

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

NOTICE OF PROPOSED RULEMAKING

Proposed Adoption of Pa.R.A.P. 1607 and 1608

The Appellate Court Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the adoption of Pa.R.A.P. 1607 and 1608 governing improvident petitions for specialized review 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 report accompanying this proposal was prepared by the Committee to indicate the rationale for the proposed rulemaking. It will neither constitute a part of the rules nor be 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 **April 29, 2022**. 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 Patricia A. McCullough
Chair

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

REPORT

Proposed Adoption of Pa.R.A.P. 1607 and 1608

The Appellate Court Procedural Rules Committee is considering proposing to the Supreme Court the adoption of Pennsylvania Rules of Appellate Procedure 1607 and 1608 to govern improvident filings of petitions for specialized review.

In *Commonwealth v. Carter*, 247 A.2d 27 (Pa. Super. 2021), the Superior Court considered an application to quash a notice of appeal filed to challenge denial of bail; the application asserted that a petition for specialized review pursuant to Chapter 16 should have been filed instead of the notice of appeal. See also Pa.R.A.P. 1610. The Superior Court pointed out that Chapter 13 governing petitions for permission to appeal and Chapter 15 governing petitions for review both have procedures for treating the filing of the wrong appellate document as the correct document. However, no similar rule exists in Chapter 16 that would permit an appellate court to treat an improvidently filed notice of appeal as a petition for specialized review. Accordingly, the Superior Court quashed the notice of appeal.

In light of this opinion, the Committee agreed to consider adding a rule to prevent dismissal for failing to file a petition for specialized review. In doing so, it reviewed and examined other Rules of Appellate Procedure that permit treatment of the wrong document initiating appellate review as the correct document: Pa.R.A.P. 1316 (Incorrect Use of Petition for Permission to Appeal), Pa.R.A.P. 1503 (Improvident Appeals or Original jurisdiction Actions), and Pa.R.A.P. 1504 (Improvident Petition for Review). These rules do not permit the dismissal of an appeal solely on the basis that the wrong document was filed. In addition, the Committee noted that Pa.R.A.P. 1102 (Improvident Appeals as of Right to the Supreme Court) and Pa.R.A.P. 1103 (Improvident Petitions for Allowance of Appeal) both permit similar treatment of incorrectly labeled documents initiating appellate review for appeals as of right and petitions for allowance of appeal in the Supreme Court.

The Committee also noted that the appeals that must now be filed pursuant to a petition for specialized review were previously included within Chapter 15 petition for review practice. Consequently, but for their removal to Chapter 16, these appeals would previously have had the protection of Pa.R.A.P. 1503. As a result, the Committee proposed new Pa.R.A.P. 1607 to allow a document designated as a notice of appeal,

complaint in an original jurisdiction action, or a petition for review to be treated as a petition for specialized review.

The Committee is also proposing Pa.R.A.P. 1608 to permit similar treatment when a petition for specialized review is filed, but a notice of appeal, petition for review, or a complaint in an original jurisdiction action should have been filed, *i.e.*, the reverse of the circumstances in *Carter*. While the Committee acknowledges that this scenario may be more unlikely, other Rules of Appellate Procedure permit such treatment for other types of documents. See Pa.R.A.P. 1102, 1103 and 1504.

Accordingly, the Committee invites all comments, objections, concerns, and suggestions regarding this proposed rulemaking.

(This is an entirely new rule.)

Rule 1607. Improvident Appeals, Original Jurisdiction Actions, or Petitions for Review.

If a notice of appeal, complaint, or petition for review is improvidently filed in an appellate court in a case in which the proper mode of review is a petition for specialized review, the court shall not dismiss the appeal, complaint, or petition for review solely on this ground. The notice of appeal, complaint, or petition for review shall be regarded and acted upon as a petition for specialized review and as if filed at the time the improvident notice of appeal, complaint, or petition for review was filed. The court may require clarification of the document by amendment or supplement.

Comment: Based on 42 Pa.C.S. § 708 (improvident administrative appeals and other matters). *See also Commonwealth v. Carter*, 247 A.3d 27 (Pa. Super. 2021).

(This is an entirely new rule.)

Rule 1608. Improvident Petitions for Specialized Review.

If a petition for specialized review is improvidently filed in an appellate court in a case in which the proper mode of review is a notice of appeal or a petition for review, or the proper mode of relief is an original jurisdiction action in equity, replevin, mandamus, or *quo warranto*, a petition for a declaratory judgment, or a writ of *certiorari* or prohibition, the court shall not dismiss the petition for specialized review solely on this ground. The petition for specialized review shall be regarded and acted upon as a notice of appeal, petition for review, or complaint or other proper process and as if filed at the time improvident petition for specialized review was filed. The court may require clarification of the document by amendment or supplement.

Comment: Based on 42 Pa.C.S. § 102 (definitions) (which includes petition for review proceedings within the statutory definition of “appeal”) and 42 Pa.C.S. § 708(b) (appeals). When the moving party files a clarifying amendment, the amendment will operate to specify that one form of action which the party elects to proceed on.