

Appellate Court Procedural Rules Committee

The Appellate Court Procedural Rules Committee proposes to amend Pennsylvania Rules of Appellate Procedure 341, 903, 904, 1701 and 1931. These amendments are being submitted for public comments and suggestions prior to their submission to the Supreme Court.

Proposed new material is underlined while deleted material is bracketed.

All communications in reference to the proposed amendment should be sent no later than Oct 4, 2011 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 Pennsylvania Rules of Appellate Procedure 341, 903, 904, 1701 and 1931. Under the Pennsylvania Rules of Civil Procedure, once post-trial motions are determined or deemed denied, there is a final and appealable order. Despite the language in Pa.R.C.P. No. 227.4(1)(b) (“A judgment entered pursuant to this subparagraph shall be final as to all parties and all issues and shall not be subject to reconsideration”), trial courts do in fact leave issues unresolved at the time they determine post-trial motions, and the Supreme Court has recognized that when the trial court finally does resolve those issues, the trial court has effectively issued a second (or subsequent) final order. *See Miller Electric Co. v. DeWeese*, 589 Pa. 167, 907 A.2d 1051 (2006). The same possibility of multiple final orders exists if a trial court grants preliminary objections, judgment on the pleadings, or summary judgment.

In addition to motions pending when a notice of appeal is filed, parties at times file requests for relief in the trial court after an appeal has been taken. Unless the request is for a ministerial correction to the judgment or is asking the trial court to enforce or otherwise ensure that effect is given to already-entered orders (such as by entering an order of contempt), the trial court is without jurisdiction to act on pending or newly-filed requests for relief, unless the appellate court expressly remands for the court to consider such motions. *See Pa.R.A.P. 1701*. As a result, pending or subsequent motions for – for example – attorneys’ fees would need to languish in the trial court until the case is remanded to it. Under the procedure set forth in Rule 1701(b)(5), however, if an appellate court determines that it will promote fairness or judicial economy to

consider the matters on appeal together with any matters that are pending in the trial court, the appellate court may remand for resolution of those matters while retaining jurisdiction over the initial appeal. These amendments are designed to clarify this procedure and to ensure that the appellate court has notice of outstanding requests for relief, because, obviously, an appellate court cannot remand for determination of a request for relief it does not know exists.

Suggested new language is underlined; suggested deletions are in brackets.

Rule 341. Final Orders; Generally.

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Explanatory Comment – 2011

Under the Pennsylvania Rules of Civil Procedure, once post-trial motions are determined or deemed denied, there is a final and appealable order. Despite the language in Pa.R.C.P. No. 227.4(1)(b) (“A judgment entered pursuant to this subparagraph shall be final as to all parties and all issues and shall not be subject to reconsideration”), trial courts do in fact leave issues unresolved at the time they determine post-trial motions, and the Supreme Court has recognized that when the trial court finally does resolve those issues, the trial court has effectively issued a second (or subsequent) final order. See *Miller Electric Co. v. DeWeese*, 589 Pa. 167, 907 A.2d 1051 (2006). Moreover, there are times when parties file requests for relief in the trial court after an appeal has been taken. By entering a final order that disposes of all claims and all parties – whether upon post-trial motions, preliminary objections, judgment on the pleadings or summary judgment – a trial court has been divested of jurisdiction to resolve any matters on that docket except (a) ministerial corrections or (b) matters necessary to give effect to the already-entered orders, e.g., contempt. See Pa.R.A.P. 1701. As a result, pending or subsequent motions for attorneys’ fees would need to languish in the trial court until the case is remanded to it. Under the procedure set forth in Rule 1701(b)(5), if an appellate court determines that it will promote fairness or judicial economy to consider the matters on appeal together with any matters that are pending in the trial court, the appellate court may remand for resolution of those matters while retaining jurisdiction over the initial appeal.

Rule 903. Time for Appeal.

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Explanatory Comment - 2011

If an appellate court has remanded to a trial court with directions for a trial court to resolve an issue that remained unresolved at the time an appeal was taken or that was raised to the trial court after the appeal was taken, a new notice of appeal needs to be filed within 30 days of the entry of the trial court's order resolving the outstanding issue. As an example, a trial court may have ruled on post-trial motions without determining attorneys' fees. While the judgment became final (and thus an appeal had to be taken in order to be timely) at the time the post-trial motions were ruled on (or deemed denied), the appellate court may conclude that it serves the interests of fairness or judicial economy to resolve any questions resulting from an award or denial of an award of attorneys' fees at the same time. If so, the appellate court will remand so that the trial court can determine the attorneys' fees, but it will not relinquish jurisdiction over the original appeal. Any (or all) parties may be aggrieved by the order on attorneys' fees. In order for the appellate court to hear an appeal of the order on attorneys' fees, the party[ies] aggrieved must file new notice(s) of appeal.

Rule 904. Content of the Notice of Appeal.

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(d) Docket entr[y]ies. – The notice of appeal shall include a statement that the order appealed from has been entered in the docket and it shall identify any motions or other requests for relief that are still pending in the trial court. A copy of the docket entr[y]ies showing the entry of the order appealed from and the pending requests for relief shall be attached to the notice of appeal.

Rule 1701. Effect of Appeal Generally.

(a) *General rule.*—Except as otherwise prescribed by these rules, after an appeal is taken or review of a quasijudicial order is sought, the trial court or other government unit may no longer proceed further in the matter. As a result, if a party has an unresolved request for relief pending in the trial court, or if a party files for relief once a notice of appeal has been filed from an order that disposes of all claims and all parties, the trial court has no authority to resolve those requests unless they come within the exceptions provided for in this rule or as permitted by 42 Pa.C.S. § 5505 (related to modification of orders), and any order issued by a trial court that is not within those exceptions is null and void.

(b) *Authority of a trial court or agency after appeal.*—After an appeal is taken or review of a quasijudicial order is sought, the trial court or other government unit may:

(1) Take such action as may be necessary to preserve the status quo, correct formal errors in papers relating to the matter, cause the record to be transcribed, approved, filed and transmitted, grant leave to appeal in forma pauperis, grant supersedeas, and take other action permitted or required by these rules or otherwise ancillary to the appeal or petition for review proceeding.

(2) Enforce any order entered in the matter, unless the effect of the order has been superseded as prescribed in this chapter. The authority to enforce an order permits a trial court to enter sanctions for conduct arising after entry of judgment.

(3) Grant reconsideration of the order which is the subject of the appeal or petition, if:

(i) an application for reconsideration of the order is filed in the trial court or other government unit within the time provided or prescribed by law; and

(ii) an order expressly granting reconsideration of such prior order is filed in the trial court or other government unit within the time prescribed by these rules for the filing of a notice of appeal or petition for review of a quasijudicial order with respect to such order, or within any shorter time provided or prescribed by law for the granting of reconsideration.

A timely order granting reconsideration under this paragraph shall render inoperative any such notice of appeal or petition for review of a quasi-judicial order theretofore or thereafter filed or docketed with respect to the prior order. The petitioning party shall and any party may file a praecipe with the prothonotary of any court in which such an inoperative notice or petition is filed or docketed and the prothonotary shall note on the docket that such notice or petition has been stricken under this rule. Where a timely order of reconsideration is entered under this paragraph, the time for filing a notice of appeal or petition for review begins to run anew after the entry of the decision on reconsideration, whether or not that decision amounts to a reaffirmation of the prior determination of the trial court or other government unit. No additional fees shall be required for the filing of the new notice of appeal or petition for review.

(4) Authorize the taking of depositions or the preservation of testimony where required in the interest of justice.

(5) Take any action directed or authorized [on application] by the appellate court. If an appellate court remands so that the trial court can consider an unresolved request for relief in the trial court, the trial court's order resolving that request for relief must also inform the parties that, if any party(ies) are aggrieved by that order, a notice of appeal from that order must be filed within 30 days after the entry of the order on the docket.

(6) Proceed further in any matter in which a non-appealable interlocutory order has been entered, notwithstanding the filing of a notice of appeal or a petition for review of the order.

(c) *Limited to matters in dispute.*—Where only a particular item, claim or assessment adjudged in the matter is involved in an appeal, or in a petition for review proceeding relating to a quasijudicial order, the appeal or petition for review proceeding shall operate to prevent the trial court or other government unit from proceeding further with only such item, claim or assessment, unless otherwise ordered by the trial court or other government unit or by the appellate court or a judge thereof as necessary to preserve the rights of the appellant.

(d) *Certain petitions for review.*—The filing of a petition for review (except a petition relating to a quasijudicial order) shall not affect the power or authority of the government unit to proceed further in the matter but the government unit shall be subject to any orders entered by the appellate court or a judge thereof pursuant to this chapter.

Note:

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Subdivision (a) provides that, when an appeal is taken from a final order that disposes of all claims and of all parties the trial court is divested of jurisdiction to act on a variety of motions that may remain pending, including those seeking relief such as non-contractual prejudgment interest, costs, delay damages or attorneys' fees and costs. When any such motions would remain pending after an appeal from a final judgment, Rule 904(d) requires that those motions be identified in the notice of appeal so that the appellate court has notice that they are still pending. The appellate court can then decide whether to proceed with the appeal or to remand to the trial court for resolution of any pending motions while retaining jurisdiction. Contractual prejudgment interest is excepted from the general rule that a notice of appeal from a final judgment divests the trial court of jurisdiction because such interest is a legal right and the correction of the judgment is correction of a formal error in the papers and is thus within the scope of subdivision (b)(1). *Fernandez v. Levin*, 519 Pa. 375, 379-80, 548 A.2d 1191, 1193 (1988); *Metro. Edison Co. v. Old Home Manor, Inc.*, 334 Pa. Super. 25, 30-32, 482 A.2d 1062, 1064-1065 (1988). The trial court is not divested of jurisdiction when appealed orders are interlocutory or collateral and thus do not dispose of all claims and of all parties. Nonetheless, in such cases, Rule 1701(c) may still restrict the issues as to

which the trial court may act. The 2011 amendment to Rule 1701 could lead to a different result in *Miller Electric Co. v. DeWeese*, 589 Pa. 167, 907 A.2d 1051 (2006) and cases that followed that decision, such as *Old Forge School District v. Highmark, Inc.*, 592 Pa. 307, 317, 924 A.2d 1205, 1211 (2007), because under the Rule as amended, a trial court could not decide attorneys' fees while the underlying case was on appeal unless the appellate court had issued a limited remand for that purpose.

Rule 1931. Transmission of the Record.

(a) Time for transmission of the record.

(1) *General rule*—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.

(2) *Children's fast track appeals*.—In a children's 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. 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.

(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 or she 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*.—When the record is sent to the appellate court, [The] the clerk of the lower court shall [, at the time of the transmittal of the record to the appellate court, mail] send 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 or already pending appeals.* — If the trial court sends the record to an appellate court and further notices of appeal have been or are filed while the appeal is pending, the trial court does not need to replicate the record transmitted pursuant to the first notice of appeal. Only the record postdating the first transmission needs to be sent. [Where more than one appeal is taken from the same order, it shall be sufficient to transmit a single record, without duplication.]