

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:

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Orphans' Court Appeal. Any appeal from an order of the Orphans' Court Division as set forth in Pa.R.A.P. 342 or an appeal from an order from the First Judicial District Family Division deciding an adoption petition.

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Rule 108. Date of Entry of Orders.

(a) **General [rule.] Rule.**

- (1) Except as otherwise prescribed in this rule, in computing any period of time under these rules involving the date of entry of an order by a court or other government unit, the day of entry shall be the day the clerk of the court or the office of the government unit mails or delivers copies of the order to the parties, or if such delivery is not otherwise required by law, the day the clerk or office of the government unit makes such copies public. The day of entry of an order may be the day of its adoption by the court or other government unit, or any subsequent day, as required by the actual circumstances.
- (2) When pursuant to law a determination of a government unit other than a court is deemed to have been made by reason of the expiration of a specified period of time after submission of a matter to the government unit or after another prior event, any person affected may treat the expiration of such period as equivalent to the entry of an order for the purposes of appeal (in which event the notice of appeal or other document seeking review shall set forth briefly facts showing the applicability of this **[paragraph] subdivision**) and shall so treat the expiration of the period where the person has actual knowledge (other than knowledge of the mere lapse of time) that the implied determination has occurred.

(b) **Civil [orders.] Orders.** The date of entry of an order in a matter subject to the Pennsylvania Rules of Civil Procedure shall be the **[day] date** on which the clerk makes the notation in the docket that **written** notice of entry of the order has been given as required by Pa.R.Civ.P. 236(b).

(c) **[Emergency appeals. Notwithstanding Subdivisions (a) and (b) of this rule, an order subject to Rule 301(e) (emergency appeals) shall be deemed entered for the purposes of these rules when the party intending to appeal has complied with such rule to the extent practicable under the circumstances.]**

Orphans' Court Orders. The date of entry of an order in a matter subject to the Pennsylvania Rules of Orphans' Court Procedure shall be the date on which the clerk makes the notation in the docket that written notice of entry of the order has been given as required by Pa.R.O.C.P. 4.6.

(d) **Criminal Orders.**

- (1) In determining the date of entry of criminal orders, subdivision (a)(1) shall apply except as provided in **[subparagraph] subdivision** (d)(2).
- (2) In a criminal case in which no post-sentence motion has been filed, the date of imposition of sentence in open court shall be deemed to be the date of entry of the judgment of sentence.

(e) Emergency Appeals. Notwithstanding the provisions of this rule, an order subject to Pa.R.A.P. 301(e) (emergency appeals) shall be deemed entered for the purposes of these rules when the party intending to appeal has complied with such rule to the extent practicable under the circumstances.

[Note:] Comment: Based in part on 42 Pa.C.S. § 5572 (time of entry of order) (which is not applicable to appeals to or judicial review of quasijudicial orders by the Supreme, Superior, or Commonwealth Courts; see 42 Pa.C.S. § 5571(a) (appeals generally)) and 1 Pa. Code § 31.13. The purpose of this rule is to fix a date from which the time periods such as those set forth in **[Rules] Pa.R.A.P. 903** (time for appeal), **Pa.R.A.P. 1113** (time for petitioning for allowance of appeal), **Pa.R.A.P. 1311** (interlocutory appeals by permission), **Pa.R.A.P. 1512** (time for petitioning for review), **Pa.R.A.P. 1602 (filing)**, and **Pa.R.A.P. 2542** (time for application for reargument) **[shall be] are** computed. **[Rule] Pa.R.A.P. 5101(g)** (statutes suspended) suspends all inconsistent statutes so that all appellate time periods are **[now]** computed on the same basis.

Subdivision (a)(2) is patterned after 42 Pa.C.S. § 5571(c)(6) (implied determinations). See **[note] Comment** to **[Rule] Pa.R.A.P. 903** (time for appeal). The purpose of the provision is **[, on the one hand,]: (1)** to permit an aggrieved party to appeal immediately after the expiration of the period notwithstanding the failure of the government unit to take formal action **[, and on the other,]; and (2)** to eliminate complicated calendar watching by forcing the government unit or another affected person to notify all parties of the expiration of the period as a prerequisite to commencement of the running of the appeal period for the purpose of the finality of the implied determination. **[See, e.g. Rule] See, e.g., Pa.R.A.P. 1571(b)(3)** (determinations of the Board of Finance and Revenue).

[See] Subdivision (d) - See Pa.R.A.P. 301(a)(1) and (2), Pa.R.A.P. 903(c)(3), and Pa.R.Crim.P. 462, 720, and 721 governing criminal appeals. **When no post-sentence motion is filed, the time for appeal begins to run from the date of imposition of sentence. See Pa.R.Crim.P. 462(H)(2), 720(A)(3) and (D), and 721(B)(2)(a)(ii), Pa.R.A.P. 301(a)(2) and 903(c)(3). See also Commonwealth v.**

Green, 862 A.2d 613 (Pa. Super. 2004) (en banc), petition for allowance of appeal denied, 882 A.2d 477 (Pa. 2005). When post-sentence motions are denied by operation of law, the appeal period shall run from the date of entry of the order denying the motion by operation of law. See Pa.R.Crim.P. 720(A)(2)(c).

Historical Commentary

The following commentary is historical in nature and represents statements of the Committee at the time of rulemaking:

Explanatory Comment—1979

Where a determination is implied by the passage of time without action by a government unit, an aggrieved party is given the option either to appeal at once at the expiration of the period or to rely on the government unit or other affected person to give notice that an implied determination has been made.

Explanatory Comment--2007

New subdivision (d) governs criminal appeals. Under new subdivision (d), when no post-sentence motion is filed, the time for appeal begins to run from the date of imposition of sentence. See Pa.R.Crim.P. 462(G)(2), 720(A)(3) and (D), and 721(B)(2)(a)(ii), and the conforming amendments to Pa.R.A.P. 301(a)(2) and 903(c)(3), and 2006 Explanatory Comment thereto. See also *Commonwealth v. Green*, 862 A.2d 613 (Pa. Super. 2004) (*en banc*), *allocatur denied*, 584 Pa. 692, 882 A.2d 477 (2005). When post-sentence motions are denied by operation of law, the appeal period shall run from the date of entry of the order denying the motion by operation of law. See Pa.R.Crim.P. 720(B)(3)(c).

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:

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- (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.

Historical Commentary

The following commentary is historical in nature and represents statements of the Committee at the time of rulemaking:

Explanatory Comment—2002

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