

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

**NOTICE OF PROPOSED RULEMAKING**

**Proposed Reorganization of Chapter 15 and Adoption of New Chapter 16**

The Appellate Court Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the reorganization of Chapter 15 of the Rules of Appellate Procedure and the adoption of a new Chapter 16 of the Rules of Appellate Procedure.

Reorganized Chapter 15 would apply exclusively 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 reorganized Chapter 15 would retain the existing name “petition for review.”

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: requests for review of refusal of interlocutory review under Pa.R.A.P. 341(c) and 1311(Note); review of bail orders under Pa.R.A.P. 1762; review of orders that find a double jeopardy claim to be frivolous under Pa.R.A.P. 1573; 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. Actions initiated under Chapter 16 would be called “petitions for limited 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.

Proposed new material is underlined and in bold-faced type and deleted material is bracketed and in bold-faced type.

The Committee invites all interested persons to submit comments, suggestions, or objections. **At this time, the Committee is soliciting input primarily on the concept of the reorganization of Chapter 15 and the creation of a new Chapter 16, rather than the form or content of individual rules.** If, after the receipt and evaluation of comments received concerning the concept of the reorganization of Chapter 15 and the creation of a new Chapter 16, the Committee determines to move

forward with the proposal, the Committee will republish the proposed amendments to Chapters 15 and new Chapter 16, and will publish for the first time proposed modifications to all of the other Rules in other chapters of the Rules of Appellate Procedure that are affected by the proposed changes to Chapter 15 and the adoption of new Chapter 16. At that time, the Committee will invite comment on the form and content of individual proposed rule changes in Chapters 15, 16, and all of the other affected rules in the Rules of Appellate Procedure.

Comments should be provided to:

**Appellate Court Procedural Rules Committee**  
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All communications in reference to the proposal should be received by **October 30, 2015**. 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

The Committee is proposing to reorganize Chapter 15 of the Rules of Appellate Procedure and to create a new Chapter 16 of the Rules of Appellate Procedure in order to separate out from existing Chapter 15 and move into new Chapter 16 a number of initiating documents presently called “petitions for review” that are neither traditional administrative agency appeals nor original jurisdiction actions against the Commonwealth, but rather are either requests for interlocutory review from lower tribunals or requests for some other type of limited appellate court review in criminal or juvenile matters that are ancillary and/or preliminary to appellate review.

As presently structured, Chapter 15’s purpose is to provide 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 against the Commonwealth, filed either in the Commonwealth Court’s appellate or original jurisdiction. However, because the definition of “government unit” is so broad as to encompass every government actor, including the courts, and because the Chapter 15 “petition for review” is the default initiating document where another initiating document is not already provided in Chapters 9, 11 or 13, Chapter 15 presently applies to a variety of matters in addition to traditional administrative agency appeals and original jurisdiction actions against the Commonwealth. These other types of petitions for review often involve appellate review that is more limited than a traditional appeal. For example, petitions for review under Pa.R.A.P. 341(c), 1311(Note), and 1573 present only the question of whether to permit an appeal from an interlocutory order, and are more procedurally similar to a petition for allowance of appeal than an appeal. Other petitions for review involve appellate review using specialized procedures that depart from standard appeal 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 reorganize Chapter 15 to limit its scope to the review of specifically enumerated government unit action or inaction, with the result that Chapter 15 will apply only to traditional administrative agency appeals, certain other enumerated appeals from adjudications or other actions, and original jurisdiction actions against the Commonwealth. Judicial review of all other action or inaction of a “government unit” not otherwise available through Chapters 9, 11, 13 or reorganized Chapter 15, including requests for interlocutory review under Pa.R.A.P. 341(c) and 1311(Note), review of bail orders under Pa.R.A.P. 1762, review of orders that find a double jeopardy claim to be frivolous under Pa.R.A.P. 1573, 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, will fall under new Chapter 16, and will occur under an initiating document called a “petition for limited review.” This proposal thus moves the “residuary” function presently assigned to Chapter 15 to new Chapter 16.

As a general principle, the proposed reorganization of Chapter 15 and the adoption of new Chapter 16 are not intended to alter existing procedures. In certain instances, however, the Committee is proposing changes to existing procedures. For example, under existing practice, the standard of review for a Pa.R.A.P. 341(c) petition for review is “abuse of discretion,” whereas the standard of review for a Pa.R.A.P. 1311(Note) petition for review is “so egregious as to justify prerogative appellate correction.” In transferring these initiating documents to Chapter 16 as petitions for limited review, the Committee is recommending that the standard of review for both be “abuse of discretion.” Similarly, existing practice under Pa.R.A.P. 341(c) requires that the lower tribunal has only 30 days from the date of entry of its original order to act on an application for a determination of finality, whereas the procedure in Pa.R.A.P. 1311 affords the lower tribunal 30 days from the filing of the application. In transferring these initiating documents to Chapter 16 as petitions for limited review, the Committee is recommending that in both the 341(c) application and the 1311 application, the lower tribunal have 30 days from the date of filing the application to act.

The Committee is aware that adoption of the proposed reorganization of Chapter 15 and the adoption of new Chapter 16 will necessitate a number of conforming changes throughout the Rules of Appellate Procedure, and has noted the particular changes required in other chapters. If, after receiving and evaluating comments to the concept of the proposed reorganization of Chapter 15 and the adoption of new Chapter 16, the Committee determines to move forward with the proposal, the Committee will republish for comment the proposed amendments to Chapters 15 and new Chapter 16, and will publish for comment for the first time, proposed modifications to all of the other rules in other chapters of the Rules of Appellate Procedure that are affected by the proposed changes to Chapter 15 and the adoption of new Chapter 16.

The following discussion of proposed changes in reorganized Chapter 15 and new Chapter 16 highlights proposed changes from existing practice.

## **Reorganized Chapter 15**

### **Pa.R.A.P. 1501 – Scope of Chapter**

1501(a)(1): The reorganization adds appeals from awards of arbitrators who decide disputes between the Commonwealth and its employees. These have always been reviewable under Chapter 15, pursuant to 42 Pa.C.S. § 763 (b), but were mentioned only in the Official Note to the Rule, not the Rule.

1501(a)(2): The reorganization deletes the words “or any other statute providing for judicial review of a determination of a government unit” in order to assure that the only appellate matters reviewable under Chapter 15 are those specified in 1501.

1501(a)(4): Legislative reapportionment appeals, while not traditional administrative agency appeals, follow an appellate process that has more similarities to Chapter 15 petitions for review than to Chapter 16 petitions for limited review; therefore, and for the additional reason discussed below as to 1501(a)(5), the reorganization retains them in Chapter 15.

1501(a)(5): Pursuant to 42 Pa.C.S. § 725 (Direct appeals from constitutional and judicial agencies), the Supreme Court has exclusive jurisdiction of appeals from certain judicial and legislative agencies. Under the current rules and practice, all of the 42 Pa.C.S. § 725 categories except appeals from the Court of Judicial Discipline, which are treated as notices of appeal under Chapter 9, fall under Chapter 15. The reorganization proposes to retain that treatment. Appeals from legislative reapportionment, 42 Pa.C.S. § 725 (1), are addressed in 1501(4) and discussed above. Appeals from orders of the other three judicial agencies (minor judiciary education, law examiners, attorney discipline), though different in some ways from a typical agency appeal, have more similarities to Chapter 15 petitions for review than to Chapter 16 matters that are typically preliminary to or ancillary to an appeal.

1501(a)(6): Similar to the appeals listed in 1501(a)(5), appeals to the Supreme Court from the Court Administrator’s denial of access to judicial financial records, though different in some ways from a typical agency appeal, have more similarities to Chapter 15 petitions for review than to Chapter 16 matters that are typically preliminary to or ancillary to an appeal.

1501(b)(3): The reorganization transfers challenges to denial of the ability to seek interlocutory review under Pa.R.A.P. 341 and 1311 to Chapter 16.

1501(b)(4): This addition highlights that Chapter 15 does not apply to matters addressed in Chapter 16.

Official Note: The proposed Official Note explains the difference between Chapters 15 and 16. The previous Official Note is superseded by the reorganization.

### **Pa.R.A.P. 1502. Exclusive Procedure**

The addition to the first sentence and deletion of the second sentence are intended to conform the rule to the limiting amendments to Pa.R.A.P. 1501.

The previous Official Note is superseded by the reorganization.

### **Pa.R.A.P. 1503. Improvident Appeals or Original Jurisdiction Actions**

The additions and deletions are intended to conform the rule to the limiting amendments to Pa.R.A.P. 1501 and to make the rule more simple and clear.

### **Pa.R.A.P. 1504. Improvident Petition for Review**

The additions and deletions are intended to conform the rule to the limiting amendments to Pa.R.A.P. 1501 and to make the rule more simple and clear.

### **Pa.R.A.P. 1512. Time for Petitioning for Review**

1512(a)(2): The word “cross” was added to clarify that, as discussed in the Official Note to the Rule, the document that is referred to in this subsection is in fact a “cross petition for review” similar in kind to a “cross notice of appeal.”

1512(a)(2) and (3): The deletion of subparagraphs (3) and (5) conform to the transfer of those matters to Chapter 16.

### **Pa.R.A.P. 1513. Petition for Review**

The last sentence of Paragraph (c) is deleted to conform to the transfer of those matters to Chapter 16.

The Official Note is restructured to follow the order of the Rule.

### **Pa.R.A.P. 1514. Filing and Service of Petition for Review**

Paragraph (c) is amended to require service on the Attorney General of all petitions for review. The current rule only requires service on the Attorney General “in matters involving the Commonwealth.” However, in Chapter 15 as reorganized, the Commonwealth will be involved in every petition for review.

Paragraph (d) is amended to add a sentence that warns practitioners that the party they represent in an appellate petition for review must intervene affirmatively under Pa.R.A.P. 1531(a) even if their counsel already is entered on the docket.

The Official Note is amended to delete the next-to-last sentence because under these amendments there no longer will be petitions for review of trial court orders in Chapter 15.

### **Pa.R.A.P. 1516. Other Pleadings Allowed**

Paragraph (a) is amended to conform to the transfer of the deleted matters (all except Pa.R.A.P. 3321) to Chapter 16.

The Official Note is amended to delete the first and final sentences to conform to the transfer of the deleted matters to Chapter 16.

### **Pa.R.A.P. 1517. Applicable Rules of Pleading**

The Official Note is deleted to conform to the transfer of the referenced matters to Chapter 16.

### **Pa.R.A.P. 1531. Intervention**

The third paragraph of the Official Note is deleted to conform to the transfer of the referenced matter to Chapter 16.

### **Pa.R.A.P. 1541. Certification of the Record**

The Official Note is deleted as under these amendments there no longer will be petitions for review of trial court orders in Chapter 15.

### **Pa.R.A.P. 1542. Evidentiary Hearing**

The Official Note is deleted to conform to the transfer of the referenced matter to Chapter 16.

### **Pa.R.A.P. 1551. Scope of Review**

The entire Official Note is deleted. All but the final paragraph is either obsolete or repetitive of other provisions or notes. The final sentence is deleted to conform to the transfer of the referenced matter to Chapter 16.

### **Pa.R.A.P. 1561. Disposition of Petition for Review**

1561(d): The “Except as” clause of Paragraph (d) is deleted to conform to the transfer of the referenced matters to Chapter 16. The remainder of Paragraph (d) is deleted because it is clear from Pa.R.A.P. 1501 that Chapter 15 does not extend to habeas or PCRA.

The last two paragraphs of the Official Note are deleted for the same reasons.

## **Pa.R.A.P. 1573. Review of Orders in Which the Court Finds an Assertion of Double Jeopardy Frivolous**

Pa.R.A.P. 1573 is transferred to Chapter 16.

## **New Chapter 16**

### **Pa.R.A.P. 1603. Form and Content**

Pa.R.A.P. 1603(b): This subsection addresses the Superior Court's concern expressed in *Commonwealth v. K.M.-F.*, 2015 Pa. Super. 124, n.5 (May 22, 2015), that petitioners specifically label petitions for review seeking out-of-home placement in a juvenile delinquency matter in order to assure expeditious attention.

### **Pa.R.A.P. 1605. Response to Petition**

1605(a): For certain existing petitions for review that are being transferred to Chapter 16 as petitions for limited review, the response time is less than 30 days. As a default rule, unless otherwise stated in a rule related to a specific petition for limited review, the response is 30 days, as there is no compelling justification for giving the respondent half the time provided to the petitioner.

1605(b): The rule does not explicitly provide for a "reply brief" by the petitioner, or for additional filings. Parties wishing to file additional responses must petition for permission under Pa.R.A.P. 123.

### **Pa.R.A.P. 1610. Review of Refusal to Enter Final Order on Fewer than All Claims**

1610(b): Existing practice under Pa.R.A.P. 341(c) requires that the lower tribunal has only 30 days from the date of entry of its original order to act on an application for a determination of finality. Pa.R.A.P. 1610 would change that practice to afford the lower tribunal 30 days from the filing of the application to rule on the application, similar to the current practice under Pa.R.A.P. 1311 for applications to the lower tribunal to amend an order to certify it for interlocutory review. Implementation of Pa.R.A.P. 1610 will require a parallel change to Pa.R.A.P. 341(c).

### **Pa.R.A.P. 1611. Review of Refusal to Certify Interlocutory Orders for Appeal**

1611(c): Existing practice under Pa.R.A.P. 1311(Note) provides that the standard of review for Pa.R.A.P. 1311(Note) petition for review is "so egregious as to justify prerogative appellate correction." In contrast, the similar procedure under Pa.R.A.P.

341(c) and proposed Pa.R.A.P. 1610 calls for an “abuse of discretion” standard of review. The Committee observes that the Supreme Court has treated the “so egregious as to justify prerogative appellate correction” standard as the same as “abuse of discretion,” see *Brittain v. Beard*, 974 A.2d 479, 490 n.6 (Pa. 2009); *Commonwealth v. Tilley*, 780 A.2d 649, 651 (Pa. 2001), and proposes to replace the “so egregious as to justify prerogative appellate correction” standard in Pa.R.A.P. 1311 (Note) and proposed Pa.R.A.P. 1611 with the abuse of discretion standard. Implementation of proposed Pa.R.A.P. 1611 will require a parallel change to Pa.R.A.P. 1311 (Note).

### **Pa.R.A.P. 1612. Review of Bail Orders**

Implementation of Pa.R.A.P. 1612 will require conforming changes to Pa.R.A.P. 1762, some of which will become obsolete if proposed Pa.R.A.P. 1612 is adopted.

### **Pa.R.A.P. 1613. Review of Orders Finding Double Jeopardy Claim Frivolous**

Pa.R.A.P. 1613 transfers the substance of existing Pa.R.A.P. 1573 to Chapter 16, but also proposes several changes to Pa.R.A.P. 1573.

Pa.R.A.P. 1613(a): Existing Pa.R.A.P. 1573(a) provides that “any party” seeking review of a frivolousness determination may file a petition. The phrase implies that the Commonwealth could file such a petition if the judge ruled that the double jeopardy claim was not frivolous. In a criminal case, however, it is only the defendant, not the Commonwealth, who would be seeking interlocutory review of a pre-trial double jeopardy claim. Therefore the defendant is the only “party” to whom the rule applies.. There could be multiple criminal defendants, only one of whom would be in a position to file a petition for limited review, but subsection (b) of the proposed rule explicitly addresses the multiple defendant situation. Therefore, in transferring existing Pa.R.A.P. 1573 to Chapter 16, the Committee proposes to change “any party” in subsection (a) of Pa.R.A.P. 1573 to “a criminal defendant.” For clarity, we also propose to change “shall” in current Pa.R.A.P. 1573(a) to “may.”

The second sentence of current Pa.R.A.P. 1573(a) (review governed by general rules in this chapter unless this rule says otherwise), is redundant in light of proposed Pa.R.A.P. 1601, second paragraph, and so is omitted from proposed Pa.R.A.P. 1613.

Pa.R.A.P. 1573 subsections (b) (contents of the petition), (d) (no supporting brief), (e) (essential requisites of petition), (g) (answer to petition) and (h) (service) are omitted from proposed Pa.R.A.P. 1613 because Pa.R.A.P. 1602-1605 supply these procedures.

Pa.R.A.P. 1613(d): Existing Pa.R.A.P. 1573(i) provides that the grant of the petition operates as a stay of “all” trial court proceedings. However, as the grant of a stay is supposed to put the defendant in the same position as if he had an appeal as of right,

and an appeal as of right does not stay all trial court proceedings, proposed Pa.R.A.P. 1613(d) provides that the grant of a petition for limited review operates to stay trial court proceedings to the extent provided in Chapter 17.

Official Note: The existing Official Note to Pa.R.A.P. 1573 states that, if the petition is denied, the defendant can file a petition for allowance of appeal with the Supreme Court. The Official Note to proposed Pa.R.A.P. 1613 eliminates this sentence.

### **Pa.R.A.P. 1614. Review of Special Prosecution Orders**

Pa.R.A.P. 1614 transfers the substance of existing Pa.R.A.P. 3331 to Chapter 16.

1614(b): The first three sentences of existing Pa.R.A.P. 3331(b) provide that the petitioner may file a brief in support of the petition for review, any party may file an answering brief, and all parties may attach portions of the record to their briefs. These sentences are removed from Pa.R.A.P. 1614 because Pa.R.A.P. 1603 provides that the petition for limited review must include all necessary legal argument.

### **Pa.R.A.P. 1615. Review of Out-of-Home Placement In Juvenile Delinquency**

Pa.R.A.P. 1615 transfers the substance of existing Pa.R.A.P. 1770 to Chapter 16, and proposes several changes to Pa.R.A.P. 1770 for clarity.

1615(c): Existing Pa.R.A.P. 1770(c) addresses the narrow scope of review under this rule:

(c) *“Objection to specific agency or institution, or underlying adjudication of delinquency, is not permitted.”*

(1) A petition for review under subdivision (a) shall not challenge the specific agency or specific institution that is the site of the Out of Home Placement and instead shall be limited to the Out of Home Placement itself.

(2) A petition for review under subdivision (a) shall not challenge the underlying adjudication of delinquency.

Proposed Pa.R.A.P. 1615(c) changes the heading to “scope of review,” consistent with other proposed Chapter 16 rules, and proposes some rewriting to the subsection for clarity purposes.

1615(d): Existing Pa.R.A.P. 1770(d)’s second sentence provides that certain Chapter 15 rules, including rules related to pleading, intervention and scope of review, do not apply to Pa.R.A.P. 1770. With the transfer of Pa.R.A.P. 1770 to Chapter 16, those disclaimers are no longer needed.

1615(e): Existing Pa.R.A.P. 1770(e)'s third sentence provides for service on the attorney general. It is eliminated here because it is already covered in proposed Pa.R.A.P. 1604.

1615(g): Existing Pa.R.A.P. 1770(g)'s last sentence states that Chapter 19 does not apply to Pa.R.A.P. 1770 petitions. As Chapter 19 does not apply to any petitions for limited review under Chapter 16, the sentence is unnecessary and so is eliminated in the proposed Pa.R.A.P. 1615.