

Appellate Court Procedural Rules Committee

The Appellate Court Procedural Rules Committee proposes to amend Pennsylvania Rules of Appellate Procedure 102, 903, 904, 905, 1112, 1113, 1116, 1123, 1925, 1931, 1972, 2154, 2172, 2185, 2542 and 2545. The suggested amendments are designed to implement a broad Family Fast Track to speed up the appellate process in cases involving the rights of children—dependency, termination of parental rights, adoptions, custody and paternity. The suggested amendments are being submitted to the bench and bar for comments and suggestions prior to their submission to the Supreme Court.

Proposed new material is underlined while deleted material is bracketed.

Attached to this Recommendation is a Committee Report that addresses the problem identified by the Committee, the process by which it studied the problem and prepared the Recommendation, and a summary of the Recommendation. This report was prepared by this Committee for the convenience of the bench and bar. It will neither constitute part of the rule nor be officially adopted or promulgated.

All communications in reference to the proposed amendment should be sent no later than September 24, 2008, to:

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By the Appellate Court Procedural Rules Committee

Honorable Maureen E. Lally-Green,
Chair
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COMMITTEE REPORT

The Problem

While timeliness is important in all court disputes, it is particularly important in cases involving the rights and interests of children—especially those who are involved in and forced to remain in unstable and sometimes violent circumstances. Because childhood is so short, time-wise, and children need stable and safe environments, it is critical that timely and efficient decision-making occurs by those who exercise legal decision making authority over children. This is especially so in cases involving custody, paternity, dependency, termination of parental rights and adoption.

We observe that the Superior Court does operate a system wherein, among others, appeals involving custody, paternity, dependency, termination of parental rights and adoption are treated by the Court on a “fast track” basis (“family fast track”). The current family fast track system expedites these appeals once they arrive at the chambers of the judges of the Superior Court. This process, however, does not expedite the process from decision by the trial court until the appeal reaches the chambers of the Superior Court judges.

After careful study, the Committee believes that a series of amendments to the appellate rules will improve case management throughout the entire appellate process (not just the time spent in the chambers of the Superior Court judges). These amendments are intended to facilitate a quicker addressing of these cases at the appellate stage with due and appropriate regard to meaningful appellate review and decision making.

The Process involved in Developing this Proposal

The Pennsylvania Supreme Court created the Office of Children and Families in the Courts within the Administrative Office of Pennsylvania Courts in 2006. The mission of the Office of Children and Families in the Courts is to achieve more rapid placement of abused and neglected children in permanent homes. There are about 20,000 such children in the Commonwealth. Sandra Moore, Administrator of the Office of Children and Families in the Courts, provided substantial support to the Committee—initially by assisting the Committee in identifying the problem and subsequently in assisting the Committee in obtaining additional input from judges, advocates and child care professionals as to how best to address case management of appeals involving children as the appeals move from the trial courts to the appellate court and through the appellate process.

Once the problem was identified, the Chair of the Committee, Superior Court Judge Maureen Lally-Green and Committee Member Frederick Frank, Esquire, were

appointed as Co-Chairs of a subcommittee to address the feasibility and the mechanism for expediting certain appeals involving children. The subcommittee included representatives of the Appellate Court Procedural Rules Committee, the Domestic Relations Procedural Rules Committee, the Juvenile Procedural Rules Committee and the Orphans' Court Procedural Rules Committee. The Chairs of the subcommittee met with, and sought input from, the Administrative Judges in a number of judicial districts and the Juvenile Judges Section of the Conference of State Court Trial Judges. The Chairs also met with, and sought input from, members of the bar and the participants in several roundtables sponsored by the Office of Children and Families in the Courts. The subcommittee, with the assistance of Counsel, then drafted the attached Recommendation, which is now being published for review and comment.

Summary of Recommendation

The Recommendation suggests the following amendments to the following Pennsylvania Rules of Appellate Procedure:

- Rule 102 (“Definitions”)—defining the term “Family Fast Track Appeal” as “any appeal from an order involving dependency, termination of parental rights, adoptions, custody or paternity”.
- Rule 903 (“Time for Appeal”)—reducing the time for filing a notice of appeal in a family fast track appeal from 30 days to 21 days.
- Rule 904 (“Content of the Notice of Appeal”)—requiring that the notice of appeal in a family fast track appeal include a statement advising the appellate court that the appeal is a family fast track appeal.
- Rule 905 (“Filing of the Notice of Appeal”)—requiring that the concise statement of errors complained of on appeal as described in Rule 1925 be filed with the notice of appeal in a family fast track appeal and served in accordance with Rule 1925, and further requiring the clerk of the appellate court to stamp the notice of appeal with a family fast track designation in red ink.
- Rule 1112 (“Appeals by Allowance”)—requiring the clerk to stamp a petition for allowance of appeal filed in a family fast track appeal with a family fast track designation in red ink.
- Rule 1113 (“Time for Petitioning for Allowance of Appeal”)—reducing the time for filing a petition for allowance of appeal in a family fast track appeal from 30 days to 21 days; and reducing the time after which an application for reconsideration filed in the Superior Court in a family fast track appeal is deemed denied from 60 days to 45 days.
- Rule 1116 (“Brief in Opposition to Petition”)—reducing the time for filing a brief in opposition to a petition for allowance of appeal in a family fast track appeal from 14 days to 10 days.

- Rule 1123 (“Denial of Appeal; Reconsideration”)—reducing the time for filing an application for reconsideration of denial of a petition for allowance of appeal in a family fast track appeal from 14 days to 7 days.
- Rule 1925 (“Opinion in Support of Order”)—requiring the judge who entered the order giving rise to a family fast track appeal to file a opinion of the reasons for the order within 14 days of receipt of the notice of appeal and concise statement of errors complained of on appeal, if the reasons do not appear of record; and reiterating the requirement in Rule 905 that the concise statement of errors complained of on appeal as described in Rule 1925 be filed with the notice of appeal in a family fast track appeal and served in accordance with Rule 1925.
- Rule 1931 (“Transmission of the Record”)—reducing the time for the transfer of the record on appeal from the lower court to the appellate court after the filing of the notice of appeal in a family fast track appeal from 60 days to 30 days.
- Rule 1972 (“Dispositions on Motion”)—requiring that any dispositive motion in a family fast track appeal seeking to transfer to another appellate court, seeking to dismiss for failure to preserve question below or for having waived the right to appeal, or seeking to quash for any reason on the record other than mootness or lack of jurisdiction, be filed within 10 days of the filing of the statement of errors complained of on appeal, or the filing of the Rule 1925 opinion, whichever period expires last.
- Rule 2154 (“Designation of Contents of Reproduced Record”)—reducing the time for the appellant in a family fast track appeal to file a designation of the reproduced record from 40 days before the date fixed for the filing of the brief of the appellant to 23 days; reducing the time for the appellee to file a designation of the reproduced record after receipt of the appellant’s designation from 10 days to 7 days; and eliminating the large record exception in a family fast track appeal.
- Rule 2172 (“Covers”)—requiring that the front covers of a brief and petition for allowance of appeal in a family fast track appeal include a statement advising the appellate court that the appeal is a family fast track appeal.
- Rule 2185 (“Time for Serving and Filing Briefs”)—reducing the time to file and serve the brief of the appellant in a family fast track appeal after the date on which the record is filed from 40 days to 30 days; reducing the time to file and serve the brief of the appellee from 30 days to 20 days; reducing the time to file and serve the reply brief from 14 days to 7 days; and reducing the time in cross appeals to file and serve the second brief of the deemed or designated appellant from 30 days to 20 days.
- Rule 2542 (“Time for Application for Reargument. Manner of Filing”)—reducing the time for filing an application for reargument in a family fast track appeal from 14 days to 7 days.
- Rule 2545 (“Answer in Opposition to Application”)—reducing the time for filing an answer to an application for reargument in a family fast track appeal from 14 days to 7 days.

Rule 102. Definitions.

Subject to additional definitions contained in subsequent provisions of these rules which are applicable to specific provisions of these rules, the following words and phrases when used in these rules shall have, unless the context clearly indicates otherwise, the meanings given to them in this rule:

Action—Any action or proceeding at law or in equity.

Argument—Where required by the context, the term includes submission on briefs.

Administrative Office—The Administrative Office of Pennsylvania Courts.

Appeal—Any petition or other application to a court for review of subordinate governmental determinations. The term includes an application for certiorari under 42 Pa.C.S. § 934 (writs of certiorari) or under any other provision of law. Where required by the context, the term includes proceedings on petition for review.

Note: Under these rules a “subordinate governmental determination” includes an order of a lower court. The definition of “government unit” includes courts, and the definition of “determination” includes action or inaction by (and specifically an order entered by) a court or other government unit. In general any appeal now extends to the whole record, with like effect as upon an appeal from a judgment entered upon the verdict of a jury in an action at law and the scope of review of an order on appeal is not limited as on broad or narrow certiorari. See 42 Pa.C.S. § 5105(d) (scope of appeal).

Appellant—Includes petitioner for review.

Appellate court—The Supreme Court, the Superior Court or the Commonwealth Court.

Appellee—Includes a party named as respondent in a petition for review.

Application—Includes a petition or a motion.

Appropriate security—Security which meets the requirements of Rule 1734 (appropriate security).

Clerk—Includes prothonotary.

Counsel—Counsel of record.

Determination—Action or inaction by a government unit which action or inaction is subject to judicial review by a court under Section 9 of Article V of the Constitution of Pennsylvania or otherwise. The term includes an order entered by a government unit.

Docket Entries—Includes the schedule of proceedings of a government unit.

Family Fast Track Appeal—Any appeal from an order involving dependency, termination of parental rights, adoptions, custody or paternity. See 42 Pa.C.S. §§ 6301 et seq.; 23 Pa.C.S. §§ 2511 et seq.; 23 Pa.C.S. §§ 2101 et seq.; 23 Pa.C.S. §§ 5301 et seq.; 23 Pa.C.S. §§ 5102 et seq.

General rule—A rule or order promulgated by or pursuant to the authority of the Supreme Court.

Government unit—The Governor and the departments, boards, commissions, officers, authorities and other agencies of the Commonwealth, including the General Assembly and its officers and agencies and any court or other officer or agency of the unified judicial system, and any political subdivision or municipal or other local authority or any officer or agency of any such political subdivision or local authority. The term includes a board of arbitrators whose determination is subject to review under 42 Pa.C.S. § 763(b) (awards of arbitrators).

Judge—Includes a justice of the Supreme Court.

Lower court—The court from which an appeal is taken or to be taken. With respect to matters arising under Chapter 17 (effect of appeals; supersedeas and stays) the term means the trial court from which the appeal was first taken.

Matter—Action, proceeding or appeal. The term includes a petition for review.

Order—Includes judgment, decision, decree, sentence and adjudication.

Paperbooks—Briefs and reproduced record. The term does not include applications for reconsideration of denial of allowance of appeal under Rule 1123(b) (reconsideration) or applications for reargument under Chapter 25 (post-submission proceedings).

Petition for allowance of appeal—A petition under Rule 1112 (appeals by allowance).

Petition for permission to appeal—A petition under Rule 1311 (interlocutory appeals by permission).

Petition for review—A petition under Rule 1511 (manner of obtaining judicial review of governmental determinations).

President judge—When applied to the Supreme Court, the term means the Chief Justice of Pennsylvania.

Proof of service—Includes acknowledgment of service endorsed upon a pleading.

Quasijudicial order—An order of a government unit, made after notice and opportunity for hearing, which is by law reviewable solely upon the record made before the government unit, and not upon a record made in whole or in part before the reviewing court.

Reargument—Includes, in the case of applications for reargument under Chapter 25 (post-submission proceedings), reconsideration and rehearing.

Reconsideration—Includes reargument and rehearing.

Reproduced Record—That portion of the record which has been reproduced for use in an appellate court. The term includes any supplemental reproduced record.

Rule of court—A rule promulgated by a court regulating practice or procedure before the promulgating court.

Verified Statement—A document filed with a clerk under these rules containing statements of fact and a statement by the signatory that it is made subject to the penalties of 18 Pa.C.S. § 4904 (unsworn falsification to authorities).

Note: Based on 42 Pa.C.S. § 102 (definitions). The definition of “determination” is not intended to affect the scope of review provided by 42 Pa.C.S. § 5105(d) (scope of appeal) or other provision of law.

Rule 903. Time for Appeal.

(a) *General rule.* Except as otherwise prescribed by this rule, the notice of appeal required by Rule 902 (manner of taking appeal) shall be filed within 30 days after the entry of the order from which the appeal is taken.

(b) *Cross appeals.* Except as otherwise prescribed in Subdivision (c) of this rule, if a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 14 days of the date on which the first notice of appeal was filed, or within the time otherwise prescribed by this rule, whichever period last expires.

(c) *Special provisions.* Notwithstanding any other provision of this rule:

(1) An appeal from any of the following orders shall be taken within **10 [ten]** days after the entry of the order from which the appeal is taken:

(i) An order changing venue or venire in a criminal proceeding. See Rule 311(a)(3) (change of criminal venue or venire).

(ii) An order in any matter arising under the Pennsylvania Election Code.

(iii) An order in any matter arising under the Local Government Unit Debt Act or any similar statute relating to the authorization of public debt.

(2) An appeal from any of the orders covered by the family fast track appeal shall be taken within 21 days of the entry of the order from which the appeal is taken.

[(2)](3) Where an election has been filed under Rule 311(b) (order sustaining venue or personal or *in rem* jurisdiction), the notice of appeal shall be filed within 30 days after the filing of the election.

[(3)](4) In a criminal case in which no post-sentence motion has been filed, the notice of appeal shall be filed within 30 days of the imposition of the judgment of sentence in open court.

Official Note: 42 Pa.C.S. § 5571(a) (appeals generally) provides that the time for filing an appeal, a petition for allowance of appeal, a petition for permission to appeal or a petition for review or a quasi-judicial order, in the Supreme Court, the Superior Court or the Commonwealth Court shall be governed by general rules and that no other provision of 42 Pa.C.S. Ch. 55D shall be applicable to such matters. In order to prevent inadvertent legislative creation of nonuniform appeal times, 42 Pa.C.S. § 1722(c) (time limitations) expressly authorizes the suspension by general rule of nonuniform statutory appeal times. See also 42 Pa.C.S. § 5501(a) (scope of chapter), which makes Chapter 55 (limitation of time) of the Judicial Code subordinate to any other statute prescribing a different time in the case of an action or proceeding, but which does not so provide in the case of an appeal.

Thus, on both a statutory and constitutional basis, this rule supersedes all inconsistent statutory provisions prescribing times for appeal.

As to subdivision (b), compare 42 Pa.C.S. § 5571(f) (cross appeal

A party filing a cross appeal pursuant to Subdivision (b) should identify it as a cross appeal in the notice of appeal to assure that the prothonotary will process the cross appeal with the initial appeal. See also Rule 511 (cross appeals), Rule 2113 (Reply Brief), Rule

2136 (Briefs in Cases of Cross Appeals), Rule 2185 (Time for Serving and Filing of Briefs) and Rule 2322 Cross and Separate Appeals).

In Re Petition of the Board of School Directors of the Hampton Township School District, 688 A.2d 279 (Pa. Cmwlth. 1997), the Commonwealth Court panel held that Rule 903(b) does not extend the appeal period for any other party to file an appeal unless the party is “adverse.” Under the 2002 amendment to Rule 511, the requirement that a party be adverse in order to file a cross appeal is eliminated. Once a notice of appeal is filed by one party, any other party may file a cross appeal within fourteen days. s).

Rule of Appellate Procedure 107 incorporates by reference the rules of construction of the Statutory Construction Act of 1972, 1 Pa.C.S. §§ 1901 through 1991. See 1 Pa.C.S. § 1908 relating to computation of time for the rule of construction relating to (1) the exclusion of the first day and inclusion of the last day of a time period and (2) the omission of the last day of a time period which falls on Saturday, Sunday or legal holiday.

See Pa.R.A.P. 108 and Explanatory Comment—2007 thereto, Pa.R.A.P. 301(a)(1) and (2), and Pa.R.Crim.P. 462, 720, and 721 governing criminal appeals.

Explanatory Comment—2001

The 2001 amendment to Subdivision (c) clarifies that the appeal period for appealing from orders in civil cases sustaining venue or personal or in rem jurisdiction runs from the date of the election under Pa.R.A.P. 311(b)(1), not the date of the original order. The 2000 amendment extends the appeal period following such an election from ten days to thirty days to conform the appeal period for civil orders changing venue pursuant to Pa.R.A.P. 311(c).

The portion of the Note suggesting the necessity of taking an appeal within the 20 day pleading period is misleading and is deleted. For this reason, the bracketed material of the Note is deleted.

Explanatory Comment—2002

See Comment following Pa.R.A.P., Rule 511.

Rule 904. Content of the Notice of Appeal.

(a) *Form.* [The] Except as otherwise prescribed by this rule, the notice of appeal shall be in substantially the following form:

COURT OF COMMON PLEAS
OF _____ COUNTY

A.B., Plaintiff :
v.
C.D., Defendant :

Docket or File No. _____
Offense Tracking Number _____

NOTICE OF APPEAL

Notice is hereby given that C.D., defendant above named, hereby appeals to the (Supreme) (Superior) (Commonwealth) Court of Pennsylvania from the order entered in this matter on the ___ day of ___ 19 ___. This order has been entered in the docket as evidenced by the attached copy of the docket entry.

(S) _____

(Address and telephone number)

(b) *Caption.*—The parties shall be stated in the caption as they stood upon the record of the lower court at the time the appeal was taken.

(c) *Request for transcript.*—The request for transcript contemplated by Rule 1911 (request for transcript) or a statement signed by counsel that there is either no verbatim record of the proceedings or the complete transcript has been lodged of record, shall accompany the notice of appeal, but the absence of or defect in the request for transcript shall not affect the validity of the appeal.

(d) *Docket entry.*—The notice of appeal shall include a statement that the order appealed from has been entered in the docket. A copy of the docket entry showing the entry of the order appealed from shall be attached to the notice of appeal.

(e) *Content in criminal cases.*—When the Commonwealth takes an appeal pursuant to Rule 311(d), the notice of appeal shall include a certification by counsel that the order will terminate or substantially handicap the prosecution.

(f) Content in family fast track appeals.—In a family fast track appeal the notice of appeal shall include a statement advising the appellate court that the appeal is a family fast track appeal.

Official Note: The Offense Tracking Number (OTN) is required only in an appeal in a criminal proceeding. It enables the Administrative Office of the Pennsylvania Courts to collect and forward to the Pennsylvania State Police information pertaining to the disposition of all criminal cases as provided by the Criminal History Record Information Act, 18 Pa.C.S. § 9101 et seq.

The 1986 amendment requires that the notice of appeal include a statement that the order appealed from has been entered in the docket. The 1986 amendment deletes the requirement that the appellant certify that the order has been reduced to judgment. This omission does not eliminate the requirement of reducing an order to judgment before there is a final appealable order where required by applicable practice or case law.

The 1997 amendment changes the word “order” to “request” in order to eliminate any unintended implication that a court order is required. No court order is required to obtain a transcript of the proceedings. See Pa.R.J.A. 5000.5 and the 1997 amendment to subdivision (a) of Rule 1911.

With respect to subdivision (e), in *Commonwealth v. Dugger*, 506 Pa. 537, 486 A.2d 382 (1985), the Supreme Court held that the Commonwealth’s certification that an order will terminate or substantially handicap the prosecution is not subject to review as a prerequisite to the Superior Court’s review of the merits of the appeal. Thus, the need for a detailed analysis of the effect of the order, formerly necessarily a part of the Commonwealth’s appellate brief, was eliminated. See also *Commonwealth v. Deans*, 530 Pa. 514, 610 A.2d 32 (1992); *Commonwealth v. Cohen*, 529 Pa. 552, 605 A.2d 1212 (1992) (allowing appeals by the Commonwealth from adverse rulings on motions in limine). Accordingly, the 1997 amendment added subdivision (e) as a requirement when the Commonwealth takes an appeal pursuant to Rule 311(d).

A party filing a cross appeal should identify it as a cross appeal in the notice of appeal to assure that the prothonotary will process the cross appeal with the initial appeal. See also Rules 2113, 2136 and 2185 regarding briefs in cross appeals and Rule 2322 regarding oral argument in multiple appeals.

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 Rule 906 (service of notice of appeal), shall be filed with the clerk of the trial court. If the appeal is to the Supreme Court, the jurisdictional statement required by Rule 909 shall also be filed with the clerk of the trial court.

(2) If the appeal is a family fast track appeal, the concise statement of errors complained of on appeal as described in Rule 1925(b) shall be filed with the notice of appeal and served in accordance with Rule 1925(b)(1).

(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 showing the date of receipt, the related proof of service and a receipt showing collection of any docketing fee in the appellate court required under Subdivision (c). If the appeal is a family fast track appeal, the clerk shall stamp the notice of appeal with a "Family Fast Track" designation in red ink, advising the appellate court that the appeal is a family fast track appeal and shall 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 Subdivision (a)(2) of this rule. The clerk shall also transmit with such papers:

1. a copy of any order for transcript;
2. a copy of any verified statement, application or other document filed under Rule 551 through Rule 561 relating to in forma pauperis; and
3. if the appeal is to the Supreme Court, the jurisdictional statement required by Rule 909.

(c) Fees. The appellant upon filing the notice of appeal shall pay any fees therefore (including docketing fees in the appellate court) prescribed by Chapter 27 (fees and costs in appellate courts and on appeal).

Official Note: Insofar as the clerk or prothonotary of the lower court is concerned, the notice of appeal is for all intents and purposes a writ in the nature of certiorari in the usual form issued out of the appellate court named therein and returnable thereto within

the time prescribed by Chapter 19 (preparation and transmission of record and related matters).

Rule 1112. Appeals by Allowance.

(a) *General rule.*—An appeal may be taken by allowance under 42 Pa.C.S. 724(a) (allowance of appeals from Superior and Commonwealth Courts) from any final order of the Commonwealth Court, not appealable under Rule 1101 (appeals as of right from the Commonwealth Court), or from any final order of the Superior Court.

(b) *Definition. Final order.*—A final order of the Superior Court or Commonwealth Court is any order that concludes an appeal, including an order that remands an appeal, in whole or in part, unless the appellate court remands and retains jurisdiction.

(c) *Petition for allowance of appeal.* ~~---~~

(1) Allowance of an appeal from a final order of the Superior Court or the Commonwealth Court may be sought by filing a petition for allowance of appeal with the Prothonotary of the Supreme Court within the time allowed by Rule 1113 (time for petitioning for allowance of appeal), with proof of service on all other parties to the matter in the appellate court below.

(2) If the petition for allowance of appeal is transmitted to the Prothonotary of the Supreme Court by means of first class mail, the petition shall be deemed received by the Prothonotary for the purposes of Rule 121(a) (filing) on the date deposited in the United States mail, as shown on a U.S. Postal Service Form 3817 certificate of mailing. The certificate of mailing shall show the docket number of the matter in the appellate court below and shall be either enclosed with the petition or separately mailed to the Prothonotary.

(3) Upon actual receipt of the petition for allowance of appeal the Prothonotary of the Supreme Court shall immediately stamp it with the date of actual receipt. That date, or the date of earlier deposit in the United States mail as prescribed in this subdivision, shall constitute the date when allowance of appeal was sought, which date shall be shown on the docket. The Prothonotary of the Supreme Court shall immediately note the Supreme Court docket number upon the petition for allowance of appeal and give written notice of the docket number assignment in person or by first class mail to the prothonotary of the appellate court below who shall note on the docket that a petition for allowance of appeal has been filed to the petitioner and to the other persons named in the proof of service accompanying the petition.

(4) In a family fast track appeal, the Prothonotary of the Supreme Court shall stamp the petition for allowance of appeal with a “Family Fast Track” designation in red ink, advising the Supreme Court that the petition for allowance of appeal is a family fast track appeal.

(d) *Reproduced record.*—One copy of the reproduced record, if any, in the appellate court below shall be lodged with the Prothonotary of the Supreme Court at the time the petition for allowance of appeal is filed therein. A party filing a cross-petition for allowance of appeal from the same order need not lodge any reproduced record in addition to that lodged by petitioner.

(e) *Fee*.—The petitioner upon filing the petition for allowance of appeal shall pay any fee therefore prescribed by Chapter 27 (fees and costs in appellate courts and on appeal).

(f) *Entry of appearance*.—Upon the filing of the petition for allowance of appeal the Prothonotary of the Supreme Court shall note on the record as counsel for the petitioner the name of his counsel, if any, set forth in or endorsed upon the petition for allowance of appeal, and, as counsel for other parties, counsel, if any, named in the proof of service. The Prothonotary shall upon praecipe of any such counsel for other parties, filed at any time within 30 days after filing of the petition, strike off or correct the record of appearance. Thereafter a counsel's appearance for a party may not be withdrawn without leave of court unless another lawyer has entered or simultaneously enters an appearance for the party.

Official Note: Based on 42 Pa.C.S. § 724(a) (allowance of appeals from Superior and Commonwealth Courts). The notation on the docket by the prothonotary of the Superior Court or Commonwealth Court of the filing of a petition for allowance of appeal renders universal the rule that the appeal status of any order may be discovered by examining the docket of the court in which it was entered.

The U.S. Postal Service Form may be in substantially the following form:

The transmittal should be taken unsealed to the Post Office, the Form 3817 should be obtained and attached to the petition, and the envelope should only then be sealed. Occasionally a postal clerk will refuse to cooperate; in such cases the Form 3817 may be withdrawn from the envelope, the envelope sealed, the Form 3817 pasted firmly to the outside of the envelope, and the entire package submitted to the postal clerk with instructions to execute the Form 3817 pasted on the envelope. It is recommended that the petitioner obtain a duplicate copy of the Form 3817 as evidence of mailing. Since the Post Office is technically the filing office for the purpose of this rule a petition which was mailed in accordance with this rule and which is subsequently lost in the mail will nevertheless toll the time for petitioning for allowance of appeal. However, counsel will be expected to follow up on a mail filing by telephone inquiry to the appellate prothonotary where written notice of the docket number assignment is not received in due course.

With regard to subdivision (f) and withdrawal of appearance without leave of the appellate court, counsel may nonetheless be subject to trial court supervision pursuant to Pa.R.Crim.P. 904 (Entry of Appearance and Appointment of Counsel; In Forma Pauperis).

With respect to appearances by new counsel following the initial docketing of appearances pursuant to Subdivision (f) of this rule, please note the requirements of Rule 120.

Rule 1113. Time for Petitioning for Allowance of Appeal.

(a) *General rule.* – Except as otherwise prescribed by this rule: [.]

(1) [a] A petition for allowance of appeal shall be filed with the Prothonotary of the Supreme Court within 30 days after the entry of the order of the Superior Court or the Commonwealth Court sought to be reviewed.

(2) If a timely application or reargument is filed in the Superior Court or Commonwealth Court by any party, the time for filing a petition for allowance of appeal for all parties shall run from the entry of the order denying reargument or from the entry of the decision on reargument, whether or not that decision amounts to a reaffirmation of the prior decision. Unless the Superior Court or the Commonwealth Court acts on the application for reargument within 60 days after it is filed the court shall no longer consider the application, it shall be deemed to have been denied and the prothonotary of the appellate court shall forthwith enter an order denying the application and shall immediately give written notice in person or by first class mail of entry of the order denying the application to each party who has appeared in the appellate court. A petition for allowance of appeal filed before the disposition of such an application for reargument shall have no effect. A new petition for allowance of appeal must be filed within the prescribed time measured from the entry of the order denying or otherwise disposing of such an application for reargument.

(b) *Cross petitions.* – Except as otherwise prescribed in Subdivision (c) of this rule, if a timely petition for allowance of appeal is filed by a party, any other party may file a petition for allowance of appeal within 14 days of the date on which the first petition for allowance of appeal was filed, or within the time otherwise prescribed by this rule, whichever period last expires.

(c) *Special provisions.* – Notwithstanding any other provision of this rule, a petition for allowance of appeal from an order in any matter arising under any of the following shall be filed within ten days after the entry of the order sought to be reviewed:

(1) Pennsylvania Election Code.

(2) Local Government Unit Debt Act or any similar statute relating to the authorization of public debt.

(d) *Family fast track appeals.*—In a family fast track appeal:

(1) A petition for allowance of appeal shall be filed with the Prothonotary of the Supreme Court within 21 days after the entry of the order of the Superior Court sought to be reviewed.

(2) If a timely application or reargument is filed in the Superior Court by any party, the time for filing a petition for allowance of appeal for all parties shall run from the entry of the order denying reargument or from the entry of the decision on reargument, whether or not that decision amounts to a reaffirmation of the prior decision. Unless the Superior Court acts on the application for reargument within 45 days after it is filed the Superior Court shall no longer consider the application, it shall be deemed to have been denied and the prothonotary of the Superior Court shall forthwith enter an order denying the application and shall immediately give written notice in person or by first class mail of entry of the order denying the application to each party who has appeared in the Superior Court. A petition for allowance of appeal filed before the disposition of such an application for reargument shall have no effect. A new petition for allowance of appeal must be filed

within the prescribed time measured from the entry of the order denying or otherwise disposing of such an application for reargument.

Official Note: See note to Rule 903 (time for appeal).

A party filing a cross petition for allowance of appeal pursuant to Subdivision (b) should identify it as a cross petition to assure that the prothonotary will process the cross petition with the initial petition. See also Rule 511 (cross appeals), Rule 2136 (Briefs in Cases Involving Cross Appeals) and Rule 2322 (Cross and Separate Appeals).

Rule 1116. Brief in Opposition to Petition.

(a) General rule.—[Within] Except as otherwise prescribed by this rule, within 14 days after service of a petition for allowance of appeal an adverse party may file a brief in opposition. The brief in opposition need not be set forth in numbered paragraphs in the manner of a pleading, shall set forth any procedural, substantive or other argument or ground why the order involved should not be reviewed by the Supreme Court and shall comply with Rule 1115(a)(7) (content of petition for allowance of appeal.). No separate motion to dismiss a petition for allowance of appeal will be received. A party entitled to file a brief in opposition under this rule who does not intend to do so shall, within the time fixed by these rules for filing a brief in opposition, file a letter stating that a brief in opposition to the petition for allowance of appeal will not be filed. The failure to file a brief in opposition will not be construed as concurrence in the request for allowance of appeal.

(b) Family fast track appeals.—In a family fast track appeal, within 10 days after service of a petition for allowance of appeal, an adverse party may file a brief in opposition.

Official Note: Based on former Supreme Court Rule 62 and makes no change in substance except as follows: The time for opposition is increased from ten to 17 days (where service is by mail). This rule and Rule 1115 contemplate that the petition and brief in opposition will address themselves to the heart of the issue, i.e. whether the Supreme Court ought to exercise its discretion to allow an appeal, without the need to comply with the formalistic pattern of numbered averments in the petition and correspondingly numbered admissions and denials in the response. While such a formalistic format is appropriate when factual issues are being framed in a trial court (as in the petition for review under Chapter 15) such a format interferes with the clear narrative exposition necessary to outline succinctly the case for the Supreme Court in the allocatur context.

Rule 1123. Denial of Appeal; Reconsideration.

(a) *Denial.* If the petition for allowance of appeal is denied the Prothonotary of the Supreme Court shall immediately give written notice in person or by first class mail of the entry of the order denying the appeal to each party who has appeared in the Supreme Court. After the expiration of the time allowed by Subdivision (b) of this rule for the filing of an application for reconsideration of denial of a petition for allowance of appeal, if no application for reconsideration is filed, the Prothonotary of the Supreme Court shall notify the prothonotary of the appellate court below of the denial of the petition.

(b) *Reconsideration.* Applications for reconsideration of denial of allowance of appeal are not favored and will be considered only in the most extraordinary circumstances. An application for reconsideration of denial of a petition for allowance of appeal shall be filed with the Prothonotary of the Supreme Court within fourteen days after entry of the order denying the petition for allowance of appeal. In a family fast track appeal, the application for reconsideration of denial of a petition for allowance of appeal shall be filed with the Prothonotary of the Supreme Court within 7 days after entry of the order denying the petition for allowance of appeal. Any application filed under this subdivision must:

(1) Briefly and distinctly state grounds which are confined to intervening circumstances of substantial or controlling effect.

(2) Be supported by a certificate of counsel to the effect that it is presented in good faith and not for delay. Counsel must also certify that the application is restricted to the grounds specified in Paragraph (1) of this subdivision.

No answer to an application for reconsideration will be received unless requested by the Supreme Court. Second or subsequent applications for reconsideration, and applications for reconsideration which are out of time under this rule, will not be received.

(c) *Manner of filing.* If the application for reconsideration is transmitted to the prothonotary of the appellate court by means of first class mail, the application shall be deemed received by the prothonotary for the purposes of Rule 121(a) (filing) on the date deposited in the United States mail as shown on a United States Postal Service Form 3817 Certificate of Mailing. The certificate of mailing shall show the docket number of the matter in the court in which reconsideration is sought and shall be enclosed with the application or separately mailed to the prothonotary. Upon actual receipt of the application, the prothonotary shall immediately stamp it with the date of actual receipt. That date, or the date of earlier deposit in the United States mail as prescribed in this subdivision, shall constitute the date when application was sought, which date shall be shown on the docket.

Official Note: The 1996 amendment to subdivision (b) lengthens the time for filing an application for reconsideration from seven days after service of notice of entry of the order denying a petition for allowance of appeal to fourteen days after entry of the order. The 1996 amendment adding subdivision (c) 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. These amendments conform reconsideration practice under Rule 1123 to reargument practice under Rule 2542.

Rule 1925. Opinion is Support of Order.

(a) *General rule.*—[Upon] Except as otherwise prescribed by this rule, upon receipt of the notice of appeal, the judge who entered the order giving rise to the notice of appeal, if the reasons for the order do not already appear of record, shall forthwith file of record at least a brief opinion of the reasons for the order, or for the rulings or other errors complained of, or shall specify in writing the place in the record where such reasons may be found.

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

(b) *Direction to file statement of errors complained of on appeal; instructions to the appellant and the trial court.*

If the judge entering the order giving rise to the notice of appeal (“judge”) desires clarification of the errors complained of on appeal, the judge may enter an order directing the appellant to file of record in the trial court and serve on the judge a concise statement of the errors complained of on appeal (“Statement”).

(1) *Filing and service.*—Appellant shall file of record the Statement and concurrently shall serve the judge. Filing of record and service on the judge shall be in person or by mail as provided in Pa.R.A.P. 121(a) and shall be complete on mailing if appellant obtains a United States Postal Service form in compliance with the requirements set forth in Pa.R.A.P. 1112(c). Service on parties shall be concurrent with filing and shall be by any means of service specified under Pa.R.A.P. 121(c).

(2) *Time for filing and service.*—The judge shall allow the appellant at least 21 days from the date of the order’s entry on the docket for the filing and service of the Statement. Upon application of the appellant and for good cause shown, the judge may enlarge the time period initially specified or permit an amended or supplemental Statement to be filed. In extraordinary circumstances, the judge may allow for the filing of a Statement or amended or supplemental Statement nunc pro tunc.

(3) *Contents of order.*—The judge’s order directing the filing and service of a Statement shall specify:

- (i) the number of days after the date of entry of the judge’s order within which the appellant must file and serve the Statement;
- (ii) that the Statement shall be filed of record;

(iii) that the Statement shall be served on the judge pursuant to paragraph (b)(1);

(iv) that any issue not properly included in the Statement timely filed and served pursuant to subdivision (b) shall be deemed waived.

(4) *Requirements; waiver.*

(i) The Statement shall set forth only those rulings or errors that the appellant intends to challenge.

(ii) The Statement shall concisely identify each ruling or error that the appellant intends to challenge with sufficient detail to identify all pertinent issues for the judge. The judge shall not require the citation to authorities; however, appellant may choose to include pertinent authorities in the Statement.

(iii) The judge shall not require appellant or appellee to file a brief, memorandum of law, or response as part of or in conjunction with the Statement.

(iv) The Statement should not be redundant or provide lengthy explanations as to any error. Where non-redundant, non-frivolous issues are set forth in an appropriately concise manner, the number of errors raised will not alone be grounds for finding waiver.

(v) Each error identified in the Statement will be deemed to include every subsidiary issue contained therein which was raised in the trial court; this provision does not in any way limit the obligation of a criminal appellant to delineate clearly the scope of claimed constitutional errors on appeal.

(vi) If the appellant in a civil case cannot readily discern the basis for the judge's decision, the appellant shall preface the Statement with an explanation as to why the Statement has identified the errors in only general terms. In such a case, the generality of the Statement will not be grounds for finding waiver.

(vii) Issues not included in the Statement and/or not raised in accordance with the provisions of this paragraph (b)(4) are waived.

(c) *Remand.*

(1) An appellate court may remand in either a civil or criminal case for a determination as to whether a Statement had been filed and/or served or timely filed and/or served.

(2) Upon application of the appellant and for good cause shown, an appellate court may remand in a civil case for the filing nunc pro tunc of a Statement or for amendment or supplementation of a timely filed and served Statement and for a concurrent supplemental opinion.

(3) If an appellant in a criminal case was ordered to file a Statement and failed to do so, such that the appellate court is convinced that counsel has been per se ineffective, the appellate court shall remand for the filing of a Statement nunc pro tunc and for the preparation and filing of an opinion by the judge.

(4) In a criminal case, counsel may file of record and serve on the judge a statement of intent to file an *Anders/McClendon* brief in lieu of filing a Statement. If, upon review of the *Anders/McClendon* brief, the appellate court believes that there are arguably meritorious issues for review, those issues will not be waived; instead, the appellate court may remand for the filing of a Statement, a supplemental opinion pursuant to 1925(a), or both. Upon remand, the trial court may, but is not required to, replace appellant's counsel.

(d) *Opinions in matters on petition for allowance of appeal.*—Upon receipt of notice of the filing of a petition for allowance of appeal under Rule 1112(c) (appeals by allowance), the appellate court below which entered the order sought to be reviewed, if the reasons for the order do not already appear of record, shall forthwith file of record at least a brief statement, in the form of an opinion, of the reasons for the order.

(e) *Family fast track appeals.*—In a family fast track appeal:

(1) Upon receipt of the notice of appeal and the concise statement of errors complained of on appeal required by Rule 905(a)(2), the judge who entered the order giving rise to the notice of appeal, if the reasons for the order do not already appear of record, shall within 14 days file of record at least a brief opinion of the reasons for the order, or for the rulings or other errors complained of, or shall specify in writing the place in the record where such reasons may be found.

(2) The concise statement of errors complained of on appeal shall be filed and served with the notice of appeal required by Rule 905. See Pa.R.A.P. 905(a)(2).

Official Note: Subdivision (a) The 2007 amendments clarify that a judge whose order gave rise to the notice of appeal may ask a prior judge who made a ruling in question for the reasons for that judge's decision. In such cases, more than one judge may issue separate 1925(a) opinions for a single case. It may be particularly important for a judge to author a separate opinion if credibility was at issue in the pretrial ruling in question. See, e.g., *Commonwealth v. Yogel*, 307 Pa. Super. 241, 243-44, 453 A.2d 15, 16 (1982). At the same time, the basis for some pre-trial rulings will be clear from the order and/or opinion issued by the judge at the time the ruling was made, and there will then be no reason to seek a separate opinion from that judge under this rule. See, e.g., Pa.R.Crim.P. 581(l). Likewise, there will be times when the prior judge may explain the ruling to the judge whose order has given rise to the notice of appeal in sufficient detail that there will be only one opinion under 1925(a), even though there are multiple rulings at

issue. The time period for transmission of the record is specified in Pa.R.A.P. 1931, and that rule was concurrently amended to expand the time period for the preparation of the opinion and transmission of the record.

Subdivision (b) This subdivision permits the judge whose order gave rise to the notice of appeal (“judge”) to ask for a statement of errors complained of on appeal (“Statement”) if the record is inadequate and the judge needs to clarify the errors complained of. The term “errors” is meant to encourage appellants to use the Statement as an opportunity to winnow the issues, recognizing that they will ultimately need to be refined to a statement that will comply with the requirements of Pa.R.A.P. 2116. Nonetheless, the term “errors” is intended in this context to be expansive, and it encompasses all of the reasons the trial court should not have reached its decision or judgment, including, for example, those that may not have been decisions of the judge, such as challenges to jurisdiction.

Paragraph (b)(1) This paragraph maintains the requirement that the Statement be both filed of record in the trial court and served on the judge. Service on the judge may be accomplished by mail or by personal service. The date of mailing will be considered the date of filing and of service upon the judge only if counsel obtains a United States Postal Service form from which the date of mailing can be verified, as specified in Pa.R.A.P. 1112(c). Counsel is advised to retain date-stamped copies of the postal forms (or pleadings if served by hand), in case questions arise later as to whether the Statement was timely filed or served on the judge.

Paragraph (b)(2) This paragraph extends the time period for drafting the Statement from 14 days to at least 21 days, with the trial court permitted to enlarge the time period or to allow the filing of an amended or supplemental Statement upon good cause shown. In *Commonwealth v. Mitchell*, 588 Pa. 19, 41, 902 A.2d 430, 444 (2006), the Court expressly observed that a Statement filed “after several extensions of time” was timely. An enlargement of time upon timely application might be warranted if, for example, there was a serious delay in the transcription of the notes of testimony or in the delivery of the order to appellate counsel. A trial court should enlarge the time or allow for an amended or supplemental Statement when new counsel is retained or appointed. A supplemental Statement may also be appropriate when the ruling challenged was so non-specific—e.g., “Motion Denied”—that counsel could not be sufficiently definite in the initial Statement.

In general, nunc pro tunc relief is allowed only when there has been a breakdown in the process constituting extraordinary circumstances. See, e.g., *In re Canvass of Absentee Ballots of Nov. 4, 2003 Gen. Election*, 577 Pa. 231, 248-49, 843 A.2d 1223, 1234 (2004) (“We have held that fraud or the wrongful or negligent act of a court official may be a proper reason for holding that a statutory appeal period does not run and that the wrong may be corrected by means of a petition filed nunc pro tunc.”) Courts have also allowed nunc pro tunc relief when “non-negligent circumstances, either as they relate to appellant or his counsel” occasion delay. *McKeown v. Bailey*, 731 A.2d 628, 630 (Pa. Super. 1999). However, even when there is a breakdown in the process, the appellant must attempt to remedy it within a “very short duration” of time. *Id.*; *Amicone v. Rok*, 839

A.2d 1109, 1113 (Pa. Super. 2003) (recognizing a breakdown in process, but finding the delay too long to justify nunc pro tunc relief).

Paragraph (b)(3) This paragraph specifies what the judge must advise appellants when ordering a Statement.

Paragraph (b)(4) This paragraph sets forth the parameters for the Statement and explains what constitutes waiver. It should help counsel to comply with the concise-yet-sufficiently-detailed requirement and avoid waiver under either *Lineberger v. Wyeth*, 894 A.2d 141, 148-49 (Pa. Super. 2006) or *Kanter v. Epstein*, 866 A.2d 394, 400-03 (Pa. Super. 2004), allowance of appeal denied, 584 Pa. 678, 880 A.2d 1239 (2005), cert. denied sub nom. *Spector Gadon & Rosen, P.C. v. Kanter*, 546 U.S. 1092 (2006). The paragraph explains that the Statement should be sufficiently specific to allow the judge to draft the opinion required under 1925(a), and it provides that the number of issues alone will not constitute waiver—so long as the issues set forth are non-redundant and non-frivolous. It allows appellants to rely on the fact that subsidiary issues will be deemed included if the overarching issue is identified and if all of the issues have been properly preserved in the trial court. This provision has been taken from the United States Supreme Court rules. See Sup. Ct. R. 14(1). This paragraph does not in any way excuse the responsibility of an appellant who is raising claims of constitutional error to raise those claims with the requisite degree of specificity. This paragraph also allows—but does not require—an appellant to state the authority upon which the appellant challenges the ruling in question, but it expressly recognizes that a Statement is not a brief and that an appellant shall not file a brief with the Statement. This paragraph also recognizes that there may be times that a civil appellant cannot be specific in the Statement because of the non-specificity of the ruling complained of on appeal. In such instances, civil appellants may seek leave to file a supplemental Statement to clarify their position in response to the judge’s more specific Rule 1925(a) opinion.

Subdivision (c) The appellate courts have the right under the Judicial Code to “affirm, modify, vacate, set aside or reverse any order brought before it for review, and may remand the matter and direct the entry of such appropriate order, or require such further proceedings to be had as may be just under the circumstances.” 42 Pa.C.S. § 706. The following additions to the rule are based upon this statutory authorization.

Paragraph (c)(1) This paragraph applies to both civil and criminal cases and allows an appellate court to seek additional information—whether by supplementation of the record or additional briefing—if it is not apparent whether an initial or supplemental Statement was filed and/or served or timely filed and/or served.

Paragraph (c)(2) This paragraph allows an appellate court to remand a civil case to allow an initial, amended, or supplemental Statement and/or a supplemental opinion. See also 42 Pa.C.S. § 706.

Paragraph (c)(3) This paragraph allows an appellate court to remand in criminal cases only when the appellant has completely failed to respond to an order to file a

Statement. It is thus narrower than (c)(2), above. Prior to these amendments of this rule, the appeal was quashed if no timely Statement was filed or served; however, because the failure to file and serve a timely Statement is a failure to perfect the appeal, it is presumptively prejudicial and “clear” ineffectiveness. See, e.g., *Commonwealth v. Halley*, 582 Pa. 164, 172, 870 A.2d 795, 801 (2005); *Commonwealth v. West*, 883 A.2d 654, 657 (Pa. Super. 2005). Direct appeal rights have typically been restored through a post-conviction relief process, but when the ineffectiveness is apparent and per se, the court in *West* recognized that the more effective way to resolve such per se ineffectiveness is to remand for the filing of a Statement and opinion. See *West*, 883 A.2d at 657. The procedure set forth in *West* is codified in paragraph (c)(3). As the *West* court recognized, this rationale does not apply when waiver occurs due to the improper filing of a Statement. In such circumstances, relief may occur only through the post-conviction relief process and only upon demonstration by the appellant that, but for the deficiency of counsel, it was reasonably probable that the appeal would have been successful. An appellant must be able to identify per se ineffectiveness to secure a remand under this section, and any appellant who is able to demonstrate per se ineffectiveness is entitled to a remand. Accordingly, this paragraph does not raise the concerns addressed in *Johnson v. Mississippi*, 486 U.S. 578, 588-89 (1988) (observing that where a rule has not been consistently or regularly applied, it is not—under federal law—an adequate and independent state ground for affirming petitioner’s conviction.)

Paragraph (c)(4) This paragraph clarifies the special expectations and duties of a criminal lawyer. Even lawyers seeking to withdraw pursuant to the procedures set forth in *Anders v. California*, 386 U.S. 738 (1967) and *Commonwealth v. McClendon*, 495 Pa. 467, 434 A.2d 1185 (1981) are obligated to comply with all rules, including the filing of a Statement. See *Commonwealth v. Myers*, 897 A.2d 493, 494-96 (Pa. Super. 2006); *Commonwealth v. Ladamus*, 896 A.2d 592, 594 (Pa. Super. 2006). However, because a lawyer will not file an *Anders/McClendon* brief without concluding that there are no non-frivolous issues to raise on appeal, this amendment allows a lawyer to file, in lieu of a Statement, a representation that no errors have been raised because the lawyer is (or intends to be) seeking to withdraw under *Anders/McClendon*. At that point, the appellate court will reverse or remand for a supplemental Statement and/or opinion if it finds potentially non-frivolous issues during its constitutionally required review of the record.

Subdivision (d) was formerly (c). The text has not been revised, except to update the reference to Pa.R.A.P. 1112(c).

The 2007 amendments attempt to address the concerns of the bar raised by cases in which courts found waiver: (a) because the Statement was too vague; or (b) because the Statement was so repetitive and voluminous that it did not enable the judge to focus on the issues likely to be raised on appeal. See, e.g., *Lineberger v. Wyeth*, 894 A.2d 141, 148-49 (Pa. Super. 2006); *Kanter v. Epstein*, 866 A.2d 394, 400-03 (Pa. Super. 2004), allowance of appeal denied, 584 Pa. 678, 880 A.2d 1239 (2005), cert. denied sub nom. *Spector Gadon & Rosen, P.C. v. Kanter*, 546 U.S. 1092 (2006). Courts have also cautioned, however, “against being too quick to find waiver, claiming that Rule 1925(b)

statements are either too vague or not specific enough.” *Astorino v. New Jersey Transit Corp.*, 912 A.2d 308, 309 (Pa. Super. 2006).

While conciseness and vagueness are very case-specific inquiries, certain observations may be helpful. First, the Statement is only the first step in framing the issues to be raised on appeal, and the requirements of Pa.R.A.P. 2116 are even more stringent. Thus, the Statement should be viewed as an initial winnowing. Second, when appellate courts have been critical of sparse or vague Statements, they have not criticized the number of issues raised but the paucity of useful information contained in the Statement. Neither the number of issues raised nor the length of the Statement alone is enough to find that a Statement is vague or non-concise enough to constitute waiver. See *Astorino v. New Jersey Transit Corp.*, 912 A.2d 308, 309 (Pa. Super. 2006). The more carefully the appellant frames the Statement, the more likely it will be that the judge will be able to articulate the rationale underlying the decision and provide a basis for counsel to determine the advisability of appealing that issue. Thus, counsel should begin the winnowing process when preparing the Statement and should articulate specific rulings with which the appellant takes issue and why. Nothing in the rule requires an appellant to articulate the arguments within a Statement. It is enough for an appellant—except where constitutional error must be raised with greater specificity—to have identified the rulings and issues that comprise the putative trial court errors.

Rule 1931. Transmission of the Record.

(a) *Time for transmission.*—[The] Except as otherwise prescribed by this rule, the record on appeal, including the transcript and exhibits necessary for the determination of the appeal, shall be transmitted to the appellate court within 60 days after the filing of the notice of appeal. If an appeal has been allowed or if permission to appeal has been granted, the record shall be transmitted as provided by Rule 1122 (allowance of appeal and transmission of record) or by Rule 1322 (permission to appeal and transmission of record), as the case may be. The appellate court may shorten or extend the time prescribed by this subdivision for a class or classes of cases.

(b) *Duty of lower court.*—After a notice of appeal has been filed the judge who entered the order appealed from shall comply with Rule 1925 (opinion in support of order), shall cause the official court reporter to comply with Rule 1922 (transcription of notes of testimony) or shall otherwise settle a statement of the evidence or proceedings as prescribed by this chapter, and shall take any other action necessary to enable the clerk to assemble and transmit the record as prescribed by this rule.

(c) *Duty of clerk to transmit the record.*—When the record is complete for purposes of the appeal, the clerk of the lower court shall transmit it to the prothonotary of the appellate court. The clerk of the lower court shall number the documents comprising the record and shall transmit with the record a list of the documents correspondingly numbered and identified with reasonable definiteness. Documents of unusual bulk or weight and physical exhibits other than documents shall not be transmitted by the clerk unless he is directed to do so by a party or by the prothonotary of the appellate court. A party must make advance arrangements with the clerk for the transportation and receipt of exhibits of unusual bulk or weight. Transmission of the record is effected when the clerk of the lower court mails or otherwise forwards the record to the prothonotary of the appellate court. The clerk of the lower court shall indicate, by endorsement on the face of the record or otherwise, the date upon which the record is transmitted to the appellate court.

(d) *Service of the list of record documents.*—The clerk of the lower court shall, at the time of the transmittal of the record to the appellate court, mail a copy of the list of record documents to all counsel of record, or if unrepresented by counsel, to the parties at the address they have provided to the clerk. The clerk shall note on the docket the giving of such notice.

(e) *Multiple appeals.*—Where more than one appeal is taken from the same order, it shall be sufficient to transmit a single record, without duplication.

(f) *Family fast track appeals.*—In a family fast track appeal, the record on appeal, including the transcript and exhibits necessary for the determination of the appeal, shall be transmitted to the appellate court within 30 days after the filing of the notice of appeal.

Official Note: Former Supreme Court Rule 22 required the record to be returned forthwith. See also former Superior Court Rule 50 and former Commonwealth Court Rules 22 and 23.

Explanatory Comment—2007

The 2007 amendment expands the time period for the trial court to transmit the certified record, including any opinions drafted pursuant to Pa.R.A.P. 1925(a), from forty to sixty days. The appellate court retains the ability to establish a shorter (or longer) period of time for the transmittal of the record in any class or classes of cases.

Rule 1972. Dispositions on Motion.

(a) Except as otherwise prescribed by this rule, [Subject] 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 paperbooks 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 family fast track appeal, a dispositive motion filed under Subdivisions (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 Rules 905(a)(2) and 1925(b), or within 10 days of the lower court's filing of a Rule 1925(e)(1) 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). Rule 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 Rule 123(c) (speaking applications).

Rule 2154. Designation of Contents of Reproduced Record.

(a) *General rule.*—Except when the appellant has elected to proceed under Subdivision (b) of this rule, or as otherwise provided in Subdivision (c) of this rule, the appellant shall not later than 30 days before the date fixed by or pursuant to Rule 2185 (time for serving and filing briefs) for the filing of his brief, serve and file a designation of the parts of the record which he intends to reproduce and a brief statement of issues which he intends to present for review. If the appellee deems it necessary to direct the particular attention of the court to parts of the record not designated by the appellant, the appellee shall, within ten days after receipt of the designations of the appellant, serve and file a designation of those parts. The appellant shall include in the reproduced record the parts thus designated. In designating parts of the record for reproduction, the parties shall have regard for the fact that the entire record is always available to the court for reference and examination and shall not engage in unnecessary designation.

(b) *Large records.*—If the appellant shall so elect, or if the appellate court has prescribed by rule of court for classes of matters or by order in specific matters, preparation of the reproduced record may be deferred until after the briefs have been served. Where the appellant desires thus to defer preparation of the reproduced record, the appellant shall, not later than the date on which his designations would otherwise be due under Subdivision (a), serve and file notice that he intends to proceed under this subdivision. The provisions of Subdivision (a) shall then apply, except that the designations referred to therein shall be made by each party at the time his brief is served, and a statement of the issues presented shall be unnecessary.

(c) Family fast track appeals.

(1) In a family fast track appeal, the appellant shall not later than 23 days before the date fixed by or pursuant to Rule 2185 (time for serving and filing briefs) for the filing of his brief, serve and file a designation of the parts of the record which he intends to reproduce and a brief statement of issues which he intends to present for review. If the appellee deems it necessary to direct the particular attention of the court to parts of the record not designated by the appellant, the appellee shall, within 7 days after receipt of the designations of the appellant, serve and file a designation of those parts. The appellant shall include in the reproduced record the parts thus designated. In designating parts of the record for reproduction, the parties shall have regard for the fact that the entire record is always available to the court for reference and examination and shall not engage in unnecessary designation.

(2) In a family fast track appeal, the provisions of Subdivision (b) shall not apply.

Official Note: Based in part upon former Supreme Court Rule 44, former Superior Court Rule 36 and former Commonwealth Court Rule 88. The prior statutory practice required the lower court or the appellate court to resolve disputes concerning the contents of the reproduced record prior to reproduction. The statutory practice was generally recognized as wholly unsatisfactory and has been abandoned in favor of deferral of the

issue to the taxation of costs phase. The uncertainty of the ultimate result on the merits provides each party with a significant incentive to be reasonable, thus creating a self-policing procedure.

Of course, parties proceeding under either procedure may by agreement omit the formal designations and accelerate the preparation of a reproduced record containing the material which the parties have agreed should be reproduced.

See Rule 2189 for procedure in cases involving the death penalty.

Explanatory Note—1979

The principal criticism of the new Appellate Rules has been the provisions for deferred preparation of the reproduced record, and the resulting procedure for the filing of advance copies of briefs (since the page citations to the reproduced record pages are not then available) followed by the later preparation and filing of definitive briefs with citations to the reproduced record pages. It has been argued that in the typical state court appeal the record is quite small, with the result that the pre-1976 practice of reproducing the record in conjunction with the preparation of appellant's definitive brief is entirely appropriate and would ordinarily be followed if the rules did not imply a preference for the deferred method. The Committee has been persuaded by these comments, and the rules have been redrafted to imply that the deferred method is a secondary method particularly appropriate for longer records.

Rule 2172. Covers.

(a) *Briefs.*—On the front cover of the brief there shall appear the following:

- (1) The name of the appellate court in which the matter is to be heard.
- (2) The docket number of the case in the appellate court.
- (3) The caption of the case in the appellate court, as prescribed by these rules.

(4) “Brief for Appellant” or “Brief for Appellee,” or, if the reproduced record is bound with the brief, “Brief for Appellant and Reproduced Record,” or “Brief for Appellee and Supplemental Reproduced Record,” as the case may be, or if the matter involves proceedings on petition for allowance of or for permission to appeal, “Petition for Allowance of Appeal,” “Petition for Permission to Appeal” or “Brief in Opposition,” as the case may be, or if the matter is pending in the appellate court on petition for review, “Brief for Petitioner,” “Brief for Petitioner and Reproduced Record,” “Brief for Respondent,” or “Brief for Respondent and Supplemental Reproduced Record,” as the case may be.

(5) Designation of the order appealed from as “Appeal from the Order of” the court from which the appeal is taken, with the docket number therein, or, if the matter involves proceedings on petition for allowance of or for permission to appeal, “Petition for Allowance of Appeal from the Order of” or “Petition for Permission to Appeal from the Order of” the court or other government unit from which the appeal is sought to be taken, with the docket number therein, or, if the matter is pending in the appellate court on petition for review, “Petition for Review of” the determination sought to be reviewed of the government unit involved, with any docket number therein. On appeals from the Superior Court or the Commonwealth Court its docket number shall be given, followed by a statement as to whether it affirmed, reversed or modified the order of the court or tribunal of first instance, giving also the name of the latter and the docket number, if any, of the case therein.

(6) The names of counsel, giving the office address and telephone number of the one upon whom it is desired notices shall be served.

(b) *Family fast track appeals.*—In a family fast track appeal, the front cover shall include a statement advising the appellate court that the appeal is a family fast track appeal.

[(b)] (c) *Reproduced record.*—If the reproduced record is bound separately, the cover thereof shall be the same as provided in Subdivision (a), except that in place of the information set forth in Paragraph (a)(4) of this rule there shall appear “Reproduced Record” or “Supplemental Reproduced Record”, as the case may be.

[(c)] (d) *Repetition in body of document.*—Unless expressly required by these rules, none of the material set forth in Subdivisions (a) and (b) shall be repeated in the brief or reproduced record.

[(d)] (e) *Cover stock.*—The covers of all briefs and reproduced records must be so light in color as to permit writing in ink thereon to be easily read and so firm in texture that the ink will not run.

Official Note: Based on former Supreme Court Rules 35C and 36, former Superior Court Rules 27C and 28, and former Commonwealth Court Rule 82, without change in substance except that Paragraph (a)(4) is clarified by eliminating the “Appeal of ...” heading, which would not conform to the caption on the notice of appeal, and Subdivision (d) is extended to the Commonwealth Court.

Rule 2185. Time for Serving and Filing Briefs.

(a) *General Rule.*—[The] Except as otherwise provided by this rule, the appellant shall serve appellant's brief not later than the date fixed pursuant to Subdivision (b) of this rule, or within 40 days after the date on which the record is filed, if no other date is so fixed. The appellee shall serve appellee's brief within 30 days after service of appellant's brief and reproduced record if proceeding under Rule 2154(a). A party may serve a reply brief permitted by these rules within 14 days after service of the preceding brief but, except for good cause shown, a reply brief must be served and filed so as to be received at least three days before argument. In cross appeals, the second brief of the deemed or designated appellant shall be served within 30 days of service of the deemed or designated appellee's first brief. Except as prescribed by Rule 2187(b) (advance text of briefs), each brief shall be filed not later than the last day fixed by or pursuant to this rule for its service.

(b) *Notice of deferred briefing schedule.*—When the record is filed the prothonotary of the appellate court shall estimate the date on which the matter will be argued before or submitted to the court, having regard for the nature of the case and the status of the calendar of the court. If the prothonotary determines that the matter will probably not be reached by the court for argument or submission within 30 days after the latest date on which the last paperbook could be filed under the usual briefing schedule established by these rules, the prothonotary shall fix a specific calendar date as the last date for the filing of the brief of the appellant in the matter, and shall give notice thereof as required by these rules. The date so fixed by the prothonotary shall be such that the latest date on which the last paperbook in the matter could be filed under these rules will fall approximately 30 days before the probable date of argument or submission of the matter.

(c) *Definitive copies.*—If the record is being reproduced pursuant to Rule 2154(b) (large records) the brief served pursuant to Subdivision (a) of this rule may be typewritten or page proof copies of the brief, with appropriate references to pages of the parts of the original record involved. Within 14 days after the reproduced record is filed each party who served briefs in advance form under this subdivision shall serve and file definitive copies of his brief or briefs containing references to the pages of the reproduced record in place of or in addition to the initial references to the pages of the parts of the original record involved (see Rule 2132 (references in the briefs to the record)). No other changes may be made in the briefs as initially served, except that typographical errors may be corrected.

(d) Family fast track appeals.

(1) In a family fast track appeal, the appellant shall serve appellant's brief within 30 days after the date on which the record is filed, if no other date is so fixed. The appellee shall serve appellee's brief within 20 days after service of appellant's brief and reproduced record. A party may serve a reply brief permitted by these rules within 7 days after service of the preceding brief but, except for good cause shown, a reply brief must be served and filed so as to be received at least three days before argument. In cross appeals, the second brief of the deemed or designated appellant shall be served within 20 days of service of the deemed or designated appellee's first brief.

(2) In a family fast track appeal, the provisions of Subdivisions (b) and (c) shall not apply.

Official Note: Unlike the provision for filing other papers, Rule 121(a) provides “paperbooks shall be deemed filed on the day of mailing if first class mail is utilized.” “Paperbooks” are defined in Rule 102 as briefs and reproduced records, but “the term does not include applications for reconsideration of denial of allowance of appeal under Rule 1123(b) (reconsideration) or applications for reargument under Chapter 25 (post-submission proceedings).”

The 2002 amendment recognizes that in cross appeals the deemed or designated appellant’s second brief is more extensive than a reply brief and, therefore may require more than 14 days to prepare. See Rule 2136 (briefs in cases involving cross appeals).

Rule 2542. Time for Application for Reargument. Manner of Filing.

(a) *Time.*—[An] Except as otherwise prescribed by this rule, an application for reargument shall be filed with the prothonotary within 14 days after entry of the judgment or other order involved.

(b) *Manner of Filing.*—If the application for reargument is transmitted to the prothonotary of the appellate court by means of first class mail, the application shall be deemed received by the prothonotary for the purposes of Rule 121(a) (filing) on the date deposited in the United States mail as shown on a U.S. Postal Service Form 3817 Certificate of Mailing. The certificate of mailing shall show the docket number of the matter in the court in which reargument is sought and shall be enclosed with the application or separately mailed to the prothonotary. Upon actual receipt of the application, the prothonotary shall immediately stamp it with the date of actual receipt. That date, or the date of earlier deposit in the United States mail as prescribed in this subdivision, shall constitute the date when application was sought, which date shall be shown on the docket.

(c) *Family fast track appeals.*—In a family fast track appeal, an application for reargument 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 provides that an application shall be deemed received on the date deposited in the United States mail as shown on a U.S. Postal Service Form 3817 certificate of mailing.

Rule 2545. Answer in Opposition to Application.

(a) General rule.—[Within] Except as otherwise prescribed in Subdivision (b) of this rule, within 14 days after service of an application for reargument, an adverse party may file an answer in opposition. The answer in opposition need not be set forth in numbered paragraphs in the manner of a pleading. The answer shall set forth any procedural, substantive or other argument or ground why the court should not grant reargument. No separate motion to dismiss an application for reargument will be received. A party entitled to file an answer in opposition under this rule who does not intend to do so shall, within the time fixed by these rules for filing an answer in opposition, file a letter stating that an answer in opposition to the application for reargument will not be filed. The failure to file an answer in opposition will not be construed as concurrence in the request for reargument.

(b) Family fast track appeals.—In a family fast track appeal, within 7 days after service of an application for reargument, an adverse party may file an answer in opposition.