

Rule 511. Cross-Appeals.

The timely filing of an appeal shall extend the time for any other party to cross-appeal as set forth in Pa.R.A.P. 903(b) (cross-appeals), 1113(b) (cross-petitions for allowance of appeal), and 1512(a)(2) (cross-petitions for review). The discontinuance of an appeal by a party shall not affect the right of appeal or cross-appeal of any other party regardless of whether the parties are adverse.

[Note] Comment: 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.

An appellee should not be required to file a cross-appeal because the court below ruled against it on an issue, as long as the judgment granted appellee the relief it sought. See *Lebanon Valley Farmers Bank v. Commonwealth*, 83 A.3d 107, 112 (Pa. 2013); *Basile v. H & R Block, Inc.*, 973 A.2d 417, 421 (Pa. 2009). **For discussion of cross-petitions for allowance of appeal, see Pa.R.A.P. 1113, cmt.**

[If, however, an intermediate appellate court awards different relief than the trial court or other government unit, a party may wish to file a cross-petition for allowance of appeal under Pa.R.A.P. 1112. See, e.g., *Meyer, Darragh, Buckler, Bebenek & Eck, P.L.L.C. v. Law Firm of Malone Middleman, P.C.*, 179 A.3d 1093, 1098 & n.5 (Pa. 2018); *Meyer, Darragh, Buckler, Bebenek & Eck, P.L.L.C. v. Law Firm of Malone Middleman, P.C.*, 137 A.3d 1247 (Pa. 2016).]

In deciding whether to cross-appeal, parties may also consider that appellate courts have discretion, but are not required, to affirm for any reason appearing in the record. See *Commonwealth v. Fant*, 146 A.3d 1254, 1265 n.13 (Pa. 2016); *Pa. Dept. of Banking v. NCAS of Del., LLC*, 948 A.2d 752, 762 (Pa. 2008); *Am. Future Sys., Inc. v. Better Bus. Bureau of E. Pa.*, 923 A.2d 389, 401 (Pa. 2007).

Historical Commentary

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

Explanatory Comment--2002

Introduction: The Appellate Rules contemplate three “multiple appeal” situations in which more than one party may wish to challenge individually an order of a court. These are: cross appeals; cross petitions for review; and cross petitions for allowance of appeal. The proposed amendments are intended to simplify and clarify the terminology and procedures in such cases. The 2002 amendments do not create a right to file new briefs or affect the right to file briefs heretofore permitted by the Appellate Rules.

Rule 511 (Cross Appeals). The 2002 amendment clarifies the intent of the former rule that the filing of an appeal extends the time within which any party may cross appeal as set forth in Rules 903(b), 1113(b) and 1512(a)(2) and that a discontinuance of an appeal by a party will not affect the right of any other party to file a timely cross appeal under Rules 903(b), 1113(b) or 1512(a)(2) or to otherwise pursue an appeal or cross appeal already filed at the time of the discontinuance. The discontinuance of the appeal at any time before or after a cross appeal is filed will not affect the right of any party to file or discontinue a cross appeal. The 2002 amendment supersedes *In Re: Petition of the Board of School Directors of the Hampton Township School*, 688 A.2d 279 (Pa. Cmwlth. 1997) to the extent that decision requires that a party be adverse to the initial appellant in order to file a cross appeal.

The Note to Rule 511 is also amended to advise that an appellee should not be required to file a cross appeal because the court below ruled against it on an issue, as long as the judgment granted appellee the relief it sought.

Rule 903 (Time For Appeal). The 2002 amendment to the Note to Rule 903 includes a suggestion, for the aid of the appellate court filing office, that a party identify a cross appeal in its notice of appeal. This will assure that the appeals are linked for processing purposes. The proposed amendment to the note also cross references Rule 511 (Cross Appeals), Rule 2136 (briefs in cases of cross appeals) and Rule 2322 (Cross and Separate Appeals). This is for the convenience of counsel and the parties to alert them to the unique aspects of cross appeal or petition practice. See also conforming amendments to the Notes to Rules 1113 and 1512.

The Explanatory Comment--1979, which is simply historical reference, is deleted as unnecessary.

Rule 1113 (Time For Petitioning For Allowance Of Appeal). See explanatory comment to Rule 903 (Time for Appeal).

Rule 1512 (Time For Petitioning For Review). See explanatory comment to Rule 903 (Time for Appeal).

Rule 2113 (Reply Brief). The 2002 amendment deletes subdivision (c), an obsolete cross reference to a reply brief in cross appeals. The briefs permitted and proper sequence in cases involving cross appeals are explained in the Note to Rule 2136.

Rule 2136 (Briefs In Cases Involving Cross Appeals). In a single party appeal or petition situation, there are three briefs: appellant's principal brief on the merits, appellee's principal brief on the merits and appellant's reply brief. In a cross appeal or petition situation, there are four briefs, because the designated appellant's second brief must

serve two purposes, that is, it is the appellant's reply brief (a brief limited in scope by Rule 2113) and, simultaneously, the appellant's principal brief on the merits of the cross appeal or petition. The appellee may then file a "reply" brief on the merits of the cross appeal, that is, a reply brief in the appeal filed by the appellee. This procedure is explained in the proposed amendment to the Note as follows:

When there are cross appeals, there may be up to four briefs: (1) the deemed or designated appellant's principal brief on the merits of the appeal; (2) the deemed or designated appellee's brief responding to appellant's arguments and presenting the merits of the cross appeal; (3) the appellant's second brief replying in support of the appeal and responding to the merits of the cross appeal; and (4) appellee's reply brief in the cross appeal.

Rule 2185 (Time For Serving And Filing Briefs). The existing rule is unclear as to the due date for the filing of the designated appellant's second brief (Brief No. 3 as described above). The 2002 amendment provides that brief is due thirty days after the deemed appellee's brief (Brief No. 2) as described above.

Rule 1113. Time for Petitioning for Allowance of Appeal.

- (a) **General [rule.--] Rule.** Except as otherwise prescribed by this rule, a petition for allowance of appeal shall be filed with the Prothonotary of the Supreme Court within 30 days after the entry of the order of the Superior Court or the Commonwealth Court sought to be reviewed.
- (1) If a timely application for reargument is filed in the Superior Court or Commonwealth Court by any party, the time for filing a petition for allowance of appeal for all parties shall run from the entry of the order denying reargument or from the entry of the decision on reargument, whether or not that decision amounts to a reaffirmation of the prior decision.
- [(2) Unless the Superior Court or the Commonwealth Court acts on the application for reargument within 60 days after it is filed, the court shall no longer consider the application, it shall be deemed to have been denied, and the prothonotary of the appellate court shall forthwith enter an order denying the application and shall immediately give notice of entry of the order denying the application to each party who has appeared in the appellate court. A petition for allowance of appeal filed before the disposition of such an application for reargument shall have no effect. A new petition for allowance of appeal must be filed within the prescribed time measured from the entry of the order denying or otherwise disposing of such an application for reargument.]**
- (3) In a children's fast track appeal, unless the Superior Court acts on the application for reargument within 45 days after it is filed, the court shall no longer consider the application, it shall be deemed to have been denied, and the Prothonotary of the Superior Court shall forthwith enter an order denying the application and shall immediately give notice of entry of the order denying the application to each party who has appeared in the appellate court. A petition for allowance of appeal filed before the disposition of such an application for reargument shall have no effect. A new petition for allowance of appeal must be filed within the prescribed time measured from the entry of the order denying or otherwise disposing of such an application for reargument.]

(2) Except as provided by subdivision (a)(3), the Superior Court or the Commonwealth Court may act on the application for reargument within 60 days after it is filed.

(3) In a children's fast track appeal, the Superior Court may act on the application for reargument within 45 days after it is filed.

(4) If an appellate court does not act on an application for reargument within the prescribed time period set forth in subdivisions (a)(2) and (a)(3):

(i) The application for reargument shall be deemed denied.

(ii) The prothonotary of the appellate court shall immediately enter an order denying the application and give notice of entry of the order denying the application to each party who has appeared in the appellate court.

(iii) A petition for allowance of appeal filed before the disposition of an application for reargument shall have no effect. A new petition for allowance of appeal shall be filed within the prescribed time measured from the entry of the order denying or otherwise disposing of such an application for reargument.

(b) [Cross petitions.--] Cross-Petitions for Allowance of Appeal. Except as otherwise prescribed in **[paragraph] subdivision (c) [of this rule]**, if a timely petition for allowance of appeal is filed by a party, any other party may file a cross-petition for allowance of appeal within 14 days of the date on which the first petition for allowance of appeal was served, or within the time otherwise prescribed by this rule, whichever period last expires.

(c) Special [provisions.--] Provisions. Notwithstanding any other provision of this rule, a petition for allowance of appeal from an order in any matter arising under any of the following shall be filed within ten days after the entry of the order sought to be reviewed:

[1.](1) Pennsylvania Election Code[.]; and

[2.](2) Local Government Unit Debt Act or any similar statute relating to the authorization of public debt.

- (d) **[Nunc pro tunc filing.--] Nunc Pro Tunc Filing.** In addition to the right of any petitioner to seek *nunc pro tunc* relief in compliance with the standard set forth in case law, in a criminal case, a party may, **[([either [pro se] by self-representation or through counsel[)]],** file an application for permission to file a petition for allowance of appeal *nunc pro tunc* if the party directed counsel to file a petition for allowance of appeal but counsel did not do so timely. If the **Supreme** Court cannot determine whether *nunc pro tunc* relief is appropriate from the information provided, the **Supreme** Court may remand to the trial court for factual findings.

[Note: See note to] Comment: See Pa.R.A.P. 903, **cmt.** (time for appeal).

[Paragraph (b)--A] Regarding subdivision (b), a party filing a cross-petition for allowance of appeal should identify it as a cross-petition to assure that the prothonotary will process the cross-petition with the initial petition. See *also* Pa.R.A.P. 511 (cross-appeals), Pa.R.A.P. 2136 (briefs in cases involving cross-appeals), and Pa.R.A.P. 2322 (cross- and separate appeals).

Unlike the Rules of Appellate Procedure governing cross-appeals as of right, the rules governing appeals by allowance do not contain an aggrievement standard. *Kramer v. Nationwide Property and Casualty Insurance Co.*, 313 A.3d 1031, 1042-44 (Pa. 2024). Thus, if a petition for allowance of appeal is filed challenging a final order of the Superior Court or the Commonwealth Court, and, in that order, the intermediate appellate court rules against the respondent on an issue, the respondent must file a cross-petition for allowance of appeal if the respondent wishes to seek discretionary review of that issue. If a respondent fails to timely file a cross-petition for allowance of appeal, and the Supreme Court reverses the judgment of the intermediate appellate court, the respondent's only recourse is to seek leave to file a *nunc pro tunc* cross-petition for allowance of appeal. *Kramer v. Nationwide Property and Casualty Insurance Co.*, 313 A.3d 1031, 1042-44, 1044 n.18 (Pa. 2024); *Meyer, Darraugh, Buckler, Bebenek & Eck, P.L.L.C. v. Law Firm of Malone Middleman, P.C.*, 137 A.3d 1247, 1260 (Pa. 2016) (Saylor, C.J., concurring); *id.* (Todd, J., concurring).

[Paragraph (d)—An] Regarding subdivision (d), an application for *nunc pro tunc* relief pursuant to Pa.R.A.P. 123 should contain averments and documentation in support of the request. Such an application may eliminate the need for a criminal defendant to vindicate the right to file a petition for allowance of appeal through post-conviction proceedings and preserve judicial resources. This method is available because the Supreme Court has recognized that a criminal defendant has a right to have counsel petition for allowance of appeal. **[Pennsylvania Rules of Criminal Procedure]**

Pa.R.Crim.P. 120 and 122 require counsel to represent clients through all stages of a direct appeal, and this places on counsel an obligation to file a petition for allowance of appeal if the client requests one, and to represent the client in the Pennsylvania Supreme Court, if allowance of appeal is granted. Parties seeking *nunc pro tunc* relief must act promptly to assert such a right upon learning of the existence of the basis for such relief. See, e.g., *Commonwealth v. Bassion*, 568 A.2d 1316 (Pa. Super. 1990). Additionally, nothing in this rule is intended to expand upon the jurisdictional time limitations of the Post Conviction Relief Act, 42 Pa.C.S. §§ 9541 *et seq.*

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.