

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

**NOTICE OF PROPOSED RULEMAKING**

**Proposed Amendment of Pa.R.A.P. 2744, 2751, and 2761**

The Appellate Court Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Pa.R.A.P. 2744, 2751, and 2761 for the reasons set forth in the accompanying explanatory 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 **January 30, 2026**. 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 Judith Ference Olson  
Chair

**Rule 2744. Further Costs. Counsel Fees. [Damages for Delay] Legal Interest.**

**[In addition to other costs allowable by general rule or Act of Assembly, an appellate court may award as further costs damages as may be just, including**

- (1) a reasonable counsel fee and**
- (2) damages for delay at the rate of 6% per annum in addition to legal interest,**

**if it determines that an appeal is frivolous or taken solely for delay or that the conduct of the participant against whom costs are to be imposed is dilatory, obdurate or vexatious. The appellate court may remand the case to the trial court to determine the amount of damages authorized by this rule.]**

- (a) General Rule. In addition to other costs set forth in Pa.R.A.P. 2742, Pa.R.A.P. 2743, and those recoverable by parties under Pa.R.A.P. 2741, an appellate court may authorize counsel fees expended on appeal to be taxed as a cost on remand if counsel fees were imposed by the trial court and not reversed on appeal.**
- (b) Further Costs. If the appellate court determines that an appeal is frivolous, taken solely for delay, or the conduct of the participant against whom costs are to be imposed is dilatory, obdurate or vexatious, the appellate court may award as further costs damages as may be just, including counsel fees and legal interest.**
- (c) Remand. Upon a satisfactory application pursuant to Pa.R.A.P. 2751, the appellate court shall remand the case to the trial court to determine the reasonable amount of counsel fees or legal interest authorized by this rule.**

**[Note:] Comment:** See 42 Pa.C.S. § 1726(1) and (3) relating to establishment of taxable costs and 42 Pa.C.S. § 2503(6), (7) and (9) relating to the right of participants to receive counsel fees.

**[Some concern was expressed that the rule should contain an exception for criminal cases in which the defendant may have a constitutional right to appeal, whether frivolous or not. It is felt that such right will be taken into consideration, when appropriate, and that such a blanket exception should not be written into the rule.]**

In criminal cases, a defendant's constitutional right to appeal, whether frivolous or not, should be taken into consideration, when appropriate, in determining an award of counsel fees.

## **Rule 2751. Applications for Further Costs and Damages.**

[An application for further costs and damages must be made before the record is remanded, unless the appellate court, for cause shown, shall otherwise direct. Such an application must set forth specifically the reasons why it should be granted, and shall be accompanied by the opinion of the court and the briefs used therein. An application for further costs and damages shall contain the certificate of compliance required by Pa.R.A.P. 127.]

- (a) General Rule. Unless the appellate court, for cause shown, shall otherwise direct, an application for further costs pursuant to Pa.R.A.P. 2744 shall be made seven days before the record is scheduled to be remanded to the trial court.**
- (b) Content of Application. The application shall:**

  - (1) itemize the requested counsel fees or legal interest;**
  - (2) set forth the basis for the award of counsel fees including:**

    - (i) the authorization from the trial court for such fees in the trial court and the authorizing statute, rule, or contract provision; or**
    - (ii) the reasons costs, counsel fees, or legal interest should be awarded for the appeal;**
  - (3) contain the certificate of compliance required by Pa.R.A.P. 127.**

[Note: Based on former Supreme Court Rule 65 and former Superior Court Rule 56, and makes no change in substance.]

**Comment: An application pursuant to this rule does not toll the time for the filing of a petition for allowance of appeal. The right to costs, fees, or legal interest may be adjudicated by an intermediate appellate court while a petition for allowance of appeal is pending. An intermediate appellate court cannot remand to the trial court for the assessment of the reasonableness and amount and enforcement of the collection of such costs, fees, or legal interest until it remands the record to the trial court.**

#### **Rule 2761. Insertion of Costs in Remanded Record and Taxation of Costs.**

**[Where]** if specific costs are awarded in an appellate court under **[Rule]** Pa.R.A.P. 2155 (allocation of cost of reproduced record) **[or Rule 2744 (damages for delay)]** or otherwise, the prothonotary of the appellate court shall prepare and certify an itemized statement of any such costs taxed in the appellate court for inclusion in the remanded record. If the record has been remanded before final determination of such costs, the statement, or any amendment thereof, may be added to the remanded record at any time upon request to the prothonotary of the appellate court. Unless otherwise ordered, all other costs on appeal, including any costs awarded by the appellate court under **[Rule]** Pa.R.A.P. 2155 or **[Rule]** Pa.R.A.P. 2744 in terms of a fraction or percentage of any amount **[which]** that has not yet been taxed of record, shall be taxed in the **[lower]** trial court.

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

**PUBLICATION REPORT**

**Proposed Amendment of Pa.R.A.P. 2744, 2751, and 2761**

The Appellate Court Procedural Rules Committee is considering proposing to the Supreme Court the amendment of Pennsylvania Rules of Appellate Procedure 2744, 2751, and 2761 to establish the timing for filing an application for counsel fees in the appellate court. The proposal is being published in conjunction with a proposal by the Civil Procedural Rules Committee addressing the timing for filing a motion for counsel fees in the court of common pleas.

Pa.R.A.P. 2741-2743, 2761-2771 govern a party's entitlement to recover certain costs at the conclusion of an appeal and the procedure for collecting those costs. Pa.R.A.P. 2744-2751 govern the procedure for a party to seek the discretionary award of further costs, counsel fees, and delay damages. It is within this latter group of rules that the Committee proposes amendments.

The first aspect is Pa.R.A.P. 2744(a), which would be amended to recognize that an appellate court may continue to award appellate counsel fees if counsel fees were awarded by the trial court. Subdivision (b), in part, is drawn largely from the current subdivision (a) and recognizes that an appellate court may award further costs, including counsel fees, regardless of whether the trial court had previously addressed the matter. The basis for this independent authority is referenced in the Comment.

The Committee discussed whether to preserve the provision of Pa.R.A.P. 2744 permitting the award of "damages for delay at the rate of 6% per annum in addition to legal interest." As presently stated, the provision implies that delay damages pursuant to Pa.R.Civ.P. 238 may be available on appeal if an appeal was frivolous or conduct was dilatory, obdurate, or vexatious. The amount of 6% for "delay damages" fixed in Pa.R.A.P. 2744 seemingly eschewed a variable rate for damages akin to that provided in Pa.R.Civ.P. 238(a)(3).

While 6% for delay damages may at one time have been considered fair compensation for delay, the provision of Pa.R.A.P. 2744 actually permits the imposition of 12% interest *in toto* when the "in addition to legal interest" language is considered. The "legal interest" in this context is believed to represent post-judgment interest governed by 42 Pa.C.S. § 8101. See *also* 41 P.S. § 202 (establishing the "legal rate of interest" as 6% per annum). Thus, a party could potentially receive 6% for delay damages and 6% for post-judgment interest. That percentage amount appeared to punish the losing party

rather than compensating the prevailing party. Arguably, punitive matters are better addressed through the court's contempt authority or the disciplinary board.

Accordingly, the Committee proposed eliminating the provision for 6% for delay damages from Pa.R.A.P. 2744. The Committee specifically invites comments on this aspect of the proposal.

Subdivision (c) is intended to codify the long-standing practice that a remand to the trial court may be necessary to determine the amount of the counsel fees. The current commentary concerning whether counsel fees may be awarded when a party has a constitutional right to appeal has been retained. See *Smith v. Pennsylvania Bd. of Prob. & Parole*, 574 A.2d 558, 563 (Pa. 1990) (holding that, despite the constitutional right to counsel in an appeal from a criminal conviction, costs and counsel fees may be assessed against court-appointed appellate counsel for the filing of a frivolous appeal).

The text of Pa.R.A.P. 2751 would be rescinded and replaced. Subdivision (a) would establish a default deadline for applications for further costs pursuant to Pa.R.A.P. 2744. That deadline is tethered to Pa.R.A.P. 2572 and the time for remand of the record. Subdivision (b) would set forth the contents of an application. The contents of the application will permit the appellate court to either award further costs or remand the matter to the trial court for determination. Readers should note that Pa.R.A.P. 2761, insofar as it relates to entitled recovery of certain costs, would not be subject to the deadline.

Accordingly, the Committee invites all comments, objections, concerns, and suggestions regarding this proposed rulemaking.