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 the following types of orders:

(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, 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 23 Pa.C.S. §§ 3323(f), 3505(a).

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

(4) **Injunctions.** An order that grants or denies, modifies or refuses to modify, continues or refuses to continue, or dissolves or refuses to dissolve an injunction unless the order was entered:

(i) Pursuant to 23 Pa.C.S. §§ 3323(f), 3505(a); or

(ii) After a trial but before entry of the final order. Such order is immediately appealable, however, if the order enjoins conduct previously permitted or mandated or permits or mandates conduct not previously mandated or permitted, and is effective before entry of the final order.

(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 trial court committed an error of law.

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

(8) **Other Cases.** An order that is made final or appealable by statute or general rule, even though the order does not dispose of all claims and of all parties.

(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 that would ultimately evade appellate review if an immediate appeal is not allowed.

(g) **Waiver of Objections.**

(1) Except as provided in subdivision (g)(1), failure to file an appeal of an interlocutory order does not waive any objections to the interlocutory order:

(i) (Rescinded).

(ii) Failure to file an appeal from an interlocutory order under subdivision (b)(1) or subdivision (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.

(iii) Failure to file an appeal from an interlocutory order under 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 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 subdivision (b)(1) of this rule, the objection may be raised on any subsequent appeal.

(h) **Further Proceedings in the Trial Court.** Pa.R.A.P. 1701(a) shall not be applicable to a matter in which an interlocutory order is appealed under subdivisions (a)(2) or (a)(4) of this rule.

Comment:

Authority—This rule implements 42 Pa.C.S. § 5105(c), 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 permitted pursuant to section 702(b).

The appeal rights under this rule and under Pa.R.A.P. 312, Pa.R.A.P. 313, Pa.R.A.P. 341, and Pa.R.A.P. 342 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. **Pa.R.A.P. 902 addresses whether separate notices of appeal are required to be filed where an order appealable under this rule is entered on more than one docket.**

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

Subdivision (a)(3)—Change of venire is authorized by 42 Pa.C.S. § 8702. Pa.R.Crim.P. 584 treats changes of venue and venire the same. Thus, an order changing venue or venire is appealable by the defendant or the Commonwealth, while an order refusing to change venue or venire is not. *See also* Pa.R.A.P. 903(c)(1) regarding time for appeal.

Subdivision (a)(4)—This subdivision does not apply to an order granting or denying an application filed with a trial court under Pa.R.A.P. 1732(a) (stays or injunctions pending appeal). Any further relief may be sought directly from the appellate court under Pa.R.A.P. 1732(b). *See In re Passarelli Trust*, 231 A.3d 969 (Pa. Super. 2020).

Subdivision (a)(5) 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. An order denying a motion for peremptory judgment in mandamus remains unappealable.

Subdivision (a)(6)—*See Commonwealth v. Wardlaw*, 249 A.3d 937 (Pa. 2021) (holding that an order declaring a mistrial only is not "an order in a criminal proceeding awarding a new trial").

Subdivision (a)(8) recognizes that orders that are procedurally interlocutory may be made appealable by statute or general rule. For example, see 27 Pa.C.S. § 8303. The Pennsylvania Rules of Civil Procedure, the Pennsylvania Rules of Criminal Procedure, etc., should also be consulted. See Pa.R.A.P. 341(f) for appeals of Post Conviction Relief Act orders.

Subdivision (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**, 308** (Pa. 1977).

In subdivision (b)(1), a plaintiff is given a qualified option to gamble that the venue of the matter or personal or *in rem* jurisdiction will be sustained on appeal because it can be overridden by petition for and grant of permission to appeal under Pa.R.A.P. 312. 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)**(2)** 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 subdivision (b)(2) of the existence of a substantial question of **venue or** 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 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. 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.

Subdivision (c) is based in part on the **[act] Act** of March 5, 1925**, [(]**P.L. 23**[, No. 15)]**. 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, 308 (Pa. 1977). Subdivision (c) covers orders that do not sustain venue, such as orders under **[Pa.R.C.P.] Pa.R.Civ.P.** 1006(d) and (e).

However, the subdivision does not relate to a transfer under 42 Pa.C.S. § 933(c)(1), 42 Pa.C.S. § 5103, or 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 Pa.R.A.P. 312, or an appeal as of right may be taken from an order dismissing the matter for lack of jurisdiction. *See Balshy v. Rank*, 490 A.2d 415, 416 (Pa. 1985).

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

Pursuant to subdivision (d), the Commonwealth has a right to take an appeal from an interlocutory order provided that the Commonwealth certifies in the notice of appeal that the order terminates or substantially handicaps the prosecution. *See* Pa.R.A.P. 904(e). This rule supersedes *Commonwealth v. Dugger*, 486 A.2d 382, 386 (Pa. 1985). *Commonwealth v. Dixon*, 907 A.2d 468, 471 n.8 (Pa. 2006).

Pursuant to subdivision (f), there is 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: a remand by a court of common pleas to the Department of Transportation for removal of points from a driver's license; and an order of the Workers' 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 Lewis v. Sch. Dist. of Philadelphia*, 690 A.2d 814, 816 (Pa. Cmwlth. 1997).

Subdivision (g)(1)**[(iii)]**__**(iv)**__ addresses waiver in the context of appeals from various classes of arbitration orders. All six types of arbitration orders identified in 42 Pa.C.S. § 7320(a) are immediately appealable as of right. Differing principles govern these orders, some of which are interlocutory and some of which are final. The differences affect whether an order is appealable under this rule or Pa.R.A.P. 341(b) and whether an immediate appeal is necessary to avoid waiver of objections to the order.

- Section 7320(a)(1)—An interlocutory order refusing to compel arbitration under 42 Pa.C.S. § 7320(a)(1) is immediately appealable pursuant to Pa.R.A.P. 311(a)(8). Failure to appeal the interlocutory order immediately waives all objections to it. *See* Pa.R.A.P. 311(g)(1)(iv). This supersedes the holding in *Cooke v. Equitable Life Assurance Soc'y*, 723 A.2d 723, 726 (Pa. Super. 1999). Pa.R.A.P. 311(a)(8) and former Pa.R.A.P. 311(g)(1)(i) require a finding of waiver based on failure to appeal the denial order when entered).

- Section 7320(a)(2)—Failure to appeal an interlocutory order granting an application to stay arbitration under 42 Pa.C.S. § 7304(b) does not waive the right to contest the stay; an aggrieved party may appeal such an order immediately under Pa.R.A.P. 311(a)(8) or challenge the order on appeal from the final judgment.

- Section 7320(a)(3)—(a)(6)—If an order is appealable under 42 Pa.C.S. § 7320(a)(3), (4), (5), or (6) because it is final, that is, the order disposes of all claims and of all parties, *see* Pa.R.A.P. 341(b), failure to appeal immediately waives all issues. If the order does not dispose of all claims or of all parties, then the order is interlocutory. An aggrieved party may appeal such an order immediately under Pa.R.A.P. 311(a)(8) or challenge the order on appeal from the final judgment.

Subdivision (h)—*See* note to Pa.R.A.P. 1701(a).

Rule 313. Collateral Orders.

(a) **General [rule.—] Rule.** An appeal may be taken as of right from a collateral order of a trial court or other government unit.

(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] Comment:

If an order meets the definition of a collateral order, it is appealed by filing a notice of appeal or petition for review.

Pa.R.A.P. 313 is a codification of existing case law with respect to collateral orders. *See Pugar v. Greco*, 394 A.2d 542, 545 (Pa. 1978) (quoting *Cohen v. Beneficial Industrial Loan Corp*., 337 U.S. 541 (1949)).

Pennsylvania appellate courts have found a number of classes of orders to fit the collateral order definition. Collateral order cases are collected and discussed in Darlington, McKeon, Schuckers and Brown, Pennsylvania Appellate Practice 2015-2016 Edition, §§ 313:1—313:201. Examples include an order denying a petition to permit the payment of death taxes, *Hankin v. Hankin*, 487 A.2d 1363 (Pa. Super. 1985), and an order denying a petition for removal of an executor, *Re: Estate of Georgiana*, 458 A.2d 989 (Pa. Super. 1983), *aff'd*, 475 A.2d 744 (Pa. 1984), and an order denying a pre-trial motion to dismiss on double jeopardy grounds if the trial court does not also make a finding that the motion to dismiss is frivolous. *See Commonwealth v. Brady*, 508 A.2d 286, 289-91 (Pa. 1986) (allowing an immediate appeal from denial of double jeopardy claim under collateral order doctrine where trial court does not make a finding of frivolousness); *Commonwealth v. Orie*, 22 A.3d 1021 (Pa. 2011). An order denying a pre-trial motion to dismiss on double jeopardy grounds that also finds that the motion to dismiss is frivolous is not appealable as of right as a collateral order, but may be appealable by permission under Pa.R.A.P. 1311(a)(3).

Pa.R.A.P. 902 addresses whether separate notices of appeal are required to be filed where an order appealable under this rule is entered on more than one docket.

Rule 341. Final Orders; Generally.

(a) **General [rule.—] Rule.** Except as prescribed in **[paragraphs] subdivisions** (d) and (e) of this rule, an appeal may be taken as of right from any final order of a government unit or trial court.

(b) **Definition of [final order.—] Final Order.** A final order:

(1) disposes of all claims and of all parties;

(2) (Rescinded);

(3) is entered as a final order pursuant to **[paragraph] subdivision** (c) of this rule; or

(4) is an order pursuant to **[paragraph] subdivision** (f) of this rule.

(c) Determination of **[finality.—] 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 government 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) An application for a determination of finality under **[paragraph] subdivision** (c) must be filed 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) 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.

(3) 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 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.

(d) **Superior Court and Commonwealth Court [orders.—] Orders.** Except as prescribed by Pa.R.A.P. 1101 no appeal may be taken as of right from any final order of the Superior Court or of the Commonwealth Court.

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

(f) **Post Conviction Relief Act [orders] Orders.**

(1) An order granting, denying, dismissing, or otherwise finally disposing of a petition for post-conviction collateral relief shall constitute a final order for purposes of appeal.

(2) An order granting sentencing relief, but denying, dismissing, or otherwise disposing of all other claims within a petition for post-conviction collateral relief, shall constitute a final order for purposes of appeal.

[Official Note] Comment:

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 constitutional provision is implemented by 2 Pa.C.S. § 702, 2 Pa.C.S. § 752, and 42 Pa.C.S. § 5105.

Criminal law proceedings—Commonwealth appeals—Orders that do not dispose of the entire case that were formerly appealable by the Commonwealth in criminal cases under Pa.R.A.P. 341 are appealable as interlocutory appeals as of right under **[paragraph (d) of]** Pa.R.A.P. 311**(d)**.

Final orders—pre- and post-1992 practice—The 1992 amendment generally eliminated appeals as of right under Pa.R.A.P. 341 from orders that do not end the litigation as to all claims and as to all parties. Prior to 1992, there were cases that deemed an order final if it had the practical effect of putting a party out of court, even if the order did not end the litigation as to all claims and all parties.

A party needs to file only a single notice of appeal to secure review of prior non-final orders that are made final by the entry of a final order**[, *see*]. *See, e.g.,*** *K.H. v. J.R.*, 826 A.2d 863, 870-71 (Pa. 2003) (**notice of appeal** following trial); *Betz v. Pneumo Abex LLC*, 44 A.3d 27, 54 (Pa. 2012) (**notice of appeal of** summary judgment)**; *Laster v. Unemployment Comp. Bd. of Rev.*, 80 A.3d 831, 832 n.2 (Pa.Cmwlth. 2013) (petition**

for review of agency decision). Where, however, one or more orders resolves issues arising on more than one docket or relating to more than one judgment, separate notices of appeal must be filed. *Malanchuk v. Tsimura*, 137 A.3d 1283, 1288 (Pa. 2016) ("[C]omplete consolidation (or merger or fusion of actions) does not occur absent a complete identity of parties and claims; separate actions lacking such overlap retain their separate identities and require distinct judgments"); *Commonwealth v. C.M.K.*, 932 A.2d 111, 113 & n.3 (Pa. Super. 2007) (quashing appeal taken by single notice of appeal from order on remand for consideration under Pa.R.Crim.P. 607 of two persons' judgments of sentence).

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

Rescission of **[subparagraph]** **subdivision** (b)(2)—Former **[subparagraph]** **subdivision** (b)(2) provided for appeals of orders defined as final by statute. The 2015 rescission of **[subparagraph]** **subdivision** (b)(2) eliminated a potential waiver trap created by legislative use of the adjective ''final'' to describe orders that were procedurally interlocutory but nonetheless designated as appealable as of right. Failure to appeal immediately an interlocutory order deemed final by statute waived the right to challenge the order on appeal from the final judgment. Rescinding **[subparagraph]** **subdivision** (b)(2) eliminated this potential waiver of the right to appeal. If an order designated as appealable by a statute disposes of all claims and of all parties, it is appealable as a final order pursuant to Pa.R.A.P. 341. If the order does not meet that standard, then it is interlocutory regardless of the statutory description. Pa.R.A.P. 311(a)(8) provides for appeal as of right from an order that is made final or appealable by statute or general rule, even though the order does not dispose of all claims or of all parties and, thus, is interlocutory. Pa.R.A.P. 311(g) addresses waiver if no appeal is taken immediately from such interlocutory order.

One of the further effects of the rescission of **[subparagraph]** **subdivision** (b)(2) is to change the basis for appealability of orders that do not end the case but grant or deny a declaratory judgment. *See Nationwide Mut. Ins. Co. v. Wickett*, 763 A.2d 813, 818 (Pa. 2000); *Pa. Bankers Ass'n v. Pa. Dep't of Banking*, 948 A.2d 790, 798 (Pa. 2008). The effect of the rescission is to eliminate waiver for failure to take an immediate appeal from such an order. A party aggrieved by an interlocutory order granting or denying a declaratory judgment, where the order satisfies the criteria for ''finality'' under *Pennsylvania Bankers Association*, may elect to proceed under Pa.R.A.P. 311(a)(8) or wait until the end of the case and proceed under **[subparagraph]** **subdivision** (b)(1) of this rule.

An arbitration order appealable under 42 Pa.C.S. § 7320(a) may be interlocutory or final. If it disposes of all claims and all parties, it is final, and, thus, appealable pursuant to Pa.R.A.P. 341. If the order does not dispose of all claims and all parties, that is, the order is not final, but rather interlocutory, it is appealable pursuant to Pa.R.A.P. 311. Failure to appeal an interlocutory order appealable as of right may result in waiver of objections to the order. *See* Pa.R.A.P. 311(g).

[Paragraph] **Subdivision** (c)—Determination of finality—**[Paragraph]** **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 **[paragraph]** **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 government unit will consider issues a second time; and

(4) whether an immediate appeal will enhance prospects of settlement.

The failure of a party to apply to the government unit or trial court for a determination of finality pursuant to **[paragraph]** **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 government unit or trial 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 permission to appeal under Pa.R.A.P. 1311 of the unappealable order of denial is the exclusive mode of review. The filing of such a petition does not prevent the trial 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 may apply for a discretionary stay of the proceeding below.

[Subparagraph] **Subdivision** (c)(2) provides for a stay of the action pending determination of an application for a determination of finality. If the application is denied, and a petition for permission to appeal is filed challenging the 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 government unit enters a final order pursuant to **[paragraph]** **subdivision** (c) of this rule, the trial court or other government unit may no longer proceed further in the matter, except as provided in Pa.R.A.P. 1701(b)(1)—(5).

[Paragraph] **Subdivision** (f)—Post Conviction Relief Act Orders—A failure to timely file an appeal pursuant to **[paragraph]** **subdivision** (f)(2) shall constitute a waiver of all objections to such an order.

Pa.R.A.P. 902 addresses whether separate notices of appeal are required to be filed where an order appealable under this rule is entered on more than one docket.

Rule 512. Joint Appeals.

Parties interested jointly, severally or otherwise in any order in the same matter or in joint matters or in matters consolidated for the purposes of trial or argument, may join as appellants or be joined as appellees in a single appeal where the grounds for appeal are similar, or any one or more of them may appeal separately or any two or more may join in an appeal.

[Official Note] Comment:

This describes who may join in a single notice of appeal. The rule does not address whether a single notice of appeal is adequate under the circumstances presented. Under **[Rule] Pa.R.A.P.** 341, a single notice of appeal will not be adequate to take an appeal from orders entered on more than one trial court docket. *See* **[Rule] Pa.R.A.P.** 341, Note (''Where, however, one or more orders resolves issues arising on more than one docket or relating to more than one judgment, separate notices of appeal must be filed.''). **Pa.R.A.P. 902 addresses whether separate notices of appeal are required to be filed where an order appealable under this rule is entered on more than one docket.**

Rule 902. Manner of Taking Appeal.

(a) Requirements. An appeal permitted by law as of right from a **[lower]** **trial** court to an appellate court shall be taken by filing a notice of appeal with the clerk of the **[lower]** **trial** court within the time allowed by **[Rule]** **Pa.R.A.P.** 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.]** **A notice of appeal must be filed in each docket in which the order has been entered.**

(b) Failure to Comply with Requirements.

(1) Generally. Except as provided in subdivision (b)(2), the failure of a party to comply with the requirements stated in subdivision (a) does not affect the validity of the appeal, but the appeal is subject to such action as the appellate court deems appropriate. Such action may include, but is not limited to, remand of the matter to the trial court so that the omitted procedural step may be taken.

(2) Exception. The failure to file a notice of appeal within the time allowed by Pa.R.A.P. 903 (time for appeal) renders an appeal invalid.

[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.]

Comment:

Discretionary aspects of sentencing. 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] Pa.R.A.P.** 904 (content of the notice of appeal)), in conjunction with the requirements set forth in Pa.R.A.P. 2116(b) and 2119(f), operates as the ''petition for allowance of appeal'' under the Sentencing Code. 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* Pa.R.A.P. 2116(b) and **[the]** note **[thereto]**; Pa.R.A.P. 2119(f) and **[the]** note **[thereto]**.

Subdivision (a). Where cases are consolidated or related, applicable practice in the trial court may result in the order listing multiple dockets and being entered in one or more dockets. Under those circumstances, an appellant who intends to appeal the order in one docket should file a notice of appeal in the appropriate docket listing that docket number. An appellant who intends to appeal the order in more than one docket is required to file a separate notice of appeal in each docket, listing the appropriate docket number. *See Commonwealth v. Walker*, 185 A.3d 969 (Pa. 2018).

The appellant who intends to appeal the order in more than one docket is cautioned that "no order of a court shall be appealable until it has been entered upon the appropriate docket in the trial court." Pa.R.A.P. 301(a)(1). The burden is on the appellant to cause entry of the order on the appropriate docket in anticipation of taking the appeal. Under these circumstances, the appellant is also cautioned to consider Pa.R.A.P. 301 when calculating the time allowed for filing the notice of appeal pursuant to Pa.R.A.P. 903. Pa.R.A.P. 301 provides that "[w]here 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." Pa.R.A.P. 301(a)(1).

One exception has been recognized to the requirement of filing separate notices of appeal. An appellant may file a single notice of appeal from an order entered in the lead docket for consolidated civil cases "where all record information necessary to adjudication of the appeal exists, and which involves identical parties, claims and issues." *See Always Busy Consulting, LLC v. Babford & Co., Inc.*, 247 A.3d 1033, 1043 (Pa. 2021).

Subdivision (b). When it is not apparent from the notice of appeal that the requirements of Pa.R.A.P. 902 have been satisfied, an appellate court may remand, issue a rule, or take other steps that may require the appellant to respond with additional information or to correct a defect. See *Commonwealth v. Young*, 265 A.3d 462 (Pa. 2021), and the Note to Pa.R.A.P. 301 for examples of when an appeal may be remanded because an order has not been reduced to judgment or final decree and docketed.

If the appellant fails to respond or take the necessary steps to correct a defect, the appellate court may quash the appeal.

The failure to file a timely notice of appeal implicates the jurisdiction of the appellate court and requires quashal of the appeal. *See* 42 Pa.C.S. § 704(b)(1); *Commonwealth v. Williams*, 106 A.3d 583, 587 (Pa. 2014).

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:

* * *

(b) **Caption.**

(1) **General [rule.—] Rule.** The parties shall be stated in the caption as they appeared on the record of the trial court at the time the appeal was taken.

(2) **Appeal of [custody action.—] Custody Action.** In an appeal of a custody action where the trial court has used the full name of the parties in the caption, upon application of a party and for cause shown, an appellate court may exercise its discretion to use the initials of the parties in the caption based upon the sensitive nature of the facts included in the case record and the best interest of the child.

(c) **Request for [transcript.—] Transcript.** The request for transcript contemplated by Pa.R.A.P. 1911 or a statement signed by counsel that either there is 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.—] Entry.** The notice of appeal shall include a statement that the order appealed from has been entered on 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.—] Criminal Cases.** When the Commonwealth takes an appeal pursuant to Pa.R.A.P. 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.—] 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.

(g) Completely Consolidated Civil Cases. In an appeal of completely consolidated civil cases where only one notice of appeal is filed, a copy of the consolidation order shall be attached to the notice of appeal.

[Official Note] Comment:

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 notice of appeal must include a statement that the order appealed from has been entered on the docket. **Because generally a separate notice of appeal must be filed on each docket on which an appealable order is entered so as to appeal from that order, *see* Pa.R.A.P. 902(a), the appellant is required to attach to the notice of appeal a copy of the docket entry showing the entry of the order appealed from on that docket.** The appellant does not need to 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.

[Paragraph] Subdivision (b)(2) provides the authority for an appellate court to initialize captions in custody appeals. *See also* Pa.R.C.P. 1915.10.

With respect to **[paragraph] subdivision** (e), in *Commonwealth v. Dugger*, 486 A.2d 382, 386 (Pa. 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. The principle in *Dugger* has been incorporated in and superseded by Pa.R.A.P. 311(d). *Commonwealth v. Dixon*, 907 A.2d 468, 471 n.8 (Pa. 2006). Thus, the need for a detailed analysis of the effect of the order, formerly necessarily a part of the Commonwealth's appellate brief, has been eliminated.

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* Pa.R.A.P. 2113, 2136, and 2185 regarding briefs in cross-appeals and Pa.R.A.P. 2322 regarding oral argument in multiple appeals.

A party appealing completely consolidated civil cases using one notice of appeal must attach a copy of the consolidation order to the notice of appeal to assure the applicability of Pa.R.A.P. 902.