

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

**NOTICE OF PROPOSED RULEMAKING**

**Proposed Amendment of Pa.R.A.P. 102 and 904**

The Appellate Court Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Pa.R.A.P. 102 and 904 relating to appeals from the Orphans' Court 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:

**Karla M. Shultz, Counsel  
Appellate Court Procedural Rules Committee  
Supreme Court of Pennsylvania  
Pennsylvania Judicial Center  
PO Box 62635  
Harrisburg, PA 17106-2635  
FAX: 717-231-9551  
[appellaterules@pacourts.us](mailto:appellaterules@pacourts.us)**

All communications in reference to the proposal should be received by **October 6, 2023**. 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,

Peter J. Gardner  
Chair

**Rule 102. Definitions.**

Subject to additional definitions contained in subsequent provisions of these rules which are applicable to specific provisions of these rules, the following words and phrases when used in these rules shall have, unless the context clearly indicates otherwise, the meanings given to them in this rule:

\* \* \*

**Orphan's Court Appeal. Any appeal from an order of the Orphans' Court Division as set forth in Pa.R.A.P. 342.**

\* \* \*

**Rule 904. Content of the Notice of Appeal.**

- (a) **Form.** Except as otherwise prescribed by this rule, the notice of appeal shall be in substantially the following form:

\* \* \*

- (b) **Caption.**

(1) **General Rule.** The parties shall be stated in the caption as they appeared on the record of the trial court at the time the appeal was taken.

(2) **Appeal of Custody Action.** In an appeal of a custody action where the trial court has used the full name of the parties in the caption, upon application of a party and for cause shown, an appellate court may exercise its discretion to use the initials of the parties in the caption based upon the sensitive nature of the facts included in the case record and the best interest of the child.

(c) **Request for Transcript.** The request for transcript contemplated by Pa.R.A.P. 1911 or a statement signed by counsel that either there is no verbatim record of the proceedings or the complete transcript has been lodged of record shall accompany the notice of appeal, but the absence of or defect in the request for transcript shall not affect the validity of the appeal.

(d) **Docket Entry.** The notice of appeal shall include a statement that the order appealed from has been entered on the docket. A copy of the docket entry showing the entry of the order appealed from shall be attached to the notice of appeal.

(e) **Content in Criminal Cases.** **[When] If** the Commonwealth takes an appeal pursuant to Pa.R.A.P. 311(d), the notice of appeal shall include a certification by counsel that the order will terminate or substantially handicap the prosecution.

(f) **Content in Children's Fast Track Appeals.** In a children's fast track appeal, the notice of appeal shall include a statement advising the appellate court that the appeal is a children's fast track appeal.

- (g) **Content in Orphans' Court Appeals.** In an Orphans' Court appeal, the **notice of appeal shall include a statement advising the appellate court that the appeal is an Orphans' Court appeal.**
- (h) **Completely Consolidated Civil Cases.** In an appeal of completely consolidated civil cases where only one notice of appeal is filed, a copy of the consolidation order shall be attached to the notice of appeal.

**Comment:**

The Offense Tracking Number (OTN) is required only in an appeal in a criminal proceeding. It enables the Administrative Office of the Pennsylvania Courts to collect and forward to the Pennsylvania State Police information pertaining to the disposition of all criminal cases as provided by the Criminal History Record Information Act, 18 Pa.C.S. §§ 9101 *et seq.*

The notice of appeal must include a statement that the order appealed from has been entered on the docket. Because generally a separate notice of appeal must be filed on each docket on which an appealable order is entered so as to appeal from that order, **[see] see** Pa.R.A.P. 902(a), the appellant is required to attach to the notice of appeal a copy of the docket entry showing the entry of the order appealed from on that docket. The appellant does not need to certify that the order has been reduced to judgment. This omission does not eliminate the requirement of reducing an order to judgment before there is a final appealable order where required by applicable practice or case law.

Subdivision (b)(2) provides the authority for an appellate court to initialize captions in custody appeals. See *also* **[Pa.R.C.P.] Pa.R.Civ.P.** 1915.10.

With respect to subdivision (e), in *Commonwealth v. Dugger*, 486 A.2d 382, 386 (Pa. 1985), the Supreme Court held that the Commonwealth's certification that an order will terminate or substantially handicap the prosecution is not subject to review as a prerequisite to the Superior Court's review of the merits of the appeal. The principle in *Dugger* has been incorporated in and superseded by Pa.R.A.P. 311(d). *Commonwealth v. Dixon*, 907 A.2d 468, 471 n.8 (Pa. 2006). Thus, the need for a detailed analysis of the effect of the order, formerly necessarily a part of the Commonwealth's appellate brief, has been eliminated.

A party filing a cross-appeal should identify it as a cross-appeal in the notice of appeal to assure that the prothonotary will process the cross-appeal with the initial appeal. **[See also] See also** Pa.R.A.P. 2113, 2136, and 2185 regarding briefs in cross-appeals and Pa.R.A.P. 2322 regarding oral argument in multiple appeals.

**See Pa.R.A.P. 342 for the orders that may be appealed as of right in Orphans' Court matters.**

A party appealing completely consolidated civil cases using one notice of appeal must attach a copy of the consolidation order to the notice of appeal to assure the applicability of Pa.R.A.P. 902.

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

**PUBLICATION REPORT**

**Proposed Amendment of Pa.R.A.P. 102 and 904**

The Appellate Court Procedural Rules Committee is considering proposing to the Supreme Court the amendment of Pennsylvania Rules of Appellate Procedure 102 and 904 relating to appeals from the Orphans' Court. This proposal is the result of the Committee's evaluation of a request to amend Pa.R.A.P. 108 (date of entry of orders) to recognize the operation of relatively new Pa.R.O.C.P. 4.6 in establishing the date of entry of an adjudication or court order on the Orphans' Court docket.

Pa.R.A.P. 108 operates to establish the date of entry of an order for purposes of computing any time period involving the date of an order under the Pennsylvania Rules of Appellate Procedure. Pa.R.A.P. 108(b) provides that the date of entry of an order for civil cases is the date on which the clerk of the trial court makes a notation on the docket that notice of the entry of the order was given as required by Pa.R.Civ.P. 236. Additional provisions address emergency appeals and criminal orders. However, Pa.R.A.P. 108 is silent on the date of entry of orders in the Orphans' Court.

The reason for that silence is that, when the relevant provisions of Pa.R.A.P. 108 were drafted, the Pennsylvania Rules of Orphans' Court Procedure were also silent on the matter of notice of an adjudication or court order. Notably, however, former Pa.R.O.C.P. 3.1 required conformity with the Pennsylvania Rules of Civil Procedure when the Orphans' Court Rules did not provide guidance on a particular matter. Therefore, appellants in Orphans' Court cases were essentially guided by Pa.R.Civ.P. 236, which aligned with Pa.R.A.P. 108(b).

The Rules of Orphans' Court Procedure were largely rewritten and adopted, effective September 1, 2016. The rewrite included new rule Pa.R.O.C.P. 4.6, which established a notice procedure analogous to and derived from Pa.R.Civ.P. 236. The instant proposal is intended to acknowledge that rule albeit, as explained below, the Committee determined that amendment of Pa.R.A.P. 108 was not the most effective vehicle.

The Committee recognized that the request to amend Pa.R.A.P. 108 also implicated a need to effectively identify Orphans' Court appeals for purposes of docketing statements. To effectuate Pa.R.A.P. 108 generally, when a notice of appeal is filed with the Superior Court, the prothonotary of that court sends:

a docketing statement form [to the appellant] which shall be completed and returned within ten (10) days in order that the Court shall be able to more efficiently and expeditiously administer the scheduling of argument and submission of cases on appeal. Failure to file a docketing statement may result in dismissal of the appeal.

Pa.R.A.P. 3517. At present, there are three docketing statement forms: (a) Civil Docketing Statement; (b) Criminal Docketing Statement; and (c) Family and Domestic Relations Docketing Statement. The Civil Docketing Statement requires entry of the date of the Pa.R.Civ.P. 236 notice, although the Family and Domestic Relations Docketing Statement does not. In the absence of an Orphans' Court specific form, the Civil Docketing Statement presumably has been used with Orphans' Court appeals. There is a concern that omission of the Pa.R.O.C.P. 4.6 notice date from the Docketing Statement may lead an appellant to complete the form incorrectly, resulting in possible delays or confusion.

As mentioned above, the Committee initially considered a proposed amendment of Pa.R.A.P. 108 to add a new subdivision pertaining to orders subject to the Rules of Orphans' Court Procedure and specifying that the date of entry of such an order is the date on which the clerk of the Orphans' Court makes the notation in the docket that written notice of the entry of the order has been given as required by Pa.R.O.C.P. 4.6. This approach, however, was thought to be insufficient in two respects. First, it was unlikely that counsel or a self-represented party would look to Pa.R.A.P. 108 for the requirement to file a docketing statement. Second, Orphans' Court appeals are not routinely identified as such when the notice of appeal is filed. As a result, filing office staff would not be aware which docketing statement should be sent to counsel or a self-represented party.

The Committee therefore devised a different approach to address both concerns, which is reflected in the present proposal. Pa.R.A.P. 342 sets forth the orders of the Orphans' Court that are appealable as of right. The proposal would amend Pa.R.A.P. 102 (definitions) to add a definition of "Orphans' Court Appeal" with a reference to Pa.R.A.P. 342 so that counsel or a self-represented party filing such an appeal is advised of the Rule of Appellate Procedure applicable to that appeal. In addition, Pa.R.A.P. 904 would be amended to add a new subdivision requiring the notice of appeal to include a statement advising the appellate court that the appeal is an Orphans' Court appeal. Identifying the appeal as an Orphans' Court matter should assist filing office staff in issuing an Orphans' Court docketing statement in a timely fashion. Finally, a statement cross-referencing Pa.R.A.P. 342 regarding orders that may be appealed as of right in Orphans' Court matters would be added to the comment to Pa.R.A.P. 904.

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