

**CHAPTER 15. JUDICIAL REVIEW OF GOVERNMENTAL  
DETERMINATIONS**

**IN GENERAL**

- Rule  
1501. Scope of Chapter.  
1502. Exclusive Procedure.  
1503. Improvident Appeals or Original Jurisdiction Appeals.  
1504. Improvident Petitions for Review.

**PETITION FOR REVIEW**

1511. Manner of Obtaining Judicial Review of Governmental Determinations.  
1512. Time for Petitioning for Review.  
1513. Petition for Review.  
1514. Filing and Service of the Petition for Review.  
1515. [Rescinded].  
1516. Other Pleadings Allowed.  
1517. Applicable Rules of Pleading.  
1518. [Rescinded].  
1519. [Rescinded].  
1531. Intervention.  
1532. Special and Summary Relief.  
1541. Certification of the Record.  
1542. Evidentiary Hearing.  
1543. [Rescinded].  
1551. Scope of Review.  
1561. Disposition of Petition for Review.

**REVIEW OF DETERMINATIONS OF THE BOARD OF FINANCE AND  
REVENUE**

1571. Determinations of the Board of Finance and Revenue.

**IN GENERAL**

**Rule 1501. Scope of Chapter.**

(a) *General rule.*—Except as otherwise prescribed by Subdivisions (b) and (c) of this rule, this chapter applies to:

- (1) Appeals from an administrative agency (within the meaning of Section 9 of Article V of the Constitution of Pennsylvania) to an appellate court.
- (2) Appeals to an appellate court pursuant to 2 Pa.C.S. § 702 (appeals), 42 Pa.C.S. § 5105 (right to appellate review) or any other statute providing for judicial review of a determination of a government unit.

(3) Original jurisdiction actions heretofore cognizable in an appellate court by actions in the nature of equity, replevin, mandamus or quo warranto or for declaratory judgment, or upon writs of certiorari or prohibition.

(4) Matters designated by general rule, e.g., review of orders refusing to certify interlocutory orders for immediate appeal, release prior to sentence, appeals under Section 17(d) of Article II of the Constitution of Pennsylvania and review of special prosecutions or investigations.

(b) *Appeals governed by other provisions of rules.*—This chapter does not apply to any appeal within the scope of:

(1) Chapter 9 (appeals from lower courts).

(2) Chapter 11 (appeals from Commonwealth Court and Superior Court).

(3) Chapter 13 (interlocutory appeals by permission), except that the provisions of this chapter and ancillary provisions of these rules applicable to practice and procedure on petition for review, so far as they may be applied, shall be applicable: (a) where required by the Note to Rule 341 and the Note to Rule 1311; and (b) after permission to appeal has been granted from a determination which, if final, would be subject to judicial review pursuant to this chapter.

(4) Rule 1941 (review of death sentences).

(c) *Unsuspending statutory procedures.*—This chapter does not apply to any appeal pursuant to the following statutory provisions, which are not suspended by these rules:

(1) Section 137 of Title 15 of the Pennsylvania Consolidated Statutes (Court to pass upon rejection of documents by Department of State).

(2) The Pennsylvania Election Code.

(d) *Jurisdiction of courts unaffected.*—This chapter does not enlarge or otherwise modify the jurisdiction and powers of the Commonwealth Court or any other court.

**Official Note:** This chapter applies to review of any “determination” of a “government unit” as defined in Rule 102 assuming, of course, that the subject matter of the case is within the jurisdiction of a court subject to these rules (see Subdivision (d) of this rule). A “determination” means “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.” The term “government unit” is all inclusive and means “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).” The term “administrative agency” is not defined in these rules, although the term is used in these rules as a result of its appearance in Section 9 of Article V of the Constitution of Pennsylvania.

Subdivision (a)(4) was added in 2004 to recognize the references in various appellate rules and accompanying notes to petition for review practice. For example, the Notes to Rules 341 and 1311 direct counsel to file a petition for review of a trial court or government agency order refusing to certify an interlocutory order for immediate appeal. Similarly, Rule 1762 directs the filing of a petition for review when a party seeks release on bail before judgment of sentence is rendered. See Rule 1762(b). A petition for review is also the proper method by which to seek judicial review pursuant to Rule 3321 (regarding legislative reapportionment commission) and Rule 3331 (regarding special prosecutions or investigations). The 2004 amendments clarify the use of petitions for review in these special situations.

Subdivision (b) of this rule is necessary because otherwise conventional appeals from a court (which is included in the scope of the term “government unit”) to an appellate court would fall within the scope of this chapter under the provisions of Paragraph (a)(2) of this rule.

Subdivision (c) expressly recognizes that some statutory procedures are not replaced by petition for review practice. Thus, matters brought pursuant to Section 137 of the Associations Code governing judicial review of documents rejected by the Department of State or pursuant to the Election Code are controlled by the applicable statutory provisions and not by the rules in Chapter 15. See 15 Pa.C.S. § 137; Act of June 3, 1937, P.L. 1333, as amended 25 P.S. §§ 2600—3591.

In light of Subdivision (d), where the court in which a petition for review is filed lacks subject matter jurisdiction (e.g., a petition for review of a local government question filed in the Commonwealth Court), Rules 741 (waiver of objections to jurisdiction), 751 (transfer of erroneously filed cases) and 1504 (improvident petitions for review) will be applicable. See also 42 Pa.C.S. § 5103.

The 2004 amendments are made to petition for review practice to address the evolution of judicial responses to governmental actions. As indicated in the Note to Rule 1502, when the Rules of Appellate Procedure were initially adopted, there was a “long history in the Commonwealth . . . of relatively complete exercise of the judicial review function under the traditional labels of equity, mandamus, certiorari and prohibition.” While such original jurisdiction forms of action are still available, their proper usage is now the exception rather than the rule because appellate proceedings have become the norm. Thus, the need to rely on Rule 1503 to convert an appellate proceeding to an original jurisdiction action and vice versa arises less often. Moreover, the emphasis on a petition for review as a generic pleading that permits the court to simultaneously consider all aspects of the controversy is diminished. The primary concern became making the practice for appellate proceedings more apparent to the occasional appellate practitioner. Accordingly, the rules have been amended to more clearly separate procedures for appellate proceedings from those applicable to original jurisdiction proceedings.

The responsibility of identifying the correct type of proceeding to be used to challenge a governmental action is initially that of counsel. Where precedent makes the choice clear, counsel can proceed with confidence. Where the choice is more problematic, then counsel should draft the petition for review so as to satisfy the directives for both appellate and original jurisdiction proceedings. Then the court can designate the proper course of action regardless of counsel’s earlier assessment.

#### Source

The provisions of this Rule 1501 amended December 11, 1978, effective December 30, 1978, 8 Pa.B. 3802; amended May 16, 1979, effective September 30, 1979, 9 Pa.B. 1740; amended July 7, 1997, effective in 60 days, 27 Pa.B. 3503; amended July 8, 2004, effective 60 days after adoption, 34 Pa.B. 3862. Immediately preceding text appears at serial pages (231647) to (231649).

**Rule 1502. Exclusive Procedure.**

The appeal and the original jurisdiction actions of equity, replevin, mandamus and quo warranto, the action for a declaratory judgment, and the writs of certiorari and prohibition are abolished insofar as they relate to matters within the scope of a petition for review under this chapter. The petition for review, insofar as applicable under this chapter, shall be the exclusive procedure for judicial review of a determination of a government unit.

**Official Note:** This chapter recognizes that the modern label “appeal” has little significance in connection with judicial review of governmental determinations in light of the long history in this Commonwealth of relatively complete exercise of the judicial review function under the traditional labels of equity, mandamus, certiorari and prohibition. If the simple form of notice of appeal utilized in Chapter 9 (appeals from lower courts) were extended to governmental determinations without any requirement for the filing of motions for post-trial relief, a litigant who incorrectly selected the appeal label, rather than the equity, mandamus, replevin, or prohibition, etc. label, would probably suffer dismissal, because the court would be reluctant to try a proceeding in the nature of equity, mandamus, replevin, or prohibition, etc. in the absence of a proper pleading adequately framing the issues.

The solution introduced by these rules is to substitute a new pleading (the petition for review) for all of the prior types of pleading which seek relief from a governmental determination (including governmental inaction). Where the reviewing court is required or permitted to hear the matter de novo, the judicial review proceeding will go forward in a manner similar to an equity or mandamus action. Where the reviewing court is required to decide the questions presented solely on the record made below, the judicial review proceeding will go forward in a manner similar to appellate review of an order of a lower court. However, experience teaches that governmental determinations are so varied in character, and generate so many novel situations, that on occasion it is only at the conclusion of the judicial review process, when a remedy is being fashioned, that one can determine whether the proceeding was in the nature of equity, mandamus, prohibition, or statutory appeal, etc. The petition for review will eliminate the wasteful and confusing practice of filing multiple “shotgun” pleadings in equity, mandamus, prohibition, statutory appeal, etc., and related motions for consolidation, and will permit the parties and the court to proceed directly to the merits unencumbered by procedural abstractions.

Rule 1551 (scope of review) makes clear that the change in manner of pleading does not change the scope or standard of review of governmental determinations or otherwise affect the substantive rights of the parties.

It should be noted that a petition for review in the nature of mandamus or prohibition will lie against a lower court (which is a “government unit”), since such relief is not available under the rules cited in Rule 1501(b).

See 42 Pa.C.S. § 708(e) (single form of action) which provides as follows:

(e) Single form of action.—Where pursuant to general rules review of a determination of a government unit may be had by a petition for a review or another single form of action embracing the appeal and actions in the nature of equity, mandamus, prohibition, quo warranto or otherwise, the jurisdiction of the appellate court shall not be limited by the provisions of 1 Pa.C.S. § 1504 (relating to statutory remedy preferred over common law), but such provisions to the extent applicable shall limit the relief available.

**Source**

The provisions of this Rule 1502 amended December 11, 1978, effective December 30, 1978, 8 Pa.B. 3802; amended July 8, 2004, effective 60 days after adoption, 34 Pa.B. 3862. Immediately preceding text appears at serial pages (231649) to (231650).

**Rule 1503. Improvident Appeals or Original Jurisdiction Actions.**

If an appeal is taken from an order of a government unit, or if a complaint in the nature of equity, replevin, mandamus, or quo warranto, or a petition for a declaratory judgment or for a writ in the nature of certiorari or prohibition is filed against a government unit or one or more of the persons for the time being conducting its affairs objecting to a determination by any one or more of them, this alone shall not be a ground for dismissal. The papers whereon the improvident matter was commenced shall be regarded and acted upon as a petition for review of such governmental determination and as if filed at the time the improvident matter was commenced. The court may require that the papers be clarified by amendment.

**Official Note:** Based on 42 Pa.C.S. § 708 (improvident administrative appeals and other matters).

**Source**

The provisions of this Rule 1503 amended December 11, 1978, effective December 30, 1978, 8 Pa.B. 3802; amended July 8, 2004, effective 60 days after adoption, 34 Pa.B. 3862. Immediately preceding text appears at serial page (231650).

**Rule 1504. Improvident Petitions for Review.**

If a petition for review is filed against any person, where the proper mode of relief is an original jurisdiction action in equity, replevin, mandamus or quo warranto, or a petition for a declaratory judgment or for a writ of certiorari or prohibition, this alone shall not be a ground for dismissal, but the papers whereon the improvident matter was commenced shall be regarded and acted upon as a complaint or other proper process commenced against such person and as if filed at the time the improvident matter was commenced. The court may require that the papers be clarified by amendment.

**Official Note:** Based on 42 Pa.C.S. § 102 (definitions) (which includes petition for review proceedings within the statutory definition of “appeal”) and 42 Pa.C.S. § 708(b) (appeals). When the moving party files a clarifying amendment, the amendment will operate to specify that one form of action which the party elects to proceed on.

**Source**

The provisions of this Rule 1504 amended December 11, 1978, effective December 30, 1978, 8 Pa.B. 3802; amended July 8, 2004, effective 60 days after adoption, 34 Pa.B. 3862. Immediately preceding text appears at serial pages (231650) and (293787).

**PETITION FOR REVIEW****Rule 1511. Manner of Obtaining Judicial Review of Governmental Determinations.**

Review under this chapter shall be obtained by filing a petition for review with the prothonotary of the appellate court within the time allowed by Rule 1512 (time for petitioning for review). Failure of a petitioner for review to take any step other than the timely filing of a petition for review does not affect the validity of the review proceeding, but is grounds only for such action as the appellate court deems appropriate, which may include dismissal of the review proceeding.

**Source**

The provisions of this Rule 1511 amended May 16, 1979, effective September 30, 1979, 9 Pa.B. 1740. Immediately preceding text appears at serial page (39591).

**Rule 1512. Time for Petitioning for Review.**

(a) *Appeals authorized by law.*—Except as otherwise prescribed by Subdivision (b) of this rule:

(1) A petition for review of a quasijudicial order, or an order appealable under 42 Pa.C.S. § 763(b) (awards of arbitrators) or under any other provision of law, shall be filed with the prothonotary of the appellate court within 30 days after the entry of the order.

(2) If a timely petition for review of such an order is filed by a party, any other party may file a petition for review within 14 days of the date on which the first petition for review was filed, or within the time otherwise prescribed by Subdivision (a)(1) of this rule, whichever period last expires.

(b) *Special appellate provisions.*—A petition for review of:

(1) A determination of the Department of Community and Economic Development in any matter arising under the Local Government Unit Debt Act, 53 Pa.C.S. §§ 8001—8271, shall be filed within 15 days after entry of the order or the date the determination is deemed to have been made, when no order has been entered.

(2) A determination governed by Rule 1571 (determinations of the Board of Finance and Revenue) shall be filed within the appropriate period therein specified.

(3) A determination governed by Rule 3331 (review of special prosecutions or investigations) shall be filed within ten days after the entry of the order sought to be reviewed.

(4) A determination of a Commonwealth agency under section 1711.1(g) of the Commonwealth Procurement Code, 62 Pa.C.S. § 1711.1(g), shall be filed within 15 days of the mailing date of a final determination denying a protest.

(c) *Original jurisdiction actions.*—A petition for review of a determination of a government unit not within the scope of Subdivisions (a) or (b) of this rule may be filed with the prothonotary of the appellate court within the time, if any, limited by law.

**Official Note:** The note to Rule 903 (time for appeal) addresses the development of the standard 30 day appeal period. Rule 102 defines a “quasijudicial order” as “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.”

See Note to Rule 903 (Time for Appeal). A party filing a cross petition for review pursuant to Subdivision (a)(2) should identify it as a cross petition for review to assure that the prothonotary will process the cross petition for review with the initial petition for review. See also Rule 511 (Cross Appeals), Rule 2136 (Briefs in Cases of Cross Appeals) and Rule 2322 (Cross and Separate Appeals).

Subdivision (c) relates to matters addressed to the original jurisdiction of an appellate court. For example, equitable matters are governed by existing principles of laches, etc. Other matters, such as petitions for review raising issues formerly cognizable by action in mandamus or quo warranto, etc., are governed by the time limits, if any, applicable under the prior procedure. See generally 42 Pa.C.S. §§ 1702 (regarding the Supreme Court’s rulemaking procedures), 1722(c) (Time limitations), 5501—5574 (Limitations of time).

#### Source

The provisions of this Rule 1512 amended December 29, 1977, effective January 29, 1978, 8 Pa.B. 133; amended December 11, 1978, effective December 30, 1978, 8 Pa.B. 3802; amended May 16, 1979, effective September 30, 1979, 9 Pa.B. 1740; amended October 18, 2002, effective December 2, 2002, 32 Pa.B. 5402; amended July 8, 2004, effective 60 days after adoption, 34 Pa.B. 3862; amended September 30, 2004, effective immediately, 34 Pa.B. 5677. Immediately preceding text appears at serial pages (305154) to (305155).

### Rule 1513. Petition for Review.

(a) *Caption and parties on appeal.* In an appellate jurisdiction petition for review, the aggrieved party or person shall be named as the petitioner and, unless the government unit is disinterested, the government unit and no one else shall be named as the respondent. If the government unit is disinterested, all real parties in interest, and not the government unit, shall be named as respondents.

(b) *Caption and parties in original jurisdiction actions.* The government unit and any other indispensable party shall be named as respondents. Where a public act or duty is required to be performed by a government unit, it is sufficient to name the government unit, and not its individual members, as respondent.

(c) *Form.* Any petition for review shall be divided into consecutively numbered paragraphs. Each paragraph shall contain, as nearly as possible, a single allegation of fact or other statement. When petitioner seeks review of an order refusing to certify an interlocutory order for immediate appeal, numbered paragraphs need not be used.

(d) *Content of appellate jurisdiction petition for review.* An appellate jurisdiction petition for review shall contain: (1) a statement of the basis for the jurisdiction of the court; (2) the name of the party or person seeking review; (3) the

name of the government unit that made the order or other determination sought to be reviewed; (4) reference to the order or other determination sought to be reviewed, including the date the order or other determination was entered; (5) a general statement of the objections to the order or other determination; and (6) a short statement of the relief sought. A copy of the order or other determination to be reviewed shall be attached to the petition for review as an exhibit. The statement of objections will be deemed to include every subsidiary question fairly comprised therein. No notice to plead or verification is necessary.

Where there were other parties to the proceedings conducted by the government unit, and such parties are not named in the caption of the petition for review, the petition for review shall also contain a notice to participate, which shall provide substantially as follows:

If you intend to participate in this proceeding in the (Supreme, Superior or Commonwealth, as appropriate) Court, you must serve and file a notice of intervention under Rule 1531 of the Pennsylvania Rules of Appellate Procedure within 30 days.

(e) *Content of original jurisdiction petition for review.* A petition for review addressed to an appellate court's original jurisdiction shall contain: (1) a statement of the basis for the jurisdiction of the court; (2) the name of the person or party seeking relief; (3) the name of the government unit whose action or inaction is in issue and any other indispensable party; (4) a general statement of the material facts upon which the cause of action is based and (5) a short statement of the relief sought. It shall also contain a notice to plead and be verified either by oath or affirmation or by verified statement.

(f) *Alternative objections.* Objections to a determination of a government unit and the related relief sought may be stated in the alternative, and relief of several different types may be requested.

**Official Note:** The 2004 amendments to this rule clarify what must be included in a petition for review addressed to an appellate court's appellate jurisdiction and what must be included in a petition for review addressed to an appellate court's original jurisdiction. Where it is not readily apparent whether a "determination" (defined in Rule 102 as "[a]ction or inaction of a government unit) is reviewable in the court's appellate or original jurisdiction, compliance with the requirements of Subdivisions (d) and (e) is appropriate.

Subdivisions (a) and (b) reflect the provisions of Rule 501 (Any Aggrieved Party May Appeal), Rule 503 (Description of Public Officers), Section 702 of the Administrative Agency Law, 2 Pa.C.S. § 702 (Appeals), and Pa.R.C.P. 1094 (regarding parties defendant in mandamus actions).

Government units that are usually disinterested in appellate jurisdiction petitions for review of their determinations include:

- the Board of Claims,
- the Department of Education (with regard to teacher tenure appeals from local school districts pursuant to section 1132 of the Public School Code of 1949, 24 P. S. § 11-1132),
- the Environmental Hearing Board,
- the State Charter School Appeal Board,

- the State Civil Service Commission, and
- the Workers' Compensation Appeal Board.

The provision for joinder of indispensable parties in original jurisdiction actions reflects the last sentence of section 761(c) of the Judicial Code, 42 Pa.C.S. § 761(c), providing for the implementation of ancillary jurisdiction of the Commonwealth Court by general rule.

Subdivisions (d) and (e) reflect the differences in proceeding in a court's original and appellate jurisdiction, while preserving the need for sufficient specificity to permit the conversion of an appellate document to an original jurisdiction pleading and vice versa should such action be necessary to assure proper judicial disposition. See also the notes to Rules 1501 and 1502. The paragraph regarding the notice to participate was formerly found in Rule 1514(c).

#### Source

The provisions of this Rule 1513 amended through April 26, 1982, effective September 12, 1982, 12 Pa.B. 1536; amended July 7, 1997, effective in 60 days, 27 Pa.B. 3503; amended July 8, 2004, effective 60 days after adoption, 34 Pa.B. 3862. Immediately preceding text appears at serial pages (293788) to (293789).

### **Rule 1514. Filing and Service of the Petition for Review.**

(a) *Filing with the prothonotary.* The petition for review, with proof of service required by Subdivision (c) of this rule, shall be filed with the prothonotary of the appellate court in person or by first class, express, or priority United States Postal Service mail.

If the petition for review is filed by 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, 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 and shall show the docket number of the matter in the government unit, and shall be either enclosed with the petition or separately mailed to the prothonotary.

Upon actual receipt of the petition for review, the prothonotary shall immediately:

- (1) 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 of filing;
- (2) assign a docket number to the petition for review; and
- (3) give written notice of the docket number assignment in person or by first class mail to the government unit that made the determination sought to be reviewed, to the petitioner, and to the other persons named in the proof of service accompanying the petition.

(b) *Fee.* The petitioner, upon filing the petition for review, shall pay any fees therefor as set by law or general rule.

(c) *Service.* A copy of the petition for review shall be served by the petitioner in person or by certified mail on the government unit that made the determination sought to be reviewed. In matters involving the Commonwealth, the petitioner shall similarly serve a copy upon the Attorney General of Pennsylvania. Where there is more than one respondent, the petitioner shall separately serve each one. All other parties before the government unit that made the determination sought to be reviewed shall be served as prescribed by Rule 121(b) (service of all papers required).

(d) *Entry of appearance.* Upon the filing of the petition for review, the prothonotary shall note on the docket as counsel for the petitioner the name of counsel, if any, set forth in or endorsed upon the petition for review, 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 within 30 days after filing of the petition, strike off or correct the record of appearances. 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:** 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.

The petition for review must be served on the government unit that made the determination in question. Rule 102 defines "government unit" as including "any court or other officer or agency of the unified judicial system." Thus, a petition for review of a trial court order must be served on the judge who issued the order.

Service on the Attorney General shall be made at: Strawberry Square, Harrisburg, PA 17120.

#### Source

The provisions of this Rule 1514 amended through December 16, 1983, effective December 16, 1983, 13 Pa.B. 3998; 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 July 8, 2004, effective 60 days after adoption, 34 Pa.B. 3862; amended September 10, 2008, effective December 1, 2008, 38 Pa.B. 5257. Immediately preceding text appears at serial pages (305157) to (305158).

### Rule 1515. [Rescinded].

**Official Note:** Rule 1515 formerly provided for an answer to a petition for review addressed to an appellate court's original jurisdiction. Answers to such petitions are now discussed in Rule 1516.

#### Source

The provisions of this Rule 1515 amended May 16, 1979, effective September 30, 1979, 9 Pa.B. 1740; amended July 7, 1997, effective in 60 days, 27 Pa.B. 3503; rescinded July 8, 2004, effective 60 days after adoption, 34 Pa.B. 3862. Immediately preceding text appears at serial page (303533).

### Rule 1516. Other Pleadings Allowed.

(a) *Appellate jurisdiction petitions for review.* No answer or other pleading to an appellate jurisdiction petition for review is authorized, unless the petition for

## JUDICIAL REVIEW

## **210 Rule 1516**

review is filed pursuant to the Notes to Rules 341 or 1311 (seeking review of a trial court or other government unit's refusal to certify an interlocutory order for immediate appeal), Rule 1762 (regarding release in criminal matters), Rule 3321 (regarding appeals from decisions of the Legislative Reapportionment Commission) or Rule 3331 (regarding review of special prosecutions and investigations). Where an answer is authorized, the time for filing an answer shall be as stated in Rule 123(b).



(b) *Original jurisdiction petitions for review.* Where an action is commenced by filing a petition for review addressed to the appellate court's original jurisdiction, the pleadings are limited to the petition for review, an answer thereto, a reply if the answer contains new matter or a counterclaim, a counter-reply if the reply to a counterclaim contains new matter, a preliminary objection, and an answer thereto. Every pleading filed after an original jurisdiction petition for review shall be filed within 30 days after service of the preceding pleading, but no pleading need be filed unless the preceding pleading is endorsed with a notice to plead.

**Official Note:** The 2004 amendments made clear that, with five limited exceptions, no answer or other pleading to a petition for review addressed to an appellate court's appellate jurisdiction is proper. With regard to original jurisdiction proceedings, practice is patterned after Rules of Civil Procedure 1017(a) (Pleadings Allowed) and 1026 (Time for Filing, Notice to Plead). The ten additional days in which to file a subsequent pleading are in recognition of the time required for agency coordination where the Commonwealth is a party. See Rule 1762(b)(2) regarding bail applications.

#### Source

The provisions of this Rule 1516 amended May 16, 1979, effective September 30, 1979, 9 Pa.B. 1740; amended February 27, 1980, 10 Pa.B. 1038, effective as set forth at 10 Pa.B. 1038; amended July 8, 2004, effective 60 days after adoption, 34 Pa.B. 3862. Immediately preceding text appears at serial pages (303533) to (303534).

### **Rule 1517. Applicable Rules of Pleading.**

Unless otherwise prescribed by these rules, the practice and procedure under this chapter relating to pleadings in original jurisdiction petition for review practice shall be in accordance with the appropriate Pennsylvania Rules of Civil Procedure, so far as they may be applied.

**Official Note:** See Rule 1762(b)(2) regarding bail applications. See also Rule 3331 regarding Review of Special Prosecutions or Investigations.

#### Source

The provisions of this Rule 1517 amended July 8, 2004, effective 60 days after adoption, 34 Pa.B. 3862. Immediately preceding text appears at serial page (303534).

### **Rule 1518. [Rescinded].**

#### Source

The provisions of this Rule 1518 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 pages (39596) and (39597).

**Rule 1519. [Rescinded].****Source**

The provisions of this Rule 1519 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 pages (39597) to (39599).

**Rule 1531. Intervention.**

(a) *Appellate jurisdiction petition for review proceedings.* A party to a proceeding before a government unit that resulted in a quasijudicial order may intervene as of right in a proceeding under this chapter relating to such order by filing a notice of intervention (with proof of service on all parties to the matter) with the prothonotary of the appellate court within 30 days after notice of the filing of the petition for review. The notice of intervention may be in substantially the following form:

[[CAPTION]]

**NOTICE OF INTERVENTION**

Notice is hereby given that A.B., a party below, hereby intervenes in this matter.

(s) \_\_\_\_\_

\_\_\_\_\_  
(Address and telephone number)

After 30 days after notice of filing of an appellate petition for review, permission to intervene may be sought by application pursuant to Rule 123.

(b) *Original jurisdiction petition for review proceedings.* A person not named as a respondent in an original jurisdiction petition for review, who desires to intervene in a proceeding under this chapter, may seek leave to intervene by filing an application for leave to intervene (with proof of service on all parties to the matter) with the prothonotary of the court. The application shall contain a concise statement of the interest of the applicant and the grounds upon which intervention is sought.

**Official Note:** A nonparty may file a brief as of right under Rule 531 (participation by *amicus curiae*) and, therefore, intervention is not necessary in order to participate in the appellate court where the petition for review is filed. However, except as provided in Rule 521(b) (status of Attorney General) and Rule 522(b) (status of Court Administrator), the mere filing of a brief does not confer party status. Where, for example, a nonparty to a petition for review proceeding in the Commonwealth Court desires to be in a position to seek further review in the Supreme Court of Pennsylvania or the Supreme Court of the United States of an order of the Commonwealth Court disposing of the petition for review, the nonparty should intervene or seek leave to intervene in the Commonwealth Court at the outset, since under Rule 501 (any aggrieved party may appeal), party status is a prerequisite to the right to further review.

See Rule 3331 regarding Review of Special Prosecutions or Investigations.

**Source**

The provisions of this Rule 1531 amended May 16, 1979, effective September 30, 1979, 9 Pa.B. 1740; amended July 8, 2004, effective 60 days after adoption, 34 Pa.B. 3862. Immediately preceding text appears at serial pages (303534) and (231657).

**Rule 1532. Special and Summary Relief.**

(a) *Special relief.* At any time after the filing of a petition for review, the court may, on application, order the seizure of property, dispose of seized property, issue a preliminary or special injunction, appoint a temporary receiver or grant other interim or special relief required in the interest of justice and consistent with the usages and principles of law.

(b) *Summary relief.* At any time after the filing of a petition for review in an appellate or original jurisdiction matter the court may on application enter judgment if the right of the applicant thereto is clear.

**Official Note:** Subdivision (a) provides examples of specific types of interim relief that may be sought using the procedures set forth in Rule 123 (application for relief). Thus, multiple forms of relief, including those in the alternative, may be combined in the same application, even though separate actions might otherwise be necessary under the Pennsylvania Rules of Civil Procedure. Compare Rule 106 (original jurisdiction matters); 42 Pa.C.S. § 708(e) (single form of action).

Subdivision (b) authorizes immediate disposition of a petition for review, similar to the type of relief envisioned by the Pennsylvania Rules of Civil Procedure regarding judgment on the pleadings and peremptory and summary judgment. However, such relief may be requested before the pleadings are closed where the right of the applicant is clear.

See Rule 3331 regarding Review of Special Prosecutions or Investigations.

The 1997 amendment to subdivision (b) is analogous to the 1996 amendment to Pa.R.C.P. 1098. The deletion of the last sentence of Rule 1532(b) is intended to eliminate the requirement of filing a motion to open or vacate the order granting summary relief. Under prior practice, a party was required to file a motion to open or vacate the order granting summary relief before an appeal could be taken. An order denying an application for summary relief is not appealable as of right.

**Source**

The provisions of this Rule 1532 adopted May 16, 1979, effective September 30, 1979, 9 Pa.B. 1740, amended April 26, 1982, effective September 12, 1982, 12 Pa.B. 1536; amended July 7, 1997, effective in 60 days, 27 Pa.B. 3503; amended July 8, 2004, effective 60 days after adoption, 34 Pa.B. 3862. Immediately preceding text appears at serial pages (231657) to (231658).

**Rule 1541. Certification of the Record.**

Upon notice from the appellate court of the filing of a petition for review addressed to the appellate jurisdiction of an appellate court, the government unit shall prepare and transmit the record as provided by Chapter 19 (preparation and transmission of record and related matters).

**Official Note:** Rule 102 defines “government unit” to include “any court or other officer or agency of the unified judicial system.” Thus, if the order to be reviewed was filed by a trial

court, that court shall certify the record. This occurs when the petition for review was filed pursuant to Rule 1762, 3321 or 3331, or the note to Rules 341 or 1311.

See Rule 3331 regarding Review of Special Prosecutions or Investigations.

**Source**

The provisions of this Rule 1541 amended July 8, 2004, effective 60 days after adoption, 34 Pa.B. 3862. Immediately preceding text appears at serial page (231658).

**Rule 1542. Evidentiary Hearing.**

In any matter addressed to the appellate court's original jurisdiction, where it appears that a genuine issue as to a material fact has been raised by the pleadings, depositions, answers to interrogatories, stipulations of fact, admissions on file and supporting verified statements, if any, the court on its own motion or on application of any party shall, after notice to the parties, hold an evidentiary hearing for the development of the record.

**Official Note:** In view of Rule 106 (original jurisdiction matters) and Rule 1532 (special and summary relief), motions for judgment on the pleadings, Pa.R.C.P. 1034, summary relief and summary judgment, Pa. R. C. P. 1035, will be available where a petition for review invoking the appellate court's original jurisdiction has been filed. The procedure under this rule is intended to be flexible, although subject to the control of the appellate court by either rule of court adopted pursuant to Rule 104(a)(3) (rules of court) or by order

See Rule 3331 regarding Review of Special Prosecutions or Investigations.

**Source**

The provisions of this Rule 1542 amended July 8, 2004, effective 60 days after adoption, 34 Pa.B. 3862. Immediately preceding text appears at serial page (231658).

**Rule 1543. [Rescinded].**

**Official Note:** See 42 Pa.C.S. § 5104 (trial by jury).

See Rule 3331 regarding Review of Special Prosecutions or Investigations.

**Source**

The provisions of this Rule 1543 rescinded July 8, 2004, effective 60 days after adoption, 34 Pa.B. 3862. Immediately preceding text appears at serial pages (231658) to (231659).

**Rule 1551. Scope of Review.**

(a) *Appellate jurisdiction petitions for review.* Review of quasijudicial orders shall be conducted by the court on the record made before the government unit. No question shall be heard or considered by the court which was not raised before the government unit except:

- (1) Questions involving the validity of a statute.
- (2) Questions involving the jurisdiction of the government unit over the subject matter of the adjudication.
- (3) Questions which the court is satisfied that the petitioner could not by the exercise of due diligence have raised before the government unit. If, upon hearing before the court, the court is satisfied that any such additional question

within the scope of this paragraph should be so raised it shall remand the record to the government unit for further consideration of the additional question.

The court may in any case remand the record to the government unit for further proceedings if the court deems them necessary.

(b) *Original jurisdiction petitions for review.* The court shall hear and decide original jurisdiction petitions for review in accordance with law. This chapter is not intended to modify, enlarge or abridge the rights of any party to an original jurisdiction petition for review.

**Official Note:** Subdivision (a) is a generalization of former Pa.R.C.P. 8 and makes no change in substance except to provide that procedural issues not raised below are waived—unless excused under Paragraph (a)(3). Compare Rule 302 (requisites for reviewable issue).

Subdivision (b) is based on Section 10(c) of Article V of the Constitution of Pennsylvania, which prevents this chapter from enlarging the substantive rights of the petitioner or abridging the substantive rights of the government unit named in the petition. Under the new practice, the appellate judge should inquire: “Assuming that this case had been properly brought before me by a complaint in equity (or in mandamus, replevin, quo warranto, etc., or by two or more of such actions properly consolidated for hearing and disposition) containing the factual allegations of the petition for review, to what relief, if any, would the moving party have been entitled under the prior practice?” This rule makes clear that the moving party is entitled to the same relief, and no more, under the new practice, since only the procedural requirement for separately labeled papers has been eliminated.

For example, where a party joins both a challenge to the action of a government unit in the nature of an appeal and a challenge to the composition of the government unit in the nature of quo warranto, the latter challenge will come too late under the standards of *State Dental Council and Examining Board v. Pollock*, 457 Pa. 264, 318 A.2d 910 (1974). Similarly, where a petition for review in the nature of prohibition is filed in the Supreme Court to attack an unappealable order of a lower court, in a case where relief would not have been available on an application for a writ of prohibition under the standards of *Carpentertown Coal and Coke Co. v. Laird*, 360 Pa. 94, 61 A.2d 426 (1948) and subsequent cases, the change in the label of the papers to a petition for review will not affect the result, and the petition will be dismissed.

See Rule 3331 regarding Review of Special Prosecutions or Investigations.

#### Source

The provisions of this Rule 1551 amended July 8, 2004, effective 60 days after adoption, 34 Pa.B. 3862. Immediately preceding text appears at serial pages (231659) to (231660).

### Rule 1561. Disposition of Petition for Review.

(a) *Appellate jurisdiction petitions for review.*—The court may 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 as may be just under the circumstances.

(b) *Original jurisdiction petitions for review.*—Where the petition for review raises questions that formerly were determinable in an action in equity, replevin, mandamus, quo warranto or for a declaratory judgment or upon a petition for a

writ of certiorari or prohibition, or in another similar plenary action or proceeding, the court may grant the relief heretofore available in any such plenary action or proceeding.

(c) *Money damages.*—Money damages arising out of tort or contract claims may not be granted under this chapter (except on review of determinations of the Board of Claims or similar agencies), but relief granted under Subdivision (b) of this rule may include any damages to which the petitioner is entitled which are claimed in the petition, which are ancillary to the matter, and which may be granted by a court.

(d) *Review of detention.*—Except as prescribed by Rule 1762(b)(2), which governs applications relating to bail when no appeal is pending, or by Rule 3331 (review of special prosecutions or investigations), review in the nature of criminal habeas corpus or post conviction relief may not be granted under this chapter.

**Official Note:** Subdivision (a) is based on 42 Pa.C.S. § 706 (disposition of appeals).

Subdivision (b) is based on 42 Pa.C.S. § 708(e) (single form of action) (which provides that 1 Pa.C.S. § 1504 (statutory remedy preferred over common law) does not limit the jurisdiction of a court over a petition for review proceeding, but to the extent applicable shall limit the relief available) and 42 Pa.C.S. § 5105(d)(2) (scope of appeal). Under 42 Pa.C.S. § 102 (definitions), statutory references to “appeal” include proceedings on petition for review. The subdivision is intended to make clear that the petition for review is a generic pleading which will permit the court to consider simultaneously all aspects of the controversy.

Subdivision (c) is intended to make clear that the petition for review does not encompass trespass or assumpsit actions, but that an appeal may reach tort or contract matters adjudicated by a government unit as contemplated by Section 2(h) of the Judiciary Act Repealer Act (42 P. S. § 20002(h)). As to ancillary statutory damages, see 42 Pa.C.S. § 8303 (action for performance of a duty required by law).

Subdivision (d) is intended to make clear that the scope of this chapter is essentially civil in nature. The application of the petition for review to questions of release prior to sentence in criminal matters and in questions arising out of special prosecutions or investigations is merely a recognition of the technical need for a plenary filing to bring the question within the appellate jurisdiction of the appropriate court.

See Rule 1762(b)(2) regarding bail applications.

#### Source

The provisions of this Rule 1561 amended December 29, 1977, effective January 29, 1978, 8 Pa.B. 133; amended December 30, 1978, 8 Pa.B. 3802; amended May 16, 1979, effective September 30, 1979, 9 Pa.B. 1740; amended July 8, 2004, effective 60 days after adoption, 34 Pa.B. 3862; amended May 15, 2007, effective immediately, 37 Pa.B. 2492. Immediately preceding text appears at serial pages (305163) to (305164).

### REVIEW OF DETERMINATIONS OF THE BOARD OF FINANCE AND REVENUE

#### **Rule 1571. Determinations of the Board of Finance and Revenue.**

(a) *General rule.*—Review of a determination of the Board of Finance and Revenue shall be governed by this chapter and ancillary provisions of these rules, except as otherwise prescribed by this rule.

(b) *Time for petitioning for review.*—A petition for review of a determination of the Board of Finance and Revenue shall be filed:

(1) Within 30 days after entry of an order of the Board which does not expressly state that it is interlocutory in nature.

(2) Within 30 days after entry of an order of the Board adopting a determination by the Department of Revenue or other government unit made at the direction of the Board respecting any matter pending before the Board.

(3) Where the Board is required by statute to act finally on any matter pending before it within a specified period after the matter is filed with the Board and has not done so, at any time between:

(i) the expiration of such specified period; and

(ii) 30 days after service of actual notice by the Board stating that it has failed to act within such period.

(c) *Form.*—The petition for review shall contain a statement of the basis for the jurisdiction of the court; the name of the party seeking review; a statement that the Board of Finance and Revenue made the determination sought to be reviewed; reference to the order or other determination sought to be reviewed; and a general statement of the objections to the order or other determination. The petition for review need not be verified and shall not contain or have endorsed upon it notice to plead. A petition for review of a taxpayer or similar party shall name the “Commonwealth of Pennsylvania” as respondent and a petition for review filed by the Commonwealth of Pennsylvania shall name all real parties in interest before the Board as respondents.

(d) *Service.*—In the case of a petition for review by a taxpayer or similar party, a copy of the petition shall be served on the Board of Finance and Revenue and on the Attorney General by the petitioner in accordance with Rule 1514(c). All other parties before the Board shall be served as prescribed by Rule 121(b) (service of all papers required).

(e) *Answer.*—An answer may not be filed to a petition for review of a determination of the Board of Finance and Revenue. The Commonwealth may raise any question on review, although no cross petition for review has been filed by it, and may introduce any facts in support of its position if 20 days written notice is given to the petitioner prior to trial of the intention of raising such new questions or presenting new facts.

(f) *Record.*—No record shall be certified to the court by the Board of Finance and Revenue. After the filing of the petition for review, the parties shall take appropriate steps to prepare and file a stipulation of such facts as may be agreed to and to identify the issues of fact, if any, which remain to be tried. See Rule 1542 (evidentiary hearing).

(g) *Oral argument.*—Except as otherwise ordered by the court on its own motion or on application of any party, after the record is closed, the matter may be listed for argument before or submission to the court.

(h) *Scope of review.*—Rule 1551(a) (appellate jurisdiction petitions for review) shall be applicable to review of a determination of the Board of Finance and Revenue except that:

(1) A question will be heard and considered by the court if it was raised at any stage of the proceedings below and thereafter preserved.

(2) To the extent provided by the applicable law, the questions raised by the petition for review shall be determined on the record made before the court. See Subdivision (f) of this rule.

(i) *Exceptions.*—Any party may file exceptions to an initial determination by the court under this rule within 30 days after the entry of the order to which exception is taken. Such timely exceptions shall have the effect, for the purposes of Rule 1701(b)(3) (authority of lower court or agency after appeal) of an order expressly granting reconsideration of the determination previously entered by the court. Issues not raised on exceptions are waived and cannot be raised on appeal.

**Official Note:** Subdivision (b) represents an exercise of the power conferred by 42 Pa.C.S. § 5105(a) (right to appellate review) to define final orders by general rule. The following statutes expressly require the Board of Finance and Revenue to act within six months in certain cases:

Section 1103 of The Fiscal Code (72 P. S. § 1103).

Act of December 5, 1933, (Sp. session 1933-34), (P. L. 38, No. 6), known as the Spirituous and Vinous Liquor Tax Law, § 5 (47 P. S. § 749).

Act of January 14, 1952 (1951 P. L. 1965, No. 550), known as the Fuel Use Tax Act, § 7 (72 P. S. § 2614.7).

Sections 234 (sales and use tax), 341 (personal income tax), and 2005 (malt beverage tax), act of March 4, 1971 (P. L. 6, No. 2), known as The Tax Reform Code of 1971 (72 P. S. §§ 7234, 7341, 9005). The following statute requires the Board of Finance and Revenue to act within twelve months in certain tax refund matters:

Section 3003.5 of the Tax Reform Code of 1971, Act of March 4, 1971, P. L. 6, No. 2, 72 P. S. § 10003.5. Section 3003.5 was added by Section 41 of the Act of June 16, 1994, P. L. 279, No. 48.

The following statutes are covered by Section 1103 of The Fiscal Code (petition to Board of Finance and Revenue for review):

Sections 809 (various insurance taxes) and 1001 (miscellaneous settlements, e.g., under the act of May 17, 1921 (P. L. 789, No. 285), known as The Insurance Department Act of 1921, § 212 (40 P. S. § 50) (retaliatory insurance taxes)) of The Fiscal Code (72 P. S. §§ 809 and 1001).

Act of June 22, 1931 (P. L. 694, No. 255) § 4 (72 P. S. § 2186) (motor carriers-trackless trolley carriers).

Act of June 22, 1935 (P. L. 414, No. 182), known as the State Personal Property Tax Act, § 18(b) (72 P. S. § 3250-11a(b)) (corporate loans tax). See Act of April 25, 1929 (P. L. 669, No. 288), § 1.

Act of May 23, 1945 (P. L. 893, No. 360), known as the Co-operative Agricultural Association Corporate Net Income Tax Act, § 6 (72 P. S. § 3420-26).

Act of January 24, 1966 (P. L. (1965) 1509, No. 531), § 11 (40 P. S. § 1006.11) (surplus lines tax).

Sections 407 (corporate net income tax), 603 (capital stock—franchise tax), 702 (bank shares tax), 802 (title insurance and trust companies shares tax), 904 (insurance premiums tax), 1102 (utilities gross receipts tax), 1111-C (realty transfer tax) and 1503 (mutual thrift institutions tax of the Tax Reform Code of 1971 (72 P. S. §§ 7407, 7603, 7702, 7802, 7904, 8102, 8111-C and 8503).

75 Pa.C.S. § 9616(f) (motor carriers road tax).

The basis of jurisdiction of the court under this rule will ordinarily be 42 Pa.C.S. § 763 (direct appeals from government agencies). Subdivision (c) is not intended to change the practice in connection with the review of orders of the Board of Finance and Revenue insofar as the amount of detail in the pleadings is concerned. What is required is that the petitioner raise every legal issue in the petition for review which the petitioner wishes the court to consider. The legal issues raised need only be specific enough to apprise the respondent of the legal issues being contested (e.g. “valuation,” “manufacturing,” “sale for resale,” etc.). See generally *House of Pasta, Inc. v. Commonwealth*, 37 Pa. Cmwlth. Ct. 317, 390 A.2d 341 (1978).

Subdivision (e) is based on Section 1104(e) of The Fiscal Code , which was suspended absolutely by these rules, and subsequently repealed.

Subdivision (f) is based on 2 Pa.C.S. § 501(b)(1) (scope of subchapter) and 2 Pa.C.S. § 701(b)(1) (scope of subchapter), which exclude tax matters from the on-the-record review requirements of 2 Pa.C.S. § 704 (disposition of appeal).

Subdivision (h) is based on Section 1104(d) of The Fiscal Code , which was suspended absolutely by these rules and subsequently repealed, and is intended as a continuation of the prior law, except, of course, that the separate specification of objections has been abolished by these rules.

Subdivision (i) is intended to make clear that the failure to file exceptions will result in waiver by a petitioner of any issues previously presented to the Commonwealth Court.

See also Rule 1782 (security on review in tax matters).

#### Source

The provisions of this Rule 1571 adopted May 16, 1979, effective September 30, 1979, 9 Pa.B. 1740; amended July 7, 1997, effective in 60 days, 27 Pa.B. 3503; amended July 8, 2004, effective 60 days after adoption, 34 Pa.B. 3862. Immediately preceding text appears at serial pages (231661) to (231664).

[Next page is 17-1.]

15-20

(305168) No. 359 Oct. 04

*Copyright © 2004 Commonwealth of Pennsylvania*