

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

**NOTICE OF PROPOSED RULEMAKING**

**Proposed Adoption of Pa.R.A.P.s 130, 131, 132, 133, 134, 135, 136 and  
Proposed Amendment of Pa.R.A.P.s 121, 122, 124, 125, 1921, 1931, 2173, 2174**

The Appellate Court Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the adoption of Pa.R.A.P.s 130, 131, 132, 133, 134, 135, 136 and the amendment of Pa.R.A.P.s 121, 122, 124, 125, 1921, 1931, 2173, 2174 governing electronic filing in the appellate courts. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any reports, notes, or comments in the proposal have been inserted by the Committee for the convenience of those using the rules. They will neither constitute a part of the rules nor will be officially adopted by the Supreme Court.

Additions to the text of the proposal are bolded and underlined; deletions to the text are bolded and bracketed.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

**Karla M. Shultz, Counsel  
Appellate Court Procedural Rules Committee  
Supreme Court of Pennsylvania  
Pennsylvania Judicial Center  
PO Box 62635  
Harrisburg, PA 17106-2635  
FAX: 717-231-9526  
[appellaterules@pacourts.us](mailto:appellaterules@pacourts.us)**

All communications in reference to the proposal should be received by **April 26, 2019**. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

By the Appellate Court Procedural Rules Committee,

Patricia A. McCullough  
Chair

## Explanatory Comment

In 2012, the Supreme Court of Pennsylvania adopted Pa.R.A.P. 125 as an interim rule authorizing electronic filing of documents through the Pennsylvania Appellate Courts electronic filing system (PACFile). The administrative order accompanying the adoption of Pa.R.A.P. 125 has governed the procedures for electronic filing in lieu of procedural rules in order to develop the system and gain experience with electronic filing in the appellate courts. Initially permitting the electronic filing of documents in the Supreme Court, the Commonwealth Court began accepting electronically filed documents in 2014, with the Superior Court following in 2015. An additional order prescribing procedures for the transmission of the record electronically was also adopted in 2015. With extensive experience now gained, the Appellate Court Procedural Rules Committee is proposing the adoption of Pa.R.A.P.s 130 through 136 and the amendment of Pa.R.A.P.s 121, 122, 124, 125, 1921, 2173, and 2174 to govern electronic filing in the appellate courts.

To accommodate PACFile, the Committee first proposes amendment of current Rules of Appellate Procedure governing the filing and service of paper documents. Pa.R.A.P.s 121 (filing and service) and 122 (content and form of proof of service) would be amended to limit the application of those procedures to paper documents only. Pa.R.A.P. 124 (form of papers) would also be amended to provide uniform requirements for documents filed with the appellate courts, regardless of whether a document is filed as a paper document or an electronic document.

Pa.R.A.P. 125 is proposed to be amended to set forth in separate paragraphs that PACFile is the exclusive electronic filing system and to reference the rules governing the electronic filing of documents. Paragraph (c) would be added to mandate the use of PACFile by attorneys at a date certain, which would result in the discontinuation of paper filing pursuant to Pa.R.A.P. 121 with the exception of attorneys for good cause and *pro se* litigants. The effective date for mandatory participation is anticipated to be no less than twelve months after the adoption of the other proposed amendments. The Committee solicits feedback on the proposed twelve-month period until participation is mandated.

Concerning the use of PACFile, this proposal is intended to codify current practice. New Pa.R.A.P.s 130 through 136 address several aspects of the PACFile system: participation by attorneys and those parties without counsel, form and handling of documents, enumeration of the responsibilities of the prothonotary's office and the parties, and electronic service by PACFile. Of particular note, Pa.R.A.P. 130(d) would provide *amicus curiae* access through PACFile to all documents and filings in a case.

The proposed recommendation also addresses transmission of the electronic record on appeal, which the Supreme Court previously implemented pursuant to an administrative order dated November 13, 2015. To codify the provisions of that order,

Pa.R.A.P. 1921 (composition of record on appeal) would be amended to specify that any documents electronically filed or transmitted through PACFile shall constitute the original documents and exhibits. New paragraph (g) in Pa.R.A.P. 1931 (transmission of the record) would authorize the electronic filing, transmission, and remand of records through PACFile. Further, that amendment would require the notation of the date of electronic filing, transmission, or remand of a record through PACFile, clarify which court has possession of the record under the rules, specify the restrictions on transmitting sealed documents that are part of the record, and continue to prohibit the electronic filing or transmission of any documents through PACFile that have been filed *in camera*.

Proposed amendments to Pa.R.A.P. 2173 (numbering of pages) and Pa.R.A.P. 2174 (tables of contents and citations) would be made to accommodate electronic filing.

**Rule 121. Filing and Service of Paper Documents.**

(a) *Filing of paper documents*.—**[Papers] Paper documents** required or permitted to be filed in an appellate court shall be filed with the prothonotary. Filing **of paper documents** may be accomplished by mail addressed to the prothonotary, but except as otherwise provided by these rules, filing shall not be timely unless the **[papers] paper documents** are received by the prothonotary within the time fixed for filing. If an application under these rules requests relief **[which] that** may be granted by a single judge, a judge in extraordinary circumstances may permit the application and any related **[papers] paper documents** to be filed with that judge. In that event the judge shall note thereon the date of filing and shall thereafter transmit such **[papers] paper documents** to the clerk.

A **[pro se filing] pro se paper document** submitted by a prisoner incarcerated in a correctional facility is deemed filed as of the date it is delivered to the prison authorities for purposes of mailing or placed in the institutional mailbox, as evidenced by a properly executed prisoner cash slip or other reasonably verifiable evidence of the date that the prisoner deposited the **[pro se] pro se** filing with the prison authorities.

(b) *Service of [all papers required] paper documents*.—Copies of all **[papers] paper documents** filed by any party and not required by these rules to be served by the prothonotary shall, concurrently with their filing, be served by a party or person acting on behalf of that party or person on all other parties to the matter. Service on a party represented by counsel shall be made on counsel.

(c)(1) *Manner of service*.—Service **of paper documents** may be **by the following**:

**[(1) by](i)** personal service, which includes delivery of the copy to a clerk or other responsible person at the office of the person served, but does not include inter-office mail;

**[(2) by](ii)** first class, express, or priority United States Postal Service mail;

**[(3) by](iii)** commercial carrier with delivery intended to be at least as expeditious as first class mail if the carrier can verify the date of delivery to it; **and**

**[(4) by](iv)** facsimile or e-mail with the agreement of the party being served as stated in the certificate of service.

Service by mail is complete on mailing.

**[(d)](2)** *Proof of service.*—**[Papers] Paper documents** presented for filing shall contain an acknowledgement of service by the person served, or proof of service certified by the person who made service. Acknowledgement or proof of service may appear on or be affixed to the **[papers] paper documents** filed. The clerk may permit **[papers] paper documents** to be filed without acknowledgement or proof of service but shall require such to be filed promptly thereafter.

**[(e)](d)** *Additional time after service of paper documents by [mail and commercial carrier] all forms of service other than personal service.*—Whenever a party is required or permitted to do an act within a prescribed period after service of a **[paper] document** upon that party (other than an order of a court or other government unit) and the **[paper] document** is served by **[United States mail or by commercial carrier] any form of service set forth in paragraph (c)(1)(ii)-(iv) of this rule**, three days shall be added to the prescribed period.

**Official Note:**

**[Subdivision] Paragraph (a)**—The term “related **[papers] paper documents**” in **[subdivision] paragraph (a)** of this rule includes any appeal **[papers] documents** required under **[Rule] Pa.R.A.P. 1702** (stay ancillary to appeal) as a prerequisite to an application for a stay or similar relief.

In 2008, the term “paperbooks” was replaced with “briefs and reproduced records” throughout these rules. The reference to the deemed filing date for paperbooks when first class mail was used that was formerly found in **[subdivision] paragraph (a)** is now found in **[Rule] Pa.R.A.P. 2185** regarding filing briefs and in **[Rule] Pa.R.A.P. 2186** regarding filing reproduced records.

As to **[pro se] pro se** filings by persons incarcerated in correctional facilities, see *Commonwealth v. Jones*, **[549 Pa. 58, ] 700 A.2d 423 (Pa. 1997)**; *Smith v. Pa. Bd. of Prob. & Parole*, **[546 Pa. 115, ] 683 A.2d 278 (Pa. 1996)**; *Commonwealth v. Johnson*, 860 A.2d 146 (Pa. Super. 2004).

**[Subdivision] Paragraph (c)(1)**—An acknowledgement of service may be executed by an individual other than the person served, **[e.g.] for example**, by a clerk or other responsible person.

**[Subdivision (d)] Paragraph (c)(2)**—With respect to appearances by new counsel following the initial docketing of appearances pursuant to **[subdivision (d)] subparagraph (c)(2)** of this rule, please note the requirements of Rule 120 (entry of appearance).

**[Subdivision (e)] Paragraph (d)**—**[Subdivision (e)] Paragraph (d)** of the rule does not apply to the filing of a notice of appeal, a petition for allowance of appeal, a petition for permission to appeal, or a petition for reconsideration or re-argument, since under these rules the time for filing such **[papers] documents** runs from the entry and service of the related order, nor to the filing of a petition for review, which is governed by similar considerations. However, these rules permit the filing of such notice and petitions (except a petition for reconsideration or re-argument) in the local county (generally in the county court house; otherwise in a post office), thus eliminating a major problem under the prior practice. The amendments to **[Rules] Pa.R.A.P.s** 903(b), 1113(b) and 1512(a)(2) clarified that **[subdivision (e)] paragraph (d)** does apply to calculating the deadline for filing cross-appeals, cross-petitions for allowance of appeal, and additional petitions for review.

**For the procedure for electronic filing and service, see Pa.R.A.P.s 125 and 130 through 136.**

**Rule 122. Content and Form of Proof of Service of Paper Documents Filed in an Appellate Court.**

(a) *Content.*—A proof of service shall contain a statement of the date and manner of service and of the names of the persons served.

(b) *Form.*—Each name and address shall be separately set forth in the form of a mailing address, including applicable zip code, regardless of the actual method of service employed. The proof of service shall also show the telephone number, the party represented, and, where applicable, an e-mail or facsimile address. The name, address, and telephone number of the serving party shall be similarly set forth, followed by the attorney's registration number. A proof of service may be in substantially the following form:

I hereby certify that I am this day serving the foregoing document upon the persons and in the manner indicated below, which service satisfies the requirements of Pa.R.A.P. 121:

Service by first class mail addressed as follows:

Name, Telephone number

Mailing address

(Party represented)

Acceptance of service endorsed by the following:

Name, Telephone number

Mailing address

(Party represented)

Service in person as follows:

Name, Telephone number

Street address

Mailing address (if different)

(Party represented)

Service by commercial carrier as follows:

Name of commercial carrier

Addressee's name, Telephone number

Street address

Mailing address (if different)

(Party represented)

Service by e-mail at following:  
E-mail address, with agreement of:  
Name, Telephone number  
Mailing address  
(Party represented)

Service by facsimile at following:  
Fax number with the agreement of:  
Name, Telephone number  
Mailing address  
(Party represented)

Date:

(S) \_\_\_\_\_  
Name, Telephone number  
(Attorney Registration No. 00000)  
Mailing address  
(Party represented)

**Official Note:**

Under 18 Pa.C.S. § 4904 (unsworn falsification to authorities) a knowingly false proof of service constitutes a misdemeanor of the second degree.

**Rule 124. Form of [Papers] Documents; Number of Copies.**

(a) *Size and other physical characteristics.*—All [papers] documents filed in an appellate court shall be on 8 1/2 inch by 11 inch [paper] pages and shall comply with the following requirements:

(1) The [papers] documents shall be prepared on white [paper (except for covers, dividers and similar sheets) of good quality] background.

(2) The first [sheet] page (except the cover of a brief or reproduced record) shall contain a 3 inch space from the top of the [paper] document for all court stampings, filing notices, etc.

(3) Text must be double spaced, but quotations more than two lines long may be indented and single spaced. Footnotes may be single spaced. Except as provided in [subdivision] subparagraph (2), margins must be at least one inch on all four sides.

(4) Lettering shall be clear and legible and no smaller than 14 point in the text and 12 point in footnotes. Lettering shall be on only one side of a page, except that exhibits and similar supporting documents, briefs, and reproduced records may be lettered on both sides of a page.

(5) Any metal fasteners or staples must be covered. Originals must be unbound. Copies must be firmly bound.

(6) No backers shall be necessary.

(b) *Nonconforming [papers] documents.*—The prothonotary of an appellate court may accept any nonconforming [papers] documents.

(c) *Copies.*—Except as otherwise prescribed by these rules,[:

(1) **An original of an application for continuance or advancement of a matter shall be filed.**

(2) **An original and three copies of any other application in the appellate courts shall be filed, but the court may require additional copies.]**

**the number of copies of an application required to be filed may be found at each appellate court's respective web page at [www.pacourts.us](http://www.pacourts.us).**

**Official Note:**

The 2013 amendment increased the minimum text font size from 12 point to 14 point and added a minimum footnote font size of 12 point. This rule requires a clear and legible font. The Supreme, Superior, and Commonwealth Courts use Arial, Verdana, and Times New Roman, respectively, for their opinions. A brief using **[one] the respective court's font is preferred, but a brief using any** of these fonts will be satisfactory.

## Rule 125. Electronic Filing.

**(a) PACFile exclusivity.**—Electronic filing of documents in the appellate courts shall be through the PACFile appellate court electronic filing system **(PACFile)**.

**(b) PACFile rules.**—Electronic filing of documents shall be governed by [Administrative Orders of the Supreme Court of Pennsylvania, which may be found at <http://ujportal.pacourts.us/refdocuments/judicialorder.pdf>] **Pa.R.A.P.s 130—136.**

**(c) PACFile participation.**

**(1) General rule.**—Effective \_\_\_\_\_, \_\_\_\_\_, attorneys shall file and serve **all documents required or permitted to be filed in an appellate court, except appeals pursuant to the Abortion Control Act under Pa.R.A.P. 3801—3814 or the Wiretap Act under 210 Pa. Code §§ 65.51—65.78, through the PACFile appellate court electronic filing system in accordance with Pa.R.A.P.s 130 through 136. Anyone proceeding without counsel may, but is not required to, file and serve all documents required or permitted to be filed in an appellate court through PACFile in accordance with Pa.R.A.P.s 125 and 130—136.**

**(2) Exemption.**—Upon application and a showing of good cause, an appellate court may exempt an attorney from the provisions of Pa.R.A.P.s 130 —136 and authorize the filing of paper documents.

### Official Note:

[This is an interim rule permitting electronic filing of documents in the Pennsylvania appellate courts. Initially, electronic filing will be available only in the Supreme Court. Subsequently, electronic filing will become available in the Superior and Commonwealth Courts. After experience is gained with electronic filing, the Pennsylvania Rules of Appellate Procedure will be amended where needed and as appropriate.]

**PACFile participation for attorneys prior to the effective date set forth in paragraph (c)(2) is optional.**

(This is an entirely new rule.)

## ELECTRONIC FILING OF DOCUMENTS IN THE APPELLATE COURTS

### Rule 130. Electronic Filing System Participation, Use, Access, and Fees.

(a) *Participation by attorneys.*—In order to use the PACFile appellate court electronic filing system (PACFile), an attorney must establish an account on the UJS web portal: <http://ujportal.pacourts.us>. An attorney is responsible for the actions of other individuals whom the attorney authorizes to use the attorney's account.

(b) *Participation by those without counsel.*—PACFile will permit parties who are proceeding without counsel, *amicus curiae* proceeding without counsel, and prospective intervening parties who are proceeding without counsel to access their cases through an authorization process on the UJS web portal: <http://ujportal.pacourts.us>.

(c) *Use.*—Use of PACFile shall constitute the filer's certification of the following:

(1) That the submission is authorized;

(2) That the filer will accept electronic notice and service of other documents through PACFile; and

(3) That the filer will accept e-mail service of advance text of briefs under Pa.R.A.P.s 2185(a) and (c), and 2187(b) if the record is being reproduced under Pa.R.A.P. 2154(b) (large records).

(d) *Access.*—Subject to the limits stated in paragraph (d)(4):

(1) Attorneys registered with PACFile shall have access to all documents and filings in any case in which they have entered an appearance on behalf of a party or *amicus curiae*.

(2) Parties proceeding without counsel who have been authorized to access their case through PACFile shall have access to all documents and filings in the case.

(3) *Amicus curiae* proceeding without counsel who have been authorized to access a case through PACFile shall have access to all documents and filings in the case.

(4) Any prospective party, with or without counsel, who has not been granted party status shall have access only to documents and filings related to the application to intervene.

(5) The access to documents and filings provided for in this paragraph does not include access to documents submitted to a court *in camera*, and may not include access to confidential information and documents.

(e) *Fees.*—Applicable filing fees shall be paid electronically through procedures established by the appellate courts and the Administrative Office of Pennsylvania Courts, and at the same time and in the same amount as required by statute, court rule or order. In addition to the filing fees now applicable, a fee for use of PACFile shall be imposed. See 204 Pa. Code § 207.3.

(This is an entirely new rule.)

**Rule 131. Format and Content of Electronically Filed Documents.**

(a) *General rule.*—The use of PACFile shall not affect the form or content of documents to be filed in the appellate courts. The applicable general rules of court and court policies that implement the rules shall continue to apply to all documents.

(b) *Format of electronically filed documents.*—Documents shall be presented for electronic filing in Portable Document Format (“.pdf”). When possible, documents should be electronically converted to .pdf.

(c) *Signatures.*—Signatures on electronically filed documents shall use the following form: /s/ *Chris L. Smith*.

**Official Note:**

Paragraph (b) expresses a preference that documents presented for electronic filing be electronically converted to .pdf rather than scanned to .pdf, when possible. There are two ways to create a .pdf: one is to scan a paper document on a commercial copier or stand-alone scanner; the other is to convert the document to .pdf electronically with the word processing program itself, or using .pdf conversion software.

(This is an entirely new rule.)

**Rule 132. Electronic Filing and Service of Documents.**

(a) *Electronic filing of documents.*

(1) Electronically filed documents shall be submitted through PACFile on the UJS web portal: <http://ujportal.pacourts.us>.

(2) Electronically filed documents may be submitted at any time, except when the UJS web portal is down for periodic maintenance. The submission of the electronically filed document must be completed by 11:59:59 p.m. EST/EDT to be considered filed that day, unless the appellate court has otherwise directed that a document be filed by a specific time.

(b) *Service.*

(1) Service of electronically filed documents on attorneys who have established a UJS web portal account and on parties proceeding without counsel who have been authorized to access their cases through PACFile will be made automatically by PACFile. Service by PACFile shall be the official service copy.

(2) Service of electronically filed documents on any attorney who has not established a UJS web portal account and on parties proceeding without counsel who have not been authorized to access their cases through PACFile shall be made by the service methods permitted under Pa.R.A.P. 121(c).

(3) Original process shall be served in accordance with the general rules that authorize such service in a matter commenced in an appellate court.

(c) *Proof of service.*

(1) A proof of service for an electronically filed document will be generated automatically by PACFile, and will be served automatically by PACFile on attorneys who have established a UJS web portal account and on parties proceeding without counsel who have been authorized to access their cases through PACFile.

(2) A proof of service for an electronically filed document that is generated automatically by PACFile shall be served by the methods required under Pa.R.A.P. 121(c)(1) on any attorney who has not established a UJS web portal account and on any party proceeding without counsel who has not been authorized to access their case through PACFile.

(d) *Additional time after service of electronic filing.*—A party who is electronically served as a result of the submission of an electronically filed document and who is required or permitted to act within a prescribed period after service shall have three days added to the prescribed period to the same extent as a party who is required or permitted to do an act within a prescribed period after service of a paper document upon that party.

**Official note:**

Subparagraph (b)(3) is intended to prevent the possibility of default judgments due to a lack of monitoring of a PACFile account. Examples of methods of service otherwise specified include Pa.R.A.P. 1514(c) concerning service of petitions for review.

(This is an entirely new rule.)

**Rule 133. Filing, Receipt, Docketing, and Rejection of Electronically Filed Documents.**

(a) *Filing*.—The time and date on which an electronically filed document is filed in PACFile shall be automatically recorded by the system. The system shall provide an electronic acknowledgement of filing to the filer.

(b) *Provisional receipt*.—If an electronically filed document has a deficiency that is correctible, the system shall provide an automatically generated notice of provisional receipt, which shall instruct the filer to refile a corrected document within a specified time. If the filer refiles a corrected document within such time, the corrected document shall be treated as if originally filed on the date and time at which the provisionally accepted document was originally submitted to PACFile.

(c) *Receipt*.—The time and date on which an electronically filed document is received by the prothonotary shall be automatically recorded by PACFile, and the electronically filed document shall be given an electronic time-stamp showing the date and time of filing and the date and time of receipt.

(1) The system shall provide an electronic acknowledgement of the acceptance of the electronically filed document to the following:

(i) the filer;

(ii) other parties to the case, *amicus curiae*, and intervening parties with attorneys who have established a UJS web portal account; and

(iii) other parties to the case, *amicus curiae*, and intervening parties proceeding without counsel who have been authorized to access their cases through PACFile.

(2) The electronic acknowledgement of the acceptance of the electronically filed document shall specify the number of paper versions of the electronically filed document required for filing to the appellate court pursuant to Pa.R.A.P. 134.

(d) *Rejection*.—If an electronically filed document is rejected by the prothonotary, the system shall provide an electronic notice of rejection to the filer specifying the reason for the rejection. A filer who files an electronically filed document that is rejected may seek appropriate relief.

**Official note:**

See Pa.R.A.P. 123 for the procedure to file an application for relief for a document rejected by PACFile pursuant to this rule. Practitioners may also contact PACFile Support through the UJS Portal Help Center at <https://ujportal.pacourts.us/PortalSelfHelp.aspx> for help to correct the filing of a rejected document.

(This is an entirely new rule.)

**Rule 134. Required Submission of Paper Version of Electronically Filed Document.**

Within seven days of the submission of any electronically filed document, the filer shall submit to the appellate court a paper version of the electronically filed document with as many copies as the court requires. The paper version of the electronically filed document shall be considered the original for archival purposes only.

(This is an entirely new rule.)

**Rule 135. Retention of Electronically Filed Documents by the Filer.**

The original of a sworn or verified document requiring an original signature that is in an electronically filed document (for example, an affidavit) or is contained within an electronically filed document (for example, a verification) shall be maintained by the filer until two years after the entry of a final order, and shall be made available upon direction of the appellate court or reasonable request of the signatory or opposing party.

(This is an entirely new rule.)

**Rule 136. Electronic Court Notices.**

The date of any notice generated by PACFile shall be noted on the docket of the court.

## **Rule 1921. Composition of Record on Appeal.**

The original **[papers] documents** and exhibits filed in the lower court, paper copies of **[legal papers] documents** filed with the prothonotary by means of electronic filing, the transcript of proceedings, if any, and a certified copy of the docket entries prepared by the clerk of the lower court shall constitute the record on appeal in all cases. **In any appeal in which the record is electronically filed or transmitted through PACFile, the documents and filings electronically filed or transmitted thereby shall constitute original documents and exhibits.**

### **Official Note:**

An appellate court may consider only the facts which have been duly certified in the record on appeal. *Commonwealth v. Young*, [456 Pa. 102, 115,] 317 A.2d 258, 264 (Pa. 1974). All involved in the appellate process have a duty to take steps necessary to assure that the appellate court has a complete record on appeal, so that the appellate court has the materials necessary to review the issues raised on appeal. Ultimate responsibility for a complete record rests with the party raising an issue that requires appellate court access to record materials. See, e.g., *Commonwealth v. Williams*, [552 Pa. 451, 460,] 715 A.2d 1101, 1106 (Pa. 1998) (addressing obligation of appellant to purchase transcript and ensure its transmission to the appellate court). [Rule] Pa.R.A.P. 1931(c) and (f) afford a “safe harbor” from waiver of issues based on an incomplete record. Parties may rely on the list of documents transmitted to the appellate court and served on the parties. If the list shows that the record transmitted is incomplete, the parties have an obligation to supplement the record pursuant to [Rule] Pa.R.A.P. 1926 (correction or modification of the record) or other mechanisms in Chapter 19. If the list shows that the record transmitted is complete, but it is not, the omission shall not be a basis for the appellate court to find waiver. This principle is consistent with the Supreme Court’s determination in *Commonwealth v. Brown*, [\_\_\_ Pa. \_\_\_,] 52 A.3d 1139, 1145 n.4 (Pa. 2012) that where the accuracy of a pertinent document is undisputed, the Court could consider that document if it was in the Reproduced Record, even though it was not in the record that had been transmitted to the Court. Further, if the appellate court determines that something in the original record or otherwise presented to the trial court is necessary to decide the case and is not included in the certified record, the appellate court may, upon notice to the parties, request it from the trial court *sua sponte* and supplement the certified record following receipt of the missing item. [See Rule] See Pa.R.A.P. 1926 (correction or modification of the record).

## **Rule 1931. Transmission of the Record.**

### *(a) Time for transmission.*

(1) *General rule.*—Except as otherwise prescribed by this rule, the record on appeal, including the transcript and exhibits necessary for the determination of the appeal, shall be transmitted to the appellate court within 60 days after the filing of the notice of appeal. If an appeal has been allowed or if permission to appeal has been granted, the record shall be transmitted as provided by Pa.R.A.P. 1122 (allowance of appeal and transmission of record) or by Pa.R.A.P. 1322 (permission to appeal and transmission of record), as the case may be. The appellate court may shorten or extend the time prescribed by this paragraph for a class or classes of cases.

(2) *Children’s fast track appeals.*—In a children’s fast track appeal, the record on appeal, including the transcript and exhibits necessary for the determination of the appeal, shall be transmitted to the appellate court within 30 days after the filing of the notice of appeal. If an appeal has been allowed or if permission to appeal has been granted, the record shall be transmitted as provided by Pa.R.A.P. 1122 (allowance of appeal and transmission of record) or by Pa.R.A.P. 1322 (permission to appeal and transmission of record), as the case may be.

(b) *Duty of lower court.*—After a notice of appeal has been filed the judge who entered the order appealed from shall comply with Pa.R.A.P. 1925 (opinion in support of order), shall cause the official court reporter to comply with Pa.R.A.P. 1922 (transcription of notes of testimony) or shall otherwise settle a statement of the evidence or proceedings as prescribed by this chapter, and shall take any other action necessary to enable the clerk to assemble and transmit the record as prescribed by this rule.

(c) *Duty of clerk to transmit the record.*—When the record is complete for purposes of the appeal, the clerk of the lower court shall transmit it to the prothonotary of the appellate court. The clerk of the lower court shall number the documents comprising the record and shall transmit with the record a list of the documents correspondingly numbered and identified with sufficient specificity to allow the parties on appeal to identify each document and whether it is marked as confidential, so as to determine whether the record on appeal is complete. Any Confidential Information Forms and the “Unredacted Version” of any pleadings, documents, or other legal papers where a “Redacted Version” was also filed shall be separated either physically or electronically and transmitted to the appellate court. Whatever is confidential shall be labeled as such. If any case records or documents were sealed in the lower court, the list of documents comprising the record shall specifically identify such records or documents as having been sealed in the lower court. Documents of unusual bulk or weight and physical exhibits other than documents

shall not be transmitted by the clerk unless he or she is directed to do so by a party or by the prothonotary of the appellate court. A party must make advance arrangements with the clerk for the transportation and receipt of exhibits of unusual bulk or weight. Transmission of the record is effected when the clerk of the lower court mails or otherwise forwards the record to the prothonotary of the appellate court. The clerk of the lower court shall indicate, by endorsement on the face of the record or otherwise, the date upon which the record is transmitted to the appellate court.

(d) *Service of the list of record documents.*—The clerk of the lower court shall, at the time of the transmittal of the record to the appellate court, mail a copy of the list of record documents to all counsel of record, or if unrepresented by counsel, to the parties at the address they have provided to the clerk. The clerk shall note on the docket the giving of such notice.

(e) *Multiple appeals.*—Where more than one appeal is taken from the same order, it shall be sufficient to transmit a single record, without duplication.

(f) *Inconsistency between list of record documents and documents actually transmitted.*—If the clerk of the lower court fails to transmit to the appellate court all of the documents identified in the list of record documents, such failure shall be deemed a breakdown in processes of the court. Any omission shall be corrected promptly pursuant to Pa.R.A.P. 1926 (correction or modification of the record) and shall not be the basis for any penalty against a party.

**(g) *Electronic filing, transmission, and remand of records.*—Records may be electronically filed, transmitted, and remanded through PACFile. The applicable general rules of court and court policies that implement the rules shall continue to apply to the filing, transmission, and remand of records on appeal regardless of whether a record is filed, transmitted, or remanded electronically through PACFile. The electronic filing or transmission of a record through PACFile by a court or other government unit to an appellate court shall not excuse the court or other government unit from submitting a paper version of the electronically filed or transmitted record to the appellate court should the appellate court require it.**

**(1) The electronic filing, transmission, or remand of a record through PACFile by a court or other government unit shall constitute the filing, transmission, or remand of the record under the Pennsylvania Rules of Appellate Procedure.**

**(2) The filing, transmission, or remand of a record through PACFile is effectuated when a court or other government unit utilizes PACFile to electronically file, transmit, or give notice of the remand or remittal of the record to a court or other government unit.**

(3) The date of the electronic filing, transmission, or remand of a record through PACFile by a court or other government unit shall be noted on the docket of the filing, transmitting, or remanding court or other government unit, and on the docket of the receiving court or other government unit.

(4) Upon the electronic filing, transmission, or remand of a record through PACFile, the record shall be considered to be in the possession of the receiving court or other government unit until the record is electronically filed in, or transmitted to, another court or government unit, or notice of remand or remittal to another court or other government unit is given.

(5) If a Rule of Appellate Procedure or court policy requires that a court file, transmit, remand, or remit a record to another court or other government unit, the filing, transmission, or notice of remand or remittal to the receiving court or other government unit may also be effectuated through PACFile.

(6) Any documents or filings sealed in a court or other government unit may be electronically filed, transmitted, or remanded through PACFile only in a manner that restricts access to the sealed documents or filings to the court or other government unit and registered users of PACFile who are authorized to view the sealed documents or filings. Documents filed *in camera* in a court or other government unit may not be electronically filed or transmitted through PACFile.

(7) The appellate courts shall retain control over electronic access to records electronically filed or transmitted through PACFile, and may permit such electronic access in whole or in part.

**Official Note:**

Pa.R.A.P. 1926 (correction or modification of the record) provides the means to resolve any disagreement between the parties as to what should be included in the record on appeal.

### **Rule 2173. Numbering of Pages.**

**[Except as provided in Rule 2174 (tables of contents and citations), the] All pages of briefs, the reproduced record, and any supplemental reproduced record shall be numbered [separately] consecutively, starting with the cover page. The pages shall be numbered in Arabic figures [and not in Roman numerals]: thus 1, 2, 3, etc., followed in the reproduced record by a small a, thus 1a, 2a, 3a, etc., and followed in any supplemental reproduced record by a small b, thus 1b, 2b, 3b, etc. Where the reproduced record is bound in more than one volume, there shall be one continuous paging, regardless of the division into volumes.**

#### **[Official Note:**

**Based on former Supreme Court Rules 37 (part) and 38 (first clause), former Superior Court Rules 29 (part) and 30 (first clause), and former Commonwealth Court Rules 83 (part) and 84, without change in substance.]**

## **Rule 2174. Tables of Contents and Citations.**

(a) *Tables of contents.*—The briefs and the reproduced record shall each contain a full and complete table of contents, set forth **[either on the inside of the front cover or]** on the first and immediately succeeding pages. The table of contents of the reproduced record, in addition to the material otherwise specified in this chapter, shall include a reference to all reproduced exhibits, indicating what each is, and the names of witnesses, indicating where the examination, cross-examination, and re-examination of each begin. Where the reproduced record is bound in more than one volume, there shall be but one table of contents which shall indicate in which volume each particular part of the record will be found. The combined table of contents ordinarily shall be set forth in full at the front of each volume, but where the combined table of contents is itself voluminous, a cross reference at the front of the second and subsequent volumes to the combined table of contents at the front of the first volume may be substituted for the text of the combined table of contents.

(b) *Tables of citations.*—All briefs shall contain a table of citations therein, arranged alphabetically, which shall be set forth immediately following the table of contents.

**[(c) *Paging of introductory tables.*—The pages of the tables specified in this rule need not be numbered, but if numbered shall be numbered in Roman numerals: thus i, ii, iii, etc.**

**Official Note: Based on former Supreme Court Rule 37, former Superior Court Rule 29 and former Commonwealth Court Rule 83. The rule substitutes the term “table of contents” for the incorrect term “index,” authorizes the optional practice of beginning the table of contents on the face-up page (rather than inside the front cover) and authorizes Roman numbering the introductory pages.]**