

(The following is an entirely new rule.)

**Rule 550. Waiver of Fees and Costs Required under Chapter 27.**

The fees and costs required under Chapter 27 (Fees and Costs in Appellate Courts and on Appeal), Pa.R.A.P. 2701-2771, may be waived for a party by continuing an existing waiver or obtaining a new waiver, as provided in these rules.

**Comment:** A party continuing or obtaining a waiver is commonly described as “proceeding *in forma pauperis*.”

Relief from requirements for posting a supersedeas bond in civil matters must be sought under Pa.R.A.P. 1732 (application for stay or injunction pending appeal) and relief from bail requirements in criminal matters must be sought as prescribed by Pa.R.A.P. 1762 (release in criminal matters). Under Pa.R.A.P. 123 (applications for relief), applications for relief pursuant to Pa.R.A.P. 552 (new waiver of fees and costs for purposes of appeal) and other rules may be combined into a single document.

**Rule 551. Continuation of [In Forma Pauperis Status] Prior Waiver of Fees and Costs for Purposes of Appeal.**

- [(a) *General rule.*—A party who has been granted leave by a trial court to proceed in forma pauperis may proceed in forma pauperis in an appellate court upon filing with the clerk of the trial court two copies of a verified statement stating:**
- (1) The date on which the trial court entered the order granting leave to proceed in forma pauperis.**
  - (2) That there has been no substantial change in the financial condition of the party since such date.**
  - (3) That the party is unable to pay the fees and costs on appeal.**
- (b) *Effect on filing fees.*—A verified statement conforming to paragraph (a) of this rule, papers transmitted therewith, and papers subsequently tendered by a party which has filed such a verified statement, shall be filed by any clerk who has notice of such filing without the payment of any fee required under Chapter 27 (fees and costs in appellate courts and on appeal).**

**Official Note: Ordinarily the copies of the verified statement under this rule would be filed with the clerk of the trial court at the time copies of the notice of appeal are filed under Pa.R.A.P. 905 (filing of notice of appeal).]**

(The following is entirely new rule text.)

- (a) *General Rule.*** A previously granted waiver of fees and costs pursuant to Pa.R.J.A. 1990 (application to waive fees and costs) shall continue in an appeal of the same case in the appellate court.
- (b) *Verified Statement.*** A court may, by order or rule, require a party previously granted a waiver to file a verified statement setting forth:
  - (1) The date on which the trial court entered the order granting the waiver;**
  - (2) There has been no substantial change in the financial condition of the party since such date; and**
  - (3) The party is unable to pay the fees and costs on appeal.**

- (c) **Effect on Fees and Costs.** The waiver continued pursuant to subdivision (a) shall permit the filing of an appeal and any related documents without the payment of any fees or costs required under Chapter 27.

### **Historical Commentary**

**The following commentary is historical in nature and represents statements of the Committee at the time of rulemaking:**

#### **Explanatory Comment—1979**

In forma pauperis rules are revised to permit the appellate prothonotary to permit an appeal to be taken without payment of fee where the IFP documentation is completed promptly after demand therefor, to reflect the integration (by the amendments to Rules 905 and 907) of appellate docketing and the filing of the notice of appeal in the lower court, and to conform the procedures on nonpayment of required filing fees with the general requirements of Chapter 27.

**Rule 552. [Application to Trial Court for Leave to Appeal *In Forma Pauperis*]  
New Waiver of Fees and Costs for Purposes of Appeal.**

- [(a) *General rule.*—A party who is not eligible to file a verified statement under Pa.R.A.P. 551 (continuation of in forma pauperis status for purposes of appeal) may apply to the trial court for leave to proceed on appeal in forma pauperis. The application may be filed before or after the taking of the appeal, but if filed before the taking of the appeal, the application shall not extend the time for the taking of the appeal.**
- (b) *Accompanying verified statement.*—Except as prescribed in paragraph (d) of this rule, the application shall be accompanied by a verified statement substantially conforming to the requirements of Pa.R.A.P. 561 (form of IFP verified statement) showing in detail the inability of the party to pay the fees and costs provided for in Chapter 27 (fees and costs in appellate courts and on appeal).**
- (c) *No filing fee required.*—The clerk of the trial court shall file an application under this rule without the payment of any filing fee.**
- (d) *Automatic approval in certain cases.*—If the applicant is represented by counsel who certifies on the application or by separate document that the applicant is indigent and that such counsel is providing free legal service to the applicant, the clerk of the trial court shall forthwith enter an order granting the application. The clerk may accept and act on an application under this paragraph without an accompanying verified statement by the party.**
- (e) *Consideration and action by the court.*—Except as prescribed in paragraph (d) of this rule, the application and verified statement shall be submitted to the court, which shall enter its order thereon within 20 days from the date of the filing of the application. If the application is denied, in whole or in part, the court shall briefly state its reasons.**
- (f) *Certificate of compliance with Case Records Public Access Policy of the Unified Judicial System of Pennsylvania.*—An application filed under this Rule shall contain the certificate of compliance required by Pa.R.A.P. 127.**

**Official Note:** Extends the substance of former Supreme Court Rule 61(b) (part) and 61(c) (part) to the Superior and Commonwealth Courts and provides for action by the clerk in lieu of the court. It is anticipated that an application under

this rule ordinarily would be acted upon prior to the docketing of the appeal in the appellate court and the transmission of the record.

**Relief from requirements for posting a supersedeas bond in civil matters must be sought under Pa.R.A.P. 1732 (application for stay or injunction pending appeal) and relief from bail requirements in criminal matters must be sought as prescribed by Pa.R.A.P. 1762 (release in criminal matters), but under Pa.R.A.P. 123 (applications for relief) and applications under Pa.R.A.P. 552 (or 553) and other rules may be combined into a single document.]**

(The following is entirely new rule text.)

(a) **General Rule.**

(1) **Notice of Appeal.** An appellant who was not previously granted a waiver of fees and costs by the trial court may seek a waiver of fees and costs by filing an application or *praecipe* of counsel pursuant to Pa.R.J.A. 1990 in the trial court at the same time as the filing of the notice of appeal or any time thereafter during the pendency of the appeal. Any application to waive fees and costs filed with the appellate court shall contain the certificate of compliance required by Pa.R.A.P. 127 (confidential information and confidential documents; certification).

(2) **Petition or Other Initiating Document.** A petitioner who was not previously granted a waiver of fees and costs may seek a waiver of fees and costs by filing an application or *praecipe* of counsel pursuant to Pa.R.J.A. 1990 in the appellate court at the same time as the filing of the petition or other initiating document or any time thereafter. Any application to waive fees and costs filed with the appellate court shall contain the certificate of compliance required by Pa.R.A.P. 127 (confidential information and confidential documents; certification).

(b) **Remand.** An appellate court may remand an application and any supplemental information to a court of record for an *ex parte* hearing and decision. The decision by the court of record shall be rendered within 30 days of the date of the remand order unless otherwise directed by the appellate court.

(c) **Unemployment Compensation Cases.** Any fees and costs required under Chapter 27 shall be deemed waived for a petitioner in an

unemployment compensation matter without the need for an application or *praecipe*.

**Comment:** If an application or *praecipe* is not filed when an action is commenced, the action will be docketed but all applicable fees and costs will be required to be paid before proceeding. See *generally* Pa.R.A.P. 902 (manner of taking appeal).

In subdivision (a)(2), “other initiating document” includes, but is not limited to, a petition for allowance of appeal, a petition for permission to appeal, petition for review, a petition for specialized review, an application for leave to file original process, and an application for extraordinary relief. See Chapter 11 (petition for allowance of appeal), Chapter 13 (petition for permission to appeal), Chapter 15 (petition for review), Chapter 16 (petition for permission to appeal), Pa.R.A.P. 3307 (application for leave to file original process), and Pa.R.A.P. 3309 (application for extraordinary relief).

A record hearing is necessary when an application cannot be granted based upon the application and any supplemental information submitted to the appellate court. Subdivision (b) authorizes an appellate court to remand the application to a court of record, if necessary.

The judicial determination of an application is *ex parte*, see subdivision (b). As such, the party is not required to serve the application on any other party. The application and order are publicly accessible pursuant to the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania*.

### **Historical Commentary**

**The following commentary is historical in nature and represents statements of the Committee at the time of rulemaking:**

#### **Explanatory Comment—1979**

In forma pauperis rules are revised to permit the appellate prothonotary to permit an appeal to be taken without payment of fee where the IFP documentation is completed promptly after demand therefor, to reflect the integration (by the amendments to Rules 905 and 907) of appellate docketing and the filing of the notice of appeal in the lower court, and to conform the procedures on nonpayment of required filing fees with the general requirements of Chapter 27.

**Rule 553. [Application in Appellate Court] Obligation to Inform of Improved Financial Circumstances.**

- [(a) *General rule.*—A party who has been denied relief under Pa.R.A.P. 552, or who has been unable to file an application under such rule because the matter is an original action in the appellate court, or a petition for review or petition for specialized review proceeding relating to a government unit other than a court, or for any other reason, may apply to the appellate court for leave to proceed in forma pauperis in the appellate court.**
- [(b) *Form and procedure.*—An application under this rule shall be governed by Pa.R.A.P. 552 so far as it may be applied.**

**Official Note: Unlike the prior rule, this rule makes clear that an application may be made in the appellate court even if it has been denied in the trial court.]**

(The following is entirely new rule text.)

A party or counsel receiving a waiver of fees and costs has a continuing obligation to inform the court of an improvement in the party's financial circumstances that would enable the party to pay any waived fees and costs.

**Comment:** For eligibility of a waiver, see Pa.R.J.A. 1990(b).

**Rule 554. [Effect of Application and Approval Thereof] Appellate Review.**

- [(a) *Appeal taken before application filed.*—If an application under Rule 552 (application to lower court for leave to appeal in forma pauperis) or Rule 553 (application in appellate court) is not filed before an appeal is taken, all applicable filing fees which are due before such an application is filed shall be treated as unpaid for purposes of Chapter 27 (fees and costs in appellate courts and on appeal).**
  
- (b) *Appeal taken before application acted upon.*—If an application under Rule 552 or Rule 553 has been filed but has not been acted upon any clerk who has notice of such filing shall accept any papers relating to the appeal without the payment of any fees required under Chapter 27. Transmission of a copy of the application under Rule 552 pursuant to Rule 905(b) (transmission to appellate court) or otherwise shall constitute notice to an appellate prothonotary of the pendency thereof for the purposes of this rule. If the application under Rule 552 or Rule 553 is thereafter denied the applicant shall pay all applicable filing fees required under Chapter 27.**
  
- (c) *Appeal taken after application granted.*—If an appeal is taken after an application under Rule 552 has been granted, the party shall proceed under Rule 551 (continuation of in forma pauperis status for purposes of appeal), except that a copy of the order granting the application may be substituted for the verified statement required by Rule 551.**

**Official Note: In addition to its elimination of the requirement for the payment of fees, IFP status eliminates the requirement of reproducing the record, see Rule 2151(b) (in forma pauperis), and reduces the number of copies of the brief required to be served and filed. See Rule 2187(c) (in forma pauperis).]**

(The following is entirely new rule text.)

Appellate review of an application to waive fees and costs denied in a court of record shall be initiated by petition for specialized review in accordance with Pa.R.A.P. 1601-1606, subject to the procedures set forth in Pa.R.A.P. 1614.

**Historical Commentary**

**The following commentary is historical in nature and represents statements of the Committee at the time of rulemaking:**

### **Explanatory Comment—1979**

In forma pauperis rules are revised to permit the appellate prothonotary to permit an appeal to be taken without payment of fee where the IFP documentation is completed promptly after demand therefor, to reflect the integration (by the amendments to Rules 905 and 907) of appellate docketing and the filing of the notice of appeal in the lower court, and to conform the procedures on nonpayment of required filing fees with the general requirements of Chapter 27.

**Rule 555. [Obligation to Inform of Improved Financial Circumstances]  
Reserved.**

**[A party permitted to proceed in forma pauperis has a continuing obligation to inform the appellate court of improvement in the financial circumstances of the party. Counsel for a party shall likewise be under a continuing obligation to inform the appellate court of such improvement within a reasonable time after counsel learns of it.]**

**Note: Extends former Supreme Court Rule 61(e) to the Superior and the Commonwealth Courts.]**

**Rule 556. [Unemployment Compensation Cases] Reserved.**

**[A claimant-appellant in an unemployment compensation matter may proceed in forma pauperis without applying for leave to do so. The petition for review, papers transmitted therewith and papers subsequently tendered by the party in such a matter shall be filed by the clerk without the payment of any fee required under Chapter 27 (fees and costs in appellate courts and on appeal).**

**Note: A claimant-appellant in a workers' compensation matter, who was within the scope of the former version of this Rule, remains free to apply for leave to proceed in forma pauperis pursuant to Rule 553.]**

**Rule 561. [Form of IFP Verified Statement] Reserved.**

**[A verified statement under this chapter in support of an application for leave to proceed in forma pauperis shall be in substantially the following form:**

**[Caption]**

**\_\_\_\_\_ (Insert name of applicant) states under the penalties provided by 18 Pa.C.S. § 4904 (unsworn falsification to authorities) that:**

- 1. I am the \_\_\_\_\_ (plaintiff or defendant) in the above action and because of my financial condition am unable to pay the following fees and costs:  
(state with particularity the relief requested, e.g., appellate filing fees, costs of reproducing records or briefs, or filing of supersedeas security if irreparable harm would result if not waived.)**
- 2. My responses to the questions below relating to my ability to pay the fees and costs of prosecuting an appeal are true and correct.**
  - (a) Are you presently employed?**
    - (1) If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer.**
    - (2) If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received.**
  - (b) Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, pensions, annuities, social security benefits, support payments or other source?**

**If the answer is yes, describe each source of income, and state the amount received from each during the past twelve months.**
  - (c) Do you own any cash or checking or savings account?**

**If the answer is yes, state the total amount of the items owned.**

- (d) Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

If the answer is yes, describe the property and state its approximate value and the amount of any encumbrances.

- (e) List the persons, if any, who are dependent upon you for support and state your relationship to those persons.

- (f) List all your debts and obligations.

3. I understand that a false statement or answer to any question in this verified statement will subject me to the penalties provided by law (misdemeanor of the second degree).

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Signature of Applicant

Note: Extends former Supreme Court Rule 61 (form) to the Superior and Commonwealth Courts and makes no change in substance other than the substitution of the statutory verification for an affidavit.]

**Rule 905. Filing of Notice of Appeal.**

**(a) Filing with [clerk] Clerk.**

- (1) Two copies of the notice of appeal, the order for transcript, if any, and the proof of service required by Pa.R.A.P. 906, shall be filed with the clerk of the trial court. If the appeal is to the Supreme Court, the jurisdictional statement required by Pa.R.A.P. 909 shall also be filed with the clerk of the trial court.
- (2) If the appeal is a children's fast track appeal, a concise statement of errors complained of on appeal as described in Pa.R.A.P. 1925(a)(2) shall be filed with the notice of appeal and served on the trial judge in accordance with Pa.R.A.P. 906(a)(2).
- (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.--] 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 and all attachments, as well as a receipt showing collection of any docketing fee in the appellate court required under **[paragraph] 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 the clerk shall also 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

**[subparagraph] subdivision (a)(2) [of this rule].** The clerk shall also transmit with such documents:

- (1) copies of all orders for transcripts relating to orders on appeal;
  - (2) a copy of any verified statement, application, or other document filed under **Pa.R.A.P. 551-561 relating to *in forma pauperis* Pa.R.J.A. 1990 and Pa.R.A.P. 550-554 relating to a waiver of fees and costs**; and
  - (3) if the appeal is to the Supreme Court, the jurisdictional statement required by Pa.R.A.P. 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.

**[Note:] Comment:** To preserve a mailing date as the filing date for an appeal as of right from an order of the Commonwealth Court, **[see] see** Pa.R.A.P. 1101(b).

To determine the number of copies to be filed, see Pa.R.A.P. 124(c) and its Official Note. The appellate court portion of the filing fee will be transmitted pursuant to regulations adopted under 42 Pa.C.S. § 3502.

### **Historical Commentary**

**The following commentary is historical in nature and represents statements of the Committee at the time of rulemaking:**

#### **Explanatory Comment—1979**

The appellate prothonotaries have reported that on numerous occasions an appeal is taken in the lower court, the appellant fails to docket the appeal, the appellee fails to move for dismissal under Rule 1971, and a record arrives in the appellate court without prior notice to the court. Hereafter a duplicate set of appeal papers will be filed in the lower court and the clerk of the lower court will collect the appellate docketing fee and notify the appellate prothonotary of the taking of an appeal by transmitting one copy of the appeal papers. The appeal will thus be self-docketing and Rule 1971 is rescinded as obsolete. Among other things, this procedure will facilitate the sua sponte dismissal of out of time appeals, since the appellate court will immediately know the date the appeal was taken. In order to permit the appellate prothonotary to contact the parties or counsel, a new requirement is added that copies of the proof of service be furnished to the clerk of the lower court at the time the appeal is filed. A related temporary provision governing the

internal transmission of the docketing fee to the appellate prothonotary is included in the Order adopting the amendments.

**Rule 1612. Review of Out-of-Home Placement in Juvenile Delinquency.**

- (a) **General [rule.--] Rule.** If a court under the Juvenile Act, 42 Pa.C.S. §§ 6301 *et seq.*, enters an order after an adjudication of delinquency of a juvenile pursuant to Pa.R.J.C.P. 409(A)(2) and 515, which places the juvenile in an out-of-home overnight placement in any agency or institution that shall provide care, treatment, supervision, or rehabilitation of the juvenile, the juvenile may file a petition for specialized review. The petition shall be filed within ten days of the order.
- (b) **Content.[--]**
- (1)** A petition for specialized review under **[paragraph] subdivision (a)** shall contain:
- (i) a specific description of any determinations made by the juvenile court;
  - (ii) the matters complained of;
  - (iii) a concise statement of the reasons why the juvenile court abused its discretion in ordering the out-of-home placement;
  - (iv) the proposed terms and conditions of an alternative disposition for the juvenile;
  - (v) a request that the official court reporter for the juvenile court transcribe the notes of testimony as required by **[paragraph] subdivision (g) [of this rule]**; and
  - (vi) the certificate of compliance required by Pa.R.A.P. 127.
- (2)** Any order(s) and opinion(s) relating to the out-of-home placement and the transcript of the juvenile court's findings shall be attached as appendices.
- (3)** The petition shall be supported by a certificate of counsel to the effect that it is presented in good faith and not for delay.

- (c) **Scope of [review] Review.**
- (1) The reviewing court shall not consider any challenge to the juvenile court's selection of a specific agency or specific institution as the site of the out-of-home placement and instead may consider only a challenge to the fact that the placement is out-of-home.
  - (2) The reviewing court shall not consider any challenge to the underlying adjudication of delinquency.
- (d) **Response.[--]Any response shall be filed within ten days of service of the petition, and no other pleading is authorized.**
- (e) **Service.[--]A copy of the petition for specialized review and any answer thereto shall be served on the judge of the juvenile court and the official court reporter for the juvenile court. All parties in the juvenile court shall be served in accordance with Pa.R.A.P. 121.**
- (f) **Opinion of [juvenile court.--] Juvenile Court.** Upon receipt of a copy of a petition for specialized review under **[paragraph] subdivision** (a), if the judge who made the disposition of the out-of-home placement did not state the reasons for such placement on the record at the time of disposition pursuant to Pa.R.J.C.P. 512(D), the judge shall file of record a brief statement of the reasons for the determination or where in the record such reasons may be found, within five days of service of the petition for specialized review.
- (g) **Transcription of Notes of Testimony.[--]Upon receipt of a copy of a petition for specialized review under **[paragraph] subdivision** (a), the court reporter shall transcribe the notes of testimony and deliver the transcript to the juvenile court within five business days. If the transcript is not prepared and delivered in a timely fashion, the juvenile court shall order the court reporter to transcribe the notes and deliver the notes to the juvenile court, and may impose sanctions for violation of such an order. **[If the juvenile is proceeding *in forma pauperis*] If a waiver of fees and costs has been granted**, the juvenile shall not be charged for the cost of the transcript.**
- (h) **[Non-waiver of objection to placement.--] Non-Waiver of Objection to Placement.** A failure to seek review under this rule of the out-of-home placement shall not constitute a waiver of the juvenile's right to seek review

of the placement in a notice of appeal filed by the juvenile from a disposition after an adjudication of delinquency.

**[Note:] Comment:** This rule provides a mechanism for the expedited review of an order of out-of-home placement entered pursuant to Pa.R.J.C.P. 515. Pa.R.J.C.P. 512(D) requires the judge who made the disposition of an out-of-home placement to place the reasons for the out-of-home placement on the record at the time of the disposition, and **[paragraph] subdivision** (f) of this rule is applicable only in the exceptional circumstance where the judge who made the disposition of an out-of-home placement fails to comply with Pa.R.J.C.P. 512(D). The Juvenile Act, 42 Pa.C.S. § 6352, sets forth the considerations for a dispositional order following an adjudication of delinquency and the alternatives for disposition. The standard for review of a dispositional order is an abuse of discretion. See *In the Interest of A.D.*, 771 A.2d 45 (Pa. Super. 2001) (*en banc*).

(The following is an entirely new rule.)

**Rule 1614. Review of Orders Denying Waiver of Fees and Costs.**

Appellate review of an order denying an application for a waiver of fees and costs by a court of record pursuant to Pa.R.J.A. 1990 shall be initiated by petition for specialized review pursuant to Pa.R.A.P. 1601-1606 subject to the following:

- (a) **Time for Filing.** A petition for specialized review shall be filed within 30 days after the entry of the order denying an application for the waiver of fees and costs by a court of record. The filing office shall docket the legal action and the application or *praecipe* without the party paying the filing fee.
- (b) **Ex Parte Review.** Appellate review shall be conducted in an *ex parte* manner. As such, no other party shall be named as respondent, only the court of record denying the application shall be served the petition, and no response to the petition by any other party shall be permitted.
- (c) **Contents.** In addition to the content requirements of Pa.R.A.P. 1603(c)(1)-(c)(5) and (c)(7)-(c)(8), the requirement of Pa.R.A.P. 1603(c)(6) shall be satisfied with a concise statement of the reasons why the court of record that denied the application erred.

**Comment:** See Pa.R.A.P. 701 (petitions for specialized review shall be filed in the appellate court having jurisdiction of final orders in such matters).

Subdivision (b) continues the *ex parte* procedure of Pa.R.J.A. 1990(e)(4) to appellate review. The proscriptions of subdivision (b) are intended to limit the application of Pa.R.A.P. 1603(a) (captions and parties), Pa.R.A.P. 1604 (service), and Pa.R.A.P. 1605 (response to petition).

See Pa.R.A.P. 1701(e) for the ability to seek a stay or supersedeas of a trial court order under Chapter 17 upon the filing of a petition for specialized review.

To determine the number of copies to be filed, see Pa.R.A.P. 124(c) and its Official Note.

## Rule 1701. Effect of Appeal Generally.

- (a) **General [rule.--] Rule.** Except as otherwise prescribed by these rules, after an appeal is taken or review of a quasijudicial order is sought, the trial court or other government unit may no longer proceed further in the matter.
- (b) **Authority of a [trial court or other government unit after appeal.--] Trial Court or Other Government Unit After Appeal.** After an appeal is taken or review of a quasijudicial order is sought, the trial court or other government unit may:
  - (1) Take such action as may be necessary to preserve the *status quo*, correct formal errors in papers relating to the matter, cause the record to be transcribed, approved, filed, and transmitted, grant **[leave to appeal in forma pauperis] a waiver of fees and costs for purposes of appeal**, grant *supersedeas*, and take other action permitted or required by these rules or otherwise ancillary to the appeal or petition for review proceeding.
  - (2) Enforce any order entered in the matter, unless the effect of the order has been superseded as prescribed in this chapter.
  - (3) Grant reconsideration of the order which is the subject of the appeal or petition, if:
    - (i) an application for reconsideration of the order is filed in the trial court or other government unit within the time provided or prescribed by law; and
    - (ii) an order expressly granting reconsideration of such prior order is filed in the trial court or other government unit within the time prescribed by these rules for the filing of a notice of appeal or petition for review of a quasijudicial order with respect to such order, or within any shorter time provided or prescribed by law for the granting of reconsideration.

A timely order granting reconsideration under this **[paragraph] subdivision** shall render inoperative any such notice of appeal or petition for review of a quasijudicial order theretofore or thereafter filed or docketed with respect to the prior order. The petitioning party shall, and any party may, file a *praecipe* with the prothonotary of any court in which such an inoperative notice or petition is filed or docketed and the prothonotary shall note on the docket that such

notice or petition has been stricken under this rule. **[Where] If** a timely order of reconsideration is entered under this **[paragraph] subdivision**, the time for filing a notice of appeal or petition for review begins to run anew after the entry of the decision on reconsideration, whether or not that decision amounts to a reaffirmation of the prior determination of the trial court or other government unit. No additional fees shall be required for the filing of the new notice of appeal or petition for review.

- (4) Authorize the taking of depositions or the preservation of testimony where required in the interest of justice.
  - (5) Take any action directed or authorized by an appellate court.
  - (6) Proceed further in any matter in which a non-appealable interlocutory order has been entered, notwithstanding the filing of a notice of appeal or a petition for review of the order.
- (c) **Limited to [matters in dispute.--] Matters in Dispute.** **[Where] If** only a particular item, claim, or assessment adjudged in the matter is involved in an appeal, or in a petition for review proceeding relating to a quasijudicial order, the appeal or petition for review proceeding shall operate to prevent the trial court or other government unit from proceeding further with only such item, claim, or assessment, unless otherwise ordered by the trial court or other government unit or by the appellate court or a judge thereof as necessary to preserve the rights of the appellant.
- (d) **Original [jurisdiction petitions for review.--] Jurisdiction Petitions for Review.** The filing of an original jurisdiction petition for review shall not affect the power or authority of the government unit to proceed further in the matter, but the government unit shall be subject to any orders entered by the appellate court or a judge thereof pursuant to this chapter.
- (e) **Petitions for [specialized review--] Specialized Review.** The filing of a petition for specialized review under Chapter 16 shall not affect the power or authority of the trial court or other government unit to proceed further in the matter, but the provisions of this chapter relating to *supersedeas* of the order of the trial court or other government unit shall apply.

**[Note:] Comment:** The following statutory provisions relate to *supersedeas* generally:

42 Pa.C.S. § 702(c) (*supersedeas*) provides that, except as otherwise prescribed by general rule, a petition for permission to appeal under that section shall not stay the

proceedings before the trial court or other government unit, unless the trial court or other government unit or the appellate court or a judge thereof shall so order. See *also* Pa.R.A.P. 1313 (effect of filing petition).

42 Pa.C.S. § 5105(e) (*supersedeas*) provides that an appeal shall operate as a *supersedeas* to the extent and upon the conditions provided or prescribed by law, and that unless a *supersedeas* is entered, no appeal from an order concerning the validity of a will or other instrument or the right to the possession of or to administer any real or personal property shall suspend the powers or prejudice the acts of the appointive judicial officer, personal representative, or other person acting thereunder.

**[Paragraph] Subdivision** (a) codifies a well-established principle. See, for example, *Merrick Estate*, 247 A.2d 786, 787 (Pa. 1968); *Corace v. Balint*, 210 A.2d 882, 889 (Pa. 1965). Pa.R.A.P. 5102 saves the provisions of Section 426 of the Pennsylvania Workers' Compensation Act, 77 P.S. § 871, which permit a rehearing by the agency under certain circumstances during the pendency of an appeal. Pa.R.A.P. 311(h) (further proceedings in trial court) provides that **[paragraph] subdivision** (a) is not applicable where an appeal as of right is taken from interlocutory orders relating to attachments, custodianships, receiverships, and injunctions, and that when such matters are appealed, the trial court may nonetheless proceed with the underlying case.

**[Subparagraph] Subdivision** (b)(1) sets forth an obvious power of the trial court or other government unit under these rules to take actions to preserve the *status quo* and to clarify or correct an order or verdict. The power to clarify or correct does not extend to substantive modifications. See *Pa. Indus. Energy Coalition v. Pennsylvania PUC*, 653 A.2d 1336, 1344-45 (Pa. Cmwlth. 1995), *aff'd*, 670 A.2d 1152 (Pa. 1996). Examples of permissible actions to preserve the *status quo* are those “auxiliary to the appellate process, such as a supersedeas or injunction.” *Id.* Examples of permissible corrections are “non-substantial technical amendments to an order, changes in the form of a decree, and modification of a verdict to add prejudgment interest.” *Id.* at 1344. “Such actions have no effect on the appeal or petition for review and cannot prompt a new appealable issue.” *Id.* at 1345.

Among the permissible “corrections” is the addition or modification of contractual or statutory prejudgment interest, which is an element of contract damages. In such cases, the award of such interest is mandatory and not discretionary. *TruServ Corp. v. Morgan's Tool & Supply Co. Inc.*, 39 A.3d 253, 264 (Pa. 2012). Accordingly, even though the amount of a verdict is changed by the addition of prejudgment interest, the verdict has been “corrected” and not “modified.”

The Supreme Court has held that, so long as a motion for attorneys' fees has been timely filed, a trial court may act on that motion under **[subparagraph] subdivision** (b)(1) even after an appeal has been taken. *Samuel-Bassett v. Kia Motors Am., Inc.*, 34 A.3d

1, 48 (Pa. 2011). Thus, unlike the court actions discussed in *Pennsylvania Industrial Energy Coalition*, an award of attorneys' fees constitutes a separately appealable order that would be reviewable upon filing of a timely separate notice of appeal, measured from the date the fee award order was entered.

Generally an appeal does not operate as a *supersedeas* of an order of a government unit.

**[Subparagraph] Subdivision** (b)(3) is intended to address the troublesome question of the effect of an application for reconsideration on the appeal process. By statute, a trial court has only 30 days from the entry of a final order to “modify or rescind” its order. 42 Pa.C.S. § 5505; see also *Key Automotive Equip. Specialists v. Abernethy*, 636 A.2d 1126, 1128 (Pa. Super. 1994) (recognizing that the statute does not apply to limit reconsideration of interlocutory orders). Under this rule, an express determination by a trial court or other government unit within 30 days that it is reconsidering its earlier order satisfies the statutory requirement; the trial court or other government unit does not need to grant the relief sought in the application for reconsideration within the 30 days. The 30-day period protects against the risk that someone could take a “snap” appeal and foreclose reconsideration, but, because the clock is running on the appeal period and the period for reconsideration simultaneously, filing the notice of appeal at the same time as or shortly after the motion for reconsideration will protect against waiver of the appeal if the trial court or other government unit fails to act.

**[Subparagraph] Subdivision** (b)(3) provides that: “[**[W]here**] **if** a timely order of reconsideration is entered under this **[paragraph] subdivision**, the time for filing a notice of appeal or petition for review begins to run anew after entry of the decision on reconsideration.” Pursuant to **[Pa.R.C.P.] Pa.R.Civ.P.** 1930.2, if reconsideration from a domestic relations order has been timely granted, a reconsidered decision or an order directing additional testimony must be entered within 120 days of the entry of the order granting reconsideration or the motion shall be deemed denied. See **[Pa.R.C.P.] Pa.R.Civ.P.** 1930.2(c), (d), and (e). The date from which the appeal period will be measured following a reconsidered decision in a domestic relations matter is governed by **[Pa.R.C.P.] Pa.R.Civ.P.** 1930.2(d) and (e).

Pa.R.Crim.P. 720 and 721 set fixed times for reconsideration of a decision on a defendant's post-sentence motion or on a Commonwealth motion to modify sentence, and reconsideration of a deemed denial is prohibited. The judge may not vacate sentence or “grant reconsideration” pursuant to **[subparagraph] subdivision** (b)(3) in order to extend the time limits for disposition of those motions.

**[Paragraph] Subdivisions** (d) and (e) explain that original jurisdiction petitions for review and petitions for specialized review do not come within Pa.R.A.P. 1701;

accordingly, any stay or *supersedeas* must be sought under other provisions of Chapter 17.

**[Subparagraph] Subdivision** (b)(5) recognizes the authority that an appellate court has to retain jurisdiction while asking a trial court or other government unit to engage in factfinding, an authority that is particularly important when questions arise in an appellate court about the course of events in the trial court or when representation by counsel becomes an issue on appeal.

### **Historical Commentary**

**The following commentary is historical in nature and represents statements of the Committee at the time of rulemaking:**

#### **Explanatory Comment—1979**

The note is expanded to describe the effect of failure of a lower court or other government unit to grant reconsideration within the appeal period.

**Rule 2151. Consideration of Matters on the Original Record without the Necessity of Reproduction.**

- (a) **General [rule] Rule.** An appellate court may by rule of court applicable to all cases, or to classes of cases, or by order in specific cases under **[Subdivision] subdivision** (d) of this rule, dispense with the requirement of a reproduced record and permit appeals and other matters to be heard on the original record, with such copies of the record, or relevant parts thereof, as the court may require.
- (b) **[In forma pauperis. If leave to proceed in forma pauperis has been] Waiver of Fees and Costs. If a waiver of fees and costs is** granted to a party, such party shall not be required to reproduce the record.
- (c) **Original [hearing cases] Hearing Cases.** When under the applicable law the questions presented may be determined in whole or in part upon the record made before the appellate court, a party shall not be required to reproduce the record.
- (d) **On [application to the court] Application to the Court.** Any appellant may within 14 days after taking an appeal file an application to be excused from reproducing the record for the reason that the cost thereof is out of proportion to the amount involved, or for any other sufficient reason. Ordinarily leave to omit reproduction of the record will not be granted in any case where the amount collaterally involved in the appeal is not out of proportion to the reproduction costs.

**[Note:] Comment:** Based on former Supreme Court Rules 35D, 35E and 61(f), former Superior Court Rules 51 (last sentence) and 52 and former Commonwealth Court Rules 81, 110B and 111A. Subdivision (a) is new and is included in recognition of the developing trend toward sole reliance on the original record.

See **[Rule] Pa.R.A.P. 2189** for **the** procedure in cases involving the death penalty.

**Rule 2187. Number of Copies to be Filed and Served.**

- (a) **Filing.**~~---~~To determine the number of copies to be filed, see Pa.R.A.P. 124(c) and its Official Note.
  
- (b) **Service.**
  - (1) **[General rule.--] General Rule.** A party shall serve one copy of its definitive brief and reproduced record on every other party separately represented.
  
  - (2) **[In forma pauperis.—] Waiver of Fees and Costs.** A party **[proceeding in forma pauperis] granted a waiver of fees and costs** shall only serve one copy of each definitive brief on every other party separately represented. Pursuant to Pa.R.A.P. 2151(b), a party **[proceeding in forma pauperis] granted a waiver of fees and costs** is not required to reproduce the record.
  
  - (3) **[Advance text of briefs.--] Advance Text of Briefs.** If the record is being reproduced pursuant to Pa.R.A.P. 2154(b) (large records), one copy of each brief without definitive reproduced record pagination shall be served on each party separately represented. Proof of service showing compliance with this rule, but not including the advance text of the brief, shall be filed with the prothonotary of the appellate court.

**[Note:] Comment:** At the request of the appellate prothonotaries, it will no longer be necessary to file advance copies (e.g., page proof) of the brief when service is made on the opposing party, but the requirement for the filing of a proof of such service is retained.

**[See] See** Pa.R.A.P. 2189 for **the** procedure in cases involving the death penalty.

**Rule 2189. Reproduced Record in Cases Involving the Death Penalty.**

- (a) **Number of [copies.--] Copies.** Any provisions of these rules to the contrary notwithstanding, in all cases involving the death penalty, the entire record shall be reproduced and filed with the prothonotary of the Supreme Court. To determine the number of copies to be filed, see Pa.R.A.P. 124(c) and its Official Note.
- (b) **Costs of [reproduction.--] Reproduction.** The appellant, or, in cases where the appellant has been **[permitted to proceed in *forma pauperis*] granted a waiver of fees and costs**, the county where the prosecution was commenced, shall bear the cost of reproduction.
- (c) **Prior [rules superseded.--] Rules Superseded.** To the extent that this rule conflicts with provisions of Pa.R.A.P. 2151(a), (b) (relating to necessity of reproduction of records); Pa.R.A.P. 2152 (relating to content of reproduced records); Pa.R.A.P. 2154(a) (relating to designation of contents of reproduced records); and Pa.R.A.P. 2155 (allocating costs of reproduction of records), the same are superseded.

**[Note:] Comment:** The death penalty statute, 42 Pa.C.S. § 9711, provides that the Supreme Court Prothonotary must send a copy of the lower court record to the Governor after the Supreme Court affirms a sentence of death. The statute does not state who is responsible for preparing the copy. This amendment provides for preparation of the Governor's copy of the record before the record is sent to the Supreme Court.

**Rule 2521. Entry of Judgment or Other Orders.**

- (a) **General [rule.] Rule.** Subject to the provisions of [Rule] Pa.R.A.P. 108 (date of entry of orders), the notation of a judgment or other order of an appellate court in the docket constitutes entry of the judgment or other order. The prothonotary of the appellate court shall prepare, sign, and enter the judgment following receipt of the opinion of the court unless the opinion is accompanied by an order signed by the court, or unless the opinion directs settlement of the form of the judgment, in which event the prothonotary shall prepare, sign, and enter the judgment following settlement by the court. If a judgment is rendered without an opinion or an order signed by the court, the prothonotary shall prepare, sign, and enter the judgment following instruction from the court. The prothonotary shall, on the date a judgment or other order is entered, send by first class mail to all parties a copy of the opinion, if any, or of the judgment or other order if no opinion was written, and notice of the date of entry of the judgment or other order.
- (b) **Notice in [death penalty cases.] Death Penalty Cases.** Pursuant to Pa.R.Crim.P. 900(B), in all death penalty cases upon the Supreme Court's affirmance of the judgment of a death sentence, the prothonotary shall include in the mailing required by subdivision (a) of this [Rule] rule the following information concerning the Post Conviction Relief Act and the procedures under Chapter 9 of the Rules of Criminal Procedure. For the purposes of this notice, the term "parties" in subdivision (a) shall include the defendant, the defendant's counsel, and the attorney for the Commonwealth.
- (1) A petition for post-conviction collateral relief must be filed within one year of the date the judgment becomes final, except as otherwise provided by statute.
- (2) As provided in 42 Pa.C.S. § 9545(b)(3), a judgment becomes final at the conclusion of direct review, which includes discretionary review in the Supreme Court of the United States and the Supreme Court of Pennsylvania, or at the expiration of time for seeking the review.
- (3)[(A) **If the defendant fails to file a petition within the one-year limit, the action may be barred. See 42 Pa.C.S. § 9545(b).**
- (B) **Any issues that could have been raised in the post-conviction proceeding, but were not, may be waived. See 42 Pa.C.S. § 9544(b).]**

**If the defendant fails to file a petition within the one-year limit, the action may be barred. See 42 Pa.C.S. § 9545(b). Any issues that could have been raised in the post-conviction proceeding, but were not, may be waived. See 42 Pa.C.S. § 9544(b).**

- (4) Pursuant to **[Rule] Pa.R.Crim.P. 904 (Entry of Appearance and Appointment of Counsel; [*In Forma Pauperis*] Waiver of Fees and Costs)**, the trial judge will appoint new counsel for the purpose of post-conviction collateral review, unless:

**[(A)](i)** the defendant has elected to proceed *pro se* or waive post-conviction collateral proceedings, and the judge finds, after a colloquy on the record, that the defendant is competent and the defendant's election is knowing, intelligent and voluntary;

**[(B)](ii)** the defendant requests continued representation by original trial counsel or direct appeal counsel, and the judge finds, after a colloquy on the record, that the petitioner's election constitutes a knowing, intelligent and voluntary waiver of a claim that counsel was ineffective; or

**[(C)](iii)** the judge finds, after a colloquy on the record, that the defendant has engaged counsel who has entered, or will promptly enter, an appearance for the collateral review proceedings.

**[Note:] Comment:** See Pa.R.Crim.P. 900(B), which also includes the identical requirement in death penalty cases that notice of the information concerning the statutory time limitations for filing petitions for post-conviction collateral relief and the right to counsel enumerated in subdivision (b) of this rule be sent by the prothonotary with the order or opinion sent pursuant to subdivision (a) of this rule. Because of the importance of this notice requirement to judges, attorneys and defendants, the requirement that the Supreme Court Prothonotary mail the aforesaid notice has been included in both the Rules of Criminal Procedure and the Rules of Appellate Procedure.

**Rule 2701. Payment of Fees Required.**

- (a) **General [rule.] Rule.** A person upon filing any paper shall pay any fee therefor prescribed by law.
- (b) **Appeals by [allowance or permission; petitions for review.] Allowance or Permission and Petitions for Review.** The fee for filing a petition for allowance of appeal, a petition for permission to appeal or a petition for review shall, except as otherwise required by statute, be the same as the fee payable under **[Rule] Pa.R.A.P. 907** (docketing of appeal). Where a petition for allowance of appeal or a petition for permission to appeal has been filed under these rules and is granted, no additional fee, except as otherwise required by statute, shall be payable upon docketing the appeal in the appellate court.
- (c) **Temporary [fee for filing notice of appeal.] Fee for Filing Notice of Appeal.** Until otherwise provided by law, the clerk upon filing a notice of appeal under **[Rule] Pa.R.A.P. 905** (filing of notice of appeal) shall be entitled to receive an amount equal to the fee otherwise payable, if any, upon the filing of a writ issued out of the Supreme Court of Pennsylvania evidencing the fact that an appeal has been taken to the Supreme Court.

**[Note:] Comment:** Former Supreme Court Rule 70 (first sentence), former Superior Court Rule 61 and former Commonwealth Court Rule 117 (first sentence) **[literally]** required the payment of the fee in advance of filing. In view of the filing by mail procedures instituted by these rules, a limited opportunity is afforded to permit the prompt correction of the failure to include a check with the letter of transmittal or the failure to draw the check in the proper amount.

A party who intends to **[proceed in forma pauperis] seek a waiver of fees and costs** should transmit a copy of **[his application under Rule 552 (application to lower court for leave to appeal in forma pauperis) to the appellate prothonotary so that Rule 554(b) (appeal taken before application acted on)] the application filed under Pa.R.A.P. 552 (new waiver of fees and costs for purposes of appeal) to the appellate prothonotary so that Pa.R.A.P. 1614(d)(3)** will operate to defer the requirement for fees in the appellate court. **See also Pa.R.A.P. 551(a) (continuation of waiver).**

The fees in appellate courts are temporarily continued by Section 24(a) of the Judiciary Act of 1976, act of July 9, 1976 (P.L. 586, No. 142), by reference to the former provisions of law, which were as follows: The fees of the Commonwealth Court were prescribed by 204 Pa.Code § 155.203. The docketing fee in the Supreme and Superior Court was fixed at \$12 by the act of May 19, 1897 (P.L. 67, No. 53), § 3 (former 12 P.S.

§ 1135), and the fee for issuing writs for the enforcement of the duty to file the records in such courts and the fee for filing a petition for allowance of appeal from the Superior Court was fixed by § 18 (second and third sentences) of the act (former 12 P.S. § 1156) at \$3.

### **Historical Commentary**

**The following commentary is historical in nature and represents statements of the Committee at the time of rulemaking:**

#### **Explanatory Comment—1979**

Language implying that the clerk or prothonotary of a court as a matter of course may extend credit for a filing fee is deleted. Such credit may be extended in extraordinary circumstances, however, as was the practice prior to 1976.

**Rule 3707. Preargument Matters; Applications and Motions.**

Prior to filing an application or a motion with the Court, a party shall confer with all counsel of record and any unrepresented parties to determine their position. Applications and motions shall include a paragraph indicating whether the other parties concur with the relief sought. If the other party does not respond to an inquiry regarding concurrence within a reasonable time, the party filing the application or motion shall set forth in detail the efforts made to obtain a response and that no response was received. This requirement shall not apply to preliminary objections, motions for judgment on the pleadings, motions for summary judgment or summary relief, motions to dismiss or quash, petitions to open or strike judgments, applications for **[supersedeas, petitions to proceed in forma pauperis]** supersedeas, applications to waive fees and costs, motions for admission *pro hac vice*, and motions for post-trial relief. This requirement also shall not apply to actions involving incarcerated individuals or fugitives.

**Rule 3804. Transcription of Notes of Testimony.**

Upon receipt of a notice of appeal to the Superior Court, the court reporter shall transcribe the notes of testimony and deliver the transcript to the Clerk of the Court of Common Pleas by 5:00 p.m. on the following business day. If the transcript is not prepared and delivered in a timely fashion, the appellate court may order the court reporter to transcribe the notes and deliver the notes to the appellate court and may impose sanctions for violation of such an order. It being presumed that a pregnant woman under Section 3206 of the Abortion Control Act **[is proceeding in forma pauperis], 18 Pa.C.S. § 3206, has been granted a waiver of fees and costs, accordingly,** she shall not be charged for the cost of the transcript. Chapter 19 of the Rules of Appellate Procedure shall not otherwise apply to appeals under this Chapter.