

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

NOTICE OF PROPOSED RULEMAKING

Proposed Amendment of Pa.R.A.P. 1702

The Appellate Court Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Pa.R.A.P. 1702 governing stays ancillary to appeal for the reasons set forth in the accompanying explanatory report. 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 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 **May 21, 2021**. 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

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

PUBLICATION REPORT

Proposed Amendment of Pa.R.A.P. 1702

The Appellate Court Procedural Rules Committee is considering proposing the amendment of Pennsylvania Rule of Appellate Procedure 1702 governing stays ancillary to appeal to clarify the necessity of a pending appeal prior to the filing an application for stay.

In 2020, the Pa.R.A.P. 1702 was amended to add “petition for specialized review” to both paragraph (a) and paragraph (b). Paragraph (a) states that the appellate court will not rule on an application until a petition for specialized relief has been filed. However, current paragraph (b) permits the filing of an application before the filing of a petition for specialized review.

In reviewing the rule, the Committee concluded there may be ambiguity with “petition for specialized review” in paragraph (b) when read *in pari materia* with Pa.R.A.P. 1732(a), which requires that an “appeal” be pending prior to an application for a stay. Pursuant to the definition of “appeal” in Pa.R.A.P. 102, the term may include a petition for specialized review. If a petition for specialized review is synonymous with an appeal, then paragraph (a) would require the petition to be filed before filing an application for a stay. However, paragraph (b) indicates that such a petition can be filed after filing an application for a stay.

Further, Pa.R.A.P. 1702(b) may be in tension with Pa.R.A.P. 1781(a), which states that an application for a stay or *supersedeas* of an order or other determination of any government unit should be made while the petition for specialized review is pending. Yet, paragraph (b) of Pa.R.A.P. 1702 states that a petition for specialized review need not be pending to file an application.

The Committee is proposing the amendment of Pa.R.A.P. 1702 in two respects. First, the rule would be modified to clarify that paragraph (a) applies when the party has a right of appeal or review, and paragraph (b) applies when a party has a discretionary right of review. The clarification within paragraph (a) is intended to resolve potential confusion about whether Chapter 17 applies in the absence of an appeal, which it does not. The Official Note would also indicate that stays pending the outcome of post-trial or post-sentence motions may be governed by other procedural rules.

Second, the rule would be modified to delete petitions for specialized review from the scope of paragraph (b). This amendment is intended to clarify that a petition for specialized review is not the proper vehicle in seeking discretionary review. Although Chapter 16 procedures are for expedited review of “discrete issues,” they were not intended as an expedited alternative to Chapter 13 (Interlocutory Appeals by Permission).

The Committee is also proposing other non-substantive revisions to the rule text and commentary to the extent that it believes the entire rule should be rescinded and replaced rather than amended. No revisions were made to paragraph (c).

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

Rule 1702. Stay Ancillary to Appeal or Review.

[(a) *General rule.*—Applications for relief under this chapter will not be entertained by an appellate court or a judge thereof until after a notice of appeal has been filed in the trial court or a petition for review or petition for specialized review has been filed.

(b) *Proceedings on petition for allowance of appeal, petition for permission to appeal, or petition for specialized review.*—Applications for relief under this chapter may be made without the prior filing of a petition for allowance of appeal, petition for permission to appeal, or petition for specialized review, but the failure to effect timely filing of such a petition, or the denial of such a petition, shall automatically vacate any ancillary order entered under this chapter. In such a case, the clerk of the court in which the ancillary order was entered shall, on *praecipe* of any party to the matter, enter a formal order under this rule vacating such ancillary order.

(c) *Supreme Court review of appellate court supersedeas and stay determinations.*—No appeal, petition for allowance of appeal, petition for review, or petition for specialized review need be filed in the Supreme Court in connection with an application under Pa.R.A.P. 3315.

Official Note:

In any instance in which a party seeks a stay or *supersedeas* from a trial court or government unit, that party can seek relief from the appellate court that has jurisdiction of the matter and can seek review of that intermediate appellate court's decision from the Supreme Court.]

(This is entirely new text.)

(a) *Right of appeal or review.*— When a party has an appeal as of right, a party may seek relief under this chapter after the filing of a notice of appeal, a petition for review, or a petition for specialized review.

(b) *Discretionary appeal or review.*—When a party intends to pursue discretionary appellate review, the party may seek relief under this chapter prior to the filing of a petition for allowance of appeal or a petition for permission to appeal.

(1) The failure to timely file such petition, or its denial, shall operate to vacate any ancillary order entered under this chapter.

(2) Any party thereafter may file a *praecipe* with the prothonotary or the clerk of the court in which the ancillary order was entered directing entry of a formal order vacating such ancillary order.

(c) *Supreme Court review of appellate court supersedeas and stay determinations.*—No appeal, petition for allowance of appeal, petition for review, or petition for specialized review need be filed in the Supreme Court in connection with an application under Pa.R.A.P. 3315.

Official Note:

Relief sought from an appellate court should be in the form of an application in accordance with Pa.R.A.P. 123 and Pa.R.A.P. 1703.

Paragraph (a) reflects the requirement that when an appellant has a right of appeal or review, the notice of appeal, or petition for review or specialized review must be filed before the application seeking a stay is filed court pursuant to Pa.R.A.P. 1732(a) or Pa.R.A.P. 1781(a). Stays pending the outcome of post-trial or post-sentence motions are not governed by this chapter. See, e.g., Pa.R.C.P. 227.1 (Post-Trial Relief); Pa.R.Crim.P. 720 (Post-Sentence Procedures; Appeal).