

## **Appellate Court Procedural Rules Committee**

The Appellate Court Procedural Rules Committee proposes to amend Pennsylvania Rule of Appellate Procedure 1931. 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 while deleted material is bracketed.

All communications in reference to the proposed amendment should be sent no later than July 13, 2010 to:

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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 Maureen Lally-Green,  
Chair

## EXPLANATORY COMMENT

The Rules of Appellate Procedure and case law place a burden on the appellant to make sure that a full and complete record is forwarded to the appellate court. The Appellate Court Procedural Rules Committee undertook a review of the rules to assist appellant in determining what, in fact, was sent by the trial court to the appellate court which led to the adoption in 2004 to the adoption of subdivision (d) – a requirement that the clerk or prothonotary send the appellant the list of recorded documents. However, the appellant's ability to determine what was included or subsumed in the list is hindered if the list is not sufficiently specific. Also, in many cases, items included in the list were not actually transmitted to the appellate court.

The Appellate Court Procedural Rules Committee recommends that the Supreme Court amend subdivision (c) to deal with lack of specificity in the lists. The proposed amendment to subdivision (c) provides that the list be sufficiently specific “to allow the parties on appeal to identify each document and to determine whether the record on appeal is complete.”

The Appellate Court Procedural Rules Committee recommends that the Supreme Court amend subdivision (d) to permit appellant to rely on the content of the list without having to physically examine the record transmitted to the appellate court. The proposed amendment to subdivision (d) provides that:

Should the clerk fail to transmit to the appellate court any document specifically identified or fairly subsumed within the list of record documents, the absence of such document shall not be a basis for the appellate court not to consider the document. Upon discovery of the omission from the record of any document specifically identified or fairly subsumed within the list of record documents, the record shall promptly be corrected pursuant to the Pa.R.A.P. 1926.

## **Rule 1931. Transmission of the Record.**

### *(a) Time for transmission.*

(1) *General rule*—Except as otherwise prescribed by this rule, the record on appeal, including the transcript and exhibits necessary for the determination of the appeal, shall be transmitted to the appellate court within 60 days after the filing of the notice of appeal. If an appeal has been allowed or if permission to appeal has been granted, the record shall be transmitted as provided by Rule 1122 (allowance of appeal and transmission of record) or by Rule 1322 (permission to appeal and transmission of record), as the case may be. The appellate court may shorten or extend the time prescribed by this subdivision for a class or classes of cases.

(2) *Children's fast track appeals.*—In a children's fast track appeal, the record on appeal, including the transcript and exhibits necessary for the determination of the appeal, shall be transmitted to the appellate court within 30 days after the filing of the notice of appeal. If an appeal has been allowed or if permission to appeal has been granted, the record shall be transmitted as provided by Rule 1122 (allowance of appeal and transmission of record) or by Rule 1322 (permission to appeal and transmission of record), as the case may be.

(b) *Duty of lower court.*—After a notice of appeal has been filed the judge who entered the order appealed from shall comply with Rule 1925 (opinion in support of order), shall cause the official court reporter to comply with Rule 1922 (transcription of notes of testimony) or shall otherwise settle a statement of the evidence or proceedings as prescribed by this chapter, and shall take any other action necessary to enable the clerk to assemble and transmit the record as prescribed by this rule.

(c) *Duty of clerk to transmit the record.*—When the record is complete for purposes of the appeal, the clerk of the lower court shall transmit it to the prothonotary of the appellate court. The clerk of the lower court shall number the documents comprising the record and shall transmit with the record a list of the documents correspondingly numbered and identified with [reasonable definiteness] sufficient specificity to allow the parties on appeal to identify each document and to determine whether the record on appeal is complete. Documents of unusual bulk or weight and physical exhibits other than documents shall not be transmitted by the clerk unless he or she is directed to do so by a party or by the prothonotary of the appellate court. A party must make advance arrangements with the clerk for the transportation and receipt of exhibits of unusual bulk or weight. Transmission of the record is effected when the clerk of the lower court mails or otherwise forwards the record to the prothonotary of the appellate court. The clerk of the lower court shall indicate, by endorsement on the face of the record or otherwise, the date upon which the record is transmitted to the appellate court.

(d) *Service of the list of record documents.*—The clerk of the lower court shall, at the time of the transmittal of the record to the appellate court, mail a copy of the list of record

documents to all counsel of record, or if unrepresented by counsel, to the parties at the address they have provided to the clerk. The clerk shall note on the docket the giving of such notice. Should the clerk fail to transmit to the appellate court any document specifically identified or fairly subsumed within the list of record documents, the absence of such document shall not be a basis for the appellate court not to consider the document. Upon discovery of the omission from the record of any document specifically identified or fairly subsumed within the list of record documents, the record shall promptly be corrected pursuant to the Pa.R.A.P. 1926.

(e) *Multiple appeals.*—Where more than one appeal is taken from the same order, it shall be sufficient to transmit a single record, without duplication.

#### Official Note

Former Supreme Court Rule 22 required the record to be returned forthwith. See also former Superior Court Rule 50 and former Commonwealth Court Rules 22 and 23.

#### **Explanatory Comment—2007**

The 2007 amendment expands the time period for the trial court to transmit the certified record, including any opinions drafted pursuant to Pa.R.A.P. 1925(a), from forty to sixty days. The appellate court retains the ability to establish a shorter (or longer) period of time for the transmittal of the record in any class or classes of cases.