

Appellate Court Procedural Rules Committee

The Appellate Court Procedural Rules Committee proposes to amend Pennsylvania Rules of Appellate Procedure 901, 1501, 1512, 1516, 1517, 1541 and 1561, and proposes new rule, Pa.R.A.P. 1770. These amendments and new rule are being submitted for public comments and suggestions prior to their submission to the Supreme Court.

Proposed additions are underlined while deleted material is bracketed.

All communications in reference to the proposed amendment should be sent no later than September 9, 2011 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 Renee Cohn Jubelirer,
Chair

EXPLANATORY COMMENT

The Interbranch Commission on Juvenile Justice was created in 2009 by an act of the General Assembly with the support of the Governor and the Supreme Court. Its purpose was to investigate circumstances that led to corruption in the juvenile court of Luzerne County resulting in federal criminal charges against two judges; to restore public confidence in the administration of justice, and to prevent similar events from occurring there or elsewhere in the Commonwealth.

The Interbranch Commission issued its Final Report on May 31, 2010. The Interbranch Commission made certain recommendations regarding appellate rights and appellate review, which are found at pp. 55-56 of the Commission's Final Report. The Recommendation of the Appellate Court Procedural Rules Committee is the Committee's response to those Recommendations.

The Recommendation proposes amendments to Pa.R.A.P. 901, 1501, 1512, 1516, 1517, 1541, 1561 and a new Rule, Pa.R.A.P. 1770 ("Review of Out of Home Placements in Juvenile Matters"). New Rule 1770 provides a mechanism for the expedited review of an order of out of home placement entered pursuant to the Rules of Juvenile Court Procedure. In juvenile matters, out of home placements can evade effective appellate review, especially when the placement is shorter than the time period to process an ordinary appeal. The Interbranch Commission has recommended an expedited appeal procedure for out of home placements. Proposed new Rule 1770 would permit the juvenile to use a petition for review as the procedural vehicle for limited expedited appellate review of the out of home placement only. The amendments to existing rules are proposed to conform those rules to new Rule 1770.

Rule 901. Scope of Chapter.

This chapter applies to all appeals from a trial court to an appellate court except:

(1) An appeal by allowance taken under 42 Pa.C.S. § 724 (allowance of appeals from Superior and Commonwealth Courts). See Rule 1112 (appeals by allowance).

(2) An appeal by permission taken under 42 Pa.C.S. § 702(b) (interlocutory appeals by permission). See Rule 1311 (interlocutory appeals by permission).

(3) An appeal which may be taken by petition for review pursuant to Rule 1762(b)(2), which governs applications relating to bail when no appeal is pending.

(4) An appeal which may be taken by petition for review pursuant to Rule 1770, which governs placement in juvenile delinquency matters.

~~[(4)]~~ (5) Automatic review of sentences pursuant to 42 Pa.C.S. § 9711(h) (review of death sentence). See Rule 1941 (review of death sentences).

~~[(5)]~~ (6) An appeal which may be taken by petition for review pursuant to Rule 3331 (review of special prosecutions or investigations).

Rule 1501. Scope of Chapter.

(a) General rule.—Except as otherwise prescribed by Subdivisions (b) and (c) of this rule, this chapter applies to:

(1) Appeals from an administrative agency (within the meaning of Section 9 of Article V of the Constitution of Pennsylvania) to an appellate court.

(2) Appeals to an appellate court pursuant to 2 Pa.C.S. § 702 (appeals), 42 Pa.C.S. § 5105 (right to appellate review) or any other statute providing for judicial review of a determination of a government unit.

(3) Original jurisdiction actions heretofore cognizable in an appellate court by actions in the nature of equity, replevin, mandamus or quo warranto or for declaratory judgment, or upon writs of certiorari or prohibition.

(4) Matters designated by general rule, e.g., review of orders refusing to certify interlocutory orders for immediate appeal, release prior to sentence, appeals under Section 17(d) of Article II of the Constitution of Pennsylvania and review of special prosecutions or investigations.

(b) Appeals governed by other provisions of rules.—This chapter does not apply to any appeal within the scope of:

(1) Chapter 9 (appeals from lower courts).

(2) Chapter 11 (appeals from Commonwealth Court and Superior Court).

(3) Chapter 13 (interlocutory appeals by permission), except that the provisions of this chapter and ancillary provisions of these rules applicable to practice and procedure on petition for review, so far as they may be applied, shall be applicable: (a) where required by the Note to Rule 341 and the Note to Rule 1311; and (b) after permission to appeal has been granted from a determination which, if final, would be subject to judicial review pursuant to this chapter.

(4) Rule 1941 (review of death sentences).

(c) Unsuspended statutory procedures.—This chapter does not apply to any appeal pursuant to the following statutory provisions, which are not suspended by these rules:

(1) Section 137 of Title 15 of the Pennsylvania Consolidated Statutes (Court to pass upon rejection of documents by Department of State).

(2) The Pennsylvania Election Code.

(d) Jurisdiction of courts unaffected.—This chapter does not enlarge or otherwise modify the jurisdiction and powers of the Commonwealth Court or any other court.

Official Note: This chapter applies to review of any “determination” of a “government unit” as defined in Rule 102 assuming, of course, that the subject matter of the case is within the jurisdiction of a court subject to these rules (see Subdivision (d) of this rule). A “determination” means “action or inaction by a government unit which action or inaction is subject to judicial review by a court under Section 9 of Article V of the Constitution of Pennsylvania or otherwise. The term includes an order entered by a government unit.” The term “government unit” is all inclusive and means “the Governor and the departments, boards, commissions, officers, authorities and other agencies of the Commonwealth, including the General Assembly and its officers and agencies and any court or other officer or agency of the unified judicial system, and any political subdivision or municipal or other local authority or any officer or agency of any such political subdivision or local authority. The term includes a board of arbitrators whose determination is subject to review under 42 Pa.C.S. § 763(b) (awards of arbitrators).” The term “administrative agency” is not defined in these rules, although the term is used in these rules as a result of its appearance in Section 9 of Article V of the Constitution of Pennsylvania.

Subdivision (a)(4) was added in 2004 to recognize the references in various appellate rules and accompanying notes to petition for review practice. For example, the Notes to Rules 341 and 1311 direct counsel to file a petition for review of a trial court or government agency order refusing to certify an interlocutory order for immediate appeal. Similarly, Rule 1762 directs the filing of a petition for review when a party seeks release on bail before judgment of sentence is rendered[.], [S]see Rule 1762(b), and Rule 1770 directs the filing of a petition for review when a juvenile seeks review of placement in a juvenile delinquency matter. A petition for review is also the proper method by which to seek judicial review pursuant to Rule 3321 (regarding legislative reapportionment commission) and Rule 3331 (regarding special prosecutions or investigations). The 2004 and 2011 amendments clarify the use of petitions for review in these special situations.

Subdivision (b) of this rule is necessary because otherwise conventional appeals from a court (which is included in the scope of the term “government unit”) to an appellate court would fall within the scope of this chapter under the provisions of Paragraph (a)(2) of this rule.

Subdivision (c) expressly recognizes that some statutory procedures are not replaced by petition for review practice. Thus, matters brought pursuant to Section 137 of the Associations Code governing judicial review of documents rejected by the Department of State or pursuant to the Election Code are controlled by the applicable statutory provisions and not by the rules in Chapter 15. See 15 Pa.C.S. § 137; Act of June 3, 1937, P. L. 1333, as amended 25 P. S. §§ 2600—3591.

In light of Subdivision (d), where the court in which a petition for review is filed lacks subject matter jurisdiction (e.g., a petition for review of a local government question filed in the Commonwealth Court), Rules 741 (waiver of objections to jurisdiction), 751 (transfer of

erroneously filed cases) and 1504 (improvident petitions for review) will be applicable. See also 42 Pa.C.S. § 5103.

The 2004 amendments are made to petition for review practice to address the evolution of judicial responses to governmental actions. As indicated in the Note to Rule 1502, when the Rules of Appellate Procedure were initially adopted, there was a “long history in the Commonwealth . . . of relatively complete exercise of the judicial review function under the traditional labels of equity, mandamus, certiorari and prohibition.” While such original jurisdiction forms of action are still available, their proper usage is now the exception rather than the rule because appellate proceedings have become the norm. Thus, the need to rely on Rule 1503 to convert an appellate proceeding to an original jurisdiction action and vice versa arises less often. Moreover, the emphasis on a petition for review as a generic pleading that permits the court to simultaneously consider all aspects of the controversy is diminished. The primary concern became making the practice for appellate proceedings more apparent to the occasional appellate practitioner. Accordingly, the rules have been amended to more clearly separate procedures for appellate proceedings from those applicable to original jurisdiction proceedings.

The responsibility of identifying the correct type of proceeding to be used to challenge a governmental action is initially that of counsel. Where precedent makes the choice clear, counsel can proceed with confidence. Where the choice is more problematic, then counsel should draft the petition for review so as to satisfy the directives for both appellate and original jurisdiction proceedings. Then the court can designate the proper course of action regardless of counsel's earlier assessment.

Rule 1512. Time for Petitioning for Review.

(a) Appeals authorized by law. – Except as otherwise prescribed by Subdivision

(b) of this rule:

- (1) A petition for review of a quasijudicial order, or an order appealable under 42 Pa.C.S. § 763(b) (awards of arbitrators) or under any other provision of law, shall be filed with the prothonotary of the appellate court within 30 days after the entry of the order.
- (2) If a timely petition for review of such an order is filed by a party, any other party may file a petition for review within 14 days of the date on which the first petition for review was filed, or within the time otherwise prescribed by Subdivision (a)(1) of this rule, whichever period last expires.

(b) Special appellate provisions. A petition for review of:

- (1) A determination of the Department of Community and Economic Development in any matter arising under the Local Government Unit Debt Act, 53 Pa.C.S. §§

8001-8271, shall be filed within 15 days after entry of the order or the date the determination is deemed to have been made, when no order has been entered.

- (2) A determination governed by Rule 1571 (determinations of the Board of Finance and Revenue) shall be filed within the appropriate period therein specified.
 - (3) A determination governed by Rule 3331 (review of special prosecutions or investigations) shall be filed within ten days after the entry of the order sought to be reviewed.
 - (4) A determination of a Commonwealth agency under section 1711.1(g) of the Commonwealth Procurement Code, 62 Pa.C.S. § 1711.1(g), shall be filed within 15 days of the mailing date of a final determination denying a protest.
 - (5) A determination governed by Rule 1770 (review of dispositional order for out of home placement in juvenile delinquency matters) shall be filed within ten days of the order sought to be reviewed.
- (c) Original jurisdiction actions.** A petition for review of a determination of a government unit not within the scope of Subdivisions (a) or (b) of this rule may be filed with the prothonotary of the appellate court within the time, if any, limited by law.

Note: The note to Rule 903 (time for appeal) addresses the development of the standard 30 day appeal period. Rule 102 defines a “quasijudicial order” as “an order of a government unit, made after notice and opportunity for hearing, which is by law reviewable solely upon the record made before the government unit, and not upon a record made in whole or in part before the reviewing court.”

Subdivision (c) related to matters addressed to the original jurisdiction of an appellate court. For example, equitable matters are governed by existing principles of laches, etc. Other matters, such as petitions for review raising issues formerly cognizable by action in mandamus or quo warranto, etc., are governed by the time limits, if any, applicable under the prior procedure. See generally 42 Pa.C.S. §§ 1702 (regarding the Supreme Court’s rulemaking procedures), 1722(c) (Time limitations), 5501-5574 (Limitations of time).

Adopted Nov. 5, 1975, effective July 1, 1976. Amended June 23, 1976, effective July 1, 1976; December 29, 1977, effective in 30 days; Dec. 11, 1978, effective Dec. 30, 1978; May 16, 1979, effective 120 days after June 2, 1979; Oct. 18, 2002, effective Dec. 2, 2002; July 8, 2004, effective Sept. 7, 2007; Sept. 30, 2004, imd. effective.

Explanatory Comment – 1976

The right to file a cross appeal from a quasi-judicial order of a government unit (e.g. an order of the Public Utility Commission approving a rate increase) is granted, to conform to Rules 901(b) and 1113(b).

Explanatory Comment – 2002

See Comment following Pa.R.A.P., Rule 511.

Rule 1516. Other Pleadings Allowed.

(a) Appellate jurisdiction petitions for review. No answer or other pleading to an appellate jurisdiction petition for review is authorized, unless the petition for review is filed pursuant to the Notes to Rules 341 or 1311 (seeking review of a trial court or other government unit's refusal to certify an interlocutory order for immediate appeal), Rule 1762 (regarding release in criminal matters), Rule 1770 (regarding placement in juvenile delinquency matters), Rule 3321 (regarding appeals from decisions of the Legislative Reapportionment Commission) or Rule 3331 (regarding review of special prosecutions and investigations). Where an answer is authorized, the time for filing an answer shall be as stated in Rule 123(b).

(b) Original jurisdiction petitions for review. Where an action is commenced by filing a petition for review addressed to the appellate court's original jurisdiction, the pleadings are limited to the petition for review, an answer thereto, a reply if the answer contains new matter or a counterclaim, a counter-reply if the reply to a counterclaim contains new matter, a preliminary objection, and an answer thereto. Every pleading filed after an original jurisdiction petition for review shall be filed within 30 days after service of the preceding pleading, but no pleading need be filed unless the preceding pleading is endorsed with a notice to plead.

Official Note: The 2004 and 2011 amendments made clear that, with [five] six limited exceptions, no answer or other pleading to a petition for review addressed to an appellate court's appellate jurisdiction is proper. With regard to original jurisdiction proceedings, practice is patterned after Rules of Civil Procedure 1017(a) (Pleadings Allowed) and 1026 (Time for Filing. Notice to Plead). The ten additional days in which to file a subsequent pleading are in recognition of the time required for agency coordination where the Commonwealth is a party. See Rule 1762(b)(2) regarding bail applications. See Rule 1770 regarding placement in juvenile delinquency matters.

Rule 1517. Applicable Rules of Pleading.

Unless otherwise prescribed by these rules, the practice and procedure under this chapter relating to pleadings in original jurisdiction petition for review practice shall be in accordance with the appropriate Pennsylvania Rules of Civil Procedure, so far as they may be applied.

Official Note: See Rule 1762(b)(2) regarding bail applications. See Rule 1770 regarding placement in juvenile delinquency matters. See also Rule 3331 regarding Review of Special Prosecutions or Investigations.

Rule 1541. Certification of the Record.

Upon notice from the appellate court of the filing of a petition for review addressed to the appellate jurisdiction of an appellate court, the government unit shall prepare and transmit

the record as provided by Chapter 19 (preparation and transmission of record and related matters).

Official Note: Rule 102 defines “government unit” to include “any court or other officer or agency of the unified judicial system.” Thus, if the order to be reviewed was filed by a trial court, that court shall certify the record. This occurs when the petition for review was filed pursuant to Rule 1762, 1770, 3321 or 3331, or the note to Rules 341 or 1311.

See Rule 3331 regarding Review of Special Prosecutions or Investigations.

Rule 1561. Disposition of Petition for Review.

(a) Appellate jurisdiction petitions for review.—The court may affirm, modify, vacate, set aside or reverse any order brought before it for review, and may remand the matter and direct the entry of such appropriate order, or require such further proceedings as may be just under the circumstances.

(b) Original jurisdiction petitions for review.—Where the petition for review raises questions that formerly were determinable in an action in equity, replevin, mandamus, quo warranto or for a declaratory judgment or upon a petition for a writ of certiorari or prohibition, or in another similar plenary action or proceeding, the court may grant the relief heretofore available in any such plenary action or proceeding.

(c) Money damages.—Money damages arising out of tort or contract claims may not be granted under this chapter (except on review of determinations of the Board of Claims or similar agencies), but relief granted under Subdivision (b) of this rule may include any damages to which the petitioner is entitled which are claimed in the petition, which are ancillary to the matter, and which may be granted by a court.

(d) Review of detention and placement of a juvenile.—Except as prescribed by Rule 1762(b)(2), which governs applications relating to bail when no appeal is pending, by Rule 1770, which governs placement in juvenile delinquency matters, or by Rule 3331 (review of special prosecutions or investigations), review in the nature of criminal habeas corpus or post conviction relief may not be granted under this chapter.

Official Note: Subdivision (a) is based on 42 Pa.C.S. § 706 (disposition of appeals).

Subdivision (b) is based on 42 Pa.C.S. § 708(e) (single form of action) (which provides that 1 Pa.C.S. § 1504 (statutory remedy preferred over common law) does not limit the jurisdiction of a court over a petition for review proceeding, but to the extent applicable shall limit the relief available) and 42 Pa.C.S. § 5105(d)(2) (scope of appeal). Under 42 Pa.C.S. § 102 (definitions), statutory references to “appeal” include proceedings on petition for review. The subdivision is intended to make clear that the petition for review is a generic pleading which will permit the court to consider simultaneously all aspects of the controversy.

Subdivision (c) is intended to make clear that the petition for review does not encompass trespass or assumpsit actions, but that an appeal may reach tort or contract matters adjudicated by a government unit as contemplated by Section 2(h) of the Judiciary Act Repealer Act (42 P. S. § 20002(h)). As to ancillary statutory damages, see 42 Pa.C.S. § 8303 (action for performance of a duty required by law).

Subdivision (d) is intended to make clear that the scope of this chapter is essentially civil in nature. The application of the petition for review to questions of release prior to

sentence in criminal matters and in questions arising out of special prosecutions or investigations is merely a recognition of the technical need for a plenary filing to bring the question within the appellate jurisdiction of the appropriate court.

See Rule 1762(b)(2) regarding bail applications. See Rule 1770 regarding placement in juvenile delinquency matters.

REVIEW OF DISPOSITIONAL ORDER FOR OUT OF HOME PLACEMENT IN JUVENILE DELINQUENCY MATTERS

Rule 1770. Review of Out of Home Placement in Juvenile Delinquency Matters

(a) General rule. If a court under the Juvenile Act, 42 Pa.C.S. § 6301 et seq., enters an order after an adjudication of delinquency of a juvenile pursuant to Rules of Juvenile Court Procedure 409(A)(2) and 515, which places the juvenile in an out of home overnight placement in any agency or institution that shall provide care, treatment, supervision or rehabilitation of the juvenile ("Out of Home Placement"), the juvenile may seek review of that order pursuant to a petition for review under Chapter 15 (judicial review of governmental determinations). The petition shall be filed within ten days of the said order.

(b) Answer. Any answer shall be filed within ten day of service of the petition, and no other pleading is authorized. Rule 1517 (applicable rules of pleading) and Rule 1531 (intervention) through 1551 (scope of review) shall not be applicable to a petition for review filed under subsection (a).

(c) Content. A petition for review under subdivision (a) shall contain: (i) a specific description of any determinations made by the juvenile court; (ii) the matters complained of; (iii) a concise statement of the reasons the juvenile court abused its discretion in ordering the Out of Home Placement; and (iv) the proposed terms and conditions of an alternative disposition for the juvenile. Any order(s) and opinion(s) relating to the Out of Home Placement and the transcript of the juvenile court's findings shall be attached as appendices. The petition shall be supported by a certificate of counsel to the effect that it is presented in good faith and not for delay.

(d) Objection to specific agency or institution, or underlying adjudication, not permitted.

(1) A petition for review under subdivision (a) shall not challenge the specific agency or specific institution that is the site of the Out of Home Placement and instead shall be limited to the Out of Home Placement itself.

(2) A petition for review under subdivision (a) shall not challenge the underlying adjudication of delinquency.

(e) Service. A copy of the petition for review and any answer thereto shall be served on the judge of the juvenile court. All parties in the juvenile court shall be served in

accordance with Rule 121(b) (service of all papers required). The Attorney General of Pennsylvania need not be served in accordance with Rule 1514(c) (service), unless the Attorney General is a party in the juvenile court.

(f) Opinion of juvenile court. Upon receipt of a copy of a petition for review under subdivision (a), if the judge who made the disposition of the Out of Home Placement did not state the reasons for such placement on the record at the time of disposition pursuant to Rule of Juvenile Court Procedure 512(D), the judge shall file of record a brief statement of the reasons for the determination or where in the record such reasons may be found, within five days of service of the petition for review.

(g) Non-waiver of objection to placement. Where the juvenile declines to seek review under this rule of the Out of Home Placement that shall not constitute a waiver of the juvenile's right to seek review of the placement in a notice of appeal filed by the juvenile from a disposition after an adjudication of delinquency.

Official Note: This Rule provides a mechanism for the expedited review of an order of Out of Home Placement entered pursuant to Rule of Juvenile Court Procedure 515. This expedited review is the same expedited review available in Rule 1762 from an order under 42 Pa.C.S. § 6322 granting or denying a juvenile's motion to transfer from a criminal proceeding to a juvenile proceeding, or an order under 42 Pa.C.S. § 6355 granting or denying the Commonwealth's motion to transfer from a juvenile proceeding to a criminal proceeding. See 42 Pa.C.S. § 6322(c) ("Expedited Review of Transfer Orders"). Rule of Juvenile Court Procedure 512(D) requires the juvenile court judge to place the reasons for an Out of Home Placement on the record at the time of the disposition. The Juvenile Act, 42 Pa.C.S. § 6352, sets forth the considerations for a dispositional order following an adjudication of delinquency and the alternatives for disposition. The standard for review of a dispositional order is an abuse of discretion. See *In the Interest of A.D.*, 771 A. 2d 45 (Pa. Super. 2001) (en banc).