automatic. Thus the right to appeal the judgment of sentence on a lesser offense will be lost unless all requisite steps are taken, including preservation of issues ([e.g.,] **such as by filing post-trial motions)[,] **and** filing a timely notice of appeal[, **etc.**].**

See [Rule] Pa.R.A.P. 2189 for [procedure] provisions specific to the production of a reproduced record in cases involving the death penalty.