APPELLATE COURT PROCEDURAL RULES COMMITTEE
ADOPTION REPORT

Amendment of Pa.R.A.P. 311, 313, 341, 512, 902, and 904

On May 18, 2023, the Supreme Court of Pennsylvania adopted amendments to Rules of Appellate Procedure 311, 313, 341, 512, 902, and 904. The Appellate Court Procedural Rules Committee has prepared this Adoption Report describing the rulemaking process. An Adoption Report should not be confused with Comments to the rules. *See* Pa.R.J.A. 103, cmt. The statements contained herein are those of the Committee, not the Court.

The Committee undertook rulemaking to address the requirements that a separate notice of appeal be filed on each docket on which an appealable order is entered to appeal from that order in light of *Commonwealth v. Walker*, 185 A.3d 969 (Pa. 2018), *Always Busy Consulting, LLC v Babford & Co., Inc.,* 247 A.3d 1033 (Pa. 2021), and *Commonwealth v. Young*, 265 A.3d 462 (Pa. 2021).

In *Commonwealth v. Walker*, 185 A.3d 969 (Pa. 2018), the Supreme Court considered whether Pa.R.A.P. 341(a) ("an appeal may be taken from any final order of … a trial court") was satisfied when a single notice of appeal had been filed from an order deciding four motions to suppress evidence against four defendants docketed at four different docket numbers. Concluding that the rule text did not specifically address the matter, the Court considered the commentary to Pa.R.A.P. 341, which provided "a bright-line mandatory instruction to practitioners to file a separate notice of appeal." *Id*. at 976-77. Thereafter, the Court held that Pa.R.A.P. 341(a) requires "that when a single order resolves issues arising on more than one lower court docket, separate notices of appeal must be filed." *Id*. at 977.

Next, in *Always Busy Consulting, LLC v Babford & Co., Inc.,* 247 A.3d 1033 (Pa. 2021), the Supreme Court held that the filing of a single notice of appeal from a single order entered at the lead docket number for consolidated civil matters was permissible and does not violate the holding in *Commonwealth v. Walker.* As such, *Always Busy Consulting* carved out an exception where *Walker* does not apply.

Finally, in *Commonwealth v. Young*, 265 A.3d 462 (Pa. 2021), the Supreme Court mitigated the result in *Walker* by clarifying that, under Pa.R.A.P. 902, an appellate court, in its discretion, has the authority to allow correction when an appellant does not file separate notices of appeal from a single order resolving issues on more than one docket:

> Rule 341 requires that when a single order resolves issues arising on more than one docket, separate notices of appeal must be filed from that order at each docket; but, where a timely appeal is filed at only one docket, Rule

902 permits the appellate court, in its discretion, to allow correction of the error, where appropriate.

Id. at 477.

Following extensive review and consideration, the Committee recommended amendment of Pa.R.A.P. 902 as the appropriate repository for the requirements and guidance to comply with *Walker*, *Always Busy Consulting*, and *Young*. As a result, Pa.R.A.P 902 has been subdivided into subdivision (a) and subdivision (b). Subdivision (a) sets forth the general requirements for taking an appeal, including the timely filing of a notice of appeal in the trial court at each docket in which the order has been entered. Subdivision (b) indicates the validity of a timely filed notice of appeal is not affected, but it may be subject to any action the appellate court deems appropriate to cure a procedural defect. However, an untimely notice of appeal cannot be cured in such a manner. *See also* Pa.R.A.P. 105(b) (appellate court may not enlarge the time for filing a notice of appeal).

The Comment accompanying Pa.R.A.P. 902 has also been revised. The commentary concerning subdivision (a) discusses *Walker* and *Always Busy Consulting* in terms of the need to file separate notices of appeal. *Young* is referenced in the commentary as a basis for subdivision (b). The Comment also includes statements that an appellant's failure to respond to an appellate court's directive to cure a defect may result in quashal and that an untimely notice of appeal will result in quashal. The Comments to Pa.R.A.P. 311, 313, 341, and 512 have also been revised to advise readers to consult Pa.R.A.P. 902.

Finally, amendments have been made to Pa.R.A.P. 904 regarding consolidated orders. Currently, subdivision (d) requires the attachment of docket entries to the notice of appeal. The Committee observed it would be helpful for the consolidation order from the trial court to be attached to the notice of appeal to make clear whether multiple notices of appeal are required in completely consolidated cases. New subdivision (g) has been added for this requirement.

Stylistic revisions to the text of each rule were also made.

The amendments become effective immediately.

The following commentary from Pa.R.A.P. 902 has been removed by this rulemaking:

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.