

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

NOTICE OF PROPOSED RULEMAKING

Proposed Amendment of Pa.R.A.P. 341

The Appellate Court Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the amendment of Pa.R.A.P. 341 governing final orders. Pursuant to Pa.R.J.A. No. 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 reports, notes, or comments in the proposal have been inserted by the Committee for the convenience of those using the rules. They will neither constitute a part of the rules nor will be officially 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 **February 22, 2019**. 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,

Patricia A. McCullough
Chair

Explanatory Comment

The Appellate Court Procedural Rules Committee proposes to amend Pa.R.A.P. 341 to add new paragraph (f) to clarify the finality of resentencing orders resolving petitions filed pursuant to the Post Conviction Relief Act (PCRA), 42 Pa.C.S. §§ 9541-9546.

Pennsylvania Rule of Criminal Procedure 910 states: “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.” Pa.R.Crim.P. 910. A question arose concerning the application of this rule and whether an order granting resentencing relief pursuant to the PCRA is final notwithstanding that resentencing has not occurred. In the absence of consensus within the Superior Court, see *Commonwealth v. Gaines*, 127 A.3d 15 (Pa. Super. 2015) (*en banc*), the Committee has discerned an emerging precedent among panel decisions that such an order is final notwithstanding resentencing. See, e.g., *Commonwealth v. Grove*, 170 A.3d 1127, 1138 (Pa. Super. 2017); *Commonwealth v. Watley*, 153 A.3d 1034, 1039 n. 3 (Pa. Super. 2016).

Accordingly, the Committee proposes to incorporate within Pa.R.A.P. 341 the language of Pa.R.Crim.P. 910 as new paragraph (f)(1) and codify *Grove, et al.* as new paragraph (f)(2). The Committee believes this approach hews more closely with *Commonwealth v. Bryant*, 780 A.2d 646, 648 (Pa. 2001) (applying similar procedure in capital cases) despite the cogently articulately policy arguments set forth in the dissenting opinion in *Gaines*.

The Committee invites all comments, concerns and suggestions regarding this proposal.

Rule 341. Final Orders; Generally.

(a) *General [R]rule.*—Except as prescribed in paragraphs (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 [F]final [O]order.*—A final order **[is any order that]:**

(1) disposes of all claims and of all parties; **[or]**

(2) (Rescinded)**[.];**

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

or

(4) is an order pursuant to paragraph (f) of this rule.

(c) *Determination of 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) The trial court or other government unit is required to act on an application for a determination of finality under paragraph (c) 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) 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 shall be reviewable only for abuse of discretion pursuant to Chapter 15.

(3) Unless the trial court or other government unit acts on the application within 30 days of entry of the order, the trial court or other government unit shall no longer consider the application and it shall be deemed denied.

(4) The time for filing a petition for review will begin to run from the date of entry of the order denying the application for a determination of finality or, if the application is deemed denied, from the 31st day. A petition for review may be filed within 30 days of the entry of the order denying the application or within 30 days of the deemed denial unless a shorter time period is provided by Pa.R.A.P. 1512(b).

(d) *Superior Court and Commonwealth Court [O]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 [O]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) PCRA 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:

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 formerly appealable under Pa.R.A.P. 341 by the Commonwealth in criminal cases as heretofore provided by law, but which do not dispose of the entire case, are now appealable as interlocutory appeals as of right under paragraph (d) of Pa.R.A.P. 311.

Final Orders—Pre- and Post-1992 Practice—The 1992 amendment generally eliminates appeals as of right under Pa.R.A.P. 341 from orders not ending the litigation as to all claims and as to all parties. Formerly, there was case law that orders not ending the

litigation as to all claims and all parties are final orders if such orders have the practical consequence of putting a litigant out of court.

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 *K.H. v. J.R.*, 826 A.2d 863, 870-71 (Pa. 2003) (following trial); *Betz v. Pneumo Abex LLC*, 44 A.3d 27, 54 (Pa. 2012) (summary judgment). 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. *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 (a) and (c), substituting the conjunction “and” for “or,” are not substantive. The amendments merely clarify that by definition any order which 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 (b)(2)—The 2015 rescission of subparagraph (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 (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 (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 (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 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 (c)—Determination of Finality—Paragraph (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 (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 (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 review under Chapter 15 of the unappealable order of denial is the exclusive mode of review to determine whether the case is so egregious as to justify prerogative appellate correction of the exercise of discretion by the lower tribunal. See, e.g., Pa.R.A.P. 1311, Official Note. The filing of such a petition for review 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 could apply for a discretionary stay of the proceeding below.

Subparagraph (c)(2) provides for a stay of the action pending determination of an application for a determination of finality. If a petition for review is filed challenging 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 (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).

The following is a partial list of orders previously interpreted by the courts as appealable as final orders under Pa.R.A.P. 341 that are no longer appealable as of right unless the trial court or government unit makes an express determination that an immediate appeal would facilitate resolution of the entire case and expressly enters a final order pursuant to Pa.R.A.P. 341(c):

(1) an order dismissing one of several causes of action pleaded in a complaint but leaving pending other causes of action;

(2) an order dismissing a complaint but leaving pending a counterclaim;

(3) an order dismissing a counterclaim but leaving pending the complaint that initiated the action;

(4) an order dismissing an action as to less than all plaintiffs or as to less than all defendants but leaving pending the action as to other plaintiffs and other defendants;

(5) an order granting judgment against one defendant but leaving pending the complaint against other defendants; and

(6) an order dismissing a complaint to join an additional defendant or denying a petition to join an additional defendant or denying a petition for late joinder of an additional defendant.

The 1997 amendment adding subparagraph (c)(3) provided for a deemed denial where the trial court or other government unit fails to act on the application within 30 days.

Paragraph (f)—PCRA Orders—A failure to timely file an appeal pursuant to paragraph (f)(2) shall constitute a waiver of all objections to such an order.