

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

NOTICE OF PROPOSED RULEMAKING

Proposed Amendments to Pa.R.A.P. 511

The Appellate Court Procedural Rules Committee proposes to amend Pennsylvania Rule of Appellate Procedure 511 to remove references to practices of 15 years ago, update case law citations, make stylistic changes, and add guidance regarding when a cross-petition for allowance of appeal may be appropriate.

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 **September 29, 2017**. 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
Hon. Patricia McCullough
Chair

EXPLANATORY COMMENT

The Committee proposes four changes to Pa.R.A.P. 511, which addresses cross-appeals. These are to delete references to practices of 15 years ago, update case law citations, make stylistic changes, and add guidance regarding when a cross-petition for allowance of appeal may be appropriate.

First, before the 2002 amendment, there were cases holding that some parties could not file cross-appeals. For example, if a co-defendant or intervenor had been aligned with the appellant in the underlying litigation, then that party could not file a cross-appeal even if it was aggrieved by rulings that did not affect the party that had already filed a notice of appeal. When Pa.R.A.P. 903(b) was amended to make a cross-appeal available to any party, the Note to Pa.R.A.P. 511 was also amended. The Committee proposes removing the discussion of that amendment.

Second, as part of the 2002 amendment, the Committee sought to clarify that a party did not need to file a cross-appeal if the ruling in question adversely decided an issue, but did not deprive the party of any relief. Since 2002, the case law has clarified that principle, and the Committee proposes substituting current case law for the law that is presently in the Note.

Third, the Committee proposes to make certain non-substantive conforming amendments to the rule.

Finally, neither the Note to Pa.R.A.P. 511 nor the Note to Pa.R.A.P. 1113 regarding cross-petitions for allowance of appeal offers guidance regarding additional considerations that may influence the decision to file a cross-petition for allowance of appeal. Unlike intermediate appellate courts, the Supreme Court exercises its discretionary review on a question-by-question basis. Thus, the prospect of Supreme Court reversal of an intermediate appellate court's decision on a given question may leave intact another ruling that adversely affects the appellee. For example, a party may have prevailed in the trial court on one theory and prevailed in the intermediate appellate court on another. The Supreme Court's ruling on one theory may leave intact the impact of the other theory. Another scenario would be where an intermediate appellate court did not have reached issues on which the party prevailed in the trial court. Either situation might lead a party to file a cross-petition for allowance of appeal, even if the party was not aggrieved by the trial court ruling. A proposed amendment adds language to alert practitioners to consider various ways in which it might be aggrieved by the intermediate court's ruling and, thus, have cause to file a cross-petition for allowance of appeal.

Rule 511. Cross-Appeals.

The timely filing of an appeal shall extend the time for any other party to cross-appeal as set forth in [Rules]Pa.R.A.P. 903(b)[(cross appeals)], 1113(b)[(cross petitions for allowance of appeal)], and 1512(a)(2)[(cross petitions for review)]. The discontinuance of an appeal by a party shall not affect the right of appeal or cross-appeal of any other party regardless of whether the parties are adverse.

Official Note: [The 2002 amendment clarifies the intent of the former rule that the filing of an appeal extends the time within which any party may cross appeal as set forth in Rules 903(b), 1113(b) and 1512(a)(2) and that a discontinuance of an appeal by a party will not affect the right of any other party to file a timely cross appeal under Rules 903(b), 1113(b) or 1512(a)(2) or to otherwise pursue an appeal or cross appeal already filed at the time of the discontinuance. The discontinuance of the appeal at any time before or after a cross appeal is filed will not affect the right of any party to file or discontinue a cross appeal.]

The 2002 amendment eliminates the requirement that a party be adverse in order to file a cross appeal and supersedes *In Re Petition of the Board of School Directors of the Hampton Township School District*, 688 A.2d 279, (Pa. Cmwlth. 1997), to the extent that decision requires that a party be adverse to the initial appellant in order to file a cross appeal. See Rule 903(b).]

[See also]See also [Rules]Pa.R.A.P. 2113, 2136, and 2185 regarding briefs in cross-appeals and [Rule]Pa.R.A.P. 2322 regarding oral argument in multiple appeals.

[An appellee should not be required to file a cross appeal because the Court below ruled against it on an issue, as long as the judgment granted appellee the relief it sought. See *Ratti v. Wheeling Pittsburgh Steel Corp.*, 758 A.2d 695 (Pa. Super. 2000) and *Hashagen v. Worker's Compensation Appeal Board*, 758 A.2d 276 (Pa. Cmwlth. 2000). To the extent that *Saint Thomas Township Board of Supervisors v. Wycko*, 758 A.2d 755 (Pa. Cmwlth. 2000) is in conflict, it is disapproved.]

An appellate court can sustain a trial court's judgment if the decision was correct, even if the basis for the decision was not; accordingly, an appellee can argue alternative grounds for affirmance and does not need to file a cross-appeal to preserve an issue it wishes to raise. *Lebanon Valley Farmers Bank v. Commonwealth*, 83 A.3d 107, 111-112 (Pa. 2013). That is because "the focus of review is on the judgment or order before the appellate court, rather than any particular reasoning or rationale employed by the lower tribunal." *Ario v. Ingram Micro, Inc.*, 965 A.2d 1194, 1200 (Pa. 2009). A party receiving all of the relief it

sought thus does not need to file a cross-appeal. *Lebanon Valley*, 83 A.3d at 112-113; *Hosp. & Healthsystem Ass'n of Pa. v. Dep't of Pub. Welfare*, 888 A.2d 601, 607 n.11 (Pa. 2005); *Pittsburgh Constr. Co. v. Griffith*, 834 A.2d 572, 589-90 (Pa. Super. 2003). A party's analysis may change in light of the ruling of an intermediate appellate court. See, e.g., *A. Scott Enter., Inc. v. City of Allentown*, 142 A.3d 779, 786 (Pa. 2016). If an intermediate appellate court decision awards different relief than the trial court or other government unit decision, a party may wish to file a cross-petition for allowance of appeal under Pa.R.A.P. 1112. See *Meyer, Darragh, Buckler, Bebenek & Eck, P.L.L.C. v. Law Firm of Malone Middleman, P.C.*, 137 A.3d 1247 (Pa. 2016).