

Appellate Court Procedural Rules Committee

The Appellate Court Procedural Rules Committee proposes to amend Pa.R.A.P. 2140. The Committee submits the proposed amendment for public comments and suggestions prior to their submission to the Supreme Court.

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

All communications in reference to the proposed amendment should be sent no later than January 14, 2013 to:

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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

The Appellate Court Procedural Rules Committee proposes to amend Pa.R.A.P. 2140 so that when a case is remanded to an intermediate appellate court or an appellate court grants reargument or reconsideration, the court shall inform the parties of any additional briefing requirements.

Rule 2140, in its current form, provides that on remand, reconsideration or reargument, it is up to the parties whether they wish to re-file their original brief or file a supplemental brief. The Appellate Procedural Rules Committee believes that such an automatic provision, uninformed by direction from the appellate court, is inappropriate. Instead, the appellate court, which will be adjudicating the remand, reargument or reconsideration, should give the parties specific direction of what additional briefing, if any, it wishes. For example the issues on remand, reconsideration or reargument may be limited to a discrete, specific issue and the appellate court will desire briefing addressed to that issue only. There may be instances where a case is remanded to consider the impact of a recently decided case and the appellate court only needs briefing addressed to the case's impact.

Further, the current section (c) of Rule 2140 provides that the party that petitioned for reargument or reconsideration automatically files the first brief and the other party files a responsive brief. In many instances, the party that petitioned for reargument or reconsideration may not be the appellant with the burden on the underlying appeal. It is illogical that the petitioning party automatically should file the first brief on reargument or reconsideration.

The above-noted issues with respect to the current rule are resolved by the proposed amendment. The amendment provides the appellate court on remand, reconsideration or reargument first shall set a schedule for further proceedings. The appellate court then will determine what additional briefing is required and the schedule therefore. This amendment allows the appellate court to determine the briefing required based upon the specific issues before it. The parties will no longer need to guess what additional briefing the appellate court desires.

Accordingly, under the proposed amendment, the current version of Rule 2140 would be replaced by the following language:

Following remand or if reargument, reconsideration or rehearing is granted, the court shall establish a schedule for further proceedings. If the court does not require further briefing, it shall notify the parties. If further briefing is required, the court shall issue a briefing schedule that includes the order in which briefs shall be submitted, the type of brief to be submitted, whether a reproduced record is needed and the number of copies to be filed.

Rule 2140. Brief on Remand or Following Grant of Reargument or Reconsideration.

[(a) General rule. Following a remand from the Supreme Court to the Superior Court or the Commonwealth Court, or an Order allowing reargument or reconsideration by any appellate court, unless otherwise directed by the Court having jurisdiction of the case, each party shall, within the time period specified below, either refile the brief previously filed together with a supplemental brief if desired, or prepare and file a substituted brief in accordance with this Rule.]
Following remand or if reargument, reconsideration or rehearing is granted, the court shall establish a schedule for further proceedings. If the court does not require further briefing, it shall notify the parties. If further briefing is required, the court shall issue a briefing schedule that includes the order in which briefs shall be submitted, the type of brief to be submitted, whether a reproduced record is needed and the number of copies to be filed.

[(b) *Cover on brief.* The brief (whether new or refiled) shall be appropriately titled to reflect the current status of the case (e.g. brief on remand, supplemental brief on remand, brief on reargument, supplemental brief on reargument).]

[(c) *Order and time for filing.* On reargument or reconsideration, the party which petitioned for reargument or reconsideration shall file its brief, including any supplemental brief, within 21 days of the order allowing reargument or reconsideration. The respondent shall file its brief within 21 days after service of the petitioner's brief. The petitioner may file a reply brief within 10 days after service of the respondent's brief.]

[On remand the original appellant or original petitioner shall file its brief, including any supplemental brief, within 21 days of the remand order. The original appellee or respondent shall file its brief within 21 days after service of the appellant's or petitioner's brief. The original appellant or original petitioner may file a reply brief within 10 days after service of the appellee's or respondent's brief.]

[(d) *Page limits.* A substituted brief shall not exceed 70 pages when produced on a word processor/computer or typewriter. A supplemental brief shall not exceed 40 pages when produced on a word processor/computer or typewriter. A reply brief shall not exceed 25 pages when produced on a word processor/computer or typewriter.]

Official Note: [The number of copies of original, substituted and supplemental briefs to be filed on reargument or reconsideration is to be set by the Prothonotary of the Appellate Court with jurisdiction over the appeal and may be

changed from time to time without notice to bar.]The 2012 revision of this rule clarified that following remand or the grant of reconsideration or reargument, the court will order such briefing as it deems necessary.