

**SUPREME COURT OF PENNSYLVANIA
APPELLATE COURT PROCEDURAL RULES COMMITTEE**

NOTICE OF PROPOSED RULEMAKING

Proposed Adoption of new Pa.R.A.P. 126 and Amendment of Pa.R.A.P. 2119

The Appellate Court Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the adoption of new Pa.R.A.P. 126 (Citation of Authority), and amendment of Pa.R.A.P. 2119 (Argument), for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any reports, notes, or comments in the proposal have been inserted by the Committee for the convenience of those using the rules. They neither will constitute a part of the rules nor will be officially adopted by the Supreme Court.

Additions to the text of the proposal are bolded and underlined; deletions to the text are bolded and bracketed.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

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All communications in reference to the proposal should be received by **May 30, 2015**. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

By the Appellate Court Procedural Rules Committee,

Honorable Renée Cohn Jubelirer
Chair

Explanatory Comment

The only provisions currently governing citations and citation form are found in Pa.R.A.P. 2119(b). There are no appellate rules governing citations and citation forms in legal papers other than the one directed to appellate briefs. On April 14, 2014 the Supreme Court amended Pa.R.A.P. 2119 to delete the requirement of parallel citations.

The Committee has reviewed the rules governing citations and has determined that: (a) there should be a general rule applicable to all legal papers filed in appellate courts; (b) the appropriate location of the general rule should be in Chapter One (General Provisions); (c) the rule ought not impose mandatory requirements that can create a basis for waiver. In keeping with these principles, the Committee proposes a new Rule 126 that requires a party citing authority not readily available through a recognized reporter system or online to attach that authority. In addition, the rule and note together suggest (but do not require) as best practices first, a party citing authority that is paginated, such as a legal opinion, ought to identify the specific page of that authority on which the party relies; and, second, parties should properly cite cases and statutes. Compliance with Pa.R.A.P.126 will benefit the appellate courts and adverse parties by enabling them to more easily locate cited authority and the relevant portion of cited authority.

New Pa.R.A.P. 126 is not intended to supersede any internal operating procedure of an appellate court regarding citation to memorandum decisions or opinions. See, e.g., Superior Court Internal Operating Procedure § 65.37, 210 Pa. Code § 65.37, Commonwealth Court Internal Operating Procedure § 69.414, 210 Pa. Code § 69.414.

The Committee also determined that it is common sense that a party citing authority should give the reason the authority was cited. This principle is sufficiently obvious that it need not be embodied expressly in the rules.

To implement the concepts set forth above, the Committee proposes the adoption of a new Pa.R.A.P. 126 and amendments to Pa.R.A.P. 2119. The proposed Note to Pa.R.A.P. 126 provides guidance previously found in Pa.R.A.P. 2119 as to best citation practices and what is commonly acceptable to appellate courts.

(This is an entirely new rule.)

Rule 126. Citation of authority. A party citing authority that is not readily available shall attach the authority as an appendix to its filing. When citing authority, a party should direct the court's attention to the specific part of the authority on which the party relies.

Official Note:

Pa.R.A.P. 126 is intended to assure that cited authority is readily available to the court and parties. This rule is not intended to supersede any internal operating procedure of an appellate court regarding the citation to memorandum decisions or opinions. See, e.g., Superior Court Internal Operating Procedure § 65.37, 210 Pa. Code § 65.37, Commonwealth Court Internal Operating Procedure § 69.414, 210 Pa. Code § 69.414.

The second sentence of the rule encourages parties to provide pinpoint citations for cases, and section or subsection citations for statutes or rules.

Although the rule does not establish rules for citation, the following guidelines are offered for counsel's benefit regarding the citation of Pennsylvania cases and statutes.

Regarding cases, the rule does not require parallel citation of Pennsylvania appellate cases to the National Reporter System and the official reports of Pennsylvania appellate courts. Parties may cite to the National Reporter System alone.

Regarding statutes, Pennsylvania has officially consolidated only some of its statutes. Parties citing a statute enacted in the Pennsylvania Consolidated Statutes may use the format "1 Pa.C.S. § 1928." Parties citing an unconsolidated statute may refer to the Pamphlet Laws or other official collection of the Legislative Reference Bureau, with a parallel citation to *Purdon's Pennsylvania Statutes Annotated*, if available, using the format "Act of February 14, 2008, P.L. 6, 65 P.S. §§ 67.101-67.3104" or "Act of May 16, 1923, P.L. 207, as amended, 53 P.S. §7106(a)." Parties are advised that *Purdon's* does not represent an official version of Pennsylvania statutes. *In re appeal of Tenet Health Systems Bucks County, LLC*, 880 A.2d 721 (Pa. Commw. 2005), appeal denied, 897 A.2d 1195 (Pa. 2006).

Prior to Pa.R.A.P. 126, there was no specific citation format applicable to all filings. The format for citing cases and statutes was located previously in Pa.R.A.P. 2119(b). The format is not mandatory and a party does not waive an argument merely by failing to follow the format. That said, the suggestions in this Note provide guidance to parties as to what is generally acceptable to appellate courts.

Rule 2119. Argument.

(a) *General rule....*

(b) *Citations of authorities.* **Citations of authorities in briefs shall be in accordance with Pa.R.A.P. 126 governing citations of authorities in all legal papers.**

[Citations of authorities must set forth the principle for which they are cited. Citations of uncodified statutes shall make reference to the book and page of the Laws of Pennsylvania (Pamphlet Laws) or other official edition, and also to a standard digest, where the statutes may be found. Citations of provisions of the Pennsylvania Consolidated Statutes may be in the form: “1 Pa.C.S. § 1928 (rule of strict and liberal construction)” and the official codifications of other jurisdictions may be cited similarly. Quotations from authorities or statutes shall also set forth the pages from which they are taken. Opinions of an appellate court of this or another jurisdiction shall be cited from the National Reporter System, if published therein.]

(c) *Reference to record....*

(d) *Synopsis of evidence....*

(e) *Statement of place of raising or preservation of issue....*

(f) *Discretionary aspects of sentence....*

Official Note:

[The 2014 amendment to paragraph (b) eliminated the requirement for parallel citation to the Pennsylvania State Reports, which is the official court reports of the Pennsylvania Supreme Court, the Pennsylvania Superior Court Reports, which had been the official court reports of the Pennsylvania Superior Court, and the Pennsylvania Commonwealth Court Reports, which had been the official court reports of the Commonwealth Court.]

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.