

## **Appellate Court Procedural Rules Committee**

The Appellate Court Procedural Rules Committee proposes to recommend amendment of Pa.R.A.P. 1925 and adoption of Pa.R.A.P. 4001-4007. This proposal is being submitted for public comment, suggestions, and concerns prior to submission to the Supreme Court.

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

All communications in reference to the proposed amendment should be sent no later than May 15, 2013 to:

### **Appellate Court Procedural Rules Committee**

Pennsylvania Judicial Center  
601 Commonwealth Ave., Suite 6200  
P.O. Box 62635  
Harrisburg, Pennsylvania 17106-2635  
or Fax to  
(717) 231-9551  
or E-Mail to  
**[appellaterules@pacourts.us](mailto:appellaterules@pacourts.us)**

An Explanatory Comment precedes the proposed amendment 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

Effective October 24, 2013, the current version of the Pennsylvania Code of Military Justice (“Code”), 51 Pa.C.S. § 5100 *et seq.*, will be repealed and replaced with a more modern, model Code. Pennsylvania is the fifteenth state to adopt the model Code in full or in part. Relevant to appellate procedure, the new Code provides for interlocutory appellate review by the Superior Court of certain rulings, as well as review of certain final judgments of courts-martial. *Id.* §§ 5910, 5919.

To provide a procedural mechanism to perfect an appeal from a military court-martial, and to ensure the preparation and transmission of the record, the Appellate Court Procedural Rules Committee (“Committee”) is proposing the adoption of a new Chapter 40 to the Pennsylvania Rules of Appellate Procedure with a correlative amendment to Pa.R.A.P. 1925(a). The Committee wishes to acknowledge the insight and assistance of the Pennsylvania National Guard and Pennsylvania Department of Military and Veterans Affairs in preparing this proposal.

## **Rule 1925. Opinion in Support of Order**

(a) Opinion in support of order.

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**(3) Appeals from courts-martial. - In an appeal from a court-martial, the concise statement of errors complained of on appeal shall be filed and served with the notice of appeal. See Pa.R.A.P. 4004(b).**

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[This is an entirely new chapter.]

## **Chapter 40**

### **APPEALS FROM COURTS-MARTIAL**

#### **Rule 4001. Scope of Chapter**

This Chapter shall apply to all appeals from a court-martial, as permitted by the Pennsylvania Code of Military Justice, 51 Pa.C.S. § 5100 *et seq.* Those Pennsylvania Rules of Appellate Procedure ancillary to the rules contained in this Chapter shall also be applicable, provided such application does not yield an inconsistent or absurd result with the Pennsylvania Rules of Appellate Procedure or the Pennsylvania Code of Military Justice.

**Official Note:** The Pennsylvania Code of Military Justice (“Code”), 51 Pa.C.S. § 5100 *et seq.*, provides for a right of appeal to the Superior Court from certain final judgments of courts-martial and specific interlocutory orders. This right of appeal under the Code is applicable only to proceedings involving “state military forces” or members of the Pennsylvania National Guard not in a status subjecting them to the exclusive jurisdiction of the United States.

#### **Rule 4002. Manner of Taking Appeal**

An appeal from a court-martial shall be taken by filing a notice of appeal with the State Judge Advocate for the respective branch of service in which the court-martial has been convened.

**Rule 4003. Time for Appeal.**

The notice of appeal required by Pa.R.A.P. 4002 shall be filed within the following time periods:

- (a) A notice of appeal of a judgment of court-martial shall be filed within 30 days upon finality of judgment and issuance to the accused of a written advisement of right to appeal the judgment to the Superior Court.
- (b) A notice of interlocutory appeal shall be filed within three days of the date of the order or ruling being appealed.

**Rule 4004. Content & Service of Notice of Appeal**

- (a) Form. The notice of appeal shall be substantially in the following form:

PENNSYLVANIA NATIONAL GUARD  
COURT-MARTIAL

Commonwealth

v.

Docket No. \_\_\_\_\_

Jonathon Doe, [rank], Defendant

NOTICE OF APPEAL

Notice is hereby given that [party name] appeals to the Superior Court of Pennsylvania from the final judgment/interlocutory order in this matter, dated \_\_\_\_\_, \_\_ 20\_\_ and rendered by \_\_\_\_\_.

The State Judge Advocate in this matter is \_\_\_\_\_, having an address of \_\_\_\_\_.

/s/ \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- (b) Statement of errors complained of on appeal. A concise statement of errors complained of on appeal in conformance with the following requirements shall be appended to the notice of appeal:
- (1) The statement shall set forth only those errors intended to be challenged.
  - (2) The statement shall concisely identify each error intended to be challenged with sufficient detail to identify all pertinent issues for the authority that rendered those rulings or errors.
  - (3) Issues not included in the statement are waived.
- (c) Additional content for notice of interlocutory appeal. When the Commonwealth appeals from an interlocutory order, the notice of appeal shall include a statement that the appeal is not taken for the purpose of delay and, if the order or ruling appealed is one which excludes evidence, that the evidence excluded is substantial proof of a fact material in the proceeding. The notice of interlocutory appeal shall be accompanied by a request for transcript when the relevant proceedings have not otherwise transcribed. The State Judge Advocate shall arrange for the necessary transcription and inclusion into the record.
- (d) Service. A copy of the notice of appeal shall be served on all parties, the convening authority, and the presiding military judge if the appeal is from an interlocutory order.

**Official Note:** Pursuant to 51 Pa.C.S. § 5719(c), a copy of the record of proceedings, including a verbatim transcript of proceedings and testimony, of any general or special court-martial resulting in conviction shall be given to the accused as soon as it is authenticated. This requirement obviates the need to include a request for transcript with a notice of appeal of a final judgment of conviction. However, this statutory provision does not extend to interlocutory matters. Therefore, a notice of appeal of an interlocutory order must include a request for transcript, as required by Pa.R.A.P. 4004(c).

#### **Rule 4005. Filing of Notice of Appeal**

- (a) Filing. Three copies of the notice of appeal shall be filed with the State Judge Advocate, who immediately shall stamp it with the date of receipt, thereby constituting the date when the appeal was taken.

- (b) Transmission to Superior Court. The State Judge Advocate immediately shall transmit a copy of the notice of appeal, together with the prescribed filing fee, to the Prothonotary of the Superior Court.
- (c) Transmission to decision-making authority. The State Judge Advocate shall immediately transmit a copy of the notice of appeal to the authority responsible for rendering the complained of error.

**Rule 4006. Opinion in Support of Ruling**

The authority that made the ruling giving rise to the complained of error shall file of record with the State Judge Advocate either:

- (a) a brief opinion of the reasons for the ruling or other errors complained of; or
- (b) specify in writing the place in the record where such reasons may be found.

If the case appealed involves a ruling issued by an authority who was not the authority entering the order giving rise to the notice of appeal, the authority entering the order giving rise to the notice of appeal may request that the authority who made the earlier ruling provide an opinion to be filed to explain the reasons for that ruling.

**Rule 4007. Record on Appeal**

- (a) Responsible office. The State Judge Advocate shall be responsible for the assembly and transmission of the record on appeal.
- (b) Composition of the record. The record shall consist of:
  - (1) The duly authenticated record of the court-martial, including a verbatim transcript of the proceeding and testimony, the pleadings, and evidence.
  - (2) The order or ruling to be appealed, including any findings, report, or opinion upon which the determination is based.
  - (3) Submissions, recommendations, reviews, and orders arising from post-trial administrative review and action.
  - (4) A copy of the written advisement of right to appeal.
  - (5) Any opinion in support of the complained of erroneous ruling.

(c) Certification and organization of record. The State Judge Advocate or designee shall certify the contents of the record, which shall be organized with the documents arranged in chronological order, numbered, and affixed to the right or bottom edge of the first page of each document a tab showing the number of that document. Thereafter, the entirety shall be bound and shall contain a table of contents identifying each document in the record.

(d) Time and notice. The State Judge Advocate shall file the record with the Prothonotary of the Superior Court within 60 days after the filing date of the notice of appeal. The Superior Court may shorten or extend the time prescribed in this subdivision. Upon filing, the State Judge Advocate shall mail a copy of the list of record documents to all counsel or to the respective parties, if unrepresented.

(e) Omissions from or misstatements of the record below. If anything material to any party is omitted from the record or is misstated therein, the parties may at any time supply the omission or correct the misstatement by stipulation, or the Superior Court may at any time direct that the omission or misstatement be corrected and, if necessary, that a supplemental record be prepared and filed.