

**CHAPTER 13. INTERLOCUTORY APPEALS BY PERMISSION**

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**Rule 1301. Form of Papers. Number of Copies.**

All papers filed under this chapter may be produced on a word processor/computer or typewriter. Eight copies shall be filed with the original in the Supreme Court. Six copies shall be filed with the original in the Superior Court. One copy and the original shall be filed in the Commonwealth Court.

**Official Note:** Counsel are advised to check with the prothonotary of the appellate court before filing as the number of copies required may change from time to time without formal amendment of these rules.

**Source**

The provisions of this Rule 1301 amended December 26, 1986, effective January 31, 1987, and shall govern all matters thereafter commenced and, insofar as just and practicable, matters then pending, 16 Pa.B. 4951; amended June 26, 2007, effective immediately, 37 Pa.B. 3222. Immediately preceding text appears at serial page (308913).

**Rule 1311. Interlocutory Appeals by Permission.**

**(Editor's Note:** See also the Order and version of Rule 1311 which follows this rule.)

(a) *General rule.*—An appeal may be taken by permission under 42 Pa.C.S. § 702(b) (interlocutory appeals by permission) from any interlocutory order of a lower court or other government unit. See Rule 312 (interlocutory appeals by permission).

(b) *Petition for permission to appeal.*—Permission to appeal from an interlocutory order containing the statement prescribed by 42 Pa.C.S. § 702(b) may be sought by filing a petition for permission to appeal with the prothonotary of the appellate court within 30 days after the entry of such order in the lower court or other government unit with proof of service on all other parties to the matter in the lower court or other government unit and on the government unit or clerk of the lower court, who shall file the petition of record in such lower court. An order may be amended to include the prescribed statement at any time, and permission to appeal may be sought within 30 days after the entry of the order as amended. If the petition for permission to appeal is transmitted to the prothonotary of the appellate 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 lower court or other government unit and shall be either enclosed with the petition or separately mailed to the prothonotary. Upon actual receipt of the petition for permission to appeal the prothonotary of the appellate 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 permission to appeal was sought, which date shall be shown on the docket. The prothonotary of the appellate court shall immediately note the appellate docket number assignment upon the petition for permission to appeal and give written notice of the docket number assignment in person or by first class mail to the government unit or clerk of the lower court, to the petitioner and to the other persons named in the proof of service accompanying the petition.

(c) *Fee.*—The petitioner upon filing the petition for permission to appeal shall pay any fee therefor prescribed by Chapter 27 (fees and costs in appellate courts and on appeal).

(d) *Entry of appearance.*—Upon the filing of the petition for permission to appeal the prothonotary of the appellate 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 permission to 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 an entry of appearance may be withdrawn only by leave of court.

**Official Note:** Based on 42 Pa.C.S. § 702(b) (interlocutory appeals by permission). See note to Rule 903 (time for appeal). Compare 42 Pa.C.S. § 5574 (effect of application for amendment to qualify for interlocutory appeal).

See the note to Rule 1112 (appeals by allowance) for an explanation of the procedure when Form 3817 is used.

Where the administrative agency or lower court refuses to amend its order to include the prescribed statement, a petition for review under Chapter 15 of the unappealable order of denial is the proper mode of determining whether the case is so egregious as to justify prerogative appellate correction of the exercise of discretion by the lower tribunal. If the petition for review is granted in such a case, the effect (as in the Federal practice under 28 U.S.C. § 1292(b)) is the same as if a petition for permission to appeal had been filed and granted, and no separate petition for permission to appeal need be filed.

#### Source

The provisions of this Rule 1311 amended through December 16, 1983, effective January 1, 1984, 13 Pa.B. 3998. Immediately preceding text appears at serial pages (115431) to (115433).

**Rule 1311. Interlocutory Appeals by Permission.****1994 Order**

*Per Curiam:*

*And now*, this 10th day of January, 1994, the amendments to Pa.R.A.P. 311, 341 and 1311 and new Pa.R.A.P. 313, adopted May 6, 1992, at No. 75 Appellate Rules Docket No. 1, are hereby made applicable to all orders entered on or after the effective date of this Order, regardless of the date the action or administrative proceeding was originally commenced in a Court, Commonwealth agency or local agency. This Order shall not affect any orders entered by a Court, Commonwealth agency or local agency after July 6, 1992, and before the effective date of this Order in any action or administrative proceeding originally commenced on or before July 6, 1992. This Order shall be effective March 1, 1994.

**1992 Order**

*And now*, this 6th day of May, 1992, Rules 311, 341 and 1311 of the Pennsylvania Rules of Appellate Procedure, and notes thereto, are amended as follows hereto. Rule 313 of the Pennsylvania Rules of Appellate Procedure and note thereto are hereby adopted.

The amendments and new rules shall become effective July 6, 1992 and shall govern only actions or administrative proceedings originally commenced in a court, Commonwealth agency or local agency after that date. It is directed that this Order shall be processed pursuant to Pa. R.J.A. 103(b).

This Order vacates and supersedes this Court's prior Order dated March 17, 1992, at No. 75 Appellate Rules Docket No. 1.

*By the Court*

ROBERT N. C. NIX, Jr.,  
*Chief Justice*

(a) *General rule.*—An appeal may be taken by permission under 42 Pa.C.S. § 702(b) (interlocutory appeals by permission) from any interlocutory order of a lower court or other government unit. See Rule 312 (interlocutory appeals by permission).

(b) *Petition for permission to appeal.*—Permission to appeal from an interlocutory order containing the statement prescribed by 42 Pa.C.S. § 702(b) may be sought by filing a petition for permission to appeal with the prothonotary of the appellate court within 30 days after entry of such order in the lower court or other government unit with proof of service on all other parties to the matter in the lower court or other government unit and on the government unit or clerk of the lower court, who shall file the petition of record in such lower court. An application for an amendment of an interlocutory order to set forth expressly the

statement specified in 42 Pa.C.S. § 702(b) shall be filed with the lower court or other government unit within 30 days after the entry of such interlocutory order and permission to appeal may be sought within 30 days after entry of the order as amended. Unless the trial court or other government unit acts on the application within 30 days after it is filed, the trial court or other government unit shall no longer consider the application and it shall be deemed denied. If the petition for permission to appeal is transmitted to the prothonotary of the appellate court by means of first class, express, or priority United States Postal Service 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 United States Postal Service Form 3817 Certificate of Mailing, or other similar United States Postal Service form from which the date of deposit can be verified. The certificate of mailing or other similar Postal Service form from which the date of deposit can be verified shall be cancelled by the Postal Service, shall show the docket number of the matter in the lower court or other government unit and shall be either enclosed with the petition or separately mailed to the prothonotary. Upon actual receipt of the petition for permission to appeal the prothonotary of the appellate 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 permission to appeal was sought, which date shall be shown on the docket. The prothonotary of the appellate court shall immediately note the appellate docket number assignment upon the petition for permission to appeal and give written notice of the docket number assignment in person or by first class mail to the government unit or clerk of the lower court, to the petitioner and to the other persons named in the proof of service accompanying the petition.

(c) *Fee.*—The petitioner upon filing the petition for permission to appeal shall pay any fee therefor prescribed by Chapter 27 (fees and costs in appellate courts and on appeal).

(d) *Entry of appearance.*—Upon the filing of the petition for permission to appeal the prothonotary of the appellate court shall note on the record as counsel for the petitioner the name of counsel, if any, set forth in or endorsed upon the petition for permission to 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. § 702(b) (interlocutory appeals by permission). See note to Rule 903 (time for appeal). Compare 42 Pa.C.S. § 5574 (effect of application for amendment to qualify for interlocutory appeal).

See the Official Note to Rule 1112 (appeals by allowance) for an explanation of the procedure when Form 3817 or other similar United States Postal Service form from which the date of deposit can be verified is used.

Where the administrative agency or lower court refuses to amend its order to include the prescribed statement, a petition for review under Chapter 15 of the unappealable order of denial is the proper mode of determining whether the case is so egregious as to justify prerogative appellate correction of the exercise of discretion by the lower tribunal. If the petition for review is granted in such a case, the effect (as in the Federal practice under 28 U.S.C. § 1292(b)) is the same as if a petition for permission to appeal had been filed and granted, and no separate petition for permission to appeal need be filed.

The 1997 amendment to subdivision (b) provides for a deemed denial where the trial court or other governmental unit fails to act on the application within 30 days. Under such circumstances, a party may need to file a praecipe for entry of the deemed denial pursuant to Rule 301(d).

With regard to subdivision (d) 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 (d) of this rule, please note the requirements of Rule 120.

#### Source

The provisions of this Rule 1311 amended through December 16, 1983, effective January 1, 1984, 13 Pa.B. 3998; amended March 12, 1992, effective July 6, 1992, and shall govern all matters thereafter commenced, 22 Pa.B. 1354; amended May 6, 1992, effective July 6, 1992, 22 Pa.B. 2675; amended July 7, 1997, effective in 60 days, 27 Pa.B. 3503; amended March 15, 2004, effective 60 days after adoption, 34 Pa.B. 1670; amended September 10, 2008, effective December 1, 2008, 38 Pa.B. 5257. Immediately preceding text appears at serial pages (231641) to (231642) and (303531).

### **Rule 1312. Content of the Petition for Permission to Appeal.**

(a) *General rule.*—The petition for permission to appeal need not be set forth in numbered paragraphs in the manner of a pleading, and shall contain the following (which shall, insofar as practicable, be set forth in the order stated):

(1) A statement of the basis for the jurisdiction of the appellate court.

(2) The text of the order in question, or the portions thereof sought to be reviewed (including the statement by the lower court or other government unit that the order involves a controlling question of law as to which there is a substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the matter), and the date of its entry in the court or other government unit below. If the order is voluminous, it may, if more convenient, be appended to the petition.

(3) A concise statement of the case containing the facts necessary to an understanding of the controlling questions of law determined by the order of the lower court or other government unit.

(4) The controlling questions of law presented for review, expressed in the terms and circumstances of the case but without unnecessary detail. The statement of questions presented will be deemed to include every subsidiary question fairly comprised therein. Only the questions set forth in the petition, or

fairly comprised therein, will ordinarily be considered by the court in the event permission to appeal is granted.

(5) A concise statement of the reasons why a substantial ground exists for a difference of opinion on the questions and why an immediate appeal may materially advance the termination of the matter.

(6) There shall be appended to the petition a copy of any opinions delivered relating to the order sought to be reviewed, as well as all opinions of lower courts or other government units in the case, and, if reference thereto is necessary to ascertain the grounds of the order, opinions in companion cases. If whatever is required by this paragraph to be appended to the petition is voluminous, it may, if more convenient, be separately presented.

(7) There shall be appended to the petition the verbatim texts of the pertinent provisions of constitutional provisions, statutes, ordinances, regulations or other similar enactments which the case involves, and the citation to the volume and page where they are published, including the official edition, if any.

(b) *Caption and parties.*—All parties to the proceeding in the lower court or other government unit other than petitioner shall be named as respondents, but respondents who support the position of the petitioner shall meet the time schedule for filing papers which is prescribed in this chapter for the petitioner, except that any response by such respondents to the petition shall be filed as promptly as possible after receipt of the petition.

(c) *No supporting brief.*—All contentions in support of a petition for permission to appeal shall be set forth in the body of the petition as prescribed by Paragraph (a)(5) of this rule. Neither the briefs below nor any separate brief in support of a petition for permission to appeal will be received, and the prothonotary of the appellate court will refuse to file any petition for permission to appeal to which is annexed or appended any brief below or supporting brief.

(d) *Essential requisites of petition.*—The failure of a petitioner to present with accuracy, brevity, and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration will be a sufficient reason for denying the petition.

(e) *Multiple petitioners.*—Where permitted by Rule 512 (joint appeals) a single petition for permission to appeal may be filed.

**Official Note:** Based on former Commonwealth Court Rule 114. Subdivision (a)(2) of this rule makes clear that the order of the tribunal below must contain a statement that the order involves a controlling question of law as to which there is a difference of opinion.

Interlocutory appeals as of right may be taken by filing a notice of appeal under Chapter 9 (appeals from lower courts), rather than by petition under this rule. See Rule 311 (interlocutory appeals as of right).

#### Source

The provisions of this Rule 1312 amended December 11, 1978, effective December 30, 1978, 8 Pa.B. 3802. Immediately preceding text appears at serial pages (27925) and (27926).

**Rule 1313. Effect of Filing Petition.**

A petition for permission to appeal shall not stay the proceedings before the lower court or other government unit, unless the lower court or other government unit, or the appellate court or a judge thereof shall so order.

**Official Note:** Based on Based on (1) 42 Pa.C.S. § 702(c) (supersedeas), and (2) former Commonwealth Court Rule 114.

**Source**

The provisions of this Rule 1313 amended December 11, 1978, effective December 30, 1978, 8 Pa.B. 3802. Immediately preceding text appears at serial page (27926).

**Rule 1314. Answer to the Petition for Permission to Appeal.**

Within 14 days after service of a petition for permission to appeal an adverse party may file an answer. The answer shall be deemed filed on the date of mailing if first class, express, or priority United States Postal Service mail is utilized. The answer 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 interlocutory order involved should not be reviewed by the appellate court and shall comply with Rule 1312(a)(7) (content of petition for permission to appeal). No separate motion to dismiss a petition for permission to appeal will be received. A party entitled to file an answer under this rule who does not intend to do so shall, within the time fixed by these rules for filing an answer, file a letter stating that an answer to the petition for permission to appeal will not be filed. The failure to file an answer will not be construed as concurrence in the request for permission to appeal.

**Source**

The provisions of this Rule 1314 amended September 10, 2008, effective December 1, 2008, 38 Pa.B. 5257. Immediately preceding text appears at serial page (308915).

**Rule 1316. Incorrect Use of Petition for Permission to Appeal or Petition for Review.**

(a) *General Rule.* The appellate court shall treat a request for discretionary review of an order which is immediately appealable as a notice of appeal under the following circumstances:

- (1) where a party has filed a timely petition for permission to appeal pursuant to Pa.R.A.P. 1311; or
- (2) where a party has filed a timely petition for review from a trial court's refusal of a timely application pursuant to Pa.R.A.P. 1311 to amend the order to set forth expressly the statement specified in 42 Pa.C.S. § 702(b).

(b) *Additional Requirements.* The appellate court may require any additional actions necessary to perfect the appeal.

**Official Note:** This Rule requires the appellate court to treat a timely, but erroneous, petition for permission to appeal pursuant to Pa.R.A.P. 1311 from an order which is, in fact, immediately appealable as of right, as a timely notice of appeal. See *Commonwealth v. Shull*, 811 A.2d 1 (Pa.Super. 2002). This Rule supersedes *Thermo-Guard, Inc. v. Cochran*, 596 A.2d 188, 192 (Pa. Super. 1991), which stated, as dictum, that “. . . in the future, where a petition for permission to appeal seeking review of a final order, appealable as of right, or of an interlocutory order made appealable as of right . . . is filed, this court should simply deny the petition.” Also, pursuant to subdivision (a)(2) of this Rule, where the trial court refuses an application to amend an order to set forth expressly the statement specified in 42 Pa.C.S. § 702(b), and that order was in fact appealable as of right, the appellate court shall treat a Chapter 15 petition for review of the trial court’s refusal to amend as a notice of appeal.

Use of the term “notice of appeal” in this Rule is not intended to preclude treatment of the petition for permission to appeal as a petition for review if the proper method of appeal as of right would be a petition for review addressed to the Commonwealth Court’s appellate jurisdiction found at 42 Pa.C.S. § 763.

#### Source

The provisions of this Rule 1316 adopted December 8, 2004, effective 60 days after adoption, 34 Pa.B. 6764.

### **Rule 1321. Transmission of Papers to and Action by the Court.**

Upon receipt of the answer to the petition for permission to appeal, or a letter stating that no answer will be filed, from each party entitled to file such, the petition and the answer, if any, shall be distributed by the prothonotary to the appellate court for its consideration. Permission to appeal may be limited to one or more of the questions presented in the petition, in which case the order granting permission to appeal shall specify the question or questions which will be considered by the court.

#### Source

The provisions of this Rule 1321 amended September 10, 2008, effective December 1, 2008, 38 Pa.B. 5257. Immediately preceding text appears at serial page (308916).

### **Rule 1322. Permission to Appeal and Transmission of Record.**

If permission to appeal is granted, the prothonotary of the appellate court shall immediately give written notice in person or by ordinary mail of the entry of the order granting permission to appeal to the government unit or clerk of the lower court and to each party who has appeared in the appellate court. The notice shall specify the question or questions which will be considered by the appellate court, if permission to appeal has been granted as to less than all questions presented. If subsequent proceedings will be governed by Chapter 15 (judicial review of governmental determinations) and if under the applicable law the questions raised by the petition for permission to appeal may be determined in whole or in part upon the record made before the appellate court, the notice shall direct the petitioner to serve and file an appropriate petition for review. The clerk of the lower court shall docket the notice in the same manner as a notice of appeal. The record shall be transmitted and filed in accordance with Chapter 19 (preparation and transmission of the record and related matters). The times fixed by those provisions for transmitting the record shall run from the date of the entry of the order granting permission to appeal. A notice of appeal need not be filed.

**Source**

The provisions of this Rule 1322 amended December 11, 1978, effective December 30, 1978, 8 Pa.B. 3802; amended May 16, 1979, effective September 30, 1979, 9 Pa.B. 1740. Immediately preceding text appears at serial page (39586).

**Rule 1323. Denial of Permission to Appeal.**

If the petition for permission to appeal is denied the prothonotary of the appellate court shall immediately give written notice in person or by first class mail of entry of the order denying permission to appeal to the government unit or clerk of the lower court and to each party who has appeared in the appellate court.

**Source**

The provisions of this Rule 1323 amended December 11, 1978, effective December 30, 1978, 8 Pa.B. 3802. Immediately preceding text appears at serial page (27928).

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