

## **Appellate Court Procedural Rules Committee**

The Appellate Court Procedural Rules Committee proposes to recommend amendments to Pa.R.A.P. 1972 and 2542. This proposal is being submitted for public comments, 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 **October 16, 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  
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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

### Proposed Amendment to Note to Pa.R.A.P. 1972

Pa.R.A.P. 1972 addresses appeals that may be dismissed on motion. Paragraph (a)(6) of the rule allows a motion to continue or dismiss because the appellant is a fugitive.

The purpose of the proposed amendment to the note to this rule pertains to paragraph (a)(6) and is to conform the note to reflect more recent case law holding that, although dismissal pursuant to a motion under paragraph (a)(6) or *sua sponte* is not a *per se* rule, a returning fugitive returns to the case in the posture in which it stands at the time of the fugitive's return and with the consequences attendant to that return.

The proposed amendment to the note also explains that, if an appeal is dismissed, appellate rights – except for those guaranteed by 42 Pa.C.S. § 9711(h) – are forfeited, not simply waived, and errors that would have been raised on direct appeal cannot be reviewed collaterally.

### Proposed Amendment to Pa.R.A.P. 2542 and Note

Pa.R.A.P. 2542 addresses the time for reargument, reconsideration or rehearing and makes it consistent with the 30-day statutory time for reconsideration under 42 Pa.C.S. § 5505, except in limited circumstances, such as children's fast track (must be filed within seven days); or under Pa.R.A.P. 1123 or 3814.

The proposed amendment to the note to Pa.R.A.P. 2542 explains that, the amendment to the rule extending the time limit generally does not affect the 14-day requirement for reconsideration of a petition for allowance of appeal under Pa.R.A.P. 1123(b) or under the Abortion Control Act.

The remaining proposed amendments to the note to Pa.R.A.P. 2542 eliminate unnecessary language and are ministerial in nature.

Rule 1972. Dispositions on Motion.

(a) Except as otherwise prescribed by this rule, subject to Rule 123 (applications for relief), any party may move:

(1) To transfer the record of the matter to another court because the matter should have been commenced in, or the appeal should have been taken to, such other court. See Rule 741 (waiver of objections to jurisdiction).

(2) To transfer to another appellate court under Rule 752 (transfers between Superior and Commonwealth Courts).

(3) To dismiss for want of jurisdiction in the unified judicial system of this Commonwealth.

(4) To dismiss for mootness.

(5) To dismiss for failure to preserve the question below, or because the right to an appeal has been otherwise waived. See Rule 302 (requisites for reviewable issue) and Rule 1551(a) (review of quasijudicial orders).

(6) To continue generally or to quash because the appellant is a fugitive.

(7) To quash for any other reason appearing on the record.

Any two or more of the grounds specified in this rule may be joined in the same motion. Unless otherwise ordered by the appellate court, a motion under this rule shall not relieve any party of the duty of filing his or her briefs and reproduced records within the time otherwise prescribed therefore. The court may grant or refuse the motion, in whole or in part; may postpone consideration thereof until argument of the case on the merits; or may make such other order as justice may require.

(b) In a children's fast track appeal, a dispositive motion filed under Paragraphs (a)(1), (a)(2), (a)(5), (a)(6) or (a)(7) of this rule shall be filed within 10 days of the filing of the statement of errors complained of on appeal required by Rule 905(a)(2), or within 10 days of the lower court's filing of a Rule 1925(a)(2) opinion, whichever period expires last, unless the basis for seeking to quash the appeal appears on the record subsequent to the time limit provided herein, or except upon application and for good cause shown.

Official Note: **[Based on former Supreme Court Rule 33 and former Superior Court Rule 25.]**

[As to Paragraph (6), see, e.g. Commonwealth v. Galloway, 460 Pa. 309, 333 A.2d 741 (1975) (continuing generally), Commonwealth v. Barron, 237 Pa. Super. 369, 352 A.2d 84 (1975) (quashing).]

**If an appellate court dismisses a criminal appeal under Pa.R.A.P. 1972(a)(6), the fugitive forfeits rather than simply waives the right to assert errors the fugitive might otherwise have raised on direct appeal, and the fugitive may not raise those errors on collateral review. Commonwealth v. Judge, 797 A.2d 250, 255, 258-60 (Pa. 2002); Commonwealth v. Doty, 48 A.3d 451 (Pa. Super. 2012) (on PCRA); 997 A.2d 1184 (Pa. Super. 2010) (on direct appeal). Forfeiture under this Rule does not limit any review under 42 Pa.C.S. § 9711(h) or Pa.R.A.P. 1941 (Review of Death Sentences).**

**[Rule] Pa.R.A.P. 1933 [(record for preliminary hearing in appellate court)]** makes clear the right of a moving party to obtain immediate transmission of as much of the record as may be necessary for the purposes of a motion under this rule. See **Pa.R.A.P.[Rule] 123(c) [(speaking applications)]**.

Rule 2542. Time for Application for Reargument, Reconsideration or Rehearing:[.]  
Manner of Filing.

(a) *Time.*

(1) General rule.—Except as otherwise prescribed by this rule or by Pa.R.A.P. 1123(b) or Pa.R.A.P. 3814, an application for reargument or for reconsideration of a dispositive order shall be filed with the prothonotary within [14] 30 days after entry of the judgment or other order involved.

(2) Children’s fast track appeals.—In a children’s fast track appeal, an application for reargument or for reconsideration of a dispositive order shall be filed with the prothonotary within 7 days after entry of the judgment or other order involved.

\* \* \* \* \*

Official Note: [ **Former Supreme Court Rule 64, former Superior Court Rules 55 and 58 and former Commonwealth Court Rule 113A required the application for reargument to be filed within ten days of the entry of the order. Under Rule 105(b) (enlargement of time) the time for seeking reargument may be enlarged by order, but no order of the Superior Court or of the Commonwealth Court, other than an actual grant of reargument meeting the requirements of Rule 1701(b)(3) (authority of lower court or agency after appeal), will have the effect of postponing the finality of the order involved under Rule 1113 (time for petitioning for allowance of appeal).**

The 1986 amendment provided that an application shall be deemed received on the date deposited in the United States mail as shown on a United States Postal Service Form 3817 Certificate of Mailing.

The 2008 amendment provides that an application shall be deemed received on the date deposited in the United States mail as shown on a United States Postal Service Form 3817 Certificate of Mailing or other similar United States Postal Service form from which the date of deposit can be verified.]

This does not affect the 14-day requirement for reconsideration of a petition for allowance of appeal under Pa.R.A.P. 1123(b) or under the Abortion Control Act.