

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

NOTICE OF PROPOSED RULEMAKING

Proposed Amendments to Chapters 13 and 15 and Adoption of New Chapter 16

In 2015, the Appellate Court Procedural Rules Committee published a recommendation in concept to reorganize Chapter 15 and to create a new Chapter 16, with the goal of limiting Chapter 15 to traditional administrative agency appeals, certain other enumerated appeals from similar adjudications or other actions, and original jurisdiction actions against the Commonwealth. After consideration of the comments, the Committee is now publishing for comment a revised proposal designed to achieve the intended reorganization by amending Chapters 13 and 15, adding Chapter 16, and making conforming amendments to rules in other chapters.

The proposed restructuring of Chapter 15 removes the rules that do not apply to appeals of administrative agency action, original jurisdiction actions cognizable in an appellate court in the nature of actions in equity, replevin, mandamus or *quo warranto*, or for declaratory judgment, or upon writs of certiorari or prohibition, and appeals of certain other enumerated adjudications. Actions initiated under Chapter 15 as proposed would retain the existing name “petition for review.”

The Committee is proposing to move three procedures that currently use the term “petition for review” from Chapter 15 to Chapter 13: (1) denials of requests to amend an order to certify it for interlocutory appeal; (2) denials of requests to certify an order as less than all claims or parties as final; and (3) orders finding a claim of double jeopardy frivolous. In purpose, content, and process, these are more similar to petitions for permission to appeal under Pa.R.A.P. 1311 than to direct appeals under Chapter 15. New Chapter 16 would apply to judicial review of all government unit action or inaction not otherwise permitted under Chapters 9, 11, 13 or reorganized Chapter 15, and would include certain existing initiating documents that under present practice are called “petitions for review” under Chapter 15 or another chapter, but that are ancillary and/or preliminary to appellate review, including: (1) review of bail orders under Pa.R.A.P. 1762; (2) review of special prosecution orders under Pa.R.A.P. 3331; and (3) review of out-of-home-placement of minors under Pa.R.A.P. 1770. Actions initiated under Chapter 16 would be called “petitions for specialized review.” The residuary function previously assigned to Chapter 15 (i.e., that actions not initiated under some other chapter of the Rules of Appellate Procedure must fall within Chapter 15) would be assigned to new Chapter 16.

The Committee invites all interested persons to submit comments, suggestions, or objections.

Comments should be provided to:

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All communications in reference to the proposal should be received by **June 20, 2016**. E-mail is the preferred method for submitting comments, suggestions, or objections; any emailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

An Explanatory Comment precedes the proposed amendments and has been inserted by this Committee for the convenience of the bench and bar. It will not constitute part of the rule nor will it be officially adopted or promulgated.

By the Appellate Court Procedural Rules Committee

Honorable Renée Cohn Jubelirer
Chair

Explanatory Comment

There have been a number of documents that have been categorized as “petitions for review” over the years that are currently addressed in Chapter 15 but are neither traditional administrative agency appeals nor original jurisdiction actions against the Commonwealth.

As originally structured, Chapter 15 provided the procedure for obtaining judicial review of action or inaction of a “government unit” not otherwise available through a notice of appeal under Chapter 9, a petition for allowance of appeal under Chapter 11, or a petition for permission to appeal under Chapter 13. Since 1976 when Chapter 15 was adopted, most of the appellate court filings that utilize Chapter 15 have been, as intended, either traditional administrative agency appeals or original jurisdiction actions when an appellate court has jurisdiction.

The definition of “government unit” is broad enough, however, to encompass “courts.” Thus, under the current practice addressed by the proposed amendments, a Chapter 15 “petition for review” is the means by which a variety of other types of orders can be appealed. These other types of petitions for review involve discretionary review and the expedited review of certain court orders.

Petitions for review under Pa.R.A.P. 341(c), 1311(Note), and 1573 seek discretionary review and present only the question of whether to permit an appeal from an interlocutory order that is not appealable as of right. Thus, they are more procedurally similar to a petition for permission to appeal than an appeal. For that reason, the Committee proposes amending Chapter 13 to include each of these three.

Other petitions for review involve appellate review using specialized procedures, such as review of bail orders under Pa.R.A.P. 1762, review of special prosecution orders under Pa.R.A.P. 3331, and review of out-of-home-placement of minors under Pa.R.A.P. 1770. The Committee is proposing to place these requests for review in Chapter 16.

As a result of these changes, Chapter 15 will be limited. Chapter 15 will apply only to administrative agency appeals, certain other enumerated appeals, and original jurisdiction actions when an appellate court has jurisdiction. Judicial review of all other action or inaction of a “government unit” not otherwise available through Chapters 9, 11, 13 or reorganized Chapter 15, will now be in Chapter 16. Thus, the petition for specialized review becomes the mechanism for appealing orders that are not appealable under Chapters 9, 11, 13, or 15.

As a general principle, the proposed amendments to Chapters 13 and 15 and the adoption of new Chapter 16 do not alter existing procedures, but make those

procedures easier to find. There are, however, a few clarifications that the Committee is incorporating into the proposed rules. The most significant of these clarifications is adoption of a single standard of review for granting discretionary review of an interlocutory order. Under existing practice, the standard of review for a Pa.R.A.P. 341(c) petition for review is “abuse of discretion,” but the description of a Pa.R.A.P. 1311(Note) petition for review refers to “so egregious as to justify prerogative appellate correction.” The Committee proposes that “abuse of discretion” be the appropriate standard for both.