

APPELLATE COURT PROCEDURAL RULES COMMITTEE ADOPTION REPORT

Amendment of Pa.R.A.P. 1925(c)(3)

On July 27, 2026, the Supreme Court of Pennsylvania amended Pennsylvania Rule of Appellate Procedure 1925(c)(3). The Appellate Court Procedural Rules Committee has prepared this Adoption Report describing the rulemaking process. An Adoption Report should not be confused with Comments to the rules. See Pa.R.J.A. 103, cmt. The statements contained herein are those of the Committee, not the Court.

Currently, Rule 1925, in relevant part, provides:

If an **appellant** represented by counsel in a criminal case was ordered to file and serve a Statement and either failed to do so, or untimely filed or served a Statement, such that the appellate court is convinced that counsel has been *per se* ineffective, and the trial court did not file an opinion, the appellate court may remand for appointment of new counsel, the filing or service of a Statement *nunc pro tunc*, and the preparation and filing of an opinion by the judge.

Pa.R.A.P. 1925(c)(3) (Emphasis added.)

In *Commonwealth v. Baker*, 311 A.3d 12 (Pa. Super. 2024), the Superior Court examined the question of whether the Commonwealth, as the appellant, had waived all issues for failure to file a timely Pa.R.A.P. 1925(b) Statement. The majority interpreted Pa.R.A.P. 1925(c)(3) to apply to the Commonwealth in this circumstance. It ultimately held the Commonwealth did not waive its issues because the trial court had an adequate opportunity to prepare an opinion addressing the issues raised on appeal, and cited to *Commonwealth v. Burton*, 973 A.2d 428 (Pa. Super. 2009) as support for this conclusion.

The concurring opinion questioned whether the waiver exception for appellants in criminal cases, as set forth in Pa.R.A.P. 1925(c)(3), applied to the Commonwealth, and would have found that the Commonwealth waived all issues for failure to file a timely 1925(b) Statement under the Supreme Court's bright-line waiver standard set forth in *Commonwealth v. Lord*. The concurring opinion also noted that there was some question about the reach of the waiver exception in light of the Superior Court's holding in *Commonwealth v. Grohowski*, 980 A.2d 113 (Pa. Super. 2009), which reached the same conclusion as the majority in *Baker* that the exception to waiver in Pa.R.A.P. 1925(c)(3) applies to the Commonwealth when there is a failure to file a timely Statement. Citing to the dissenting opinion in *Grohowski*, the concurrence noted, among other points, that the concept of *per se* ineffectiveness is a term of art particular to criminal defense lawyers, not prosecutors, and the reason for the exception was to forestall claims under the Post

Conviction Relief Act. 311 A.3d at 22 (Olson, J., concurring), citing *Grohowski*, 980 A.2d at 117 (Klein, J., dissenting).

The Committee proposed clarifying this subdivision and its accompanying commentary to explicitly state that it is the criminal defendant-appellant, and not the Commonwealth, who is afforded the exception to the bright-line waiver standard in *Commonwealth v. Lord*, 710 A.2d 306 (Pa. 1988), set forth in subdivision (c)(3) when there is a failure to file a timely Pa.R.A.P. 1925(b) Statement. In doing so, it noted that the dissenting opinion in *Grohowski*, which also questioned whether subdivision (c)(3) applied to the Commonwealth, suggested that if the subdivision were intended to apply to only criminal defendants, “appellant” should be clarified as the “criminal defendant-appellant.” 980 A.2d at 117. The proposed amendment incorporated this language and a similar change was made to the commentary discussing subdivision (c)(3). In addition, the commentary was amended to state that the exception in subdivision (c)(3) is not available to the Commonwealth, and to add a statement indicating that the rule supersedes both *Grohowski* and *Baker* and their progeny.

Following publication, see 54 Pa.B. 7114 (November 2, 2024), the Committee received comments in both opposition to and support of the proposal. Comments opposing the amendment advocated for maintaining the scope of subdivision (c)(3) as interpreted by the intermediate appellate court case law, contending that it should apply to both criminal defendants and the Commonwealth.

A comment in support of the proposal suggested additional commentary to clarify that Pa.R.A.P. 1925(c)(3) also applies to situations when a defense attorney on a first PCRA appeal is *per se* ineffective for failing to file a timely 1925(b) Statement. The Committee declined to recommend this clarification because the removal of “criminal case” and the insertion of “criminal defendant” would resolve any ambiguity concerning the application of subdivision (c)(3) to PCRA appeals because it focuses on the party rather than the case type; “criminal defendant” would be applicable in both a direct appeal and a post-conviction collateral appeal.

The amendment becomes effective October 1, 2026.