

**CHAPTER 7. COURTS TO WHICH APPEALS SHALL BE TAKEN**

**IN GENERAL**

- Rule 701. Interlocutory Orders.
- 702. Final Orders.
- 703. Arbitration Awards in Public Employment Disputes.

**OBJECTIONS TO JURISDICTION**

- 741. Waiver of Objections to Jurisdiction.

**TRANSFERS OF CASES**

- 751. Transfer of Erroneously Filed Cases.
- 752. Transfers Between Superior and Commonwealth Courts.

**Rule 701. Interlocutory Orders.**

An appeal authorized by law from an interlocutory order in a matter shall be taken to, and petitions for permission to appeal from an interlocutory order in a matter shall be filed in, the appellate court having jurisdiction of final orders in such matters.

**Official Note:** Based on 42 Pa.C.S. § 702(a) (appeals authorized by law).

**Source**

The provisions of this Rule 701 amended December 11, 1978, effective December 30, 1978, 8 Pa.B. 3802. Immediately preceding text appears at serial page (33977).

**Rule 702. Final Orders.**

(a) *General rule.*—An appeal authorized by law from a final order shall be taken to, and petitions for allowance of appeal from a final order shall be filed in, the appellate court vested by law with jurisdiction over appeals from such order.

(b) *Matters tried with capital offenses.*—If an appeal is taken to the Supreme Court under Rule 1941 (review of death sentences), any other appeals relating to sentences for lesser offenses imposed on a defendant as a result of the same criminal episode or transaction and tried with the capital offense shall be taken to the Supreme Court.

(c) *Supervision of special prosecutions or investigations.*—All petitions for review under Rule 3331 (review of special prosecutions or investigations) shall be filed in the Supreme Court.

**Official Note:** Because of frequent legislative modifications it is not desirable to attempt at this time to restate appellate court jurisdiction in these rules. However, the Administrative Office of Pennsylvania Courts publishes from time to time at 204 Pa. Code § 201.2 an unofficial chart of the Unified Judicial System showing the appellate jurisdiction of the several courts of this Commonwealth, and it is expected that the several publishers of these rules will include a copy of the current version of such chart in their respective publications.

Subdivisions (b) and (c) are based upon 42 Pa.C.S. § 722(1) (direct appeals from courts of common pleas). Under Rule 751 (transfer of erroneously filed cases) an appeal from a lesser offense improvidently taken to the Superior Court or the Commonwealth Court will be transferred to the Supreme Court for consideration and decision with the capital offense.

Under Rule 701 (interlocutory orders) the jurisdiction described in Subdivision (c) extends also to interlocutory orders. See Rule 102 (definitions) where the term “appeal” includes proceedings on petition for review. Ordinarily Rule 701 will have no application to matters within the scope of Subdivision (b), since that subdivision is contingent upon entry of a final order in the form of a sentence of death; the mere possibility of such a sentence is not intended to give the Supreme Court direct appellate jurisdiction over interlocutory orders in homicide and related cases since generally a death sentence is not imposed.

#### Source

The provisions of this Rule 702 amended through April 26, 1982, effective September 12, 1982, 12 Pa.B. 1536. Immediately preceding text appears at serial pages (39561) and (39562).

### Rule 703. Arbitration Awards in Public Employment Disputes.

[Rescinded].

**Note:** Former Rule 703 (arbitration awards in public employment disputes) and former Rule 2101 of the Pennsylvania Rules of Judicial Administration related to jurisdiction to review an award of arbitrators appointed in conformity with statute (e.g. Act of June 24, 1968 (P. L. 237, No. 111) (43 P. S. § 217.1 et seq.). See now 42 Pa.C.S. § 763(b) (awards of arbitrators). Compare 42 Pa.C.S. § 933(b) (awards of arbitrators).

#### Source

The provisions of this Rule 703 rescinded December 11, 1978, effective December 30, 1978, 8 Pa.B. 3802. Immediately preceding text appears at serial page (33978).

## OBJECTIONS TO JURISDICTION

### Rule 741. Waiver of Objections to Jurisdiction.

(a) *General Rule.*—The failure of an appellee to file an objection to the jurisdiction of an appellate court on or prior to the last day under these rules for the filing of the record shall, unless the appellate court otherwise orders, operate to perfect the appellate jurisdiction of such appellate court, notwithstanding any provision of law vesting jurisdiction of such appeal in another appellate court.

(b) *Exception.*—Subdivision (a) shall not apply to any defect in the jurisdiction of an appellate court which arises out of:

- (1) The failure to effect a filing within the time provided by these rules.

(2) An attempt to take an appeal from an interlocutory order which has not been made appealable by Rule 311 (interlocutory appeals as of right) or pursuant to Chapter 13 (interlocutory appeals by permission).

**Official Note:** Based on 42 Pa.C.S. § 704 (waiver of objection to jurisdiction). It is the intention of this rule that where a case is appealed to the wrong appellate court, only the court may require transfer after the briefing schedule has commenced. In view of Subdivision (b)(2), the practice in *Gurnick v. Government Employees Ins. Co.*, 278 Pa. Super. 437, 420 A.2d 620 (1980) is disapproved.

**Source**

The provisions of this Rule 741 amended through April 26, 1982, effective September 12, 1982, 12 Pa.B. 1536. Immediately preceding text appears at serial page (39563).

**TRANSFERS OF CASES**

**Rule 751. Transfer of Erroneously Filed Cases.**

(a) *General rule.*—If an appeal or other matter is taken to or brought in a court or magisterial district which does not have jurisdiction of the appeal or other matter, the court or district justice shall not quash such appeal or dismiss the matter, but shall transfer the record thereof to the proper court of this Commonwealth, where the appeal or other matter shall be treated as if originally filed in the transferee court on the date first filed in a court or magisterial district.

(b) *Transfers by prothonotaries.*—An appeal or other matter may be transferred from a court to another court under this rule by order of court or by order of the prothonotary of any appellate court affected.

**Official Note:** Based on 42 Pa.C.S. § 5103(a) (transfer of erroneously filed matters). See Rule 2703 (erroneously filed cases).

**Source**

The provisions of this Rule 751 amended December 11, 1978, effective December 30, 1978, 8 Pa.B. 3802. Immediately preceding text appears at serial pages (33979) and (25391).

**Rule 752. Transfers Between Superior and Commonwealth Courts.**

(a) *General rule.*—The Superior Court and the Commonwealth Court, on their own motion or on application of any party, may transfer any appeal to the other court for consideration and decision with any matter pending in such other court involving the same or related questions of fact, law or discretion.

(b) *Content of application; answer.*—The application shall contain a statement of the facts necessary to an understanding of the same or related questions of fact, law or discretion; a statement of the questions themselves; and a statement of the reasons why joint consideration of the appeals would be desirable. The application shall be served on all other parties to all appeals or other matters involved, and shall include or have annexed thereto a copy of each order from

which any appeals involved were taken and any findings of fact, conclusions of law and opinions relating thereto. Any other party any appeal or other matter involved may file an answer in opposition in accordance with Rule 123(b). The application and answer shall be submitted without oral argument unless otherwise ordered.

(c) *Effect of filing application.*—An application to transfer under this rule shall not stay proceedings in any appeal or other matter involved unless the appellate court in which the appeal or other matter is pending or a judge thereof shall so order.

(d) *Grant of application.*—If the application to transfer is granted the prothonotary of the transferor court shall transfer the record of the appeal involved to the prothonotary of the transferee court, who shall immediately give written notice by first class mail of the transfer to all parties to all appeals or other matters involved. The notice shall set forth any necessary changes in the schedule in the transferee court for concurrent briefing and argument of the original and transferred appeals or other matters.

**Official Note:** Based on 42 Pa.C.S. § 705 (transfers between intermediate appellate courts).

**Source**

The provisions of this Rule 752 amended December 11, 1978, effective December 30, 1978, 8 Pa.B. 3802; amended July 7, 1997, effective in 60 days, 27 Pa.B. 3503. Immediately preceding text appears at serial page (115414).

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