

Internal Operating Procedures of the Supreme Court

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§ 1. Introduction.

[This manual of internal operating procedures is]The Internal Operating Procedures are intended to implement Article V of the Constitution of Pennsylvania, statutory provisions, the Pennsylvania Rules of Appellate Procedure and the customs and traditions of this Court. No substantive or procedural rights are created, nor are any such rights diminished.

§ 2. Preamble.

- A. In the discharge of judicial duties, every **[j]Justice** is responsible to the Court.
- B. In its discharge of judicial functions, the Court is the responsibility of every **[j]Justice**.
- C. All **[j]Justices** bear an equal responsibility for the proper disposition of every matter before the Court.
- D. The assignment of a given matter to a single **[j]Justice** is solely for the efficiency of the Court, and neither enhances the power of the assigned **[j]Justice** nor diminishes the duty of the remaining **[j]Justices** as to its proper disposition.

In furtherance of the duties expressed in the preamble, the following procedures, which may be amended without notice as circumstances require, have been adopted by the Court:

§ 3. Decisional [p]Procedures: Argued and Submitted Cases.

A. Argued Cases

1. Argument [~~sessions 1.]~~Session Schedule. Unless otherwise ordered by the Court, argument sessions shall be scheduled for one-week periods during the months of [~~January,]~~ March, April, May, September, October and December. [~~Argument sessions]~~ Daily arguments shall begin at 9:30 a.m. unless otherwise designated.

2. [~~Argued]~~Listing of [c]Cases.

[a. ~~Death penalty]~~The following cases [~~are automatically assigned to an]~~shall be listed for oral argument [~~list immediately]~~ upon completion of the briefing schedule[.] or as soon as practicable:

a. Direct appeals from a judgment of sentence of death (“capital direct appeals”).

b. Cases in which allowance of appeal (“allocatur”) has been granted[and], unless the Court has ordered that the appeal be submitted on the briefs.

c. All other cases [~~which]~~that have been designated by the Court as suitable for oral argument [~~shall be assigned to an argument list upon completion of the briefing schedule.], including but not limited to non-capital direct appeals and Post Conviction Relief Act (“PCRA”) appeals.~~

[3. **Direct appeals. Because they would, under a differently structured judicial system, have gone to intermediate appellate courts for evaluation, direct appeals shall be submitted for screening rather than automatically accepted for oral argument. Therefore, as soon as briefs are received, all direct appeals other than death penalty cases will be assigned by the prothonotary to a justice on a rotating basis by seniority for preparation of a Disposition Memorandum, which will contain a short recitation of the facts, a brief discussion of the issues, and a recommendation of whether the case should be resolved by 1) a per curiam order; 2) affirmance on the opinion of the court below, plus, where possible/necessary a brief statement of matters not covered by that opinion; 3) submission on briefs; or 4) should be listed for oral argument. Each Disposition Memorandum shall be circulated to the Court within sixty (60) days of assignment, with contemporaneous notice to the prothonotary. It shall then be placed on a supplemental list for consideration and vote at the same**

time as opinions. (See IV. Opinions. A. Circulation schedule 3. Voting). Disposition Memoranda must be circulated to the Court ten (10) days prior to the list date to be placed on the vote list. The case shall thereafter be disposed of or listed for oral argument in accordance with the vote of the majority. If no clear majority emerges, the case will be listed for oral argument.

4. Post conviction hearing cases. These appeals are treated in accordance with Rule 2311(b), Pa.R.A.P.

B.]3. Assignments

[1. **Conference].** Each day following oral argument the Court shall meet in conference to discuss the cases argued that day. The Chief Justice shall preside at the conference, lead the Court's discussion, and call for a tentative vote on the decision of each case. The [j]Justices shall vote in an inverse order of seniority.

Argued cases, except for non-capital direct appeals,]2. **Death penalty cases. Cases in which the death penalty has been ordered] shall be assigned [in a separate rotation based on seniority to assure equal distribution of assignments among the members of the Court.] **at conference]3. **Civil and criminal appeals. Cases shall be assigned]** by the senior **member of Justice in the majority position]** in such a manner as to achieve equal distribution of assignments[,] and to avoid delay in deciding cases. If it appears that due to illness of a [j]Justice or for some other reason this purpose is not being served, the Chief Justice may, as a matter of his or her discretion, alter the assignment order.****

[In the event]An argued non-capital direct appeal will be assigned to the Justice who prepared the disposition memorandum, unless after conference vote his or her position is not aligned with that of the majority, in which case the assignment shall be made by the senior member of the majority.

If a [j]Justice to whom a case has been assigned subsequently decides to change his or her [vote]position on the proper decision of the case and ceases to be [among]aligned with the conference majority view, he or she shall provide a draft opinion or proposed order along with [a cover letter explaining the reason for the] an explanation of the change of position.

[Where appeals other than direct appeals have been submitted, the prothonotary]

B. Submitted Cases.

When the Court has determined, either upon motion of the parties in advance of oral argument or sua sponte, that a case shall be decided on the submitted briefs, the Prothonotary shall direct the case to the Court for disposition [after]upon completion of the briefing schedule[.]or as soon as practicable. PCRA appeals shall be submitted on the briefs unless otherwise directed by the Court on its own motion or upon application, in accordance with Pa.R.A.P. 2311(b).

The Chief Justice will assign [the case for preparation of a draft opinion to an individual justice in the rotation established by seniority.]**submitted cases in a rotation schedule by seniority, except for non-capital direct appeals, which shall be assigned to the Justice who authored the disposition memorandum. Capital PCRA appeals shall be assigned in a separate rotation, to ensure an even distribution of responsibility in those appeals. If it appears that there is an unequal distribution of cases or a delay in deciding cases, the Chief Justice may, as a matter of his or her discretion, alter the assignment order.**

[4. Direct appeals. An argued direct appeal will be assigned to the justice who prepared the Disposition Memorandum, unless after preliminary vote his or her position is not that of the majority. In such an instance, the assignment shall be made by the senior member of the majority.

A direct appeal which the Court has determined shall be decided by opinion on the submitted briefs shall be assigned to the justice who prepared the Disposition Memorandum.

5]C. Per Curiam Orders.

1[D)]. A per curiam order may be **[used] issued**
a. when the Court's decision:
(1[a]) does not establish a new rule of law;
(2[b]) does not alter, modify, criticize or clarify an existing rule of law;
(3[c]) does not apply an established rule of law to a novel fact situation;
(4[d]) does not constitute the only[, or only recent] binding precedent on a particular point of law;

(5[e]) does not involve a legal issue of continuing public interest; or **(f)b.** whenever the Court decides such an order is appropriate.

2[)]. A per curiam order reversing an order of the lower court[,] must cite to controlling legal authority or **[give]provide** a full explanation **[as to]of** the reasons for reversal.

3. In cases involving discretionary appeals, the Court may enter a per curiam order dismissing the appeal as improvidently granted.

4. A Justice may request that a per curiam order record that he or she voted for a different disposition.

5. A per curiam order shall indicate if a Justice did not participate in the consideration or decision of the matter.

6. Reconsideration Applications

a. Assignment. The Prothonotary shall assign applications for reconsideration to the Justice who authored the per curiam order.

b. Circulation and Disposition. The assigned Justice shall circulate to all members of the Court a recommended disposition within fourteen (14) days of the assignment or within seven (7) days of the date of assignment in Children’s Fast Track appeals.¹ A Justice who disagrees with the recommended disposition shall circulate a counter-recommendation within fourteen (14) days of the original recommendation or seven (7) days in Children’s Fast Track appeals. A vote of the majority is required to grant reconsideration. In any case in which reconsideration is denied, a Justice may request that the order record that he or she voted to grant reconsideration. The order shall indicate if a Justice did not participate in the consideration or decision of the matter.

D. Oral Argument

1. Guidelines for Oral Argument.

¹ **“Children’s Fast Track appeal” is defined in Pa.R.A.P. 102. A “Children’s Fast Track case” is any case involving an order regarding dependency, termination of parental rights, adoptions, custody or paternity. See 42 Pa.C.S. §§ 6301 et seq.; 23 Pa.C.S. §§ 2511 et seq.; 23 Pa.C.S. §§ 2101 et seq.; 23 Pa.C.S. §§ 5321 et seq.; 23 Pa.C.S. §§ 5102 et seq.**

- a. No fixed amount of time is reserved for each argument. Oral argument is at the discretion of the Court and proceeds to the extent necessary to answer any questions the Justices may have on the issue(s).
- b. Since the Court does not use a clock or light system, counsel should be alert to indications from the Chief Justice that the Court is satisfied that all questions have been addressed.
- c. The Court does not ordinarily permit rebuttal. Counsel are advised not to request rebuttal. However, when necessary and appropriate, the Court may in its discretion request to hear further from counsel.
- d. The Court is familiar with the cases to be heard at oral argument. Accordingly, counsel should avoid a recitation of the facts and procedural history and focus on the issue(s) to be argued.
- e. The Court recognizes that oral argument is only one part of appellate advocacy. Counsel for the appellant should be selective in the issues to be argued and may rely on their briefs for the remainder of the issues. Nothing is waived by this process. The appellee's counsel should generally respond only to the issues argued by the appellant's counsel.
- f. In cases involving multiple parties represented by separate counsel, counsel should strive to avoid repetitive presentations.
- g. If a party's counsel fails to appear for argument, opposing counsel may be asked to submit the case on the briefs.
- h. Counsel are advised not to use graphs and charts on easels. Instead, copies of such matters should be provided to the court crier for distribution to the Court. Counsel must also provide advance copies to opposing counsel.

2. Requests by Amicus Curiae. In cases where amicus curiae has filed a brief, requests by amicus to present oral argument shall be made by application and will be granted only in extraordinary circumstances. Applications to present oral argument are assigned to the Chief Justice, who will circulate a recommendation to the Court. A vote of the majority is required to grant the request.

§ 4. Opinions.

A. Circulation Schedule[.]; **Voting; Hold; Reassignment.**

- 1. Preparation of Opinions. Preparation of opinions and responses to circulating opinions shall be given the highest priority. **[The justice to whom the drafting of an opinion has been assigned shall, absent**

extraordinary circumstances, circulate a proposed opinion to all members of the Court, with contemporaneous notice to the prothonotary's office, within ninety (90) days of the assignment or within forty-five (45) days of the assignment of a Children's Fast Track appeal.

2.]a. Majority. The assigned Justice shall, absent extraordinary circumstances, circulate a proposed majority opinion to all members of the Court within ninety (90) days of the assignment in single-issue cases and serial capital PCRA appeals, within one hundred and twenty (120) days in multiple-issue cases, within one hundred and fifty (150) days in capital direct appeals, within one hundred and eighty (180) days in first capital PCRA appeals, or within forty-five (45) days of the assignment of a Children's Fast Track appeal. The Court should make every effort to decide cases by clear majority disposition.

b. Concurrences and Dissents. Justices who are aligned as to the result should collaborate as much as possible to achieve a unified position in responsive opinions. Concurrences and dissents shall be circulated to all members of the Court within forty (40) days of the date on which votes on the proposed majority **[opinions are due. For]opinions were due in single-issue cases and serial capital PCRA appeals, within sixty (60) days in multiple-issue cases, within seventy-five (75) days in capital direct appeals, and within ninety (90) days in first capital PCRA cases. Matters may also be held for additional review by a Justice during these time periods.** In Children's Fast Track appeals, concurrences and dissents shall be circulated to all members of the Court within twenty (20) days of the date on which votes on the proposed majority **[opinions are due. Such concurrences and dissents shall be placed on the next available voting list following their circulation to the Court. The prothonotary's office shall receive contemporaneous notice of concurrences or dissents.]opinion were due.**

[3. Voting. Consideration of]2. Monthly Vote Lists. Circulating proposed opinions [shall occur at a regularly scheduled opinion conference, either]are voted upon each month according to the schedule provided by [written]the Chief Justice for use in that calendar year. Each monthly vote[, or via telephone conference call. Lists of circulating opinions]list shall be [supplied to the members of the Court and the prothonotary]circulated by

the [office of the] Chief Justice [on a regularly scheduled list date. The list date shall be set for] the first Monday of [every]the month, or, if that date is a holiday, on the first Tuesday [following] of the month; the [Monday holiday.]dates to circulate the vote lists may be adjusted. The cases listed shall include all proposed majority opinions, per curiam opinions and dispositive per curiam orders in appeal cases submitted for the Court's consideration as of ten (10) days prior to the [list date.]circulation of the vote list. Responsive opinions to majority opinions on a vote list shall be circulated by 5:00 p.m. on the Friday before the vote list is circulated; responsive opinions circulated after that time shall move the case to the next vote list. Responsive opinions to majority opinions not already on a vote list shall be placed on the next available vote list following their circulation to the Court.

[a. Written]3. Entry of Votes. [Written votes]Votes on listed cases shall be [returned to the Chief Justice's office]entered according to the schedule provided by the Chief Justice. Generally speaking, votes are due on the fifth business day following [publication of the list.]circulation of the vote list. However, that time frame is adjusted to account for holidays, court sessions and other anticipated conflicts. The vote schedule for the calendar year distributed to the Court by the Chief Justice specifies the vote day for each month. Within two (2) business days following [submission]entry of [written]the votes, the [office of the] Chief Justice will circulate to all [justices a compilation of all] Justices a disposition, listing the votes [received.]for each case. Within two (2) days after [receipt]circulation of the [compilation, the office of]disposition, the Chief Justice must be advised of any correction[to the voting list results]. On the next business day[,] (the fifth business day following the [voting conference, the office]entry of votes) the Chief Justice shall [issue]circulate to the Court and to the Prothonotary a confidential list [to the prothonotary] of all cases [which are] ready to be filed together with the votes of the [j]Justices. No case will appear on the confidential list unless all votes are recorded. [Notice of the forthcoming filings shall be posted, by case name and number only, in the office(s) of the prothonotary, and the prothonotary]The Prothonotary will docket opinions consistent with the information received.

a. Permissible votes include “join majority opinion”; “join majority opinion/author concurring opinion”; “author revised majority opinion”; “author concurring opinion”; “author revised concurring opinion”; “hold for concurring opinion”; “join concurring opinion”; “author dissenting opinion”; “author revised dissenting opinion”; “hold for dissenting opinion”; “join dissenting opinion”; “author

concurring/dissenting opinion”; “hold for concurring/dissenting opinion”; “join concurring/dissenting opinion”; “hold for further review”; “do not participate”; or “other.” A Justice may also “concur in the result” or “dissent without opinion,” but these options should not be employed if the vote is dispositive.

- b. Telephone Conferences[. Any justice] and Administrative Agenda. After receipt of the monthly vote list, any Justice may request that any case be held for telephone conference by making such request in writing [to the office of]or electronically to the Chief Justice with notice to all other [justices and the prothonotary after receipt of the monthly voting list]Justices. The list will also indicate a date certain on which a telephone conference will be held for any cases so designated. [Cases]At the request of any Justice, and upon approval by the Chief Justice, cases may be held for discussion to take place at the next scheduled [court conference following oral argument by a vote of three justices]administrative agenda.
- c. Holds. [Cases may be placed on Hold]Upon entry of any hold vote, the period required for [twenty (20) day]response shall correspond to the time periods[, or ten (10) day periods] allowed for [Children’s Fast Track appeals, following] circulation of [a]concurrences and dissents. A Justice may request additional leeway upon circulation of an internal letter [to the members of the Court and to the prothonotary] explaining the reasons for the [hold, e.g., a forthcoming]delay and estimating the time for completion of the review or responsive opinion [in a pending case, or preparation of dissent or concurrence. In instances where the hold relates to preparation of a dissent or concurrence,]. If the [hold period shall commence on]review or responsive opinion is not completed by the [original due date for] designated time, additional status information shall be provided every twenty (20) days thereafter, except when the [dissent or concurrence,] matter has been placed on hold for another pending case; in that [is]event, the [fortieth day after votes are due on vote listed cases or] matter shall be resolved upon the [twentieth day for Children’s Fast Track appeals. In]resolution of the pending case. Once a matter has been voted upon and the time period initially allowed for circulation of concurrences and dissents has passed, holds upon subsequent listings are strongly discouraged. Held opinions

are to be resolved expeditiously. In a Children’s Fast Track appeal, in no event shall circulation of a [dissent or concurrence]responsive opinion occur beyond [sixty (60) days from the date votes are due on vote listed cases or] thirty (30) days [for Children’s Fast Track appeals. If, within thirty (30) days for Children’s Fast Track appeals or sixty (60) days for all other cases]from the date the vote was initially due.

Upon appropriate notice to a “holding” Justice and an opportunity to respond, the Chief Justice in his or her discretion may direct the filing of an opinion with a “holding” Justice noted as not participating in the decision of the matter, dissenting without opinion, concurring in the result, or with an opinion to follow, as the case may be. In Children’s Fast Track appeals, if, within thirty (30) days of the date votes are due on majority opinions no dissent or concurrence has been placed in circulation, the case will be [put down]filed, and the dissenting or concurring [j]Justice will be noted as not having participated in the decision of the [case]matter.

- d. Reassignment. When a concurrence or dissent garners a majority of votes, the **author of the proposed majority opinion may withdraw the opinion to revise to accommodate the new majority, or the** case shall be reassigned to the author of the concurrence or dissent[, whose]. **Upon reassignment, and absent extraordinary circumstances, the new** majority opinion shall [then] be [forthcoming]circulated within thirty (30) days [of the reassignment, or, for]in **single-issue cases and serial capital PCRA appeals, sixty (60) days in multiple-issue cases, seventy-five (75) days in capital direct appeals, ninety (90) days in first capital PCRA appeals, and, in** Children’s Fast Track appeals, within fifteen (15) days.

[4. Monitoring. The prothonotary shall provide the Court with a monthly table, or for Children’s Fast Track appeals a semimonthly table, showing the name, docket number, journal number, assignment, assignment date and circulation date of all argued and submitted cases. All argued and submitted cases which are open for more than one hundred fifty (150) days, or for Children’s Fast Track appeals which are open for more than seventy-five (75) days, and all petitions for reargument which are open for a period of more than forty-five (45) days or, for Children’s Fast Track appeals that are open for a period of more than twenty-one (21) days, shall be separately listed.]

[5.]Notwithstanding any contrary procedures set forth above, [J]Justices shall give priority in both circulation of and voting on proposed [decisions]opinions in Children’s Fast Track appeals.

B. Labeling of Opinions.

1. Majority Opinion. An opinion will be labeled “Opinion” when a majority [of the Court] joins the [opinion.]rationale and result of the opinion. Majority opinions shall list the composition of the Court hearing the appeal, and shall indicate when a Justice did not participate in the consideration or decision of the matter. Proposed majority opinions that involve multiple, complex issues which the authoring Justice believes may garner disparate votes should be divided into sections. [See, e.g., Phillips v. Cricket Lighters, 841 A.2d 1000 (Pa. 2003).] If there is a split [on]in votes in an opinion that has been divided into sections, the [author of the lead opinion]authoring Justice will be responsible for preparing a short introductory [explanatory] statement [regarding]summarizing the [breakdown of]resulting votes.

2. Concurrences and Dissents. An opinion is a “concurring opinion” when [it]the Justice agrees with the result of the [lead]proposed majority opinion. A Justice who agrees with the result of the [lead]proposed majority opinion, but does not agree with the rationale supporting the [lead]proposed majority opinion, in whole or in part, may write a separate “concurring opinion.” An opinion is a “dissenting opinion” when [it]the Justice disagrees with the result of the [lead]proposed majority opinion. [An]

As a general rule, an opinion is a “concurring and dissenting opinion” [only] when there is more than one [result]issue and the Justice agrees with [one or more]the majority’s disposition of [the results,]some but not [the]all issues, and is in disagreement with the mandate. There may be occasions, however, in which a Justice may agree with the outcome but may disagree with a principle enunciated by a majority of the Court which will govern the outcome of other[(s).] cases. In such instances, Justices are not strictly bound to concur outright; rather, they retain the discretion to label responses as concurring and dissenting.

Alternatively, a Justice may choose to “concur in the result” or “dissent” without writing a separate opinion, although both options are strongly disfavored if the vote is dispositive.

3. Other designations. An opinion shall be designated as the “Opinion Announcing the Judgment of the Court” when it reflects only the mandate, and not the rationale, of a majority of Justices. When the votes are equally divided, any resulting opinions shall be designated as the “Opinion in Support of Affirmance” or “Opinion in Support of Reversal,” as the case may be. In all such opinions, the name of any Justice not participating in the consideration or decision of the matter shall be noted.

C. [Reargument Petitions]Reconsideration Applications

1. Assignment. [Upon receipt of a petition]The Prothonotary shall assign applications for [reargument of an order of the Court disposing of an appeal, the prothonotary shall direct the petition]reconsideration to the author of the majority opinion or the opinion announcing the judgment of the Court. If [the appeal was resolved without opinion, the petition will be directed to the office of the Chief Justice to be assigned to the most senior member of the majority. In the event that] the appeal was resolved by an equally divided Court, the petition shall be assigned to the author of the opinion in support of affirmance.
2. Circulation and Disposition. The [justice to whom the reargument petition was] assigned Justice shall circulate to all members of the Court a recommended disposition [of the petition] within fourteen (14) days of the assignment or within seven (7) days of the [date of] assignment [for]in Children’s Fast Track appeals. A [j]Justice who disagrees with the recommended disposition shall circulate a counter-recommendation within fourteen (14) days of the original recommendation or seven (7) days [for]in Children’s Fast Track appeals. A vote of the majority is required to grant [reargument]reconsideration. In any case in which reconsideration has been denied, a Justice may request that the order record that he or she voted to grant reconsideration. All orders shall indicate if a Justice did not participate in the consideration or decision of the matter.

§ 5 Non-Capital Direct Appeals.

- A. Assignment. All non-capital direct appeals shall be reviewed by the Court to determine their suitability for oral argument. As soon as all briefs have been received, the non-capital direct appeal will be assigned by the Prothonotary to a Justice on a rotating basis by seniority for preparation of a disposition memorandum, which will contain a short recitation of the

facts, a brief discussion of the issues, and a recommendation as to whether the case should be (1) listed for oral argument; (2) submitted on the briefs; (3) resolved by affirmance on the opinion of the court below, including when necessary a brief statement of matters not covered by that opinion; or (4) resolved by per curiam order.

A per curiam order may be issued

1. when the Court's decision:
 - a. does not establish a new rule of law;
 - b. does not alter, modify, criticize or clarify an existing rule of law;
 - c. does not apply an established rule of law to a novel fact situation;
 - d. does not constitute the only binding precedent on a particular point of law;
 - e. does not involve a legal issue of continuing public interest; or
2. whenever the Court decides such an order is appropriate.

A per curiam order reversing an order of the lower court must cite to controlling legal authority or provide a full explanation of the reasons for reversal.

- B. Circulation and Disposition: Each disposition memorandum shall be circulated to the Court within sixty (60) days of assignment. It shall then be placed on a supplemental list for consideration and vote at the same time as opinions. Disposition Memoranda must be circulated to the Court at least ten (10) days prior to circulation of the vote list to be placed on that vote list. A hold for the purpose of preparing a counter-recommendation shall not exceed thirty (30) days; only by vote of the majority may a hold be extended beyond thirty (30) days, but in no event shall a hold exceed ninety (90) days.

The case shall thereafter be resolved in accordance with the vote of the majority. If no clear majority emerges, the case will be listed for oral argument. A Justice may request that the order record that he or she voted for a different disposition. All orders resolving a non-capital direct appeal shall indicate if a Justice did not participate in the consideration or decision of the matter.

C. Reconsideration Applications.

- 1. Assignment. The Prothonotary shall direct the application for reconsideration to the Justice who prepared and filed the order.**
- 2. Circulation and Disposition. The assigned Justice shall circulate to all members of the Court a recommended disposition within fourteen (14) days of the assignment. A Justice who disagrees with the recommended disposition shall circulate a counter-recommendation within fourteen (14) days of the original recommendation. A vote of the majority is required to grant reconsideration. In any case in which reconsideration has been denied, a Justice may request that the order record that he or she voted to grant reconsideration. All orders shall indicate if a Justice did not participate in the consideration or decision of the matter.**

§ 6. Allocaturs.

A. Standards. Petitions for allowance of appeal (“allocaturs”) may be granted for any of the following reasons:

1. **[that]** the holding of the intermediate appellate court conflicts with another intermediate appellate court opinion;
2. **[that]** the holding of the intermediate appellate court conflicts with a holding of this Court or the United States Supreme Court on the same legal question;
3. **[that]** the question presented is one of first impression;
4. **[that]** the question presented is one of such substantial public importance as to require prompt and definitive resolution by this Court;
5. **[that]** the issue involves the constitutionality of a statute of this Commonwealth;
6. **[that]** the intermediate appellate court has so far departed from accepted judicial practices or so abused its discretion as to call for the exercise of this Court's supervisory authority; or
7. **[that]** the intermediate appellate court has erroneously entered an order quashing or dismissing an appeal.

B. Assignment. **The Prothonotary shall initially screen allocatur petitions for compliance with the applicable appellate rules. Untimely petitions may be refused for filing by the Prothonotary without further action of the Court.**

Petitions for allowance of appeal shall be assigned to individual **[j]Justices** by the **[prothonotary's office]Prothonotary** on a rotating basis **by seniority** for

preparation of an allocatur report. Petitions from the same district presenting the same question shall be consolidated; petitions from different districts that present the same question may be consolidated at the discretion of the Court.

- C. Circulation and Disposition.** Allocatur reports ~~[are to]~~**shall** be circulated within ~~[sixty (60)]~~**ninety (90)** days of the receipt of such an assignment **[with notice to the prothonotary's office that the report is in circulation]**. The proposed disposition date shall not be greater than sixty (60) days from the date of circulation. Holds may be placed on allocatur petitions **[for allowance of appeal]** only upon written notice to the members of the Court **[and the prothonotary]** as to the reasons for the hold, e.g., the existence of another petition from another district presenting the same question. No hold may be placed on a petition without the existence of a terminus, e.g., the issuance of an opinion on a petition presenting the same question. **[A hold for the purpose of preparing a counter report shall not exceed thirty (30) days; only by vote of the majority can a hold be extended beyond thirty (30) days, but in no event shall a hold exceed ninety (90) days. Petitions from the same district presenting the same question shall be consolidated; petitions from different districts presenting the same question may be consolidated at the discretion of the Court.]** Where a hold results from the existence of another petition presenting the same issue, the parties shall be notified of the hold and the case **[which will determine the issue]**that will determine the issue. A hold for the purpose of preparing a counter-report shall not exceed thirty (30) days; only by vote of the majority may a hold be extended beyond thirty (30) days, but in no event shall a hold for such purpose exceed ninety (90) days.

Notwithstanding any contrary procedures set forth above, allocatur reports in Children's Fast Track appeals are to be circulated within thirty (30) days of the receipt of the assignment **[with notice to the prothonotary's office that the report is in circulation]**, and the proposed disposition date shall not be greater than thirty (30) days from the date of circulation. A hold for purposes of preparing a counter-report in a Children's Fast Track appeal shall not exceed fifteen (15) days; only by vote of the majority ~~[can]~~**may** a hold be extended beyond fifteen (15) days, but in no event shall a hold exceed forty-five (45) days.

- [C. Disposition.**

A petition for allocatur is granted upon]Upon the affirmative vote of three or more **[members of the Court. Orders granting allocatur]** Justices, allocatur will be granted and the case will be listed for oral argument, unless the order indicates that the matter will be submitted on the briefs. An order

granting an allocatur petition shall specify the issues upon which allocatur was granted[, and whether the case is to be submitted on briefs or designated by the Court to be heard at the argument session. The order shall also contain the names of any justices not participating in the decision. In any case in which],

A per curiam order granting allocatur [has been denied, a justice]and reversing an order of the lower court must cite to controlling legal authority or provide a full explanation of the reasons for reversal.

A Justice may request that the order [of denial]**resolving the allocatur petition** record that he or she voted [to grant the petition.]**for a different disposition. All orders shall indicate if a Justice did not participate in the consideration or decision of the matter.**

D. Reconsideration **Applications.**

[A vote of the majority is required to grant reconsideration.

E. Monitoring.

1. The prothonotary shall issue to the Court a confidential monthly report showing the name and docket number, assignment, assignment date and circulation date of all allocatur reports. Assignments open for more than sixty (60) days shall be separately listed. Monthly reports showing the filing date, and the votes for and against the granting of each allocatur petition shall also be provided by the prothonotary's office to each justice.

2. Cases shall be screened by the prothonotary for compliance with applicable appellate rules. Untimely filed petitions may be dismissed by the prothonotary without further action of the Court.]

1. Assignment. The Prothonotary shall direct applications for reconsideration to the Justice who authored the allocatur report.

2. Circulation and Disposition. The assigned Justice shall circulate to the Court a recommended disposition within fourteen (14) days of the date of the assignment, or within seven (7) days of the date of assignment in Children's Fast Track appeals. A Justice who disagrees with the recommended disposition shall circulate a counter-recommendation within fourteen (14) days of the original recommendation, or within seven (7) days of the date of the original

recommendation in Children’s Fast Track appeals. A vote of the majority is required to grant reconsideration. In any case in which reconsideration has been denied, a Justice may request that the order record that he or she voted to grant reconsideration. All orders shall indicate if a Justice did not participate in the consideration or decision of the matter.

§ [6]7. Motions, Miscellaneous Petitions, and Applications for Relief.

A. Duties of Prothonotary. All assignments of motions, miscellaneous petitions and applications for relief[.

A. Assignments. All assignments of applications for relief, including emergency motions and those requesting the exercise of King's Bench powers, extraordinary jurisdiction and original jurisdiction, shall originate in the [p]Prothonotary's office. No motions, petitions or applications will be considered which were not first filed in the Prothonotary’s office [of the prothonotary] and thence assigned[unless a Rule of Appellate Procedure specifies otherwise]. Documents may be filed in paper format, or by electronic or facsimile transmission. Once received, motions, petitions and applications will be monitored by the [deputy prothonotary] Prothonotary’s office for compliance with applicable appellate rules. [Motions, etc., which] Proposed filings that are not in compliance will not be docketed. [Matters which] Proposed filings that are in compliance will be docketed and a response will be [sought] allowed. At the expiration of the response period the documents will be forwarded to the Court.

Procedural motions (e.g., requests for extension of time, requests to exceed page limits, and requests to proceed in forma pauperis) may be resolved by the Prothonotary without further action of the Court.

Note: Time periods for responses*

FILING	RULE	RESPONSE PERIOD
APPLICATION FOR RELIEF (EXTENSIONS)	123	14 DAYS [*]
JURISDICTIONAL STATEMENT	909(b)	14 DAYS
PETITION FOR ALLOCATUR	1116	14 DAYS
<u>PETITION FOR ALLOCATUR - CHILDREN’S FAST TRACK CASES</u>	1116(b)	10 DAYS
RECONSIDERATION	1123	NO ANSWER PERMITTED
PETITION FOR PERM. TO APPEAL	1314	14 DAYS
PETITION FOR REVIEW	1516(c)	30 DAYS [*]

N.B. NO ANSWER REQUIRED UNLESS PETITION CONTAINS NOTICE TO PLEAD

APPLICATION FOR RELEASE (BAIL)	1762	14 DAYS
REARGUMENT	2545	14 DAYS
ORIGINAL PROCESS (e.g., HABEAS, MANDAMUS)	3307	14 DAYS [*]
EXTRAORDINARY RELIEF	3309	14 DAYS [*]

* **[COULD]MAY** BE SHORTER IN STAY OR SUPERSEDEAS APPLICATIONS WHEN CIRCUMSTANCES REQUIRE, OR BY COURT ORDER

B. **Assignment, Circulation and Disposition.** **[The] All motions, petitions and applications will be assigned to the Chief Justice, except for emergency motions, motions addressed to a single Justice, and applications for stay of execution in capital cases. In matters assigned to the Chief Justice, the Chief Justice will prepare [memoranda]a memorandum setting forth the positions of the parties[,] and a recommended disposition. [Vote proposals]Recommendations should [shall] be circulated within [thirty (30)] sixty (60) days from the date [of assignment]the answer is filed or is due to be filed, whichever occurs first, and should [shall] contain a proposed disposition date no greater than thirty (30) days from the date of circulation, except [for]in Children’s Fast Track cases, in which [vote proposals must] recommendations shall be circulated within fifteen (15) days from the date the answer is filed or due to be filed, whichever occurs first, and the proposed disposition date shall be no greater than fifteen (15) days from the date of circulation. [[FN1]] A vote of the majority [of those participating] is required to implement the proposed disposition.**

Every motion, **petition or application** shall be decided within sixty (60) days, or **within** thirty (30) days **[for]in** Children’s Fast Track cases. **A Justice may request that the order record that he or she voted for a different disposition.** Orders disposing of motions, **petitions and applications** shall **[include the names of any justices who]indicate if a Justice** did not participate in the consideration or decision of the matter. **[Procedural motions, e.g., requests for extension of time, requests to exceed page limits, and to proceed in forma pauperis, are to be disposed of by the prothonotary’s office after screening by the deputy prothonotary.]**

[Note: Deputy prothonotaries are to be attorneys.

[FN1] For purposes of this section, a “Children’s Fast Track case” is any case involving an order regarding dependency, termination of parental rights, adoptions, custody or paternity. See 42 Pa.C.S. § § 6301 et seq.; 23 Pa.C.S. § §

2511 et seq.; 23 Pa.C.S. § § 2101 et seq.; 23 Pa.C.S. § § 5301 et seq.; 23 Pa.C.S. § § 5102 et seq.]

C. Emergency **[m]Motions.**

- 1. Assignment.** On or before the first Monday in January, the Chief Justice shall publish a calendar of duty assignments for the handling of emergency **[petitions]motions**. Two **[j]Justice**[, **one from the eastern district and one from the western district**] will be assigned by the Chief Justice on a monthly rotating basis to review emergency **[petitions]motions for the Eastern and Western Districts**. Cases filed in the **[m]Middle [d]District** will be assigned alternately between the **[Philadelphia]Eastern** and **[Pittsburgh]Western District** duty **[j]Justice**s.
- 2. Circulation and Disposition.** Any motion assigned to the duty **[j]Justice** may at the discretion of that **[j]Justice** be referred to the full Court for consideration, with or without the entry of an interim order. **[Moreover, emergency applications for stay of execution in death penalty cases may only be denied by a majority vote of the Court.**

Emergency motions may be filed by fax with the prothonotary, who will forward the papers to the duty justice, or a substitute. No other filing by fax will be permitted.]D. **Motions Directed to a Single [j]Justice [motions].** A **[duty j]Justice** may entertain and may grant or deny[*] any request for relief which may[,] under Pa.R.A[pp].P. 123[,] or 3315 properly be sought by motion, except that a single **[j]Justice** may not dismiss or otherwise determine an appeal or other proceeding.

[* See exception under C. Emergency Motions.]

E. **Applications for Stay of Execution in a Capital Case**

- 1. Contents of application.** **The applicant shall set forth the procedural history of the case, certify that the matter involves an emergency, and specify any other applications for stay of execution that have been or will be filed, including those in federal courts. The application shall include any relevant orders and trial court docket entries. Whenever possible, applicants shall give the Prothonotary advance notice of the anticipated filing of an application for a stay of execution.**

- 2. Assignment. The application for stay of execution will be assigned to the duty Justice.**
- 3. Circulation and Disposition. The assigned Justice shall promptly circulate a proposed disposition and the application shall be resolved according to the vote of the majority.**

F. Reconsideration Applications.

- 1. Assignment. The Prothonotary shall direct applications for reconsideration to the Justice who entered the order resolving the application.**
- 2. Circulation and Disposition. The assigned Justice shall circulate to the Court a recommended disposition within fourteen (14) days of the date of the assignment, within seven (7) days of the date of assignment in Children's Fast Track appeals, or as soon as practicable in emergency and stay of execution matters. A Justice who disagrees with the recommended disposition shall circulate a counter-recommendation within fourteen (14) days of the original recommendation, within seven (7) days of the date of the original recommendation in Children's Fast Track appeals, or as soon as practicable in emergency and stay of execution matters. A vote of the majority is required to grant reconsideration. In any case in which reconsideration has been denied, a Justice may request that the order record that he or she voted to grant reconsideration. All orders shall indicate if a Justice did not participate in the consideration or decision of the matter.**

[§ 7. Communications from counsel in pending cases.

Whenever any matter is pending before the Court, all communications to the Court from counsel are to be addressed to the prothonotary's office with copies to all other counsel.

§ 8. Quorum.

A majority of the Court shall be a quorum of the Court.

§ 9. Suspension of procedures.

Whenever exceptional or emergency conditions require speedy action, or whenever there is other good cause for special action regarding any

matter, [FN2] the operation of these procedures may be suspended by affirmative vote of four members of the Court.

The Chief Justice may extend any applicable time limit on written request by a justice stating good cause and the date by which he or she expects to comply.

[FN2] For example, whenever in these rules an action day falls on a holiday, the action shall occur on the next business day after the holiday.]

§ [10]8. Certification of [q]Questions of [l]Law.

A. Court [l]Limitation. This Court will accept Certification Petitions from [any of the following courts:

1. The United States Supreme Court; or
2. United States Courts of Appeal.]the United States Supreme Court or any United States Court of Appeals.

B. Contents of Certification Petition. A court may file a Certification Petition either on the motion of a party or sua sponte. A Certification Petition shall contain the following:

1. A brief statement of the nature and stage of the proceedings in the petitioning court;
2. A brief statement of the material facts of the case;
3. A statement of the question or questions of Pennsylvania law to be determined;
4. A statement of the particular reasons why this Court should accept certification; and
5. A recommendation as to which party should be designated as the appellant and which should be designated as the appellee in subsequent pleadings filed with this Court.

The petitioning court shall attach to the Certification Petition copies of any papers filed by the parties regarding certification, e.g., a Motion for Certification, a response thereto and a Stipulation of Facts.

C. Standards[. Like granting allocatur, acceptance] for Acceptance. Acceptance of certification is a matter of judicial discretion. Th[is]e Court may accept certification of a question of Pennsylvania law only whe[re]n there are special and important reasons therefor, including, but not limited to, any of the following:

1. The question of law is one of first impression and is of such substantial public importance as to require prompt and definitive resolution by this Court;
 2. The question of law is one with respect to which there are conflicting decisions in other courts; or
 3. The question of law concerns an unsettled issue of the constitutionality, construction, or application of a statute of this Commonwealth.
4.]Th[is]e Court shall not accept certification unless all facts material to the question of law to be determined are undisputed, and the question of law is one that the petitioning court has not previously decided.[]
 5.]Th[is]e Court shall decide whether to accept or **[refuse]declin**e certification without hearing oral argument.

[C]D. Assignment, **Circulation** and **[d]D**isposition. The **[p]P**rothonotary shall refer Certification Petitions to the Chief Justice[. **The Chief Justice**], **who** will prepare **[memoranda]a memorandum** setting forth the positions of the parties and a recommended disposition. **[Vote proposals]The recommendation [shall]should** be circulated within thirty **(30)** days from the date of assignment, and **[shall]should** contain a proposed disposition date no greater than thirty **(30)** days from the date of circulation. **Every Certification Petition should be decided within sixty (60) days.** A vote of the majority **[of those participating]** is required to implement the proposed disposition.**[Every Certification Petition shall be decided within sixty days.] A Justice may request that the order record that he or she voted for a different disposition.** Orders disposing of Certification Petitions shall **[include the names of any justices who]indicate if a Justice** did not participate in the consideration or decision of the matter.

Upon acceptance of certification[,] **by** the **[prothonotary]Court, the Prothonotary** shall[:]

[1. Issue](1) issue an order accepting certification, which shall specify the questions of law for which certification was accepted, and whether the case is to be submitted on **the** briefs or **[designated by the Court to be]** heard at **[the]an** argument session; **(2) establish a briefing schedule; (3) list the matter for oral argument if oral argument has been granted; and (4) take such further action as the Court directs.**

2. **Establish a briefing schedule;**
3. **If oral argument is granted, list the matter for oral argument; and**
4. **Take such further action as this Court directs.]**

E. Amicus curiae briefs. After **the Court accepts** certification [**is accepted, an**], amicus curiae briefs may be submitted without prior leave of Court. Such briefs shall be filed and served in the manner and within the time directed by the Prothonotary.

[D]F. Reconsideration[. A vote of the majority is required to grant reconsideration] Applications.

- 1. Assignment.** Upon receipt of an application for reconsideration **following an order resolving a Certification Petition, the Prothonotary shall direct the reconsideration application to the Chief Justice for assignment.**
- 2. Circulation and Disposition.** The assigned Justice shall circulate to the Court a recommended disposition within fourteen (14) days of the date of the assignment. A Justice who disagrees with the recommended disposition shall circulate a counter-recommendation within fourteen (14) days of the original recommendation. A vote of the majority is required to grant reconsideration. In any case in which reconsideration has been denied, a Justice may request that the order record that he or she voted to grant reconsideration. All orders shall indicate if a Justice did not participate in the consideration or decision of the matter.

[RULES REGARDING CERTIFICATION OF QUESTIONS OF PENNSYLVANIA LAW

The Pennsylvania Supreme Court, by Order of Jan. 12, 2000, 30 Pa.B. 519, provided that:

- 1. Any of the following courts may file a Certification Petition with this Court:**
 - a. The United States Supreme Court; orAny United States Court of AppealsA court may file a Certification Petition either on the motion of a party or sua sponte.**
- 3. A Certification Petition shall contain the following:**
 - a. A brief statement of the nature and stage of the proceedings in the petitioning court;**
 - b. A brief statement of the material facts of the case;**
 - c. A statement of the question or questions of Pennsylvania law to be determined;**
 - d. A statement of the particular reasons why this Court should accept certification; and**

- e. **A recommendation about which party should be designated Appellant and which Appellee in subsequent pleadings filed with this Court.**
- f. **The petitioning court shall attach to the Certification Petition copies of any papers filed by the parties regarding certification, e.g., a Motion for Certification, a response thereto, a Stipulation of Facts, etc.]**

§ [11]9. Photographing, Recording and Broadcasting of Supreme Court Proceedings by the Pennsylvania Cable Network (“PCN”).

A. General Provisions

1. The recording by the Pennsylvania Cable Network (“PCN”) of a proceeding before the Supreme Court for future broadcast on PCN is permissible only in accordance with this section.
2. A request to be present to record a scheduled proceeding electronically for future broadcast on PCN must be made at least three business days before the proceeding. Such requests must be submitted to the Executive Administrator of the Supreme Court of Pennsylvania or his or her designee (“Executive Administrator”) for approval by the Chief Justice. The Supreme Court shall maintain discretion to prohibit camera coverage of any proceeding, or any part thereof, due to the nature of the issues or the sensitivity of the subject matter of a proceeding.
3. There shall be no coverage of a proceeding involving any case that has been designated as “sealed.”
4. There shall be no audio pickup or broadcast of conferences between co-counsel or among the Justices.
5. The Supreme Court may limit or terminate coverage, or direct the removal of camera coverage personnel, when necessary to protect the rights of the parties or to assure the orderly conduct of the proceedings.
6. The Supreme Court shall not incur any expense for equipment, wiring or personnel necessary to provide coverage by PCN.
7. Introductory commentary, if any, shall be supplied by members in good standing of the Pennsylvania Bar approved by the Supreme Court.
8. All coverage must be “gavel-to-gavel,” including rebroadcasts, with the exceptions in A. 3.-5.
9. All copyrights to the broadcasts are the possession of the Supreme Court and may not be used without its approval. PCN shall provide the Supreme Court with DVD or videotape recordings of all sessions covered by PCN, whether or not broadcast or aired.
- 10. Broadcasts are not permitted until a minimum of 48 hours after recording.**

B. Equipment and Personnel

1. Only robotic cameras will be permitted in the courtroom. PCN personnel shall consult with the Executive Administrator to determine the location in the courtroom for the camera equipment and operators.
2. Equipment shall not produce distracting sound or light. Signal lights or devices to show when the equipment is operating shall not be visible.
3. Except as otherwise approved by the Executive Administrator, existing courtroom sound and light systems shall be used without modification. Audio pickup for all media purposes shall be accomplished from existing audio systems present in the court facility, or from a camera's built-in microphone. If no technically suitable audio system exists in the court facility, microphones and related wiring essential for media purposes shall be unobtrusive and shall be located in places designated in advance by the Executive Administrator.
4. All equipment must be in place prior to the opening of the court session and shall not be removed until after the conclusion of the day's proceedings. Video recording equipment which is not a component part of a camera shall be located in an area remote from the courtroom. PCN personnel shall not enter or exit the courtroom once the proceedings are in session except during a recess or adjournment. PCN personnel shall wear appropriate attire in the courtroom.
5. PCN personnel shall adhere to the direction of the Executive Administrator in matters such as security, parking, noise avoidance and other related issues.

C. Impermissible Use of Material

None of the film, videotape, video discs, still photographs or audio reproductions developed during or by virtue of coverage of a proceeding shall be admissible as evidence in the proceeding from which it arose, in any proceeding subsequent or collateral thereto, or upon any appeal of such proceedings.

§ 10. Communications to the Court in Pending Cases.

Whenever any matter is pending before the Court, all communications to the Court from counsel or from a party, if unrepresented, are to be addressed to the Prothonotary's office with copies to all other counsel and unrepresented parties.

§ 11. Quorum.

A majority of the Court shall be a quorum of the Court.

§ 12. Suspension of Procedures.

Whenever exceptional or emergency conditions require speedy action, or whenever there is other good cause for special action regarding any matter, the operation of these procedures may be suspended by affirmative vote of a majority of the Court.

The Chief Justice may alter any applicable time limit in extraordinary circumstances (e.g., when the Court lacks a full complement of members), or on written request by a Justice stating good cause for the extension and the date by which he or she expects to comply.