

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

NOTICE OF PROPOSED RULEMAKING

**Proposed Amendment of Pa.R.A.P. 124, 905, 909,
1111, 1301, 1732, 2187, 2189, and 2541**

The Appellate Court Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Pa.R.A.P. 124, 905, 909, 1111, 1301, 1732, 2187, 2189, and 2541 for the reasons set forth in the accompanying explanatory report. 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:

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All communications in reference to the proposal should be received by **October 2, 2020**. 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

PUBLICATION REPORT

The Appellate Court Procedural Rules Committee is considering proposing amendments to Pa.R.A.P. 124, 905, 909, 1111, 1301, 1732, 2187, 2189, and 2541 to direct practitioners to each appellate court's web page at www.pacourts.us for the number of copies of a document required for filing with that appellate court.

Currently, the Rules of Appellate Procedure specify the number of copies to be filed for a document. See, e.g., Pa.R.A.P. 124(c)(2) (requiring three copies of an application to be filed). Notwithstanding these specifications, each appellate court has the discretion to determine the number of copies required for filing. See the Official Notes to Pa.R.A.P. 1301, 2187, and 2541, which caution practitioners to consult the prothonotary's office of an appellate court before filing because the required number of copies may change from time to time without amendment of the rules.

Since technical requirements continually change, the Committee is proposing the amendment of Pa.R.A.P. 124(c) to require a party to file the number of copies as specified in (1) the "copy and fee requirements" found on each appellate court's web page, (2) correspondence from the court, or (3) a court order. The Official Note to Pa.R.A.P. 124 would be amended to provide the links to the specific web page for each appellate court's copy and fee requirements.

The proposed amendments of Pa.R.A.P. 905, 909, 1111, 1301, 1732, 2187, 2189, and 2541 delete any references to a specified number of copies to be filed. The Official Note of each rule is proposed to be amended to include a cross reference to Pa.R.A.P. 124(c) and its Official Note. Stylistic revisions to these rules are also proposed.

The Committee intends to consider similar amendments to number of copies requirements in Chapter 16 (Specialized Review) after those rules become effective.

All comments, concerns, and suggestions concerning this proposal are welcome.

Rule 124. Form of [Papers;] Documents. Number of Copies to be Filed.

(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] paragraph (a)(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.]**

Number of copies to be filed.—A party shall file the number of copies as specified in:

(1) the copy and fee requirements set forth on each appellate court's web page;

(2) correspondence from the court; or

(3) a court order.

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.

The number of copies to be filed in the Supreme Court can be found at <http://www.pacourts.us/courts/supreme-court/copy-and-fee-requirements>.

The number of copies to be filed in the Superior Court can be found at <http://www.pacourts.us/courts/superior-court/copy-and-fee-requirements>.

The number of copies to be filed in the Commonwealth Court can be found at <http://www.pacourts.us/courts/commonwealth-court/copy-and-fee-requirements>.

Rule 905. Filing of Notice of Appeal.

(a) *Filing with clerk.*

(1) Two copies of the notice of appeal, the order for transcript, if any, and the proof of service required by Pa.R.A.P. 906, shall be filed with the clerk of the trial court. If the appeal is to the Supreme Court, the jurisdictional statement required by Pa.R.A.P. 909 shall also be filed with the clerk of the trial court.

(2) If the appeal is a children's fast track appeal, a concise statement of errors complained of on appeal as described in Pa.R.A.P. 1925(a)(2) shall be filed with the notice of appeal and served on the trial judge in accordance with Pa.R.A.P. 906(a)(2).

(3) Upon receipt of the notice of appeal, the clerk shall immediately stamp it with the date of receipt, and that date shall constitute the date when the appeal was taken, which date shall be shown on the docket.

(4) If a notice of appeal is mistakenly filed in an appellate court, or is otherwise filed in an incorrect office within the unified judicial system, the clerk shall immediately stamp it with the date of receipt and transmit it to the clerk of the court which entered the order appealed from, and upon payment of an additional filing fee the notice of appeal shall be deemed filed in the trial court on the date originally filed.

(5) A notice of appeal filed after the announcement of a determination but before the entry of an appealable order shall be treated as filed after such entry and on the day thereof.

(b) *Transmission to appellate court.*—The clerk shall immediately transmit to the prothonotary of the appellate court named in the notice of appeal a copy of the notice of appeal and all attachments, as well as a receipt showing collection of any docketing fee in the appellate court required under paragraph (c). If the appeal is a children's fast track appeal, the clerk shall stamp the notice of appeal with a "Children's Fast Track" designation in red ink, advising the appellate court that the appeal is a children's fast track appeal, and the clerk shall also transmit to the prothonotary of the appellate court named in the notice of appeal the concise statement of errors complained of on appeal required by subparagraph (a)(2) of this rule. The clerk shall also transmit with such **[papers]** documents:

[1.](1) copies of all orders for transcripts relating to orders on appeal;

[2.](2) a copy of any verified statement, application, or other document filed under Pa.R.A.P. 551-561 relating to *in forma pauperis*; and

[3.](3) if the appeal is to the Supreme Court, the jurisdictional statement required by Pa.R.A.P. 909.

(c) *Fees.*—The appellant upon filing the notice of appeal shall pay any fees therefor (including docketing fees in the appellate court) prescribed by Chapter 27.

Official Note:

To preserve a mailing date as the filing date for an appeal as of right from an order of the Commonwealth Court, see Pa.R.A.P. 1101(b).

[As to number of copies, see Pa.R.A.P. 124, note] To determine the number of copies to be filed, see Pa.R.A.P. 124(c) and its Official Note. The appellate court portion of the filing fee will be transmitted pursuant to regulations adopted under 42 Pa.C.S. § 3502.

Rule 909. Appeals to the Supreme Court. Jurisdictional Statement. Sanctions. Number of Copies to be Filed.

(a) *General rule.*—Upon filing a notice of appeal to the Supreme Court, the appellant shall file with the prothonotary or clerk of the trial court a jurisdictional statement. The statement shall be in the form prescribed by [Rule] **Pa.R.A.P. 910(a) and (b)**. No statement need be filed in cases arising under Pa.R.A.P. 1941 (Review of Death Sentences).

(b) *Answer.*—Within 14 days after service of a jurisdictional statement, an adverse party may file with the Prothonotary of the Supreme Court **[an original and eight copies of]** an answer thereto in the form prescribed by [Rule] **Pa.R.A.P. 911**. The answer shall be deemed filed on the date of mailing if first class, express, or priority United States Postal Service mail is utilized. No separate motion to dismiss a jurisdictional statement will be received. A party entitled to file an answer who does not intend to do so shall, within the time fixed by these rules for filing an answer, file a letter stating that an answer to the jurisdictional statement will not be filed. The failure to file an answer will not be construed as concurrence in the jurisdictional statement.

(c) *Action by the Supreme Court.*—After consideration of the jurisdictional statement and the brief in opposition thereto, if any, the Court will enter an appropriate order which may include summary dismissal for lack of subject matter jurisdiction. If the Supreme Court in its order notes probable jurisdiction or postpones consideration of jurisdiction to the hearing on the merits, the Prothonotary of the Supreme Court forthwith shall notify the court below and the attorneys of record of the noting or postponement, and the case will then stand for briefing and oral argument. In such case, the parties shall address the question of jurisdiction at the outset of their briefs and oral arguments.

(d) *Sanctions.*—If the court finds that the parties have not complied with **[Rules 909 through 911] Pa.R.A.P. 909-911**, it may impose appropriate sanctions including but not limited to dismissal of the action, imposition of costs or disciplinary sanction upon the attorneys.

(e) Number of copies to be filed.—To determine the number of copies to be filed, see Pa.R.A.P. 124(c) and its Official Note.

Rule 1111. Form of [Papers;] Documents. Number of Copies to be Filed.

All [papers] documents filed under this chapter, other than under [Rule] Pa.R.A.P. 1101 (appeals as of right from the Commonwealth Court), shall be prepared in the manner provided by [Rule] Pa.R.A.P. 2171 (method of reproduction) through [Rule] Pa.R.A.P. 2174 (tables of contents and citations). **[Eight copies shall be filed with the original.] To determine the number of copies to be filed, see Pa.R.A.P. 124(c) and its Official Note.**

Official Note:

This rule does not apply to appeals taken under [Rule] Pa.R.A.P. 1101 (appeals as of right from the Commonwealth Court), since those appeals are taken pursuant to Chapter 9 (appeals from lower courts).

Rule 1301. Form of [Papers;] Documents. Number of Copies to be Filed.

All **[papers] documents** filed under this chapter may be produced on a word processor/computer or typewriter. **[Eight copies shall be filed with the original in the Supreme Court. Six copies shall be filed with the original in the Superior Court. One copy and the original shall be filed in the Commonwealth Court.] To determine the number of copies to be filed, see Pa.R.A.P. 124(c) and its Official Note.**

[Official Note:

Counsel are advised to check with the prothonotary of the appellate court before filing as the number of copies required may change from time to time without formal amendment of these rules.]

Rule 1732. Application for Stay or Injunction Pending Appeal. Number of Copies to be Filed.

(a) *Application to trial court.*—Application for a stay of an order of a trial court pending appeal, or for approval of or modification of the terms of any *supersedeas*, or for an order suspending, modifying, restoring, or granting an injunction during the pendency of an appeal, or for relief in the nature of peremptory mandamus, must ordinarily be made in the first instance to the trial court, except where a prior order under this chapter has been entered in the matter by the appellate court or a judge thereof.

(b) *Contents of application for stay.*—An application for stay of an order of a trial court pending appeal, or for approval of or modification of the terms of any *supersedeas*, or for an order suspending, modifying, restoring, or granting an injunction during the pendency of an appeal, or for relief in the nature of peremptory mandamus, may be made to the appellate court or to a judge thereof, but the application shall show that application to the trial court for the relief sought is not practicable, or that the trial court has denied an application, or has failed to afford the relief which the applicant requested, with the reasons given by the trial court for its action. The application shall also show the reasons for the relief requested and the facts relied upon, and if the facts are subject to dispute the application shall be supported by sworn or verified statements or copies thereof. With the application shall be filed such parts of the record as are relevant. Where practicable, the application should be accompanied by the briefs, if any, used in the trial court. The application shall contain the certificate of compliance required by Pa.R.A.P. 127.

(c) *Number of copies to be filed.*—**[Seven copies of applications under this rule in the Supreme Court or the Superior Court, and three copies of applications under this rule in the Commonwealth Court, shall be filed with the original.] To determine the number of copies to be filed, see Pa.R.A.P. 124(c) and its Official Note.**

Official Note:

See generally Pennsylvania Public Utility Commission v. Process Gas Consumers Group, 467 A.2d 805 (Pa. 1983), for the criteria for the issuance of a stay pending appeal.

Rule 2187. Number of Copies [to be Served and Filed] to be Filed and Served.

[(a) *General rule.*—Unless the appellate court directs otherwise, each party shall file:

- (1) 25 copies of each definitive brief and reproduced record in the Supreme Court;**
- (2) 15 copies of each definitive brief and five copies of each reproduced record in the Commonwealth Court;**
- (3) 7 copies of each definitive brief and reproduced record in the Superior Court.**

Each party shall serve 2 copies of its definitive brief and reproduced record on every other party separately represented.

(b) *Advance text of briefs.*—If the record is being reproduced pursuant to Rule 2154(b) (large records) two copies of each brief without definitive reproduced record pagination shall be served on each party separately represented. Proof of service showing compliance with this rule (but not including the advance text of the brief) shall be filed with the prothonotary of the appellate court.

(c) *In forma pauperis.*—Unless the appellate court directs otherwise, a party who has been permitted to proceed in forma pauperis shall file:

- (i) 15 copies of each definitive brief with the Supreme Court;**
- (ii) 15 copies of each definitive brief with the Commonwealth Court;**
- (iii) 7 copies of each definitive brief with the Superior Court.**

Each party who has been permitted to proceed in forma pauperis shall serve one copy of each definitive brief on every other party separately represented.]

(a) *Filing.*— To determine the number of copies to be filed, see Pa.R.A.P. 124(c) and its Official Note.

(b) *Service.*

(1) *General rule.*—A party shall serve one copy of its definitive brief and reproduced record on every other party separately represented.

(2) *In forma pauperis.*—A party proceeding *in forma pauperis* shall only serve one copy of each definitive brief on every other party separately represented. Pursuant to Pa.R.A.P. 2151(b), a party proceeding *in forma pauperis* is not required to reproduce the record.

(3) *Advance text of briefs.*—If the record is being reproduced pursuant to Pa.R.A.P. 2154(b) (large records) one copy of each brief without definitive reproduced record pagination shall be served on each party separately represented. Proof of service showing compliance with this rule, but not including the advance text of the brief, shall be filed with the prothonotary of the appellate court.

[Explanatory Note]

Official Note:

At the request of the appellate prothonotaries, it will no longer be necessary to file advance copies (**[e.g.] e.g.**, page proof) of the brief when service is made on the opposing party, but the requirement for the filing of a proof of such service is retained.

[Counsel are advised to check with the prothonotary of the appellate court before filing as the number of copies required may change from time to time without formal amendment of these rules.]

Official Note: See Rule] See Pa.R.A.P. 2189 for procedure in cases involving the death penalty.

Rule 2189. Reproduced Record in Cases Involving the Death Penalty.

(a) *Number of copies.*—Any provisions of these rules to the contrary notwithstanding, in all cases involving the death penalty, **[eight copies of]** the entire record shall be reproduced and filed with the prothonotary of the Supreme Court**[, unless the Supreme Court shall by order in a particular case direct filing of a lesser number]**. **To determine the number of copies to be filed, see Pa.R.A.P. 124(c) and its Official Note.**

(b) *Costs of reproduction.*—**[A]The** appellant, or, in cases where **the** appellant has been permitted to proceed in *forma pauperis*, the county where the prosecution was commenced, shall bear the cost of reproduction.

(c) *Prior rules superseded.*—To the extent that this rule conflicts with provisions of **[Rule] Pa.R.A.P.** 2151(a), (b) (relating to necessity of reproduction of records); **[Rule] Pa.R.A.P.** 2152 (relating to content of reproduced records); **[Rule] Pa.R.A.P.** 2154(a) (relating to designation of contents of reproduced records); **and [Rule] Pa.R.A.P.** 2155 (allocating costs of reproduction of records)**]; and Rule 2187(a), (prescribing numbers of copies of reproduced record to be filed)]**, the same are superseded.

Official Note:

The death penalty statute, 42 Pa.C.S. § 9711, provides that the Supreme Court Prothonotary must send a copy of the lower court record to the Governor after the Supreme Court affirms a sentence of death. The statute does not state who is responsible for preparing the copy. This amendment provides for preparation of the Governor's copy of the record before the record is sent to the Supreme Court.

Rule 2541. Form of [Papers;] Documents. Number of Copies to be Filed.

All **[papers] documents** relating to applications for reargument shall be prepared in the manner prescribed by **[Rule] Pa.R.A.P. 2171** (method of reproduction) through **[Rule] Pa.R.A.P. 2174** (table of contents and citations). **[An original and eight copies of each application for reargument shall be filed with the Supreme Court. An original and 23 copies of each application for reargument shall be filed with the Superior Court. An original and 11 copies of each application for reargument shall be filed with Commonwealth Court.] To determine the number of copies to be filed, see Pa.R.A.P. 124(c) and its Official Note.**

Official Note:

This rule and the succeeding rules on reargument practice are patterned after the practice in **[Rules] Pa.R.A.P. 1111 [et seq.] et seq.** (petition for allowance of appeal).

[Counsel are advised to check with the prothonotary of the appellate court before filing as the number of copies required may change from time to time without formal amendment of these rules.]