

Appellate Court Procedural Rules Committee

The Appellate Court Procedural Rules Committee proposes to recommend amendments to Pa.R.A.P. 1513. 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 **May 16, 2014** 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

The Committee proposes to amend and reorganize Pennsylvania Rule of Appellate Procedure 1513 (d) and (e) regarding appellate jurisdiction petitions for review. The amendment to subparagraph (d)(5) is intended to minimize the likelihood of inadvertent waiver of otherwise properly preserved issues due to a defect in the required general statement of objections to the order or other determination. The reorganization of (d) and (e) highlights the required elements of appellate and original jurisdiction petitions for review. The reasons for the proposed amendments follow.

The petition for review contemplated in Pa.R.A.P. 1513(d) often serves the same function as a notice of appeal under Chapter Nine of the Rules of Appellate Procedure, but the rule requires that the filing party provide substantially more information than a notice of appeal. Among the reasons for the additional detail required are that: 1) the appellate courts may need the additional detail, for example, for the Commonwealth Court to determine whether the petition for review is more properly addressed to its original jurisdiction, or for conversions in the Supreme Court, such as filings under the Gaming Control Act; and 2) if the appellate court determines that the petition is more properly addressed to its original jurisdiction, the additional detail is needed in order to allow the respondent to answer and thereby frame the issues to be decided. Pa.R.A.P. 1513(d)(5) requires a general statement of the objections to the order or other determination, that is, a sufficiently specific statement so as to preserve and present all issues to be raised on appeal. This requirement has been interpreted to mean that the statement must be more than a mere restatement of the court's standard of review. Commentators have noted that this aspect of preparing an appellate petition for review is problematic and that case law over the years has not been entirely consistent as to the detail required in a general statement of objections. G. Darlington, K. McKeon, D. Schuckers & K. Brown, *Pennsylvania Appellate Practice* § 1513:9 (West 2013-2014).

Case law requires more than mere generic allegations of error and there is some concern that the requirement of a general statement of objections can result in a waiver of issues that had otherwise been properly preserved in the underlying agency proceeding. Pa.R.A.P. 1513(d)(5) currently provides that “[t]he statement of objections will be deemed to include every subsidiary question fairly compromised therein,” and there is inherent subjectivity in determining whether, in fact, the general statement is general enough to preserve all issues on the one hand or too general to preserve any issues on the other hand. Because the decision as to whether the general statement has failed to raise issues can be subjective, the Committee believes that fundamental fairness mitigates against application of a strict waiver doctrine at this very preliminary stage of an appellate proceeding, particularly since the agency will have written its opinion before the petition for review is filed. In order to avoid this possibility, the Committee proposes that Pa.R.A.P. 1513(d)(5) be amended to add that “omission of an

issue from the statement shall not be the basis for a finding of waiver if the court is able to address the issue based on the certified record.”

The Committee further proposes that the Supreme Court rescind the language regarding preservation of issues “fairly subsumed” in the general statement. The Committee proposes to rescind this language because it is inconsistent with the proposed amendment to Pa.R.A.P. 1513(d)(5). The Committee also proposes some minor reorganization to Pa.R.A.P. 1513(d) and 1513(e) for clarification purposes and deletion of the 1979 and 2011 Explanatory Comments as no longer necessary.

Rule 1513. Petition for Review.

(a) *Caption and parties on appeal.* In an appellate jurisdiction petition for review, the aggrieved party or person shall be named as the petitioner and, unless the government unit is disinterested, the government unit and no one else shall be named as the respondent. If the government unit is disinterested, all real parties in interest, and not the government unit, shall be named as respondents.

(b) *Caption and parties in original jurisdiction actions.* The government unit and any other indispensable party shall be named as respondents. Where a public act or duty is required to be performed by a government unit, it is sufficient to name the government unit, and not its individual members, as respondent.

(c) *Form.* Any petition for review shall be divided into consecutively numbered paragraphs. Each paragraph shall contain, as nearly as possible, a single allegation of fact or other statement. When petitioner seeks review of an order refusing to certify an interlocutory order for immediate appeal, numbered paragraphs need not be used.

(d) *Content of appellate jurisdiction petition for review.* An appellate jurisdiction petition for review shall contain:

- (1) a statement of the basis for the jurisdiction of the court;
- (2) the name of the party or person seeking review;
- (3) the name of the government unit that made the order or other determination sought to be reviewed;
- (4) reference to the order or other determination sought to be reviewed, including the date the order or other determination was entered;
- (5) a general statement of the objections to the order or other determination, **but the omission of an issue from the statement shall not be the basis for a finding of waiver if the court is able to address the issue based on the certified record; [and]**
- (6) a short statement of the relief sought; **and**
- (7) **[. Ala]** copy of the order or other determination to be reviewed, **which** shall be attached to the petition for review as an exhibit. **[The statement of objections will be deemed to include every subsidiary question fairly comprised therein.]**

No notice to plead or verification is necessary.

Where there were other parties to the proceedings conducted by the government unit, and such parties are not named in the caption of the petition for review, the petition for review shall also contain a notice to participate, which shall provide substantially as follows:

If you intend to participate in this proceeding in the (Supreme, Superior or Commonwealth, as appropriate) Court, you must serve and file a notice of

intervention under Rule 1531 of the Pennsylvania Rules of Appellate Procedure within 30 days.

(e) *Content of original jurisdiction petition for review.* A petition for review addressed to an appellate court's original jurisdiction shall contain:

- (1) a statement of the basis for the jurisdiction of the court;
 - (2) the name of the person or party seeking relief;
 - (3) the name of the government unit whose action or inaction is in issue and any other indispensable party;
 - (4) a general statement of the material facts upon which the cause of action is based; **[and]**
 - (5) a short statement of the relief sought **[.]; and**
- (6) [It shall also contain]** a notice to plead and **[be verified]** verification either by oath or affirmation or by verified statement.

(f) *Alternative objections.* Objections to a determination of a government unit and the related relief sought may be stated in the alternative, and relief of several different types may be requested.

Official Note: The 2004 amendments to this rule clarify what must be included in a petition for review addressed to an appellate court's appellate jurisdiction and what must be included in a petition for review addressed to an appellate court's original jurisdiction. Where it is not readily apparent whether a "determination" (defined in **[Rule] Pa.R.A.P. 102** as "[a]ction or inaction of a government unit) is reviewable in the court's appellate or original jurisdiction, compliance with the requirements of **[Subdivisions] paragraphs** (d) and (e) is appropriate.

[Subdivisions] Paragraphs (a) and (b) reflect the provisions of **[Rule] Pa.R.A.P. 501** (Any Aggrieved Party May Appeal), **[Rule] Pa.R.A.P. 503** (Description of Public Officers), Section 702 of the Administrative Agency Law, 2 Pa.C.S. § 702 (Appeals), and Pa.R.C.P. **No.** 1094 (regarding parties defendant in mandamus actions).

Government units that are usually disinterested in appellate jurisdiction petitions for review of their determinations include:

- the Board of Claims,
- the Department of Education (with regard to teacher tenure appeals from local school districts pursuant to section 1132 of the Public School Code of 1949, 24 P. S. § 11-1132),
- the Environmental Hearing Board,
- the State Charter School Appeal Board,
- the State Civil Service Commission, and
- the Workers' Compensation Appeal Board.

The provision for joinder of indispensable parties in original jurisdiction actions reflects the last sentence of section 761(c) of the Judicial Code, 42 Pa.C.S. § 761(c), providing for the implementation of ancillary jurisdiction of the Commonwealth Court by general rule.

[Subdivisions]Paragraphs (d) and (e) reflect the differences in proceeding in a court's original and appellate jurisdiction, while preserving the need for sufficient specificity to permit the conversion of an appellate document to an original jurisdiction pleading and vice versa should such action be necessary to assure proper judicial disposition. See also the notes to **[Rules]Pa.R.A.P.** 1501 and 1502. **[The paragraph regarding the notice to participate was formerly found in Rule 1514(c).]**

[Explanatory Comment—1979

The note is expanded to reflect the fact that the Department of Education does not defend its decisions in teacher tenure appeals from local school districts.]

[Explanatory Comment -- 2011

With respect to the general statement of objections in an appellate jurisdiction petition for review required in subdivision (d)(5), see *Maier v. Unemployment Comp. Bd. of Review*, 983 A.2d 1264, 1266 (Pa. Cmwlth. 2009).]

Official Note - 2014

The 2014 amendments to Pa.R.A.P.1513(d) relating to the general statement of objections in an appellate jurisdiction petition for review are intended to preclude a finding of waiver if the court is able, based on the certified record, to address an issue not within the issues stated in the petition for review but included in the statement of questions involved and argued in a brief. The amendment neither expands the scope of issues that may be addressed in an appellate jurisdiction petition for review beyond those permitted in Pa.R.A.P. 1551(a) nor affects Pa.R.A.P. 2116's requirement that "[n]o question will be considered unless it is stated in the statement of questions involved [in appellant's brief] or is fairly suggested thereby."