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CHAPTER 9. APPEALS FROM LOWER COURTS

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Rule 901. Scope of Chapter.

This chapter applies to all appeals from a trial court to an appellate court except:

- (1) An appeal by allowance taken under 42 Pa.C.S. § 724 (allowance of appeals from Superior and Commonwealth Courts). See Rule 1112 (appeals by allowance).
- (2) An appeal by permission taken under 42 Pa.C.S. § 702(b) (interlocutory appeals by permission). See Rule 1311 (interlocutory appeals by permission).
- (3) An appeal which may be taken by petition for review pursuant to Rule 1762(b)(2), which governs applications relating to bail when no appeal is pending.
- (4) Automatic review of sentences pursuant to 42 Pa.C.S. § 9711(h) (review of death sentence). See Rule 1941 (review of death sentences).

(5) An appeal which may be taken by petition for review pursuant to Rule 3331 (review of special prosecutions or investigations).

Source

The provisions of this Rule 901 amended December 29, 1977, effective January 29, 1978, 8 Pa.B. 133; amended December 11, 1978, effective December 30, 1978, 8 Pa.B. 3802; amended February 27, 1980, 10 Pa.B. 1038, effective as set forth at 10 Pa.B. 1038; amended May 15, 2007, effective immediately, 37 Pa.B. 2492. Immediately preceding text appears at serial pages (215303) to (215304).

Rule 902. Manner of Taking Appeal.

An appeal permitted by law as of right from a lower court to an appellate court shall be taken by filing a notice of appeal with the clerk of the lower court within the time allowed by Rule 903 (time for appeal). Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but it is subject to such action as the appellate court deems appropriate, which may include but is not limited to, remand of the matter to the lower court so that the omitted procedural step may be taken.

Official Note: 42 Pa.C.S. § 703 (place and form of filing appeals) provides that appeals, petitions for review, petitions for permission to appeal and petitions for allowance of appeal shall be filed in such office and in such form as may be prescribed by general rule.

This chapter represents a significant simplification of practice. In all appeals the appellant prepares two documents: (1) a simple notice of appeal, and (2) a proof of service. The notice of appeal is filed in the lower court and copies thereof, together with copies of the proof of service, are mailed and delivered to all who need to know of the appeal: other parties, lower court judge, official court reporter. The clerk of the trial court transmits one set of the filed papers to the appellate prothonotary (with the requisite filing fee). The appellate prothonotary notes the appellate docket number on the notice of appeal and may utilize photocopies of the marked-up notice of appeal to notify the parties, the lower court and Administrative Office of the fact of docketing. In an appeal to the Supreme Court, the appellant must also prepare, file and serve and the clerk of the trial court must transmit a jurisdictional statement as required by Rule 909.

The new procedure has a number of advantages: (1) the taking of the appeal is more certain in counties other than Dauphin, Philadelphia and Pittsburgh, because the appellant may toll the time for appeal by filing the notice of appeal in his local court house thereby eliminating the time lost in transmission of the appeal by mail; (2) the initial filing in the lower court raises an immediate caveat on the record before irreversible or undesirable action is taken on the faith of the judgment appealed from; (3) the immediate recording of the appeal below will simplify criminal appeal matters, e.g. by avoiding in certain cases the unnecessary holding and transfer of defendants between sentencing and perfecting an appeal; (4) the new procedure necessarily eliminates the “trap” of failure to perfect an appeal since the notice of appeal is self-perfecting; and (5) the paper work of all parties and the appellate prothonotary is significantly reduced, since the preparation of the writ of certiorari and certain other papers is eliminated.

The 1986 revision to the last sentence of the rule indicates a change in approach to formal defects. The reference to dismissal of the appeal has been deleted in favor of a preference toward, remanding the matter to the lower court so that the omitted procedural step may be taken, thereby enabling the appellate court to reach the merits of the appeal. Nevertheless, dismissal of the appeal ultimately remains a possible alternative where counsel fails to take the

necessary steps to correct the defect. See Note to Rule 301 for examples of when an appeal may be remanded because an order has not been reduced to judgment or final decree and docketed.

Section 9781 of the Sentencing Code (42 Pa.C.S. § 9781) provides that the defendant or the Commonwealth may file a “petition for allowance of appeal” of the discretionary aspects of a sentence for a felony or a misdemeanor. The notice of appeal under this chapter (see Rule 904 (content of the notice of appeal)) operates as the “petition for allowance of appeal” under the Sentencing Code. It automatically raises all possible questions under 42 Pa.C.S. § 9781 and is available and appropriate even where no issue relating to guilt or the legality of the sentence (in the sense that the sentence falls outside of the range of discretion vested by law in the sentencing court) is presented. No additional wording is required or appropriate in the notice of appeal.

In effect, the filing of the “petition for allowance of appeal” contemplated by the statute is deferred by these rules until the briefing stage, where the question of the appropriateness of the discretionary aspects of the sentence may be briefed and argued in the usual manner. See Rule 2116 (statement of questions involved) and Rule 2119 (argument).

42 Pa.C.S. § 9781(f) provides that: “No appeal of the discretionary aspects of the sentence shall be permitted beyond the appellate court that has initial jurisdiction of such appeals.”

Source

The provisions of this Rule 902 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. 4951. Immediately preceding text appears at serial pages (70057) and (110215).

Rule 903. Time for Appeal.

(a) *General rule.* Except as otherwise prescribed by this rule, the notice of appeal required by Rule 902 (manner of taking appeal) shall be filed within 30 days after the entry of the order from which the appeal is taken.

(b) *Cross appeals.* Except as otherwise prescribed in Subdivision (c) of this rule, if a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 14 days of the date on which the first notice of appeal was filed, or within the time otherwise prescribed by this rule, whichever period last expires.

(c) *Special provisions.* Notwithstanding any other provision of this rule:

(1) An appeal from any of the following orders shall be taken within ten days after the entry of the order from which the appeal is taken:

(i) An order changing venue or venire in a criminal proceeding. See Rule 311(a)(3) (change of criminal venue or venire).

(ii) An order in any matter arising under the Pennsylvania Election Code.

(iii) An order in any matter arising under the Local Government Unit Debt Act or any similar statute relating to the authorization of public debt.

(2) Where an election has been filed under Rule 311(b) (order sustaining venue or personal or *in rem* jurisdiction), the notice of appeal shall be filed within 30 days after the filing of the election.

(3) In a criminal case in which no post-sentence motion has been filed, the notice of appeal shall be filed within 30 days of the imposition of the judgment of sentence in open court.

Official Note: 42 Pa.C.S. § 5571(a) (appeals generally) provides that the time for filing an appeal, a petition for allowance of appeal, a petition for permission to appeal or a petition for review or a quasi-judicial order, in the Supreme Court, the Superior Court or the Commonwealth

Court shall be governed by general rules and that no other provision of 42 Pa.C.S. Ch. 55D shall be applicable to such matters. In order to prevent inadvertent legislative creation of nonuniform appeal times, 42 Pa.C.S. § 1722(c) (time limitations) expressly authorizes the suspension by general rule of nonuniform statutory appeal times. See also 42 Pa.C.S. § 5501(a) (scope of chapter), which makes Chapter 55 (limitation of time) of the Judicial Code subordinate to any other statute prescribing a different time in the case of an action or proceeding, but which does not so provide in the case of an appeal.

Thus, on both a statutory and constitutional basis, this rule supersedes all inconsistent statutory provisions prescribing times for appeal.

As to subdivision (b), compare 42 Pa.C.S. § 5571(f) (cross appeal)

A party filing a cross appeal pursuant to Subdivision (b) should identify it as a cross appeal in the notice of appeal to assure that the prothonotary will process the cross appeal with the initial appeal. See also Rule 511 (cross appeals), Rule 2113 (Reply Brief), Rule 2136 (Briefs in Cases of Cross Appeals), Rule 2185 (Time for Serving and Filing of Briefs) and Rule 2322 (Cross and Separate Appeals).

In Re Petition of the Board of School Directors of the Hampton Township School District, 688 A.2d 279 (Pa. Cmwlth. 1997), the Commonwealth Court panel held that Rule 903(b) does not extend the appeal period for any other party to file an appeal unless the party is “adverse.” Under the 2002 amendment to Rule 511, the requirement that a party be adverse in order to file a cross appeal is eliminated. Once a notice of appeal is filed by one party, any other party may file a cross appeal within fourteen days. s).

Rule of Appellate Procedure 107 incorporates by reference the rules of construction of the Statutory Construction Act of 1972, 1 Pa.C.S. §§ 1901 through 1991. See 1 Pa.C.S. § 1908 relating to computation of time for the rule of construction relating to (1) the exclusion of the first day and inclusion of the last day of a time period and (2) the omission of the last day of a time period which falls on Saturday, Sunday or legal holiday.

See Pa.R.A.P. 108 and Explanatory Comment—2007 thereto, Pa.R.A.P. 301(a)(1) and (2), and Pa.R.Crim.P. 462, 720, and 721 governing criminal appeals.

Explanatory Comment—2001

The 2001 amendment to Subdivision (c) clarifies that the appeal period for appealing from orders in civil cases sustaining venue or personal or in rem jurisdiction runs from the date of the election under Pa.R.A.P. 311(b)(1), not the date of the original order. The 2000 amendment extends the appeal period following such an election from ten days to thirty days to conform the appeal period for civil orders changing venue pursuant to Pa.R.A.P. 311(c).

The portion of the Note suggesting the necessity of taking an appeal within the 20 day pleading period is misleading and is deleted. For this reason, the bracketed material of the Note is deleted.

Explanatory Comment—2002

See Comment following Pa.R.A.P., Rule 511.

Source

The provisions of this Rule 903 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. 4951; amended April 26, 2001, effective July 1, 2001, 31 Pa.B. 2469; amended October 18, 2002, effective December 2, 2002, 32 Pa.B. 5402; amended January 18, 2007, effective August 1, 2007, 37 Pa.B. 521. Immediately preceding text appears at serial pages (293777) to (293778).

Rule 904. Content of the Notice of Appeal.

(a) *Form.*—Except as otherwise prescribed by this rule, the notice of appeal shall be in substantially the following form:

COURT OF COMMON PLEAS
OF _____ COUNTY

A.B., Plaintiff :
v.
C.D., Defendant :

Docket or File No. _____
Offense Tracking Number _____

NOTICE OF APPEAL

Notice is hereby given that C.D., defendant above named, hereby appeals to the (Supreme) (Superior) (Commonwealth) Court of Pennsylvania from the order entered in this matter on the ___ day of _____ 20 ___. This order has been entered in the docket as evidenced by the attached copy of the docket entry.

(S) _____

(Address and telephone number)

(b) *Caption.*—The parties shall be stated in the caption as they stood upon the record of the lower court at the time the appeal was taken.

(c) *Request for transcript.*—The request for transcript contemplated by Rule 1911 (request for transcript) or a statement signed by counsel that there is either no verbatim record of the proceedings or the complete transcript has been lodged of record, shall accompany the notice of appeal, but the absence of or defect in the request for transcript shall not affect the validity of the appeal.

(d) *Docket entry.*—The notice of appeal shall include a statement that the order appealed from has been entered in the docket. A copy of the docket entry showing the entry of the order appealed from shall be attached to the notice of appeal.

(e) *Content in criminal cases.*—When the Commonwealth takes an appeal pursuant to Rule 311(d), the notice of appeal shall include a certification by counsel that the order will terminate or substantially handicap the prosecution.

(f) *Content in children’s fast track appeals.*—In a children’s fast track appeal the notice of appeal shall include a statement advising the appellate court that the appeal is a children’s fast track appeal.

Official Note: The Offense Tracking Number (OTN) is required only in an appeal in a criminal proceeding. It enables the Administrative Office of the Pennsylvania Courts to collect and forward to the Pennsylvania State Police information pertaining to the disposition of all criminal cases as provided by the Criminal History Record Information Act, 18 Pa.C.S. § 9101 et seq.

The 1986 amendment requires that the notice of appeal include a statement that the order appealed from has been entered in the docket. The 1986 amendment deletes the requirement that

the appellant certify that the order has been reduced to judgment. This omission does not eliminate the requirement of reducing an order to judgment before there is a final appealable order where required by applicable practice or case law.

The 1997 amendment changes the word “order” to “request” in order to eliminate any unintended implication that a court order is required. No court order is required to obtain a transcript of the proceedings. See Pa.R.J.A. 5000.5 and the 1997 amendment to subdivision (a) of Rule 1911.

With respect to subdivision (e), in *Commonwealth v. Dugger*, 506 Pa. 537, 486 A.2d 382 (1985), the Supreme Court held that the Commonwealth’s certification that an order will terminate or substantially handicap the prosecution is not subject to review as a prerequisite to the Superior Court’s review of the merits of the appeal. Thus, the need for a detailed analysis of the effect of the order, formerly necessarily a part of the Commonwealth’s appellate brief, was eliminated. See also *Commonwealth v. Deans*, 530 Pa. 514, 610 A.2d 32 (1992); *Commonwealth v. Cohen*, 529 Pa. 552, 605 A.2d 1212 (1992) (allowing appeals by the Commonwealth from adverse rulings on motions in limine). Accordingly, the 1997 amendment added subdivision (e) as a requirement when the Commonwealth takes an appeal pursuant to Rule 311(d).

A party filing a cross appeal should identify it as a cross appeal in the notice of appeal to assure that the prothonotary will process the cross appeal with the initial appeal. See also Rules 2113, 2136 and 2185 regarding briefs in cross appeals and Rule 2322 regarding oral argument in multiple appeals.

Source

The provisions of this Rule 904 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. 4951; corrected at January 16, 1987, 17 Pa.B. 246; amended July 7, 1997, effective in 60 days, 27 Pa.B. 3503; amended October 16, 2002, effective immediately, 32 Pa.B. 5402; amended January 13, 2009, 39 Pa.B. 1094, effective as to all appeals filed 60 days or more after adoption. Immediately preceding text appears at serial pages (325772) and (293779) to (293780).

Rule 905. Filing of Notice of Appeal.

(a) *Filing with clerk.*

(1) Two copies of the notice of appeal, the order for transcript, if any, and the proof of service required by Rule 906 (service of notice of appeal), shall be filed with the clerk of the trial court. If the appeal is to the Supreme Court, the jurisdictional statement required by Rule 909 shall also be filed with the clerk of the trial court.

(2) If the appeal is a children’s fast track appeal, the concise statement of errors complained of on appeal as described in Rule 1925(a)(2) shall be filed with the notice of appeal and served in accordance with Rule 1925(b)(1).

(3) Upon receipt of the notice of appeal the clerk shall immediately stamp it with the date of receipt, and that date shall constitute the date when the appeal was taken, which date shall be shown on the docket.

(4) If a notice of appeal is mistakenly filed in an appellate court, or is otherwise filed in an incorrect office within the unified judicial system, the clerk shall immediately stamp it with the date of receipt and transmit it to the clerk

of the court which entered the order appealed from, and upon payment of an additional filing fee the notice of appeal shall be deemed filed in the trial court on the date originally filed.

(5) A notice of appeal filed after the announcement of a determination but before the entry of an appealable order shall be treated as filed after such entry and on the day thereof.

(b) *Transmission to appellate court.* The clerk shall immediately transmit to the prothonotary of the appellate court named in the notice of appeal a copy of the notice of appeal showing the date of receipt, the related proof of service and a receipt showing collection of any docketing fee in the appellate court required under Subdivision (c). If the appeal is a children's fast track appeal, the clerk shall stamp the notice of appeal with a "Children's Fast Track" designation in red ink, advising the appellate court that the appeal is a children's fast track appeal and shall transmit to the prothonotary of the appellate court named in the notice of appeal the concise statement of errors complained of on appeal required by Subdivision (a)(2) of this rule. The clerk shall also transmit with such papers:

1. a copy of any order for transcript;
2. a copy of any verified statement, application or other document filed under Rule 551 through Rule 561 relating to *in forma pauperis*; and
3. if the appeal is to the Supreme Court, the jurisdictional statement required by Rule 909.

(c) *Fees.* The appellant upon filing the notice of appeal shall pay any fees therefor (including docketing fees in the appellate court) prescribed by Chapter 27 (fees and costs in appellate courts and on appeal).

Official Note: Insofar as the clerk or prothonotary of the lower court is concerned, the notice of appeal is for all intents and purposes a writ in the nature of *certiorari* in the usual form issued out of the appellate court named therein and returnable thereto within the time prescribed by Chapter 19 (preparation and transmission of record and related matters).

To preserve a mailing date as the filing date for an appeal as of right from an order of the Commonwealth Court, see Rule 1101(b).

As to number of copies, see note to Rule 124 (form of papers; number of copies). The appellate court portion of the filing fee will be transmitted pursuant to regulations adopted under 42 Pa.C.S. § 3502 (financial regulations).

Pending adoption of such rules the subject is regulated by Paragraph 4 of the Order amending this rule, which provides as follows:

"4. Pending adoption of initial regulations under 42 Pa.C.S. § 3502 (financial regulations), the docketing fee (currently \$12 in the Supreme Court and the Superior Court and \$25 in the Commonwealth Court) paid through the clerk or prothonotary of the lower court pursuant to Rule 905(c) (fees) of the Pennsylvania Rules of Appellate Procedure shall be transmitted as follows:

(a) If the docketing fee is tendered by check payable to the appellate prothonotary, the clerk or prothonotary of the lower court shall transmit the check pursuant to Rule 905(b).

(b) If the docketing fee is tendered by check payable to the clerk of prothonotary of the lower court he or she shall endorse it without recourse to the appropriate appellate prothonotary and transmit the check pursuant to Rule 905(b).

(c) If the docketing fee is tendered in cash the clerk or prothonotary of the lower court shall draw a check in like amount on the account of such clerk or prothonotary to the order of such clerk or prothonotary to the order of the appropriate appellate prothonotary and transmit the check pursuant to Rule 905(b).

(d) In matters arising under 42 Pa.C.S. § 723 (appeals from the Commonwealth Court), the appellant shall tender the docketing fee in the Supreme Court to the Prothonotary of the Commonwealth Court by check payable to the order of the Prothonotary of the Supreme Court, which shall be transmitted pursuant to Rule 905(b).''

The better practice will be to pay the fee for filing the notice of appeal in the lower court and the docketing fee in the appellate court by separate checks payable to the respective clerks or prothonotaries.

The 1982 amendment to Subdivision (a) corrects deficiencies in previous practice which were illustrated in *State Farm Mutual Auto. Ins. Co. v. Schultz*, 281 Pa. Super. 212, 421 A.2d 1224 (1980).

Source

The provisions of this Rule 905 amended through December 10, 1987, effective January 31, 1987, and shall govern all matters thereafter commenced and, insofar as just and practicable matters then pending, 16 Pa.B. 4951; amended September 10, 2008, effective December 1, 2008, 38 Pa.B. 5257; amended January 13, 2009, 39 Pa.B. 1094, effective as to all appeals filed 60 days or more after adoption. Immediately preceding text appears at serial pages (293780) and (338797) to (338798).

Rule 906. Service of Notice of Appeal.

(a) *General rule.* Concurrently with the filing of the notice of appeal under Rule 905 (filing of notice of appeal), the appellant shall serve copies thereof, and of any order for transcript, and copies of a proof of service showing compliance with this rule, upon:

(1) All parties to the matter in the trial court including parties previously dismissed pursuant to an interlocutory order unless; (i) the interlocutory order of dismissal was reviewed by an appellate order and affirmed; or (ii) the interlocutory order of dismissal was made final under Rule 341(c) and no party appealed from that date;

(2) The judge of the court below, whether or not the reasons for the order appealed from already appear of record;

(3) The official court reporter of the trial court, whether or not an order for transcript accompanies the papers; and

(4) The district court administrator or other person designated by the administrator pursuant to Rule 5000.5(a)(3) of the Pennsylvania Rules of Judicial Administration (requests and orders for transcripts).

(b) *Appeals to the Supreme Court.* In addition to the requirements of subdivision (a), the appellant shall serve copies of the jurisdictional statement required

by Rule 909 upon all parties to the matter in the trial court. The proof of service shall show compliance with this subdivision.

Official Note: See Rule 908 (Parties on Appeal).

Source

The provisions of this Rule 906 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. 4951; amended July 7, 1997, effective in sixty days, 27 Pa.B. 3503. Immediately preceding text appears at serial page (215309).

Rule 907. Docketing of Appeal.

(a) *Docketing of appeal.* Upon the receipt of the papers specified in Rule 905(b) (transmission to appellate court) the prothonotary of the appellate court shall immediately enter the appeal upon the docket, note the appellate docket number upon the notice of appeal, and give written notice of the docket number assignment in person or by first class mail to the clerk of the lower court, to the appellant and to the persons named in the proof of service accompanying the notice of appeal. An appeal shall be docketed under the caption given to the mat-

ter in the lower court, with the appellant identified as such, but if such caption does not contain the name of the appellant, his name, identified as appellant, shall be added to the caption in the appellate court.

(b) *Entry of appearance.* Upon the docketing of the appeal the prothonotary of the appellate court shall note on the record as counsel for the appellant the name of his counsel, if any, set forth in or endorsed upon the notice of appeal, and, as counsel for other parties, counsel, if any, named in the proof of service. The prothonotary of the appellate court shall upon praecipe of any such counsel for other parties, filed within 30 days after filing of the notice of appeal, strike off or correct the record of appearances. Thereafter a counsel's appearance for a party may not be withdrawn without leave of court, unless another lawyer has entered or simultaneously enters an appearance for the party.

Official Note: The transmission of a photocopy of the notice of appeal, showing a stamped notation of filing and the appellate docket number assignment, without a letter of transmittal or other formalities, will constitute full compliance with the notice requirement of Subdivision (a) of this rule.

With regard to subdivision (b) and withdrawal of appearance without leave of the appellate court, counsel may nonetheless be subject to trial court supervision pursuant to Pa.R.Crim.P. 904 (Entry of Appearance and Appointment of Counsel; In forma Pauperis).

With respect to appearances by new counsel following the initial docketing appearances pursuant to Subdivision (b) of this rule, please note the requirements of Rule 120.

Source

The provisions of this Rule 907 amended May 16, 1979, effective September 30, 1979, 9 Pa.B. 1740; amended July 7, 1997, effective in sixty days, 27 Pa.B. 3503; amended March 15, 2004, effective 60 days after adoption, 34 Pa.B. 1670. Immediately preceding text appears at serial pages (231630) and (279429).

Rule 908. Parties on Appeal.

All parties to the matter in the court from whose order the appeal is being taken shall be deemed parties in the appellate court, unless the appellant shall notify the prothonotary of the appellate court of the belief of the appellant that one or more of the parties below have no interest in the outcome of the appeal. A copy of such notice shall be served on all parties to the matter in the lower court, and a party noted as no longer interested may remain a party in the appellate court by filing a notice that he has an interest in the appeal with the prothonotary of the appellate court. All parties in the appellate court other than the appellant shall be appellees, but appellees who support the position of the appellant shall meet the time schedule for filing papers which is provided in these rules for the appellant.

Official Note: Based on U.S. Supreme Court Rule 10(4).

Rule 909. Appeals to the Supreme Court. Jurisdictional Statement. Sanctions.

(a) *General rule.* Upon filing a notice of appeal to the Supreme Court, the appellant shall file with the prothonotary or clerk of the trial court an original and 8 copies of a jurisdictional statement. The statement shall be in the form prescribed by Rule 910(a) and (b). No statement need be filed in cases arising under Pa.R.A.P. 1941 (Review of Death Sentences).

(b) *Answer.* Within 14 days after service of a jurisdictional statement, an adverse party may file with the Prothonotary of the Supreme Court an original and eight copies of an answer thereto in the form prescribed by Rule 911. The answer shall be deemed filed on the date of mailing if first class, express, or priority United States Postal Service mail is utilized. No separate motion to dismiss a jurisdictional statement will be received. A party entitled to file an answer who does not intend to do so shall, within the time fixed by these rules for filing an answer, file a letter stating that an answer to the jurisdictional statement will not be filed. The failure to file an answer will not be construed as concurrence in the jurisdictional statement.

(c) *Action by the Supreme Court.* After consideration of the jurisdictional statement and the brief in opposition thereto, if any, the Court will enter an appropriate order which may include summary dismissal for lack of subject matter jurisdiction. If the Supreme Court in its order notes probable jurisdiction or postpones consideration of jurisdiction to the hearing on the merits, the Prothonotary of the Supreme Court forthwith shall notify the court below and the attorneys of record of the noting or postponement, and the case will then stand for briefing and oral argument. In such case, the parties shall address the question of jurisdiction at the outset of their briefs and oral arguments.

(d) *Sanctions.* If the court finds that the parties have not complied with Rules 909 through 911, it may impose appropriate sanctions including but not limited to dismissal of the action, imposition of costs or disciplinary sanction upon the attorneys.

Source

The provisions of this Rule 909 adopted 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. 4951; 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. This Rule 909 is suspended with respect to death penalty cases until further notice; amended September 10, 2008, effective December 1, 2008, 38 Pa.B. 5257. Immediately preceding text appears at serial page (215311).

Rule 910. Jurisdictional Statement. Content. Form.

(a) *General Rule.* The jurisdictional statement required by Rule 909 shall contain the following in the order set forth:

(1) A reference to the official and unofficial reports of the opinions delivered in the courts below, if any, and if reported, the citation thereto. Any unreported opinions shall be appended to the jurisdictional statement.

(2) A statement of the basis, either by Act of Assembly or general rule, for the jurisdiction of the Supreme Court or the cases believed to sustain that jurisdiction;

(3) The text of the order in question, or the portions thereof sought to be reviewed, and the date of its entry in the court. The order may be appended to the statement;

(4) A concise statement of the procedural history of the case.

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

(b) *Matters of Form.* The jurisdictional statement need not be set forth in numbered paragraphs in the manner of a pleading. It shall be as short as possible and shall not exceed five pages, excluding the appendix.

(c) *Nonconforming Statements.* The Prothonotary of the Supreme Court shall not accept for filing any statement that does not comply with this rule. He shall return it to the appellant, and inform all parties in which respect the statement does not comply with the rule. The prompt filing and service of a new and correct statement within seven days after return by the Prothonotary shall constitute a timely filing of the jurisdictional statement.

Source

The provisions of this Rule 910 adopted 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. 4951.

Rule 911. Answer to Jurisdictional Statement. Content. Form.

An answer to a jurisdictional statement shall set forth any procedural, substantive or other argument or ground why the order appealed from is not reviewable as of right and why the Supreme Court should not grant an appeal by allowance. The answer need not be set forth in numbered paragraphs in the manner of a pleading and shall not exceed five pages.

Official Note: The Supreme Court has, in a number of cases, determined that a party has no right of appeal, but has treated the notice of appeal as a petition for allowance of appeal and granted review. See *Gossman v. Lower Chanceford Tp. Bd. of Supervisors*, 503 Pa. 392, 469 A.2d 996 (1983); *Xpress TruckLines, Inc. v. Pennsylvania Liquor Control Board*, 503 Pa. 394, 469 A.2d 1008 (1983); *O'Brien v. State Employment Retirement Board*, 503 Pa. 414, 469 A.2d 1000 (1983). See also R.A.P. 1102. Accordingly, a party opposing a jurisdictional statement shall set forth why the order appealed from is not reviewable on direct appeal and why the Court should not grant an appeal by allowance.

210 Rule 911

RULES OF APPELLATE PROCEDURE

Source

The provisions of this Rule 911 adopted 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. 4951; amended September 10, 2008, effective December 1, 2008, 38 Pa.B. 5257. Immediately preceding text appears at serial pages (215312) to (215313).

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