

**SUPREME COURT OF PENNSYLVANIA
APPELLATE COURT PROCEDURAL RULES COMMITTEE**

NOTICE OF PROPOSED RULEMAKING

Proposed Amendment of Pa.R.A.P. 311, 1311, and 1312

The Appellate Court Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Pa.R.A.P. 311, 1311, and 1312 governing orders sustaining venue, personal jurisdiction, or *in rem* jurisdiction for the reasons set forth in the accompanying publication report. Pursuant to Pa.R.J.A. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any report accompanying this proposal was prepared by the Committee to indicate the rationale for the proposed rulemaking. It will neither constitute a part of the rules nor be adopted by the Supreme Court.

Additions to the text of the proposal are bolded and underlined; deletions to the text are bolded and bracketed.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

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All communications in reference to the proposal should be received by **September 30, 2022**. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

By the Appellate Court Procedural Rules Committee,

Honorable J. Andrew Crompton
Chair

Rule 311. Interlocutory Appeals as of Right.

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

- (b) Order **[sustaining venue or personal or *in rem* jurisdiction.—] Sustaining Venue, Personal Jurisdiction, 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.] the court makes an express determination that the order presents a substantial issue of venue, personal jurisdiction, or *in rem* jurisdiction. If the court does not make such an express determination in its initial order:**

(i) An aggrieved party may file an application for such a determination within 30 days of entry of the order sustaining venue, personal jurisdiction, or *in rem* jurisdiction.

(ii) Unless the court acts on the application within 30 days after it is filed, the court shall no longer consider the application and it shall be deemed denied.

(iii) A notice of appeal may be filed within 30 days after entry of an order containing such a determination unless a shorter time period is provided in Pa.R.A.P. 903(c). Any denial of such an application is reviewable only through a petition for permission to appeal under Pa.R.A.P. 1311.

- (c) Changes of **[venue, etc.—] 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.

(g) Waiver of **[objections]** Objections.

- (1) Except as provided in **[subparagraphs]** subdivisions (g)(1)(ii), (iii), and (iv), failure to file an appeal of an interlocutory order does not waive any objections to **[the interlocutory]** that order:
 - (i) (Rescinded).
 - (ii) **[Failure to file an appeal from an interlocutory order under subparagraph (b)(1) or paragraph (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 appeal.] All objections to venue, personal jurisdiction, and *in rem* jurisdiction are waived if no appeal is taken from an order deemed final under subdivision (b)(1) or appealable under subdivision (c).**
 - (iii) Failure to file an appeal from an interlocutory order under **[paragraph]** subdivision (e) of this rule shall constitute a waiver of all objections to such an order.
 - (iv) Failure to file an appeal from an interlocutory order refusing to compel arbitration, appealable under 42 Pa.C.S. § 7320(a)(1) and **[subparagraph]** subdivision (a)(8) of this rule, shall constitute a waiver of all objections to such an order.
- (2) **[Where no election that an interlocutory order shall be deemed final is filed under subparagraph (b)(1) of this rule, the objection may be raised on any subsequent appeal.] If an election permitted by subdivision (b)(1) is not filed, the objections to the order sustaining venue, personal jurisdiction, or *in rem* jurisdiction may be raised on any subsequent appeal.**
- (3) **If an application is denied under subdivision (b)(2), the objections to the order sustaining venue, personal jurisdiction, or *in rem* jurisdiction may be raised on any subsequent appeal.**

[Official Note] Comment:

Paragraph (b)—**[Paragraph (b) is based in part on the Act of March 5, 1925, P. L. 23. 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*, 370 A.2d 307 (Pa. 1977).]**

In subparagraph (b)(1), a plaintiff is given a qualified (because it can be overridden by petition for and grant of permission to appeal under Pa.R.A.P. 312) option to gamble that the venue of the matter, **[or] personal jurisdiction**, or *in rem* jurisdiction will be sustained on appeal. **[Subparagraph] Subdivision** (g)(1)(ii) provides that if the plaintiff timely elects final treatment, the failure of the defendant to appeal constitutes a waiver. The appeal period under Pa.R.A.P. 903 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 Pa.R.A.P. 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 **[subparagraph] subdivision** (b)(2) of the existence of a substantial question of jurisdiction and the defendant elects to appeal, (2) an interlocutory appeal is permitted under Pa.R.A.P. 312, or (3) another basis for appeal appears, for example, under **[subparagraph] subdivision** (a)(1), and an appeal is taken. Presumably, a plaintiff would file such an election where plaintiff desires to force the defendant to decide promptly whether the objection to venue or jurisdiction will be seriously pressed. **[Paragraph] Subdivision** (b) does not cover orders that do not sustain jurisdiction because they are, of course, final orders appealable under Pa.R.A.P. 341.

[Subparagraph (b)(2)—The 1989 amendment to subparagraph] Subdivision (b)(2) permits an interlocutory appeal as of right where the trial court **[certifies] determines** that a substantial question of venue, **personal jurisdiction, or in rem jurisdiction** is present. **[This eliminated an inconsistency formerly existing between paragraph (b) and subparagraph (b)(2).] The procedures for obtaining a determination are based, in part, on those found at Pa.R.A.P. 341(c)(1)-(3).**

Rule 1311. Interlocutory Appeals by Permission.

- (a) General **[rule.—] Rule.** An appeal may be taken by permission from an interlocutory order:
- (1) certified under 42 Pa.C.S. § 702(b) or for which certification pursuant to 42 Pa.C.S. § 702(b) was denied; see Pa.R.A.P. 312;
 - (2) for which certification pursuant to Pa.R.A.P. 341(c) was denied; **[or]**
 - (3) that determined that a defendant's motion to dismiss on the basis of double jeopardy is frivolous~~[.]~~ **[or]**
 - (4) for which an application for an express determination that the order presents a substantial issue filed pursuant to Pa.R.A.P. 311(b)(2) was denied.**
- (b) Petition for **[permission to appeal.—] Permission to Appeal.** Permission to appeal from an interlocutory order listed in paragraph (a) may be sought by filing a petition for permission to appeal with the prothonotary of the appellate court within 30 days after entry of such order or the date of deemed denial in the trial court or other government unit with proof of service on all other parties to the matter in the trial court or other government unit and on the government unit or clerk of the trial court, who shall file the petition of record in such trial court. An application for an amendment of an interlocutory order to set forth expressly **[either]** the statement specified in 42 Pa.C.S. § 702(b), **[or the one in] Pa.R.A.P. 311(b)(2), or** Pa.R.A.P. 341(c) shall be filed with the trial court or other government unit within 30 days after the entry of such interlocutory order, and permission to appeal may be sought within 30 days after entry of the order as amended. Unless the trial court or other government unit acts on the application within 30 days after it is filed, the trial court or other government unit shall no longer consider the application and it shall be deemed denied. If the petition for permission to appeal is transmitted to the prothonotary of the appellate court by means of first class, express, or priority United States Postal Service mail, the petition shall be deemed received by the prothonotary for the purposes of Pa.R.A.P. 121(a) (filing) on the date deposited in the United States mail, as shown on a United States Postal Service Form 3817 Certificate of Mailing, or other similar United States Postal Service form from which the date of deposit can be verified. The certificate of mailing or other similar Postal Service form from which the date of deposit can be verified shall be cancelled by the Postal Service, shall show the docket number of the matter in the trial court or other government unit, and shall be either

enclosed with the petition or separately mailed to the prothonotary. The petitioner must file the original and one copy. Upon actual receipt of the petition for permission to appeal, the prothonotary of the appellate court shall immediately stamp it with the date of actual receipt. That date, or the date of earlier deposit in the United States mail as prescribed in this paragraph, shall constitute the date when permission to appeal was sought, which date shall be shown on the docket. The prothonotary of the appellate court shall immediately note the appellate docket number assignment upon the petition for permission to appeal and give notice of the docket number assignment to the government unit or clerk of the trial court, to the petitioner, and to the other persons named in the proof of service accompanying the petition.

[Official Note] Comment:

[Pa.R.A.P. 1311 originally implemented only 42 Pa.C.S. § 702(b) (interlocutory appeals by permission). The accompanying note provided that an order refusing to certify an order as meeting the requirements of 42 Pa.C.S. § 702(b) was reviewed by filing of a petition for review under Chapter 15. The rule was amended in 2020 to expand the use of] Pa.R.A.P. 1311 expands the use of a petition for permission to appeal to requests for review of interlocutory orders that were not certified for immediate review pursuant to 42 Pa.C.S. § 702(b) or Pa.R.A.P. 341(c) and of interlocutory orders that found a criminal defendant's claim that further proceedings would cause the defendant to be placed in double jeopardy to be frivolous.

See the Official Note to Pa.R.A.P. 1112 (appeals by allowance) for an explanation of the procedure when Form 3817 or other similar United States Postal Service form from which the date of deposit can be verified is used.

Rule 1312. Content of the Petition for Permission to Appeal.

- (a) **General [rule.—] Rule.** The petition for permission to appeal need not be set forth in numbered paragraphs in the manner of a pleading, and shall contain the following (which shall, insofar as practicable, be set forth in the order stated):
- (1) A statement of the basis for the jurisdiction of the appellate court.
 - (2) The text of the order in question, or the portions thereof sought to be reviewed, the text of any order ruling on any subsequent request for certification, and the date of their entry in the trial court or other government unit. If the order(s) are voluminous, it may, if more convenient, be appended to the petition.
 - (3) A concise statement of the case containing the facts necessary to an understanding of the basis for the order of the trial court or other government unit.
 - (4) The proposed questions presented for review, expressed in the terms and 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 petition, or fairly comprised therein, will ordinarily be considered by the court in the event permission to appeal is granted.
 - (5) A concise statement of the reasons for an immediate appeal:
 - (i) For a petition for permission to appeal an order certified pursuant to 42 Pa.C.S. § 702(b), a statement of the reasons why the order involves a controlling question of law as to which there is a substantial ground for difference of opinion and that an appeal from the order may materially advance the ultimate termination of the matter;
 - (ii) For a petition for permission to appeal an order for which certification pursuant to 42 Pa.C.S. § 702(b) was denied or deemed denied, a statement of reasons why the order involves a controlling question of law as to which there is substantial ground for difference of opinion, that an appeal from the order may materially advance the ultimate termination of the matter, and why the refusal of certification

was an abuse of the trial court's or other government unit's discretion that is so egregious as to justify prerogative appellate correction;

- (iii) For a petition for permission to appeal an order for which certification pursuant to Pa.R.A.P. 341(c) was denied or deemed denied, the petition must contain a statement of reasons why an immediate appeal would facilitate resolution of the entire case and why the refusal of certification was an abuse of the trial court's or other government unit's discretion that is so egregious as to justify prerogative appellate correction;
- (iv) For a petition for permission to appeal pursuant to Pa.R.A.P. 1311(a)(3), the petition must set forth why the claim of double jeopardy is colorable[.];
- (v) **For a petition for permission to appeal an order for which an application for an express determination that the order presents a substantial issue filed pursuant to Pa.R.A.P. 311(b)(2) was denied or deemed denied, the petition must contain a statement of reasons why a substantial issue of venue, personal jurisdiction, or *in rem* jurisdiction is present.**

**SUPREME COURT OF PENNSYLVANIA
APPELLATE COURT PROCEDURAL RULES COMMITTEE**

PUBLICATION REPORT

Proposed Amendment of Pa.R.A.P. 311, 1311, and 1312

The Appellate Court Procedural Rules Committee is considering proposing to the Supreme Court the amendment of Pennsylvania Rules of Appellate Procedure 311, 1311, and 1312 governing orders sustaining venue, personal jurisdiction, or *in rem* jurisdiction.

Pa.R.A.P. 311 identifies several interlocutory orders that may be appealed as of right regardless of finality. One of those orders is an order sustaining venue, personal jurisdiction, or *in rem* jurisdiction. See Pa.R.A.P. 311(b). The party benefitting from that order may appeal within 10 days of the order; a party aggrieved from that order may appeal if “the court states in the order that a substantial issue of venue or jurisdiction is presented.” Pa.R.A.P. 311(b)(1)-(2). As a matter of practice, if the order sustaining venue or jurisdiction does not state that a substantial issue is present, then the aggrieved party may seek amendment of the order to include such a statement. See, e.g., *United Farm Bureau Mut. Ins. Co. v. U.S. Fid. & Guar. Co.*, 462 A.2d 1300, 1302 (Pa. 1983); *Frick v. Fuhai Li*, 225 A.3d 573, 575 n.1 (Pa. Super. 2019); *Dep’t of Transp. v. Yudacufski*, 562 A.2d 424, 426 (Pa. Cmwlth. 1989).

It was in this context that the Committee observed the Rules of Appellate Procedure are silent on when to request this statement, e.g., within 30 days of the interlocutory order, or whether the trial court must rule on the request or whether the request is deemed denied after a specified time. Cf., Pa.R.A.P. 341(c)(1)-(c)(3); Pa.R.A.P. 1311(b).

Accordingly, the Committee proposes expanding Pa.R.A.P. 311(b)(2) to include procedures for a party to follow when the court does not make an express determination as to venue, personal jurisdiction, and *in rem* jurisdiction. The proposed amendment would require:

- the party to file an application to request an express determination within 30 days of the entry of the court’s initial order;
- the court to act on the application within 30 days; otherwise the application is deemed denied; and
- the party to file a notice of appeal within 30 days after the entry of the order with an express determination unless a shorter time period is provided in Pa.R.A.P. 903(c) (time for appeal).

In fashioning this proposal, the Committee reviewed the procedures set forth in Pa.R.A.P. 341(c)(1)-(3) for a determination of finality as a basis for the amendment of Pa.R.A.P. 311(b)(2), subject to certain refinements. Additionally, the Committee proposes permitting review of a denied application through a petition for permission to appeal pursuant to Pa.R.A.P. 1311, and subject to the requirements of Pa.R.A.P. 1312. Appellate consideration of the denial would be consistent with Pa.R.A.P. 341.

The proposed amendments to Pa.R.A.P. 311(g) are intended to be stylistic and non-substantive.

The Committee considered whether the qualifier for an interlocutory appeal pursuant to Pa.R.A.P. 311(b)(2), *i.e.*, “substantial issue,” should be retained or altered to more closely hew to that found in 42 Pa.C.S. § 702(b), *i.e.*, “a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the matter.” See *also* Pa.R.A.P. 1312(a)(5)(ii). The Committee believes that maintaining the existing qualifier is preferable rather than introducing a new qualifier into the analysis.

All comments, concerns, and suggestions regarding this proposal are welcome.