

Appellate Court Procedural Rules Committee

The Appellate Court Procedural Rules Committee proposes to amend Pennsylvania Rule of Appellate Procedure 2113, 2185 and 531. The amendment is being submitted to the bench and bar for comments and suggestions prior to its submission to the Supreme Court.

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

All communications in reference to the proposed amendment should be sent no later than February 11, 2011 to:

Dean R. Phillips, Counsel
D. Alicia Hickok, Deputy Counsel
Scot Withers, Deputy Counsel
Appellate Court Procedural Rules Committee
Pennsylvania Judicial Center
601 Commonwealth Ave., Suite 6200
P.O. Box 62635
Harrisburg, Pennsylvania 17106-2635
or Fax to
(717) 231-9555
or E-Mail to
appellaterules@pacourts.us

An Explanatory Comment precedes the proposed amendments 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 Maureen Lally-Green,
Chair

EXPLANATORY COMMENT

The proposed amendment to subdivision (a) to Rule 2113 permits appellant to address in a reply brief matters raised in amicus curiae briefs. Currently, the Rule permits appellant to address in a reply brief only matters raised in the appellee's brief. The proposed amendment does not change the requirement that the appellant may not address in the reply brief matters previously addressed in appellant's principal brief.

The proposed addition of paragraph (a)(3) to Rule 2185 addresses two situations: when does appellee's time period to file appellee's brief begins to run when more than one appellant exists; and, when does appellant's time period to file a reply brief begin to run when more than one appellee exists.

The first situation occurs when there is more than one appellant and each appellant does not file its brief on the same date. For example, if there are two appellants and one appellant files early or one is granted an extension of time to file, the two briefs for appellants will not be filed or served on the same date. The proposed addition of paragraph (a)(3) clarifies that the time period begins to run on the date on which the latest, timely filed preceding brief is served (or when a relevant brief should have been filed).

The second situation occurs when there is more than one appellee and each appellee does not file its brief on the same date. The proposed addition of paragraph (a)(3) clarifies that the time period begins to run on the date on which the latest, timely filed preceding brief is served (or when a relevant brief should have been filed).

The proposed amendments contained in this recommendation will be submitted to the Supreme Court in 2011, following expiration of the comment period and further Committee review.

The final situation concerns the filing of amicus curiae briefs under Pa.R.A.P. 531. The proposed amendment to Pa.R.A.P. 531 adds paragraph (a)(2) and would clarify when those filing amicus curiae briefs should serve and file their briefs when the appellant has chosen or the parties have been directed to proceed under the rules related to large records (Rule 2154(b)), advance text (Rule 2187(b)) and definitive copies (Rule 2185(c)). Under those rules, the appellant may defer preparation of the reproduced record until after the briefs have been served. The parties serve on one another (but do not file) advance texts of their briefs within the times required by Rule 2187. At the time they file

their advance texts, each party includes certified record designations for inclusion in the reproduced record. The appellant must then prepare and file the reproduced record within 21 days of service of the appellee's advance text (Rule 2186(a)(2)). Within 14 days of the filing of the reproduced record, each party that served a brief in advanced text may file and serve definitive copies of their briefs. The definitive copy must include references to the pages of the reproduced record, but it may not otherwise include changes from the advance text other than correction of typographical errors. Those filing amicus curiae briefs may choose to serve an advanced text and then file and serve definitive copies according to the procedure required of the parties or they may choose to file a definitive brief without citations to the reproduced record.

Rule 2113. Reply Brief.

(a) *General rule.*—In accordance with Rule 2185(a) (**time for serving [service]** and filing [of] briefs), the appellant may file a brief in reply to matters raised by appellee’s brief **or in any amicus curiae brief** and not previously addressed in appellant’s brief. If the appellee has cross appealed, the appellee may file a similarly limited reply brief.

(b) *Response to draft or plan.*—A reply brief may be filed as prescribed in Rule 2134 (drafts or plans).

(c) *Other briefs.*—No further briefs may be filed except with leave of court.

Official Note:

* * * *

The amendment to Rule 2113(a) authorized an appellant to address in a reply brief matters raised in amicus curiae briefs. Before the 2011 amendment, the rule permitted the appellant to address in its reply brief only matters raised in the appellee’s brief. The 2011 amendment did not change the requirement that the reply brief must not address matters previously addressed in the appellant’s principal brief.

Rule 2185. Time for Serving and Filing Briefs.

(a) *Time for serving and filing briefs.*

(1) *General rule.*—Except as otherwise provided by this rule, the appellant shall serve and file appellant’s brief not later than the date fixed pursuant to Subdivision (b) of this rule, or within 40 days after the date on which the record is filed, if no other date is so fixed. The appellee shall serve and file appellee’s brief within 30 days after service of appellant’s brief and reproduced record if proceeding under Rule 2154(a). A party may serve and file a reply brief permitted by these rules within 14 days after service of the preceding brief but, except for good cause shown, a reply brief must be served and filed so as to be received at least three days before argument. In cross appeals, the second brief of the deemed or designated appellant shall be served and filed within 30 days of service of the deemed or designated appellee’s first brief. Except as prescribed by Rule 2187(b) (advance text of briefs), each brief shall be filed not later than the last day fixed by or pursuant to this rule for its service. Briefs shall be deemed filed on the date of mailing if first class, express, or priority United States Postal Service mail is utilized.

(2) *Children’s fast track appeals.*

(i) In a children’s fast track appeal, the appellant shall serve and file appellant’s brief within 30 days after the date on which the record is filed, if no other date is so fixed. The appellee shall serve and file appellee’s brief within 21 days after service of appellant’s brief and reproduced record. A party may serve and file a reply brief permitted by these rules within 7 days after service of the preceding brief but, except for good cause shown, a reply brief must be served and

filed so as to be received at least 3 days before argument. In cross appeals, the second brief of the deemed or designated appellant shall be served and filed within 21 days of service of the deemed or designated appellee's first brief. Briefs shall be deemed filed on the date of mailing if first class, express, or priority United States Postal Service mail is utilized.

(ii) In a children's fast track appeal, the provisions of Subdivisions (b) and (c) of this Rule shall not apply.

(3) Multiple briefs for appellants or appellees.— If the time for filing a brief is established by reference to service of a preceding brief and more than one such preceding brief is filed, the deadline for filing the subsequent brief shall be calculated from the date on which the last timely filed preceding brief is served. If no such preceding brief is filed, the deadline for a subsequent brief shall be calculated from the date on which the preceding brief should have been filed.

(b) *Notice of deferred briefing schedule.*—When the record is filed the prothonotary of the appellate court shall estimate the date on which the matter will be argued before or submitted to the court, having regard for the nature of the case and the status of the calendar of the court. If the prothonotary determines that the matter will probably not be reached by the court for argument or submission within 30 days after the latest date on which the last brief could be filed under the usual briefing schedule established by these rules, the prothonotary shall fix a specific calendar date as the last date for the filing of the brief of the appellant in the matter, and shall give notice thereof as required by these rules. The date so fixed by the prothonotary shall be such that the latest date on which the last brief in the matter could be filed under these rules will fall approximately 30 days before the probable date of argument or submission of the matter.

(c) *Definitive copies.*—If the record is being reproduced pursuant to Rule 2154(b) (large records) the brief served pursuant to Subdivision (a) of this rule may be typewritten or page proof copies of the brief, with appropriate references to pages of the parts of the original record involved. Within 14 days after the reproduced record is filed each party who served briefs in advance form under this subdivision shall serve and file definitive copies of his or her brief or briefs containing references to the pages of the reproduced record in place of or in addition to the initial references to the pages of the parts of the original record involved (see Rule 2132 (references in the briefs to the record)). No other changes may be made in the briefs as initially served, except that typographical errors may be corrected.

Official Note:

* * * *

The addition of subsection (a)(3), clarified practice in an appeal in which there is more than one appellant or appellee and all appellants or all appellees do not file their briefs on the same date. For example, if there are two appellants and one files early or one is granted an extension of time to file, the two briefs for appellants will not be filed or served on the same date. Without subsection (a)(3), it was not clear when the appellee's 30-day period to file its brief began. The same issue can arise with respect to the appellant's

time for filing its reply brief when there are two or more appellees. New Subsection (a)(3) clarified the point by starting the period on the date on which the latest, timely filed preceding brief is served.

AMICUS CURIAE

Rule 531. Participation by Amicus Curiae.

(a) *Briefs.*—Anyone interested in the questions involved in any matter pending in an appellate court, excluding Petitions for Allowance of Appeal, although not a party, may, without applying for leave to do so, file a brief amicus curiae in regard to those questions.

(1) Unless otherwise ordered by the court, any amicus curiae shall file and serve its brief in the manner and number required and within the time allowed by these rules with respect to the party whose position as to affirmance or reversal the amicus brief will support, or with respect to the appellant, if the amicus brief does not support the position of any party.

(2) In an appeal proceeding under Rules 2154(b), 2185(c) and 2187(b), any amicus curiae shall file and serve its brief within the time allowed by these rules for service of the advance text of the brief by the party whose position as to affirmance or reversal the amicus brief will support or, if the amicus brief does not support the position of any party, within the time allowed by these rules for service of the advance text by the appellant. Alternatively, the amicus curiae may, but is not required to, serve an advance text and then file and serve a definitive copy of its brief. If the amicus curiae chooses to serve an advance copy and then file and serve a definitive copy, its deadlines for each are the same as for the party whose position as to affirmance or reversal the amicus brief supports or, if the amicus brief does not support the position of any party, as for the appellant.

(b) *Oral argument.*—Oral argument may be presented by amicus curiae only as the appellate court may direct. Requests for leave to present oral argument shall be by application and will be granted only for extraordinary reasons.

Official Note

* * * *

The 2011 amendment to the rule clarified when those filing amicus curiae briefs should serve and file their briefs when the appellant has chosen or the parties have been directed to proceed under the rules related to large records (Rule 2154(b)), advance text (Rule 2187(b)) and definitive copies (Rule 2185(c)). Under those rules, the appellant may defer preparation of the reproduced record until after the briefs have been served. The parties serve on one another (but do not file) advance texts of their briefs within the times required by Rule 2187. At the time they file their advance texts, each party includes certified record designations for inclusion in the reproduced record. The appellant must then prepare and file the reproduced record within 21 days of service of the appellee's advance text (Rule 2186(a)(2)). Within 14 days of the filing of the reproduced record, each party that served a brief in advanced text may file and serve definitive copies of their briefs. The definitive copy must include references to the pages of the reproduced record, but it may not otherwise include changes from the advance text other than correction of typographical errors. Those filing amicus curiae briefs may choose to serve an advanced

text and then file and serve definitive copies according to the procedure required of the parties or they may choose to file a definitive brief without citations to the reproduced record.