

**CHAPTER 19. PREPARATION AND TRANSMISSION OF RECORD
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RECORD ON APPEAL FROM LOWER COURT

Rule 1911. Request for Transcript.

(a) *General rule.*—The appellant shall request any transcript required under this chapter in the manner and make any necessary payment or deposit therefor in the amount and within the time prescribed by Rules 5000.1 et seq. of the Pennsylvania Rules of Judicial Administration (court reporters).

(b) *Cross appeals.*—Where a cross appeal has been taken the cross appellant shall also have a duty to pay for and cause the transcript to be filed and shall share the initial expense equally with all other appellants.

(c) *Form.*—The order for transcript may be endorsed on, incorporated into or attached to the notice of appeal or other document and shall be in substantially the following form:

[Caption]

A (notice of appeal) (petition for review) (other appellate paper, as appropriate) having been filed in this matter, the official court reporter is hereby ordered to produce, certify and file the transcript in this matter in conformity with Rule 1922 of the Pennsylvania Rules of Appellate Procedure.

Signature

(d) *Effect of failure to comply.*—If the appellant fails to take the action required by these rules and the Pennsylvania Rules of Judicial Administration for the preparation of the transcript, the appellate court may take such action as it deems appropriate, which may include dismissal of the appeal.

Official Note: The 1997 amendment changes the “order” to “request” in order to clarify that an order of court is not necessary. See Pa.R.J.A. 5000.5 and 1997 amendment to Rule 904(c). If a request for a transcript on appeal is made in open court the appellant must nevertheless prepare and serve a written order for transcript, so that the district court administrator and the appellate court are aware of the order. Local rules contemplated by Pa. R.J.A. 5000.6 should be consulted as to the officer or other person who is to receive and hold any security deposit (up to one-half the estimated charge) required by the court reporter. It is the responsibility of the appellant to contact the court reporter to ascertain whether a deposit will be required and the amount thereof, and to make the deposit. The court reporter is under no obligation to proceed in the absence of a required deposit, and under Pa. R.J.A. 5000.11(b) is under no obligation to certify and file the transcript in the absence of full payment or adequate security therefor. While delay in payment, and any resulting delay in certification and filing of the transcript, does not automatically affect the validity of the appeal, under Subdivision (d) the appellate court may impose other sanctions in an appropriate case. Compare Rule 902 (manner of taking appeal) and Rule 2101 (conformance with requirements). This rule and Rule 1922 are “another arrangement for delivery” under Pa. R.J.A. 5000.11(a), since it is undesirable for the official appellate transcript to pass outside of the control of court officials.

Source

The provisions of this Rule 1911 adopted April 26, 1982, effective July 15, 1981, 12 Pa.B. 1536; amended July 7, 1997, effective in 60 days, 27 Pa.B. 3503. Immediately preceding text appears at serial pages (124458) to (124459).

Rule 1921. Composition of Record on Appeal.

The original papers and exhibits filed in the lower court, hard copies of legal papers filed with the prothonotary by means of electronic filing, the transcript of proceedings, if any, and a certified copy of the docket entries prepared by the clerk of the lower court shall constitute the record on appeal in all cases.

Official Note: The rule is intended as a codification of present practice. An appellate court may consider only the facts which have been duly certified in the record on appeal. *Commonwealth v. Young*, 456 Pa. 102, 115, 317 A.2d 258, 264 (1974).

Explanatory Comment—2008

Pa.R.C.P. No. 205.4(a)(1) authorizes a court by local rule to permit or require electronic filing of legal papers with the prothonotary. Therefore, the amendment to Rule 1921 provides that where such electronic filing is utilized, hard copies of legal papers electronically filed shall become part of the record on appeal.

Source

The provisions of this Rule 1921 amended August 13, 2008, effective immediately, 38 Pa.B. 5422. Immediately preceding text appears at serial pages (231680) and (279439).

Rule 1922. Transcription of Notes of Testimony.

(a) *General rule.*—Upon receipt of the order for transcript and any required deposit to secure the payment of transcript fees the official court reporter shall proceed to have his notes transcribed, and not later than 14 days after receipt of such order and any required deposit shall lodge the transcript (with proof of service of notice of such lodgment on all parties to the matter) with the clerk of the trial court. Such notice by the court reporter shall state that if no objections are made to the text of the transcript within five days after such notice, the transcript will become a part of the record. If objections are made the difference shall be submitted to and settled by the trial court. The trial court or the appellate court may on application or upon its own motion shorten the time prescribed in this subdivision.

(b) *Diminution of transcription.*

(1) In civil cases, an application for an order providing that less than the entire proceedings shall be transcribed may be made to the trial court by any party within two days after the order for transcript is filed. A party shall have the right to require that any specified part of the notes of testimony or recordings be transcribed, subject to the applicable requirements for the payment of transcript fees.

(2) In criminal cases, diminution of transcription shall be in accordance with Rule 115 of the Pennsylvania Rules of Criminal Procedure (recording and transcribing court proceedings).

(3) In any case, untranscribed notes or recordings shall not be part of the record on appeal for any purpose.

(c) *Certification and filing.*—The trial judge shall examine any part of the transcript as to which an objection is made pursuant to subdivision (a) of this rule or which contains the charge to the jury in a criminal proceeding, and may examine any other part of the transcript, and after such examination and notice to the parties and opportunity for objection (unless previously given) shall correct such transcript. If the trial judge examines any portion of the transcript, he shall cer-

tify thereon, by reference to the page and line numbers or the equivalent, which portions thereof he has read and corrected. If no objections are filed to the transcript as lodged, or after any differences have been settled or other corrections have been made by the court, the official court reporter shall certify the transcript, and cause it to be filed with the clerk of the lower court.

(d) *Emergency appeals.*—Where the exigency of the case is such as to impel immediate consideration in the appellate court, the trial judge shall take all action necessary to expedite the preparation and transmission of the record notwithstanding the usual procedures prescribed in this chapter. Pending action by the lower court under this subdivision any party may proceed in the appellate court under Rule 1923 (statement in absence of transcript) and may append to any filing in the appellate court as much of the record below as the party desires to bring to the attention of the appellate court.

Official Note: Based in part upon former Supreme Court Rule 56, former Superior Court Rule 46, and former Commonwealth Court Rule 25 and the act of May 11, 1911 (P. L. 279, No. 179), § 4 (12 P. S. § 1199). The 14 day requirement is designed to fix an objective standard to guide the official court reporter and the lower court, so as to permit the settling of any objections by the lower court and the physical preparation and transmission by the clerk of the record within the 40 day period fixed by Rule 1931 (transmission of the record). Although under these rules a writ of certiorari is no longer issued, the requirements of these rules have the effect of a Supreme Court order, and the lower court is expected to give the transcription of notes of testimony under this rule priority over unappealed matters in the lower court.

The certification requirement of subdivision (c) recognizes that in practice the trial judge ordinarily will not actually read the transcript prior to certification unless objection is made by one of the parties. However, the rule requires the judge to review and correct the charge in criminal cases, to avoid the problems which arise when a later attempt is made by the trial judge under Rule 1926 (correction and modification of the record) to conform the transcript to his recollection of events.

Source

The provisions of this Rule 1922 amended through April 26, 1982, effective July 15, 1981, 12 Pa.B. 1536. Immediately preceding text appears at serial pages (50308) and (50309).

Rule 1923. Statement in Absence of Transcript.

If no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including his recollection. The statement shall be served on the appellee, who may serve objections or propose amendments thereto within ten days after service. Thereupon the statement and any objections or proposed amendments shall be submitted to the lower court for settlement and approval and as settled and approved shall be included by the clerk of the lower court in the record on appeal.

Official Note: Based on the statute of 13 Edw. 1, c. 31, 1 Ruffhead 99 (see *Commonwealth v. Anderson*, 441 Pa. 483, 493, 272 A.2d 877, 882 (1971)), which is suspended by these rules insofar as applicable in this Commonwealth.

Rule 1924. Agreed Statement of Record.

In lieu of the record on appeal as defined in Rule 1921 (composition of record on appeal), the parties may prepare and sign a statement of the case showing how the issues presented by the appeal arose and were decided in the lower court and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the issues presented. If the statement conforms to the truth, it, together with such additions as the lower court may consider neces-

sary fully to present the issues raised by the appeal, shall be approved by the lower court and shall then be certified to the appellate court as the record on appeal and transmitted thereto by the clerk of the lower court within the time prescribed by Rule 1931 (transmission of the record). Copies of the agreed statement and the order from which the appeal is taken may be filed as the reproduced record.

Official Note: Based on former Supreme Court Rule 45, former Superior Court Rule 37, and former Commonwealth Court Rule 89.

Source

The provisions of this Rule 1924 amended December 11, 1978, effective December 30, 1978, 8 Pa.B. 3802. Immediately preceding text appears at serial page (25443).

Rule 1925. Opinion in Support of Order.

(a) *Opinion in support of order.*

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

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

(2) *Children’s fast track appeals.*—In a children’s fast track appeal:

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

(ii) Upon receipt of the notice of appeal and the concise statement of errors complained of on appeal required by Rule 905(a)(2), the judge who entered the order giving rise to the notice of appeal, if the reasons for the order do not already appear of record, shall within 30 days file of record at least a brief opinion of the reasons for the order, or for the rulings or other errors complained of, which may, but need not, refer to the transcript of the proceedings.

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

(1) *Filing and service.*—Appellant shall file of record the Statement and concurrently shall serve the judge. Filing of record and service on the judge shall be in person or by mail as provided in Pa.R.A.P. 121(a) and shall be complete on mailing if appellant obtains a United States Postal Service Form 3817, Certificate of Mailing, or other similar United States Postal Service form from which the date of deposit can be verified, in compliance with the requirements set forth in Pa.R.A.P. 1112(c). Service on parties shall be concurrent with filing and shall be by any means of service specified under Pa.R.A.P. 121(c).

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

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

- (i) the number of days after the date of entry of the judge's order within which the appellant must file and serve the Statement;
- (ii) that the Statement shall be filed of record;
- (iii) that the Statement shall be served on the judge pursuant to paragraph (b)(1);
- (iv) that any issue not properly included in the Statement timely filed and served pursuant to subdivision (b) shall be deemed waived.

(4) *Requirements; waiver.*

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

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

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

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

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

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

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

(c) *Remand.*

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

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

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

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

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

Official Note: Subdivision (a) The 2007 amendments clarify that a judge whose order gave rise to the notice of appeal may ask a prior judge who made a ruling in question for the reasons for that judge's decision. In such cases, more than one judge may issue separate Rule 1925(a) opinions for a single case. It may be particularly important for a judge to author a separate opinion if credibility was at issue in the pretrial ruling in question. See, e.g., *Commonwealth v. Yogel*, 307 Pa. Super. 241, 243-44, 453 A.2d 15, 16 (1982). At the same time, the basis for some pretrial rulings will be clear from the order and/or opinion issued by the judge at the time the ruling was made, and there will then be no reason to seek a separate opinion from that judge under this rule. See, e.g., Pa.R.Crim.P. 581(I). Likewise, there will be times when the prior judge may explain the ruling to the judge whose order has given rise to the notice of appeal in sufficient detail that there will be only one opinion under Rule 1925(a), even though there are multiple rulings at issue. The time period for transmission of the record is specified in Pa.R.A.P. 1931,

and that rule was concurrently amended to expand the time period for the preparation of the opinion and transmission of the record.

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

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

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

In general, nunc pro tunc relief is allowed only when there has been a breakdown in the process constituting extraordinary circumstances. See, e.g., *In re Canvass of Absentee Ballots of Nov. 4, 2003 Gen. Election*, 577 Pa. 231, 248-49, 843 A.2d 1223, 1234 (2004) (“We have held that fraud or the wrongful or negligent act of a court official may be a proper reason for holding that a statutory appeal period does not run and that the wrong may be corrected by means of a petition filed nunc pro tunc.”) Courts have also allowed nunc pro tunc relief when “non-negligent circumstances, either as they relate to appellant or his counsel” occasion delay. *McKeown v. Bailey*, 731 A.2d 628, 630 (Pa. Super. 1999). However, even when there is a breakdown in the process, the appellant must attempt to remedy it within a “very short duration” of time. *Id.*; *Amicone v. Rok*, 839 A.2d 1109, 1113 (Pa. Super. 2003) (recognizing a breakdown in process, but finding the delay too long to justify nunc pro tunc relief).

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

Paragraph (b)(4) This paragraph sets forth the parameters for the Statement and explains what constitutes waiver. It should help counsel to comply with the concise-yet-sufficiently-detailed requirement and avoid waiver under either *Lineberger v. W̄yeth*, 894 A.2d 141, 148-49 (Pa. Super. 2006) or *Kanter v. Epstein*, 866 A.2d 394, 400-03 (Pa. Super. 2004), allowance of appeal denied, 584 Pa. 678, 880 A.2d 1239 (2005), cert. denied sub nom. *Spector Gadon & Rosen, P.C. v. Kanter*, 546 U.S. 1092 (2006). The paragraph explains that the Statement should be sufficiently specific to allow the judge to draft the opinion required under 1925(a), and it provides

that the number of issues alone will not constitute waiver—so long as the issues set forth are non-redundant and non-frivolous. It allows appellants to rely on the fact that subsidiary issues will be deemed included if the overarching issue is identified and if all of the issues have been properly preserved in the trial court. This provision has been taken from the United States Supreme Court rules. See Sup. Ct. R. 14(1). This paragraph does not in any way excuse the responsibility of an appellant who is raising claims of constitutional error to raise those claims with the requisite degree of specificity. This paragraph also allows—but does not require—an appellant to state the authority upon which the appellant challenges the ruling in question, but it expressly recognizes that a Statement is not a brief and that an appellant shall not file a brief with the Statement. This paragraph also recognizes that there may be times that a civil appellant cannot be specific in the Statement because of the non-specificity of the ruling complained of on appeal. In such instances, civil appellants may seek leave to file a supplemental Statement to clarify their position in response to the judge’s more specific Rule 1925(a) opinion.

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

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

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

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

Paragraph (c)(4) This paragraph clarifies the special expectations and duties of a criminal lawyer. Even lawyers seeking to withdraw pursuant to the procedures set forth in *Anders v. California*, 386 U.S. 738 (1967) and *Commonwealth v. McClendon*, 495 Pa. 467, 434 A.2d 1185 (1981) are obligated to comply with all rules, including the filing of a Statement. See *Commonwealth v. Myers*, 897 A.2d 493, 494-96 (Pa. Super. 2006); *Commonwealth v. Ladamus*, 896 A.2d

592, 594 (Pa. Super. 2006). However, because a lawyer will not file an *Anders/McClendon* brief without concluding that there are no non-frivolous issues to raise on appeal, this amendment allows a lawyer to file, in lieu of a Statement, a representation that no errors have been raised because the lawyer is (or intends to be) seeking to withdraw under *Anders/McClendon*. At that point, the appellate court will reverse or remand for a supplemental Statement and/or opinion if it finds potentially non-frivolous issues during its constitutionally required review of the record.

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

The 2007 amendments attempt to address the concerns of the bar raised by cases in which courts found waiver: (a) because the Statement was too vague; or (b) because the Statement was so repetitive and voluminous that it did not enable the judge to focus on the issues likely to be raised on appeal. See, e.g., *Lineberger v. Wyeth*, 894 A.2d 141, 148-49 (Pa. Super. 2006); *Kanter v. Epstein*, 866 A.2d 394, 400-03 (Pa. Super. 2004), allowance of appeal denied, 584 Pa. 678, 880 A.2d 1239 (2005), cert. denied sub nom. *Spector Gadon & Rosen, P.C. v. Kanter*, 546 U.S. 1092 (2006). Courts have also cautioned, however, “against being too quick to find waiver, claiming that Rule 1925(b) statements are either too vague or not specific enough.” *Astorino v. New Jersey Transit Corp.*, 912 A.2d 308, 309 (Pa. Super. 2006).

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

Source

The provisions of this Rule 1925 amended May 16, 1979, effective September 30, 1979, 9 Pa.B. 1740; amended December 30, 1987, effective January 16, 1988 and shall govern all matters thereafter commence and, insofar as just and practicable, matters then pending, 18 Pa.B. 245; amended May 10, 2007, effective 60 days after adoption, 37 Pa.B. 2405; amended January 13, 2009, effective as to all appeals filed 60 days or more after adoption, 39 Pa.B. 1094. Immediately preceding text appears at serial pages (327959) to (327964).

Rule 1926. Correction or Modification of the Record.

If any difference arises as to whether the record truly discloses what occurred in the lower court, the difference shall be submitted to and settled by that court after notice to the parties and opportunity for objection, and the record made to conform to the truth. If anything material to either party is omitted from the record by error or accident or is misstated therein, the parties by stipulation, or the lower court either before or after the record is transmitted to the appellate

court, or the appellate court, on proper suggestion or of its own initiative, may direct that the omission or misstatement be corrected, and if necessary that a supplemental record be certified and transmitted. All other questions as to the form and content of the record shall be presented to the appellate court.

Official Note: Based on former Supreme Court Rule 63 and former Superior Court Rule 54. This rule is intended to close a gap in the prior practice whereby the lower court could not correct an error discovered in writing an opinion under Rule 1925 (opinion in support of order). This rule does not enlarge the power of the lower court to rewrite the record but, together with Rule 1922(c) (certification and filing), merely postpones the reading and correction by the trial judge of an unobjected to transcript (except for the charge to the jury in criminal proceedings) from the transcription stage to the opinion writing stage, so as to conform to actual practice.

Source

The provisions of this Rule 1926 amended December 11, 1978, effective December 30, 1978, 8 Pa.B. 3802. Immediately preceding text appears at serial page (27959).

Rule 1931. Transmission of the Record.

(a) *Time for transmission.*

(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 pro-

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

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

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

Explanatory Comment—2007

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

Source

The provisions of this Rule 1931 amended December 11, 1978, effective December 30, 1978, 8 Pa.B. 3802; amended April 1, 2004, effective in 60 days, 34 Pa.B. 2064; amended May 10, 2007, effective 60 days after adoption, 37 Pa.B. 2408; amended January 13, 2009, effective as to all appeals filed 60 days or more after adoption, 39 Pa.B. 1094. Immediately preceding text appears at serial pages (327965) to (327966).

Rule 1932. Retention of Record in Lower Court.

(a) *Temporary retention.*—Notwithstanding the provisions of Rule 1931 (transmission of the record), on praecipe of a party the clerk of the lower court shall temporarily retain the record for use by the parties in preparing appellate papers. In that event, the clerk of the lower court shall nevertheless cause the record to be filed within the time fixed or allowed for transmission of the record by transmitting to the prothonotary of the appellate court a partial record in the form of a copy of the docket entries, accompanied by a certificate, reciting that the record, including the transcript or parts thereof designated for inclusion and all necessary exhibits, is complete for purposes of the appeal. The filing of a partial record under this rule shall constitute the filing of the record for the purposes of Rule 2185 (time for serving and filing briefs) and Rule 2186 (time for serving

and filing reproduced record). Upon receipt of the brief of the appellee, or at such earlier time as the parties may agree or the court may order, the appellant shall request the clerk of the lower court to transmit the record.

(b) *Retention by order of court.*

(1) The appellate court may provide by order that a certified copy of the docket entries shall be transmitted in lieu of the entire record, subject to the right of any party to request at any time during the pendency of the appeal that designated parts of the record be transmitted.

(2) If the record or any part thereof is required in the lower court for use there pending the appeal, the lower court may make an order to that effect, and the clerk of the lower court shall retain the record or parts thereof subject to the request of the appellate court, and shall transmit a copy of the order and of the docket entries together with such parts of the original record as the lower court shall allow and copies of such parts as the parties may designate.

(c) *Stipulation of parties that parts of the record be retained in the lower court.*—The parties may agree by written stipulation filed in the lower court that designated parts of the record shall be retained in the lower court unless thereafter the appellate court shall order or any party shall request their transmittal. The parts thus designated shall nevertheless be a part of the record on appeal for all purposes.

Rule 1933. Record for Preliminary Hearing in Appellate Court.

If prior to the time the record is transmitted a party desires to make in the appellate court a motion for dismissal, an application for release, for a stay pending appeal, for modification of security on appeal, or for any intermediate order, the clerk of the lower court at the request of the party shall transmit to the appellate court such parts of the original record as any party shall designate.

Rule 1934. Filing of the Record.

Upon receipt of the record (or of papers authorized to be filed in lieu of the record under the provisions of these rules) by the prothonotary of the appellate court after the appeal has been docketed, the prothonotary shall file the record in the appellate court. The prothonotary of the appellate court shall immediately give notice to all parties and the Administrative Office of the date on which the record was filed and shall give notice to all parties of the date, if any, specially fixed by the prothonotary pursuant to Rule 2185(b) (notice of deferred briefing schedule) for the filing of the brief of the appellant.

Official Note: Based in part on former Commonwealth Court Rule 32A (second sentence).

Rule 1935. Notices and Reports Concerning Delinquent Transmission of Record.

(a) *Notice to trial court judge.*—The prothonotary of the appropriate appellate court, within ten days after the date for filing the record in that court under Rule 1931, shall give written notice to the trial court judge of any delinquency in the transmission of the record. A copy of this notice shall also be forwarded to the president judge of the judicial district.

(b) *Report to Supreme Court.*—If the record is further delayed and satisfactory explanation of the delay is not given, the appellate court prothonotary shall inform the Administrative Office, and where appropriate, the Court Administrator shall report any such case of neglect or refusal to comply with this chapter to the Supreme Court, which may consider and act on the matter as provided by Rule 506(b) of the Rules of Judicial Administration.

Official Note: It is intended that the prothonotaries of the appellate courts monitor appeals in which the record is not timely filed under Rule 1931, and bring to the attention of the trial court judge any delinquency in such filing. Where the reminder from the prothonotary is unavailing, the matter is referred to the Administrative Office for further action.

The trial court has direct control over the official court reporter and staff, and it is appropriate, therefore, that notice of delinquency in filing the record on appeal be sent to the trial court judge. See e.g. *Commonwealth v. Morgan*, 469 Pa. 35, n.2, 364 A.2d 891, 892 n.2 (1976).

Authority

The provisions of this Rule 1935 issued under Article V, section 10, of the Constitution of Pennsylvania.

Source

The provisions of this Rule 1935 amended through April 30, 1981, effective June 15, 1981, 11 Pa.B. 1625. Immediately preceding text appears at serial pages (45546) and (45547).

REVIEW OF DEATH SENTENCES

Rule 1941. Review of Death Sentences.

(a) *Procedure in trial court.*—Upon the entry of a sentence subject to 42 Pa.C.S. § 9711(h) (review of death sentence) the court shall direct the official court reporter and the clerk to proceed under this chapter as if a notice of appeal had been filed 20 days after the date of entry of the sentence of death, and the clerk shall immediately give written notice of the entry of the sentence to the Administrative Office and to the Supreme Court Prothonotary's Office. The clerk shall insert at the head of the list of documents required by Rule 1931(c) (duty of clerk to transmit the record) a statement to the effect that the papers are transmitted under this rule from a sentence of death.

(b) *Filing and docketing in the Supreme Court.*—Upon receipt by the Prothonotary of the Supreme Court of the record of a matter subject to this rule, the Prothonotary shall immediately:

- (1) Enter the matter upon the docket as an appeal, with the defendant indicated as the appellant and the Commonwealth indicated as the appellee.
- (2) File the record in the Supreme Court.
- (3) Give written notice of the docket number assignment in person or by first class mail to the clerk of the lower court.
- (4) Give notice to all parties and the Administrative Office of the docket number assignment and the date on which the record was filed in the Supreme Court, and shall give notice to all parties of the date, if any, specially fixed by

the Prothonotary pursuant to Rule 2185(b) (notice of deferred briefing schedule) for the filing of the brief of the appellant.

(c) *Further proceedings.*—Except as required by Rule 2189 or by statute, a matter subject to this rule shall proceed after docketing in the same manner as other appeals in the Supreme Court.

Official Note: Formerly the act of February 15, 1870 (P. L. 15, No. 6) required the appellate court to review the sufficiency of the evidence in certain homicide cases regardless of the failure of the appellant to challenge the matter. See, e.g. *Commonwealth v. Santiago*, 476 Pa. 340, 382 A.2d 1200 (1978). Rule 302 (requisites for reviewable issue) now provides otherwise with respect to homicide cases generally. However, under Subdivision (c) of this rule the procedure for automatic review of capital cases provided by 42 Pa.C.S. § 9711(h) (review of death sentence) will permit an independent review of the sufficiency of the evidence in such cases.

Although Rule 702(b) (matters tried with capital offenses) vests jurisdiction in the Supreme Court over appeals from sentences imposed on a defendant for lesser offenses as a result of the same criminal episode or transaction where the offense is tried with the capital offense, the appeal from the lesser offenses is not automatic. Thus the right to appeal the judgment of sentence on a lesser offense will be lost unless all requisite steps are taken, including preservation of issues (e.g. by filing post-trial motions), filing a timely notice of appeal, *etc.*

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

Source

The provisions of this Rule 1941 amended December 1, 1982, effective December 1, 1982, 12 Pa.B. 4332; amended March 22, 1989, effective immediately, 19 Pa.B. 1524. Immediately preceding text appears at serial pages (124466) to (124467).

RECORD ON PETITION FOR REVIEW OF ORDERS OF GOVERNMENT UNITS OTHER THAN COURTS

Rule 1951. Record below in Proceedings on Petition for Review.

(a) *Composition of the record.*—Where under the applicable law the questions raised by a petition for review may be determined by the court in whole or in part upon the record before the government unit, such record shall consist of:

- (1) The order or other determination of the government unit sought to be reviewed.
- (2) The findings or report on which such order or other determination is based.
- (3) The pleadings, evidence and proceedings before the government unit.

(b) *Omissions from or misstatements of the record below.*—If anything material to any party is omitted from the record or is misstated therein, the parties may at any time supply the omission or correct the misstatement by stipulation, or the court may at any time direct that the omission or misstatement be corrected and, if necessary, that a supplemental record be prepared and filed.

(c) *Reasons for order.*—The government unit shall comply with the provisions of Rule 1925 (opinion in support of order) where the petition for review relates to a quasijudicial order.

Official Note: This rule and Rule 1952 (filing of record in response to petition for review) are also applicable when permission to appeal from an order of a government unit other than a court has been granted. See Rule 1322 (permission to appeal and transmission of record).

Rule 1952. Filing of Record in Response to Petition for Review.

(a) *Time and notice.*—Where under the applicable law the question raised by a petition for review may be determined in whole or in part upon the record before the government unit, the government unit shall file the record with the prothonotary of the court named in the petition for review within 40 days after service upon it of the petition. The court may shorten or extend the time prescribed in this subdivision. The prothonotary shall give notice to all parties of the date on which the record is filed.

(b) *Certificate of record.*—The government unit shall certify the contents of the record. The government unit shall (1) arrange the documents to be certified in chronological order, (2) number them, and (3) affix to the right or bottom edge of the first page of each document a tab showing the number of that document. These shall be bound and shall contain a table of contents identifying each document in the record. The certificate shall be made by the head, chairman, deputy or secretary of the government unit. The government unit may file the entire record or such parts thereof as the parties may designate by stipulation filed with the government unit. The original papers in the government unit or certified copies thereof may be filed. Instead of filing the record or designated parts thereof the government unit may file a certified list of all documents, transcripts of testimony, exhibits and other material comprising the record, or a list of such parts thereof as the parties may designate, adequately describing each, and the filing of the certified list shall constitute filing of the record. The parties may stipulate that neither the record nor a certified list be filed with the court. The stipulation shall be filed with the prothonotary of the court and the date of its filing shall be deemed the date on which the record is filed. If a certified list is filed, or if the parties designate only parts of the record for filing or stipulate that neither the record nor a certified list be filed, the government unit shall retain the record or parts thereof. Upon request of the court or the request of a party, the record or any part thereof thus retained shall be transmitted to the court notwithstanding any prior stipulation. All parts of the record retained by the government unit shall be a part of the record on review for all purposes.

Official Note: Based in part upon former Commonwealth Court Rules 22, 23 and 32A (second sentence). The time within which the record must be certified has been increased from 20 days to 40 days to conform to Rule 1931 (transmission of the record).

Source

The provisions of this Rule 1952 amended May 16, 1979, effective September 30, 1979, 9 Pa.B. 1740; amended December 30, 1987, effective January 16, 1988 and shall govern all matters thereafter commenced and, insofar as just and practicable, matters then pending, 18 Pa.B. 245. Immediately preceding text appears at serial pages (79560) and (70100).

DISPOSITION WITHOUT REACHING THE MERITS**Rule 1971. [Rescinded].****Source**

The provisions of this Rule 1971 amended May 16, 1979, effective September 30, 1979, 9 Pa.B. 1740. Immediately preceding text appears at serial page (39628).

Rule 1972. Dispositions on Motion.

(a) Except as otherwise prescribed by this rule, subject to Rule 123 (applications for relief), any party may move:

(1) To transfer the record of the matter to another court because the matter should have been commenced in, or the appeal should have been taken to, such other court. See Rule 741 (waiver of objections to jurisdiction).

(2) To transfer to another appellate court under Rule 752 (transfers between Superior and Commonwealth Courts).

(3) To dismiss for want of jurisdiction in the unified judicial system of this Commonwealth.

(4) To dismiss for mootness.

(5) To dismiss for failure to preserve the question below, or because the right to an appeal has been otherwise waived. See Rule 302 (requisites for reviewable issue) and Rule 1551(a) (review of quasijudicial orders).

(6) To continue generally or to quash because the appellant is a fugitive.

(7) To quash for any other reason appearing on the record.

Any two or more of the grounds specified in this rule may be joined in the same motion. Unless otherwise ordered by the appellate court, a motion under this rule shall not relieve any party of the duty of filing his or her briefs and reproduced records within the time otherwise prescribed therefore. The court may grant or refuse the motion, in whole or in part; may postpone consideration thereof until argument of the case on the merits; or may make such other order as justice may require.

(b) In a children's fast track appeal, a dispositive motion filed under Paragraphs (a)(1), (a)(2), (a)(5), (a)(6) or (a)(7) of this rule shall be filed within 10 days of the filing of the statement of errors complained of on appeal required by Rule 905(a)(2), or within 10 days of the lower court's filing of a Rule 1925(a)(2) opinion, whichever period expires last, unless the basis for seeking to quash the appeal appears on the record subsequent to the time limit provided herein, or except upon application and for good cause shown.

Official Note: Based on former Supreme Court Rule 33 and former Superior Court Rule 25.

As to Paragraph (6) see, e.g. *Commonwealth v. Galloway*, 460 Pa. 309, 333 A.2d 741 (1975) (continuing generally), *Commonwealth v. Barron*, 237 Pa. Super. 369, 352 A.2d 84 (1975) (quashing). Rule 1933 (record for preliminary hearing in appellate court) makes clear the right of a moving party to obtain immediate transmission of as much of the record as may be necessary for the purposes of a motion under this rule. See Rule 123(c) (speaking applications).

Source

The provisions of this Rule 1972 amended May 16, 1979, effective September 30, 1979, 9 Pa.B. 1740; amended February 27, 1980, 10 Pa.B. 1038, effective date as set forth at 10 Pa.B. 1038; amended September 10, 2008, effective December 1, 2008, 38 Pa.B. 5257; amended January 13, 2009, effective as to all appeals filed 60 days or more after adoption, 39 Pa.B. 1094. Immediately preceding text appears at serial pages (338838) to (338839).

Rule 1973. Discontinuance.

(a) *General rule.*—An appellant may discontinue an appeal or other matter as to all appellees as of course at any time prior to argument, or thereafter by leave of court upon application. A discontinuance may not be entered by appellant as to less than all appellees except by stipulation for discontinuance signed by all the parties, or by leave of court upon application. Discontinuance by one appellant shall not affect the right of any other appellant to continue the appeal.

(b) *Filing of discontinuance.*—If an appeal has not been docketed, the appeal may be discontinued in the lower court. Otherwise all papers relating to the discontinuance shall be filed in the appellate court and the appellate prothonotary shall give written notice of the discontinuance in person or by first class mail to the prothonotary or clerk of the lower court or to the government unit, to the persons named in the proof of service accompanying the appeal or other matter and to the Administrative Office. If an appeal has been docketed in the appellate court, the prothonotary or clerk of the lower court or the clerk of the government unit shall not accept a *praecipe* to discontinue the action until it has received notice from the appellate court prothonotary or certification of counsel that all pending appeals in the action have been discontinued.

Official Note: Based on former Supreme Court Rule 20A; former Superior Court Rule 10A, and former Commonwealth Court Rule 28 (except last sentence).

Source

The provisions of this Rule 1973 amended December 30, 1988, effective January 16, 1988 and shall govern all matters thereafter commenced and, insofar as just and practicable, matters then pending, 18 Pa.B. 245. Immediately preceding text appears at serial page (50313).

[Next page is 21-1.]