

**CHAPTER 3. ORDERS FROM WHICH APPEALS
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IN GENERAL

Rule 301. Requisites for an Appealable Order.

(a) *Entry upon docket below.*

(1) Except as provided in paragraph (2) of this subdivision, no order of a court shall be appealable until it has been entered upon the appropriate docket in the lower court. Where under the applicable practice below an order is entered in two or more dockets, the order has been entered for the purposes of appeal when it has been entered in the first appropriate docket.

(2) In a criminal case in which no post-sentence motion has been filed, a judgment of sentence is appealable upon the imposition of sentence in open court.

(b) *Separate document required.*—Every order shall be set forth on a separate document.

(c) *Nonappealable orders.*—Except as provided in subdivision (a)(2), a direction by the lower court that a specified judgment, sentence or other order shall be entered, unaccompanied by actual entry of the specified order in the docket, does not constitute an appealable order. Any such order shall be docketed before an appeal is taken.

(d) *Entry of appealable orders.*—Subject to any inconsistent general rule applicable to particular classes of matters, the clerk of the lower court shall on praecipe of any party (except a party who by law may not praecipe for entry of an adverse order) forthwith prepare, sign and enter an appropriate order, judgment or final decree in the docket, evidencing any action from which an appeal lies either as of right or upon permission to appeal or allowance of appeal.

(e) *Emergency appeals.*—Where the exigency of the case is such as to impel an immediate appeal and the party intending to appeal an adverse action is unable to secure the formal entry of an appealable order pursuant to the usual procedures, the party may file in the lower court and serve a praecipe for entry of an adverse order, which action shall constitute entry of an appealable order for the purposes of these rules. The interlocutory or final nature of the action shall not be affected by this subdivision.

Official Note: See Rules of Appellate Procedure 311 authorizing interlocutory appeals as of right, 312 authorizing interlocutory appeals by permission, and 341 to 843 authorizing appeals from final orders.

See also Rules of Appellate Procedure 903 governing time for filing notice of appeal, 1113 governing time for filing petition for allowance of appeal, 1311(b) governing time for filing petition for permission for appeal, and 1512 governing time for filing petition for review.

The 1986 Amendment to Rule 301 states that no order shall be appealable until entered in the docket and deletes reference to reduction of an order to judgment as a prerequisite for appeal in every case. This deletion does not eliminate the requirement of reduction of any order to judgment in an appropriate case. Due to the variety of orders issued by courts in different kinds of cases, no single rule can delineate the requirements applicable in all cases. The bar is cautioned that if the applicable practice or case law requires that an order be reduced to judgment or final decree before it becomes final, that requirement must still be met before the order can be appealed.

An appeal may be remanded or subject to other appropriate action of the appellate court when the order is such that it may be reduced to judgment or final decree and entered in the docket but such action has not been taken. Rule 902. Examples of orders which may be remanded under Rule 902 when the order appealed from has not been reduced to judgment or final decree include:

1. an order denying a motion for a new trial or judgment notwithstanding the verdict after a trial by jury, *Dennis v. Smith*, 288 Pa. Super 185, 431 A.2d 350 (1981);
2. an order dismissing exceptions to the decision after a trial without jury, *Black Top Paving Co., Inc. v. John Carlo, Inc.*, 292 Pa. Super. 404, 437 A.2d 756 (1981); and
3. an order dismissing exceptions to the decree nisi in an equity action, *Kopchak v. Springer*, 292 Pa. Super. 441, 437 A.2d 756 (1981).

An appeal will also be quashed where the order appealed from is interlocutory and the appeal is not authorized by Rule 311 governing interlocutory appeals as of right or Rule 312 governing interlocutory appeals by permission. Examples of interlocutory orders include:

1. an order granting a petition for appointment of an arbitrator, *Cassidy v. Keystone Ins. Co.*, 297 Pa. Super. 421, 443 A.2d 1193 (1982); and
2. an order relating to alimony pendente lite, and interim counsel fees and expenses is not appealable. *Fried v. Fried*, Pa. , 501 A.2d 211 (1985).

Subdivision (a) extends former Supreme Court Rule 19A and former Commonwealth Court Rule 29A to the Superior Court. The second sentence of the subdivision codifies *Stotsenburg v. Frost*, 465 Pa. 187, 348 A.2d 418 (1975).

The requirement of Subdivision (b) for a separate document is patterned after Fed. Rules Civ. Proc. 58, as interpreted in *United States v. Indrelunas*, 93 S.Ct. 1562, 411 U.S. 216, 36 L.Ed.2d 202 (1973), so as to render certain the date on which an order is entered for purposes of computing the running of the time for appeal. See also *Bankers Trust Co. v. Mallis*, 98 S.Ct. 1117, 435 U.S. 381, 55 L.Ed.2d.357 (1978) (requirement of separate document may be waived by

appellee). This requirement is intended to control over an inconsistent civil (including orphans' court) or criminal procedural rule, since such rules are not primarily concerned with the appellate process.

Subdivision (c) sets forth the frequently overlooked requirement for an appealable order that an order must be docketed before it may be appealed. The subdivision also sets forth the rule that an appeal is premature where the Court directs that a judgment sentence or order be entered in the docket and the prothonotary fails to do so. *Friedman v. Kasser*, 293 Pa. Super. 294, 438 A.2d 1001 (1981). Moreover, an order of Court then directing that a complaint as set forth will be dismissed upon the passage of time or occurrence or failure of an event is not appealable; only a subsequent order of dismissal would be appealable. See *Ayre v. Mountaintop Area Joint San. Auth.*, 58 Pa. Cmwlth. 510, 427 A.2d 1294 (1981).

This rule does not supersede rules such as Pa. R. Civ. Proc. 237 which impose additional requirements or procedures in connection with filing a praecipe for a final order.

Subdivision (d) provides a remedy for the appellant where no appealable order has been entered on the docket, and is similar to Pa. R. Civ. P. 227.4. The exception refers to cases such as certain matrimonial matters, where it has been held that the defendant is not entitled to cause an adverse decision to be formally entered as judgment. See, e.g., *Mirarchi v. Mirarchi*, 226 Pa. Super. 53, 311 A.2d 698 (1973).

The filing in the lower court required by Subdivision (e) may under Rule 121(a) (filing) be made with a judge of the lower court in connection with an application under Chapter 17 (effect of appeals, supersedeas and stays).

See Pa.R.A.P. 108 and Explanatory Comment—2007 thereto, Pa.R.A.P. 903(c)(3), and Pa.R.Crim.P. 462, 720, and 721 governing criminal appeals.

Explanatory Comment—1976

Language clarified to conform to *Stotsenburg v. Frost*, 465 Pa. 187, 348 A.2d 418 (1975).

Source

The provisions of this Rule 301 amended through December 10, 1986, effective January 31, 1987, and shall govern all matters thereafter commenced and, insofar as just and practicable, matters then pending, 16 Pa.B. 4591; amended January 18, 2007, effective August 1, 2007, 37 Pa.B. 521. Immediately preceding text appears at serial pages (312363) to (312365).

Rule 302. Requisites for Reviewable Issue.

(a) *General rule.* Issues not raised in the lower court are waived and cannot be raised for the first time on appeal.

(b) *Charge to jury.* A general exception to the charge to the jury will not preserve an issue for appeal. Specific exception shall be taken to the language or omission complained of.

Official Note: This rule sets forth a frequently overlooked requirement. See, e.g. *Commonwealth v. Piper*, 458 Pa. 307, 328 A.2d 845 (1974), as to Subdivision (a). See, e.g. *Dilliaine v. Lehigh Valley Trust Co.*, 457 Pa. 255, 322 A.2d 114 (1974); *Commonwealth v. Light*, 458 Pa. 328, 326 A.2d 288 (1974) as to Subdivision (b). Rule 2117(c) (statement of place of raising or preservation of issues) and Rule 2119(e) (statement of place of raising or preservation of issues) require that the brief expressly set forth in both the statement of the case and in the argument reference to the place in the record where the issue presented for decision on appeal has been raised or preserved below.

See Rule 1551 (Scope of Review) as to requisites for reviewable issue on petition for review.

Source

The provisions of this Rule 302 amended February 27, 1980, 10 Pa.B. 1038, effective as set forth at 10 Pa.B. 1038. Immediately preceding text appears at serial pages (42958).

INTERLOCUTORY APPEALS**Rule 311. Interlocutory Appeals as of Right.**

(a) *General rule.* An appeal may be taken as of right and without reference to Pa. R.A.P. 341(c) from:

(1) *Affecting judgments.* An order refusing to open, vacate or strike off a judgment. If orders opening, vacating or striking off a judgment are sought in the alternative, no appeal may be filed until the court has disposed of each claim for relief.

(2) *Attachments, etc.* An order confirming, modifying or dissolving or refusing to confirm, modify or dissolve an attachment, custodianship, receivership or similar matter affecting the possession or control of property, except for orders pursuant to Sections 3323(f) and 3505(a) of the Divorce Code, 23 Pa.C.S. §§ 3223(f) and 3505(a).

(3) *Change of criminal venue or venire.* An order changing venue or venire in a criminal proceeding.

(4) *Injunctions.* An order granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions, except for injunctions pursuant to Sections 3323(f) and 3505(a) of the Divorce Code, 23 Pa.C.S. §§ 3323(f) and 3505(a). A decree nisi granting or denying an injunction is not appealable as of right under this rule, unless the decree nisi (i) grants an injunction effective upon the entry of a decree nisi or (ii) dissolves a previously granted preliminary injunction effective upon the entry of a decree nisi.

(5) *Peremptory judgment in mandamus.* An order granting peremptory judgment in mandamus.

(6) *New trials.* An order in a civil action or proceeding awarding a new trial, or an order in a criminal proceeding awarding a new trial where the defendant claims that the proper disposition of the matter would be an absolute discharge or where the Commonwealth claims that the lower court committed an error of law.

(7) *Partition.* An order directing partition.

(8) *Estate and trust matters.* An order determining the validity of a will or trust.

(9) *Other cases.* An order which is made appealable by statute or general rule.

(b) *Order sustaining venue or personal or in rem jurisdiction.* An appeal may be taken as of right from an order in a civil action or proceeding sustaining the venue of the matter or jurisdiction over the person or over real or personal property if:

(1) the plaintiff, petitioner or other party benefiting from the order files of record within ten days after the entry of the order an election that the order shall be deemed final; or

(2) the court states in the order that a substantial issue of venue or jurisdiction is presented.

(c) *Changes of venue, etc.* An appeal may be taken as of right from an order in a civil action or proceeding changing venue, transferring the matter to another court of coordinate jurisdiction, or declining to proceed in the matter on the basis of forum non conveniens or analogous principles.

(d) *Commonwealth Appeals in Criminal Cases.* In a criminal case, under the circumstances provided by law, the Commonwealth may take an appeal as of right from an order that does not end the entire case where the Commonwealth certifies in the notice of appeal that the order will terminate or substantially handicap the prosecution.

(e) *Orders Overruling Preliminary Objections in Eminent Domain Cases.* An appeal may be taken as of right from an order overruling preliminary objections to a declaration of taking and an order overruling preliminary objections to a petition for appointment of a board of viewers.

(f) *Administrative Remand.* An appeal may be taken as of right from: (1) an order of a common pleas court or government unit remanding a matter to an administrative agency or hearing officer for execution of the adjudication of the reviewing tribunal in a manner that does not require the exercise of administrative discretion; or (2) an order of a common pleas court or government unit remanding a matter to an administrative agency or hearing officer that decides an issue which would ultimately evade appellate review if an immediate appeal is not allowed.

(g) *Waiver of objections.*

(1) Where an interlocutory order is immediately appealable under this rule, failure to appeal:

(i) Under Subdivisions (a)(1)—(7), (a)(9), (b)(2) or (f) of this rule shall not constitute a waiver of the objection to the order and the objection may be raised on any subsequent appeal in the matter from a determination on the merits.

(ii) Under Subdivisions (b)(1) or (c) of this rule shall constitute a waiver of all objections to jurisdiction over the person or over the property involved or to venue, etc. and the question of jurisdiction or venue shall not be considered on any subsequent appellate review of the matter.

(iii) Under Subdivisions (a)(8) or (e) of this rule shall constitute a waiver of all objections to such orders and any objection may not be raised on any subsequent appeal in the matter from a determination on the merits.

(2) Where no election that an interlocutory order shall be deemed final is filed under Subdivision (b)(1) of this rule, the objection may be raised on any subsequent appeal in the matter from a determination on the merits.

(h) *Further proceedings in lower court.* Rule 1701(a) (effect of appeal generally) shall not be applicable to a matter in which an interlocutory order is appealed under Subdivisions (a)(2) or (a)(4) of this rule.

Official Note: Authority—This rule implements 42 Pa.C.S. § 5105(c) (interlocutory appeals), which provides:

(c) Interlocutory appeals. There shall be a right of appeal from such interlocutory orders of tribunals and other government units as may be specified by law. The governing authority shall be responsible for a continuous review of the operation of section 702(b) (relating to interlocutory appeals by permission) and shall from time to time establish by general rule rights to appeal from such classes of interlocutory orders, if any, from which appeals are regularly allowed pursuant to section 702(b).

The appeal rights under this rule, and under Rule 312 (interlocutory appeals by permission), Rule 313 (collateral orders), Rule 341 (final orders generally), and Rule 342 (final distribution orders), are cumulative; and no inference shall be drawn from the fact that two or more rules may be applicable to an appeal from a given order.

Subdivision (a)—If an order falls under Rule 311, an immediate appeal may be taken as of right simply by filing a notice of appeal. The procedures set forth in Rules 341(c) and 1311 do not apply to an appeal under Rule 311.

Subdivision (a), Paragraph (a)(1) (Affecting judgments)—The 1989 amendment to paragraph (a)(1) eliminated interlocutory appeals of right from orders opening, vacating, or striking off a judgment while retaining the right of appeal from an order refusing to take any such action.

Paragraph (a)(2) (Attachments, etc.)—The 1987 Amendment to paragraph (a)(2) is consistent with appellate court decisions disallowing interlocutory appeals in matrimonial matters. *Fried v. Fried*, 509 Pa. 89, 501 A.2d 211 (1985); *O'Brien v. O'Brien*, 359 Pa. Super. 594, 519 A.2d 511 (1987).

Paragraph (a)(3) (Change of criminal venue or venire)—Under prior practice, either a defendant or the Commonwealth could appeal an order changing venue. See former Pa.R.Crim.P. 311(a) (Third sentence) before amendment of June 29, 1977, 471 Pa. XLIV. An order refusing to change venue is not appealable. *Commonwealth v. Swanson*, 424 Pa. 192, 225 A.2d 231 (1967). This rule makes no change in existing practice.

Change of venire is authorized by 42 Pa.C.S. § 8702 (impaneling jury from another county). Pa.R.Crim.P. 312 (motion for change of venue or change of venire) treats changes of venue and venire the same. Thus an order changing venire is appealable by the defendant or the Commonwealth, while an order refusing to change venire is not.

See also Rule 903(c)(1) regarding time for appeal.

Paragraph (a)(4) (Injunctions)—The 1987 amendment to paragraph (a)(4) is consistent with appellate court decisions disallowing interlocutory appeals in matrimonial matters. *Fried v. Fried*, 509 Pa. 89, 501 A.2d 211 (1985); *O'Brien v. O'Brien*, 359 Pa. Super. 594, 519 A.2d 511 (1987).

The 1996 amendment to paragraph (a)(4) reconciled two conflicting lines of cases by adopting the position that generally an appeal may not be taken from a decree nisi granting or denying a permanent injunction. *Humphreys v. Cain*, 84 Pa. Cmwlth. 222, 474 A.2d 353 (1984). To the extent that *Agra Enterprises Inc. v. Brunozzi*, 302 Pa. Super. 166, 170, 448 A.2d 579, 581 (1982); *Martin Industrial Supply Corp. v. Riffert*, 366 Pa. Super. 89, 91, 530 A.2d 906, 907 (1987); *Bolus v. Ryder Truck Rental, Inc.*, 258 Pa. Super. 387, 388, 517 A.2d 995, 996 (1986); *Commonwealth ex. rel. Lewis v. Allouwill Realty Corp.*, 330 Pa. Super. 32, 35, 478 A.2d 1334, 1336 (1984); and *Neshaminy Constructors, Inc. v. Philadelphia, Pennsylvania Building and Construction Trades Council, AFL-CIO*, 303 Pa. Super. 420, 422 n.1, 449 A.2d 1389, 1390 n.1 (1982) permit an immediate appeal from a decree nisi granting or denying prospective injunctive relief, they are overruled.

The 1996 amendment to paragraph (a)(4) simultaneously recognized two exceptions to the non-appealability of a decree nisi; these exceptions, identified as phrases (a)(4)(i) and (ii), permit an appeal from a decree nisi if the order has the immediate effect of changing the status quo. Thus, if the decree nisi grants or denies permanent injunctive relief to become effective when the decree nisi is made final, no appeal is possible. If, however, the decree nisi provides for permanent injunctive relief upon entry of the decree nisi, or strikes a previously granted preliminary injunction upon entry of the decree nisi, the decree nisi is appealable pursuant to phrase (a)(4)(i) or (ii).

Paragraph (a)(5) (Peremptory judgment in mandamus)—Paragraph (a)(5), added in 1996, authorizes an interlocutory appeal as of right from an order granting a motion for peremptory judgment in mandamus without the condition precedent of a motion to open the peremptory judgment in mandamus. Under prior practice established in *Hamby v. Stoe*, 448 Pa. 483, 295 A.2d 309 (1972), an order granting peremptory judgment in mandamus was not appealable; only the order denying a motion to open the peremptory judgment in mandamus was appealable. The 1996 amendment eliminated the need to move to open. The January 1, 1996 amendment to Pa.R.C.P. 1098 eliminates the former practice of filing a petition to open a peremptory judgment in mandamus. The 1996 amendment overrules *Hamby v. Stoe* and other decisions that quashed appeals that were taken from the peremptory judgment in mandamus rather than the order denying the motion to open the judgment, e.g., *Butler v. Emerson*, 76 Pa. Cmwlth. 156, 463 A.2d 109 (1983); *Mertz v. Lakatos*, 21 Pa. Cmwlth. 291 (1975); *Ellenbogen v. Larsen*, 16 Pa. Cmwlth. 353, 328 A.2d 587 (1974). An order denying a motion for peremptory judgment in mandamus remains unappealable.

Paragraph (a)(9) (Other cases)—Paragraph (a)(9) is directed primarily to statutes and general rules hereafter enacted or promulgated. The current text of the Pennsylvania Rules of Civil Procedure, the Pennsylvania Rules of Criminal Procedure, etc., should be consulted to identify any interlocutory appeal rights provided for therein. See also, e.g., 42 Pa.C.S. § 7320 (appeals from court orders), concerning appeals from certain orders in nonjudicial arbitration proceedings, which section is not suspended by these rules. See Rule 5102(a) (Judicial Code unaffected).

Subdivision (b) (Order sustaining venue or personal or in rem jurisdiction)—Subdivision (b) is based in part on the Act of March 5, 1925, P. L. 23 (order ruling on question of jurisdiction). The term “civil action or proceeding” is broader than the term “proceeding at law or in equity” under the prior practice and is intended to include orders entered by the orphans’ court division. Cf. *In the Matter of Phillips*, 471 Pa. 289, 370 A.2d 307 (1977).

In paragraph (b)(1), a plaintiff is given a qualified (because it can be overridden by petition for and grant of permission to appeal under Rule 312 (interlocutory appeals by permission)) option to gamble that the venue of the matter or personal or in rem jurisdiction will be sustained on appeal. Paragraph (g)(ii) provides that if the plaintiff timely elects final treatment, the failure of the defendant to appeal constitutes a waiver. The appeal period under Rule 903 (time for appeal) ordinarily runs from the entry of the order, and not from the date of filing of the election, which procedure will ordinarily afford at least 20 days within which to appeal. See Rule 903(c) as to treatment of special appeal times. If the plaintiff does not file an election to treat the order as final, the case will proceed to trial unless (1) the trial court makes a finding under Paragraph (b)(2) of the existence of a substantial question of jurisdiction and the defendant elects to appeal, (2) an interlocutory appeal is permitted under Rule 312 or (3) another basis for appeal appears, e.g., under paragraph (a)(1), and an appeal is taken. Presumably a plaintiff would file such an election where he desires to force the defendant to decide promptly whether the objection to venue or jurisdiction will be seriously pressed. Subdivision (b) does not cover orders that do not sustain jurisdiction because they are, of course, final orders appealable under Rule 341.

Subdivision (b)(2) (Substantial issue of venue or jurisdiction)—The 1989 amendment to paragraph (b)(2) permits an interlocutory appeal as of right where the trial court certifies that a substantial question of venue is present. This eliminated an inconsistency formerly existing between subdivision (b) and paragraph (b)(2).

Subdivision (c) (Changes of venue, etc.)—Subdivision (c) is based in part on the act of March 5, 1925 (P.L. 23, No. 15) (order ruling on question of jurisdiction). The term “civil action or proceeding” is broader than the term “proceeding at law or in equity” under the prior practice and is intended to include orders entered by the orphans’ court division. Cf. *In the Matter of Phillips*, 471 Pa. 289, 370 A.2d 307 (1977).

Subdivision (c) covers orders that do not sustain venue, e.g., orders under Pa.R.C.P. 1006(d) and (e).

However, the subdivision does not relate to a transfer under 42 Pa.C.S. § 933(c)(1) (concurrent and exclusive jurisdiction), 42 Pa.C.S. § 5103 (transfer of erroneously filed matter) or under any other similar provision of law, because such a transfer is not to a “court of coordinate jurisdiction” within the meaning of this rule; it is intended that there shall be no right of appeal from a transfer order based on improper subject matter jurisdiction. Such orders may be appealed by permission under Rule 312, or an appeal as of right may be taken from an order dismissing the matter for lack of jurisdiction. See *Balshy v. Rank*, 507 Pa. 384, 388, 490 A.2d 415, 416 (1985).

Other orders relating to subject matter jurisdiction (which for this purpose does not include questions as to the form of action, e.g., as between law and equity, or divisional assignment, see 42 Pa.C.S. § 952 (status of court divisions)) will be appealable under Rule 341 if jurisdiction is not sustained, and otherwise will be subject to Rule 312.

Subdivision (d) (Commonwealth appeals in criminal matters)—In subdivision (d), the 1992 amendment permits appeals by the Commonwealth from certain interlocutory orders that were previously treated as final orders under the pre-1992 version of Rule 341(c). See, e.g., *Commonwealth v. Dugger*, 506 Pa. 537, 486 A.2d 382 (1985); *Commonwealth v. Deans*, 530 Pa. 514, 610 A.2d 32 (1992); and *Commonwealth v. Cohen*, 529 Pa. 552, 605 A.2d 1212 (1992). The 1996 amendment to Rule 904(e) requires that the Commonwealth assert in the notice of appeal that the trial court’s order will terminate or substantially handicap the prosecution.

Subdivision (e) (Orders overruling preliminary objections in eminent domain cases)—In subdivision (e), the 1992 amendment permits interlocutory appeals from orders overruling preliminary objections in eminent domain cases. These orders were previously appealable as final orders under Rule 341 even though such orders did not dispose of all claims and all parties. See *In Re Certain Parcels of Real Estate*, 420 Pa. 289, 216 A.2d 774 (1966); and *Central Bucks Joint School Bldg. Authority v. Rawls*, 8 Pa. Cmwlth. 491, 303 A.2d 863 (1973).

Subdivision (f) (Administrative remand)—In subdivision (f), the 1992 amendment permitted an immediate appeal as of right from an order of a common pleas court or government unit remanding a matter to an administrative agency or hearing officer for execution of the adjudication of the reviewing tribunal in a manner that does not require the exercise of administrative discretion. Examples of such orders include: (1) a remand by a court of common pleas to the Department of Transportation for removal of points from a drivers license; and (2) an order of the Workmen’s Compensation Appeal Board reinstating compensation benefits and remanding to a referee for computation of benefits.

Subdivision (f) further permits immediate appeal from an order of a common pleas court or government unit remanding a matter to an administrative agency or hearing officer that decides an issue that would ultimately evade appellate review if an immediate appeal is not allowed. See *Department of Environmental Resources v. Big B Mining Co., Inc.*, 123 Pa. Cmwlth. 591, 554 A.2d 1002 (1989) (order of Environmental Hearing Board reversing D.E.R.’s denial of a surface

mining permit and remanding to D.E.R. for re-evaluation of effluent limitations); *Phila. Commission On Human Relations v. Gold*, 95 Pa. Cmwlth. 76, 503 A.2d 1120 (1986) (court of common pleas order reversing a Philadelphia Human Relations Commission finding of discrimination on ground the commission impermissibly commingled prosecutorial [or] and adjudicative functions). The 1992 amendment overrules, in part, *FMC Corporation v. Workmen's Compensation Appeal Board*, 116 Pa. Cmwlth. 527, 542 A.2d 616 (1988) to the extent that it is inconsistent with subdivision (f).

Subdivision (h) (Further proceedings in lower court)—See note to Rule 1701(a) (effect of appeal generally).

Source

The provisions of this Rule 311 amended June 28, 1985, effective July 20, 1985, 15 Pa.B. 2635; 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; amended March 31, 1989, effective July 1, 1989, 19 Pa.B. 1721; amended March 12, 1992, effective July 6, 1992, and shall govern all matters thereafter commenced, 22 Pa.B. 1354; amended May 6, 1992, effective July 6, 1992, 22 Pa.B. 2675; amended April 10, 1996, effective April 27, 1996, 26 Pa.B. 1985; amended June 29, 2005, effective 60 days after publication, 35 Pa.B. 3897. Immediately preceding text appears at serial pages (253464) to (253470) and (279423) to (279425).

Rule 312. Interlocutory Appeals by Permission.

An appeal from an interlocutory order may be taken by permission pursuant to Chapter 13 (interlocutory appeals by permission).

Rule 313. Collateral Orders.

(a) *General Rule.* An appeal may be taken as of right from a collateral order of an administrative agency or lower court.

(b) *Definition.* A collateral order is an order separable from and collateral to the main cause of action where the right involved is too important to be denied review and the question presented is such that if review is postponed until final judgment in the case, the claim will be irreparably lost.

Official Note: Rule 313 is a codification of existing case law with respect to collateral orders. See *Pubar v. Greco*, 483 Pa. 68, 73, 394 A.2d 542, 545 (1978) (quoting *Cohen v. Beneficial Industrial Corp.*, 337 U. S. 541 (1949)). Examples of collateral orders include an order denying a pre-trial motion to dismiss based on double jeopardy, *Commonwealth v. Brady*, 510 Pa. 363, 508 A.2d 286, 289—91 (1986) (allowing an immediate appeal from denial of double jeopardy claim under collateral order doctrine where trial court makes a finding that motion is not frivolous); an order denying a petition to permit the payment of death taxes, *Hankin v. Hankin*, 338 Pa. Super. 442, 487 A.2d 1363 (1985); and an order denying a petition for removal of an executor, *Re: Estate of Georgianna*, 312 Pa. Super. 339, 458 A.2d 989 (1983), *aff'd*, 504 Pa. 510, 475 A.2d 744. Thorough discussions of the collateral order doctrine as it has been applied by Pennsylvania appellate courts are found in the following sources: *Darlington, McKeon, Schuckers and Brown, 1 Pennsylvania Appellate, Practice Second Edition*, §§ 313:1-313:201 (1994) and *Byer, Appealable orders under the Pennsylvania Rules of Appellate Procedures in Practice and Procedures in Pennsylvania Appellate Courts* (PBI No. 1994-869); *Pines, Pennsylvania Appellate Practice: Procedural Requirements and the Vagaries of Jurisdiction*, 91 Dick. L. Rev. 55, 107—115 (1986).

If an order falls under Rule 313, an immediate appeal may be taken as of right simply by filing a notice of appeal. The procedures set forth in Rules 341(c) and 1311 do not apply under Rule 313.

Source

The provisions of this Rule 313 adopted March 12, 1992, effective July 6, 1992, and shall govern all matters thereafter commenced; amended May 6, 1992, effective July 6, 1992, 22 Pa.B. 2675; amended July 7, 1997, effective in 60 days, 27 Pa.B. 3503; corrected August 8, 1997, 27 Pa.B. 3995. Immediately preceding text appears at serial page (231606).

FINAL ORDERS

Rule 341. Final Orders; Generally.

(a) *General Rule.*—Except as prescribed in subdivision (d), and (e) of this rule, an appeal may be taken as of right from any final order of an administrative agency or lower court.

(b) *Definition of Final Order.*—A final order is any order that:

- (1) disposes of all claims and of all parties; or
- (2) is expressly defined as a final order by statute; or
- (3) is entered as a final order pursuant to subsection (c) of this rule.

(c) *Determination of finality.*—When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim or when multiple parties are involved, the trial court or other governmental unit may enter a final order as to one or more but fewer than all of the claims and parties only upon an express determination that an immediate appeal would facilitate resolution of the entire case. Such an order becomes appealable when entered. In the absence of such a determination and entry of a final order, any order or other form of decision that adjudicates fewer than all the claims and parties shall not constitute a final order. In addition, the following conditions shall apply:

(1) The trial court or other governmental unit is required to act on an application for a determination of finality under subdivision (c) within 30 days of entry of the order. During the time an application for a determination of finality is pending the action is stayed.

(2) A notice of appeal may be filed within 30 days after entry of an order as amended unless a shorter time period is provided in Rule 903(c). Any denial of such an application shall be reviewable only for abuse of discretion pursuant to Chapter 15.

(3) Unless the trial court or other governmental unit acts on the application within 30 days of entry of the order, the trial court or other governmental unit shall no longer consider the application and it shall be deemed denied.

(4) The time for filing a petition for review will begin to run from the date of entry of the order denying the application for a determination of finality or, if the application is deemed denied, from the 31st day. A petition for review

may be filed within 30 days of the entry of the order denying the application or within 30 days of the deemed denial unless a shorter time period is provided by Rule 1512(b).

(d) *Superior Court and Commonwealth Court Orders.*—Except as prescribed by Rule 1101 (appeals as of right from the Commonwealth Court) no appeal may be taken as of right from any final order of the Superior Court or of the Commonwealth Court.

(e) *Criminal Orders.*—An appeal may be taken by the Commonwealth from any final order in a criminal matter only in the circumstances provided by law.

Official Note: *Related Constitutional and Statutory Provisions*—Section 9 of Article V of the Constitution of Pennsylvania provides that “there shall be a right of appeal from a court of record or from an administrative agency to a court of record or to an appellate court.” The term “administrative agency” is not defined in Rule 102 of these rules and as used in this rule is intended to have the same meaning as the term “administrative agency” in Section 9 of Article V of the Constitution of Pennsylvania. The constitutional provision is implemented by 2 Pa.C.S. § 702 (appeals), 2 Pa.C.S. § 752 (appeals), and 42 Pa.C.S. § 5105 (right to appellate review).

Criminal Law Proceedings—Discretionary Aspects of Sentencing—Section 9781 of the Sentencing Code (42 Pa.C.S. § 9781) states that the defendant or the Commonwealth may “petition for allowance of appeal” of the discretionary aspects of a sentence for a felony or a misdemeanor. The practice under these rules is to file a notice of appeal. See note to Rule 902 (manner of taking appeal). If the defendant has a right to an appeal with respect to the discretionary aspects of a sentence, the appellate court must, of course, entertain the appeal. Otherwise, such an appeal may be entertained by an appellate court if, but only if, it appears to the court that there is a substantial question that the sentence imposed is not appropriate under the applicable guidelines.

Criminal Law Proceedings—Commonwealth Appeals—Orders formerly appealable under Rule 341 by the Commonwealth in criminal cases as heretofore provided by law, but which do not dispose of the entire case, are now appealable as interlocutory appeals as of right under Subdivision (d) of Rule 311.

Final Orders—Pre-and Post-1992 Practice—The 1992 amendment generally eliminates appeals as of right under Rule 341 from orders not ending the litigation as to all claims and as to all parties. Formerly, there was case law that orders not ending the litigation as to all claims and all parties are final orders if such orders have the practical consequence of putting a litigant out of court.

The 1997 amendments to subdivisions (a) and (c), substituting the conjunction “and” for “or,” are not substantive. The amendments merely clarify that by definition any order which disposes of all claims will dispose of all parties and any order that disposes of all parties will dispose of all claims.

Final Orders in Declaratory Judgment Matters—In an action taken pursuant to the Declaratory Judgments Act, 42 Pa.C.S. §§ 7531—7541, orders based on a pre-trial motion or petition are considered “final” within the meaning of this Rule, under subdivision (b)(2), if they affirmatively or negatively declare the rights and duties of the parties. *Nationwide Mut. Ins. Co. v. Wickett*, 563 Pa. 595, 604, 763 A.2d 813, 818 (2000). Thus, an order in a declaratory judgment action sustaining a demurrer and dismissing some, but not all, defendants is considered a final order under subdivision (b)(2) because it is expressly defined as such by statute. Importantly, however, when a court enters an order in a declaratory judgment action that overrules preliminary objections in the nature of a demurrer, the order is not “final” under subdivision (b)(2),

because such order merely allows the case to go forward without declaring the rights and duties of the parties. *Safe Harbor Water Power Corp. v. Fajt*, 583 Pa. 234, 876 A.2d 954 (2005).

In order to preserve issues for appeal after a trial in a declaratory judgment action, an aggrieved party must file post-trial motions as required by Pa.R.C.P. No. 227.1. *Motorists Mutual v. Pinkerton*, 574 Pa. 333, 830 A.2d 958 (2003); *Chalkey v. Roush*, 569 Pa. 462, 805 A.2d 491 (2002).

Orders Appealable Under Other Rules—Orders which are separable from and collateral to the main cause of action where the right involved is too important to be denied review, and the question presented is such that if review is postponed until final judgment in the case, the claim will be irreparably lost, previously appealable as final orders under Rule 341, are now appealable under Rule 313. See *Pugar v. Greco*, 483 Pa. 68, 73, 394 A.2d 542, 545 (1978) (quoting *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541 (1949)).

The following is a partial list of orders that are no longer appealable as final orders pursuant to Rule 341 but which, in an appropriate case, might fall under Rules 312 (Interlocutory Appeals by Permission) or 313 (Collateral Orders) of this Chapter.

- (1) a decision transferring an equity action to the law side;
- (2) an order denying a defendant leave to amend his answer to plead an affirmative defense;
- (3) a pre-trial order refusing to permit a defendant to introduce evidence of an affirmative defense;
- (4) an order denying a party the right to intervene;
- (5) an order denying a petition to amend a complaint;
- (6) an order requiring the withdrawal of counsel;
- (7) an order denying class certification in a class action case; and
- (8) an order striking a *lis pendens*.

The dismissal of preliminary objections to a petition for appointment of a board of viewers and the dismissal of preliminary objections to a declaration of taking, formerly appealable as final orders under Rule 341, are now appealable as interlocutory appeals as of right under Rule 311.

Subdivision (c)—Determination of Finality—Subdivision (c) permits an immediate appeal from an order dismissing less than all claims or parties from a case only upon an express determination that an immediate appeal would facilitate resolution of the entire case. Factors to be considered under Subdivision (c) include, but are not limited to:

- (1) whether there is a significant relationship between adjudicated and unadjudicated claims;
- (2) whether there is a possibility that an appeal would be mooted by further developments;
- (3) whether there is a possibility that the court or administrative agency will consider issues a second time;
- (4) whether an immediate appeal will enhance prospects of settlement.

The failure of a party to apply to the administrative agency or lower court for a determination of finality pursuant to subdivision (c), shall not constitute a waiver and the matter may be raised in a subsequent appeal following the entry of a final order disposing of all claims and all parties.

Where the administrative agency or lower court refuses to amend its order to include the express determination that an immediate appeal would facilitate resolution of the entire case and refuses to enter a final order, a petition for review under Chapter 15 of the unappealable order of denial is the exclusive mode of review to determine whether the case is so egregious as to justify prerogative appellate correction of the exercise of discretion by the lower tribunal. See, e.g., Pa.R.A.P. 1311 Official Note. The filing of such a petition for review does not prevent the lower Court or other government unit from proceeding further with the matter, pursuant to Pa.R.A.P. 1701(b)(6). Of course, as in any case, the appellant could apply for a discretionary stay of the proceeding below.

Subsection (c)(2) provides for stay of the action pending determination of an application for determination of finality. If a petition for review is filed challenging denial, a stay or supersedeas will issue only as provided under Chapter 17 of these Rules.

In the event that a trial court or other governmental unit enters a final order pursuant to subdivision (c) of this rule, the trial court or other governmental unit may no longer proceed further in the matter, except as provided in Pa.R.A.P. 1701(b)(1)-(5).

The following is a partial list of orders previously interpreted by the courts as appealable as final orders under Rule 341 that are no longer appealable as of right unless the trial court or administrative agency makes an express determination that an immediate appeal would facilitate resolution of the entire case and expressly enters a final order pursuant to Rule 341(c):

- (1) an order dismissing one of several causes of action pleaded in a complaint but leaving pending other causes of action;
- (2) an order dismissing a complaint but leaving pending a counterclaim;
- (3) an order dismissing a counterclaim but leaving pending the complaint which initiated the action;
- (4) an order dismissing an action as to less than all plaintiffs or as to less than all defendants but leaving pending the action as to other plaintiffs and other defendants; and
- (5) an order granting judgment against one defendant but leaving pending the complaint against other defendants; and
- (6) an order dismissing a complaint to join an additional defendant or denying a petition to join an additional defendant or denying a petition for late joinder of an additional defendant.

The 1997 amendment adding subdivision (c)(3) provides for a deemed denial where the trial court or other governmental unit fails to act on the application within 30 days.

Source

The provisions of this Rule 341 amended through April 26, 1982, effective September 12, 1982, 12 Pa.B. 1536; amended March 12, 1992, effective July 6, 1992, and shall govern all matters thereafter commenced, 22 Pa.B. 1354; corrected May 1, 1992, effective July 6, 1992, and shall govern all matters thereafter commenced, 22 Pa.B. 2315; amended May 6, 1992, effective July 6, 1992, 22 Pa.B. 2675; amended July 7, 1997, effective in 60 days, 27 Pa.B. 3503; amended October 13, 2006, effective 60 days after adoption, 36 Pa.B. 6507. Immediately preceding text appears at serial pages (312372) to (312375).

Rule 342. Orphans' Court Orders Appealable. Orders Determining Realty, Personalty and Status of Individuals or Entities. Orders Making Distribution.

An order of the Orphans' Court Division making a distribution, or determining an interest in realty or personalty or the status of individuals or entities shall be immediately appealable:

- (1) upon a determination of finality by the Orphans' Court Division, or
- (2) as otherwise provided by Chapter 3 of these rules.

Official Note: This rule was amended in 2001 to allow appeals from orders determining an interest in realty, personalty or status of individuals or entities, upon certification of the Orphans' Court judge. Prior to the 2001 amendment, this rule only permitted appeals from an order of distribution not final under Rule 341(b). The amendment to the rule was not intended to preclude immediate appeals in Orphans' Court matters as heretofore permitted under Rule 311 (Interlocutory Appeals as of Right) and Rule 313 (Collateral Orders).

However, Rule 342 may have been ambiguous in that regard because in *Estate of Sorber*, 2002 Pa. Super. 226, 803 A.2d 767 (2002), a panel of the Superior Court interpreted the 2001 amendment of Rule 342 to preclude immediate appeals from collateral orders unless determined to be final by the Orphans' Court judge. The holding in *Estate of Sorber*, to wit, that Rule 342 precludes collateral order appeals under Rule 313, is now superseded by the 2005 amendment to Rule 342.

The 2005 amendment provides that Rule 342 is not the exclusive means for appealing orders: (a) determining an interest in realty or personalty or the status of individuals or entities, or (b) making a distribution. An aggrieved party may appeal such orders under any other Rule in Chapter 3 of the Rules of Appellate Procedure to the extent that the order meets the requirements for appealability under any such rule.

Source

The provisions of this Rule 342 amended December 11, 1978, effective December 30, 1978, 8 Pa.B. 3802; amended December 20, 2000, effective January 1, 2001, 31 Pa.B. 7; amended June 29, 2005, effective 60 days after adoption, 35 Pa.B. 3897. Immediately preceding text appears at serial page (272383).

Rule 343. (Rescinded).

Official Note: The Supreme Court rescinded this Rule in 1997 as obsolete in view of the changes to the Rules of Criminal Procedure rescinding Pa.R.Crim.P. 321 and adopting new Pa.R.Crim.P. 1410, effective as to cases in which the determination of guilt occurs on or after January 1, 1994. See Criminal Procedural Rules Committee Final Report at 620—621 A.2d (Pennsylvania Reporter Series) pages CVIII—CXXXIII.

Source

The provisions of this Rule 343 adopted June 29, 1977, effective September 1, 1977, 7 Pa.B. 2112, amended May 22, 1978, effective July 1, 1978, 8 Pa.B. 1612; amended July 7, 1997, effective in 60 days, 27 Pa.B. 3503. Immediately preceding text appears at serial pages (214295) to (214296).

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