

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

Amendment of Pa.R.A.P. 102, 108, and 904

On July 26, 2024, the Supreme Court of Pennsylvania adopted amendments to Pennsylvania Rules of Appellate Procedure 102, 108, 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 received a request to amend Pa.R.A.P. 108 to establish the date of entry of orphans' court orders for purposes of computing any time period involving an orphans' court order under the Pennsylvania Rules of Appellate Procedure. Relevant to the request, Pa.R.A.P. 108(b) provides that the date of entry of an order for civil cases is the date on which the clerk of the trial court makes a notation on the docket that notice of the entry of the order was given as required by Pa.R.Civ.P. 236. Additional provisions address emergency appeals and criminal orders.

In its initial consideration, the Committee assumed that Pa.R.A.P. 108 was silent on the date of entry of orders in the orphans' court because, when the relevant provisions of Pa.R.A.P. 108 were drafted, the Pennsylvania Rules of Orphans' Court Procedure themselves were silent on the matter of notice of an adjudication or court order. Notably, however, former Pa.R.O.C.P. 3.1 required conformity with the Pennsylvania Rules of Civil Procedure when the Rules of Orphans' Court Procedure did not provide guidance on a particular matter. Therefore, appellants in orphans' court cases were guided by Pa.R.Civ.P. 236, which squared with Pa.R.A.P. 108(b).

Subsequently, the Rules of Orphans' Court Procedure were largely rewritten and adopted, effective September 1, 2016. The rewrite included new rule Pa.R.O.C.P. 4.6, which established a notice procedure analogous to and derived from Pa.R.Civ.P. 236.

The Committee recognized that the request to amend Pa.R.A.P. 108 also implicated a need to effectively identify orphans' court appeals for purposes of docketing statements. To effectuate Pa.R.A.P. 108 generally, when a notice of appeal is filed with the Superior Court, the prothonotary of that court sends:

a docketing statement form [to the appellant] which shall be completed and returned within ten (10) days in order that the Court shall be able to more efficiently and expeditiously administer the scheduling of argument and

submission of cases on appeal. Failure to file a docketing statement may result in dismissal of the appeal.

Pa.R.A.P. 3517. At present, there are three docketing statement forms: (a) Civil Docketing Statement; (b) Criminal Docketing Statement; and (c) Family and Domestic Relations Docketing Statement. The Civil Docketing Statement requires the date of entry of the Pa.R.Civ.P. 236 notice, although the Family and Domestic Relations Docketing Statement does not. In the absence of an orphans' court specific form, the Civil Docketing Statement presumably has been used with orphans' court appeals. There was a concern that omission of the Pa.R.O.C.P. 4.6 notice date from the Docketing Statement may lead an appellant to complete the form incorrectly, resulting in possible delays or confusion.

While the Committee initially considered a proposed amendment of Pa.R.A.P. 108 to add a new subdivision pertaining to orders subject to the Rules of Orphans' Court Procedure, it concluded that this approach was insufficient because it was unlikely that counsel or a self-represented party would look to Pa.R.A.P. 108 for the requirement to file a docketing statement. In addition, orphans' court appeals are not routinely identified as such when the notice of appeal is filed. As a result, filing office staff would not be aware which docketing statement should be sent to counsel or a self-represented party.

The Committee therefore devised a different approach to address both concerns. Pa.R.A.P. 342 sets forth the orders of the orphans' court that are appealable as of right. The proposal would amend Pa.R.A.P. 102 (definitions) to add a definition of "Orphans' Court Appeal" with a reference to Pa.R.A.P. 342 so that counsel or a self-represented party is advised of the Rule of Appellate Procedure applicable to that appeal. In addition, Pa.R.A.P. 904 was amended to add a new subdivision requiring the notice of appeal to include a statement advising the appellate court that the appeal is an orphans' court appeal. Finally, a statement cross-referencing Pa.R.A.P. 342 regarding orders that may be appealed as of right in orphans' court matters was added to the comment to Pa.R.A.P. 904.

The Committee published the proposal for comment, see 53 Pa.B. 4962 (August 12, 2023), and received responses supporting the proposal; the respondents also suggested modifications to the proposal.

A respondent suggested that the amendments of Pa.R.A.P. 102 and 904 did not obviate the need for an amendment to Pa.R.A.P. 108. The proposal appeared to overlook the reason for amending the rule given the adoption of Pa.R.O.C.P. 4.6. Specifically, without an amendment of Pa.R.A.P. 108, an appellate court's calculation of the timeliness of orphans' court appeals in ascertaining its jurisdiction will diverge from past practice.

The respondent indicated that Pa.R.A.P. 108(a) provides a general rule for computing time periods involving the date of entry of an order: "the day of entry shall be

the day the clerk of the court or the office of the government unit mails or delivers copies of the order to the parties,” unless it is subject to one of enumerated exceptions set forth in the rule. Pa.R.A.P. 108(b) provides one exception for the date of entry of civil orders. It diverges from the general rule in that it references docketing of the notice:

The date of entry of an order in a matter subject to the Pennsylvania Rules of Civil Procedure shall be the day on which the clerk makes the notation in the docket that notice of entry of the order has been given as required by Pa.R.Civ.P. 236(b).

When the notation of giving of the notice occurs on a date after the day on which the copies were served, the date of expiration of the 30-day appeal period will differ depending on whether the case is subject to Rules of Civil Procedure or the general rule in Pa.R.A.P. 108(a).

Prior to the adoption of Pa.R.O.C.P. 4.6, the notice requirements of Pa.R.Civ.P. 236 applied to orphans’ court decisions. Following the adoption of Pa.R.O.C.P. 4.6, Pa.R.Civ.P. 236 no longer governed the notice of the entry of orphans’ court orders. Consequently, orphans’ court orders are no longer “civil orders” subject to the exception in Pa.R.A.P. 108(b) and instead are now subject to the general rule in Pa.R.A.P. 108(a). As a result, the appeal period begins to run from the date the order is mailed or delivered to the parties, regardless of when the clerk of the orphans’ court makes a notation on the docket as required by Pa.R.O.C.P. 4.6. The respondent urged amendment of Pa.R.A.P. 108 to fully account for the adoption of Pa.R.O.C.P. 4.6. In doing so, appeals in civil cases and orphans’ court cases will receive equal treatment.

The Committee accepted these suggestions and agreed that Pa.R.A.P. 108 should be amended to add a provision recognizing the operation of Pa.R.O.C.P. 4.6. This new provision governing orphans’ court orders is set forth as subdivision (c) and hews to the exact text of Pa.R.O.C.P. 4.6. The text of current subdivision (c) relating to emergency appeals has been moved to new subdivision (e).

A second respondent supported the proposal but also urged amendment of Pa.R.A.P. 108 to distinguish between the date of entry for civil orders and orphans’ court orders, and to recognize the requirements of Pa.R.O.C.P. 4.6. The Committee concluded that this suggestion dovetailed with the comment from the first respondent and was addressed by the above-mentioned amendment to Pa.R.A.P. 108(c).

This respondent also suggested that the proposal may benefit from the addition of commentary to Pa.R.A.P. 102 and 904 that is currently set forth in the note to Pa.R.A.P. 342 (appealable orphans’ court orders). This commentary identifies orders “otherwise appealable as provided by Chapter 3,” *i.e.*, Pa.R.A.P. 311, 312, 313, and 341. The respondent believed that cross-referencing them in commentary to Pa.R.A.P. 102 and

904 would educate counsel and self-represented litigants as to the scope of appealable orphans' court orders. The Committee, however, declined to include the cross reference because the Comment to Pa.R.A.P. 342 provides a substantial discussion of Pa.R.A.P. 342(a)(8), the orders appealable as provided in Chapter 3, and cites to Pa.R.A.P. 311, 312, 313, and 341. Further, the amendments to Pa.R.A.P. 102 and the commentary to Pa.R.A.P. 904 already cross referenced Pa.R.A.P. 342 and were intended to point readers to review Pa.R.A.P. 342 and its comment.

The amendments become effective October 1, 2024.