

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

**NOTICE OF PROPOSED RULEMAKING**

**Proposed Amendment of Pa.R.A.P. 102, 1926, 1931, 1951, 1952, 2132, and 2151**

The Appellate Court Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Pa.R.A.P. 102, 1926, 1931, 1951, 1952, 2132, and 2151 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 28, 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

## **PUBLICATION REPORT**

The Appellate Court Procedural Rules Committee is considering proposing the amendment of Pennsylvania Rules of Appellate Procedure 102, 1926, 1931, 1951, 1952, 2132, and 2151 to facilitate reference to the certified record transmitted to the appellate court using PACFile. This alternative form of reference to the record is intended to allow a party to forgo the necessity of preparing and filing a reproduced record.

The Committee was asked to consider whether there was a need for a separate reproduced record when an appellate court may have access to a digital version of the original record via PACFile. Preliminarily, the Committee observed that the reproduced record, when properly prepared, allows the parties to organize materials, is easier to use than the original record, and is often smaller in volume than the original record. However, there are instances where the reproduced record is packed with irrelevant materials and essentially replicates the original record, or fails to include the pertinent documents necessary to effectuate appellate review. The obvious benefits of removing the reproduced record requirement is greater overall efficiency by eliminating duplicative materials being transmitted, together with savings in time and costs. Accordingly, the Committee favored eliminating the reproduced record when there is a digital version of the original record transmitted through PACFile.

Two attributes of a sufficient substitute are the location of documents and the reference to documents. Concerns with using a digital original record include the overall volume of material that is included, but might not be relevant to the issue on appeal. The size of the record can be challenging for users to locate information through perusal. There must also be a unique reference to each location so that parties and the court can cite to the same record. The Committee concluded that a substitute for the reproduced record needs to be paginated to permit quick location of specified documents and a universal reference for that location.

Currently, there is no requirement that the digital original record be paginated. The record is often transmitted to the appellate courts in parts and by different departments of the trial court or other government unit. Thus, the Committee proposes to amend Pa.R.A.P. 1931(c) to require that the entire record be consecutively paginated, converted into the fewest number of PDF files as practicable, and that the “PDF files shall be text searchable and paginated so that the page numbers displayed by the PDF reader exactly match the pagination of the certified record.” To improve readability of the rule, paragraph (c) is further delineated into subparagraphs (1)-(6). The Committee specifically invites comments from affected stakeholders on this aspect of the proposal.

Included within Pa.R.A.P. 1931 is proposed new paragraph (g). The paragraph is part of another, larger proposal concerning rules implementing PACFile in the appellate

courts being contemporaneously published for comment. Paragraph (g) is included in this proposal to provide additional context for the reader.

The Committee also proposes the definitions of “original record,” “certified record,” and “record on appeal.” These terms have been used inconsistently and, at times, interchangeably. The definitions are intended to enhance uniformity. Further, the rules are revised to clarify that the certified record is transmitted by the trial court or other government to the appellate court; it is not filed.

With pagination of the certified record transmitted via PACFile, the Committee proposes amendment of Pa.R.A.P. 2132 (Reference to the Record in Briefs). Paragraphs (a) and (b) have been revised as new paragraphs (a) - (c). Paragraph (d) is new and permits the appellate court to require parallel references to both the reproduced record and the certified record. This paragraph is intended to accommodate current practice of appellate court jurists who may rely solely on the certified record rather than the reproduced record. The paragraph also permits the parties to provide parallel references.

The Committee proposes amending Pa.R.A.P. 2151 by restating the substance of paragraphs (a)-(d) and adding new paragraph (e). The new paragraph will relieve a party of the requirement of filing a reproduced record when the certified record has been transmitted using PACFile in accordance with Pa.R.A.P. 1931. The proffered reasons for seeking relief from filing a reproduced record have been removed from paragraph (d) and placed in the Official Note. Added to that commentary is the ability to seek relief pursuant to paragraph (d) if a party is directed to file a reproduced record.

All comments, concerns, and suggestions concerning this proposal are welcome.

**Rule 102. Definitions.**

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**Certified Record.**—The original record certified by the clerk as the record on appeal.

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**Clerk.**—[Includes prothonotary] The filing office of the trial court or other government unit.

\* \* \*

**Original Record.**—The original documents, exhibits, determinations, and transcripts filed with the clerk.

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**Record on Appeal.**—The certified record transmitted by the clerk to the appellate court.

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**Rule 1926. Correction or Modification of the Certified Record.**

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**Rule 1931. Certification and Transmission of the Record.**

(a) *Time for transmission.*

(1) *General rule.*—Except as otherwise prescribed by this rule, the **original** record **[on appeal]**, including the transcript and exhibits necessary for the determination of the appeal, shall be **certified and** transmitted **by the clerk** to the appellate court within 60 days after the filing of the notice of appeal. If an appeal has been allowed or if permission to appeal has been granted, the record shall be transmitted as provided by Pa.R.A.P. 1122 (allowance of appeal and transmission of record) or by Pa.R.A.P. 1322 (permission to appeal and transmission of record), as the case may be. The appellate court may shorten or extend the time prescribed by this paragraph for a class or classes of cases.

(2) *Children’s fast track appeals.*—In a children’s fast track appeal, the **original** record **[on appeal]**, including the transcript and exhibits necessary for the determination of the appeal, shall be **certified and** transmitted **by the clerk** to the appellate court within 30 days after the filing of the notice of appeal. If an appeal has been allowed or if permission to appeal has been granted, the record shall be transmitted as provided by Pa.R.A.P. 1122 (allowance of appeal and transmission of record) or by Pa.R.A.P. 1322 (permission to appeal and transmission of record), as the case may be.

(b) *Duty of trial court.*—After a notice of appeal has been filed, the judge who entered the order appealed from shall:

(1) comply with Pa.R.A.P. 1925 (opinion in support of order)[, **shall**];

(2) cause the official court reporter to comply with Pa.R.A.P. 1922 (transcription of notes of testimony) or shall otherwise **[settle] approve** a statement of the evidence or proceedings as prescribed by **[this chapter,] Pa.R.A.P. 1923 (statement in absence of transcript) and Pa.R.A.P. 1924 (agreed statement of record)**; and

(3) **[shall]** take any other action necessary to enable the clerk to assemble and transmit the record as prescribed by this rule.

(c) *Duty of clerk to **certify and** transmit the **original** record.*

(1) **Certification.** When the **original** record is complete for purposes of the appeal, the clerk **[of the lower court]** shall **assemble and certify its contents [and transmit it to the prothonotary of the appellate court]**.

**(2) Numbering and list of documents.** The clerk [of the trial court] shall number the documents comprising the **original** record. **Thereafter, the clerk shall prepare and** transmit with the **certified** record a list of the documents correspondingly numbered and identified with sufficient specificity to allow the parties on appeal to identify each document and whether it is marked as confidential, so as to determine whether the record on appeal is complete.

**(3) PACFile transmission requirements.** **If the certified record is to be transmitted using PACFile, then the entire record shall be consecutively paginated and compiled into the fewest number of PDF files as practicable. The PDF files shall be text searchable and paginated so that the page numbers displayed by the PDF reader exactly match the pagination of the certified record.**

**(4) Confidential information.** Any Confidential Information Forms and the “Unredacted Version” of any pleadings, documents, or other legal papers where a “Redacted Version” was also filed shall be separated either physically or electronically and transmitted to the **[appellate court] prothonotary**. Whatever is confidential shall be labeled as such. If any case records or documents were sealed in the **[lower] trial** court, the list of documents comprising the **certified** record shall specifically identify such records or documents as having been sealed in the **[lower] trial** court.

**(5) Exhibits of unusual bulk or weight.** Documents of unusual bulk or weight and physical exhibits other than documents shall not be transmitted by the clerk unless **[he or she is]** directed to do so by a party or by the prothonotary **[of the appellate court]**. A party must make advance arrangements with the clerk for the transportation and receipt of exhibits of unusual bulk or weight.

**(6) Transmission.** **[Transmission of the record is effected when the clerk mails or otherwise forwards the record to the prothonotary.] The clerk shall transmit the certified record to the prothonotary by mail, PACFile, or other means deemed acceptable by the prothonotary.** The clerk **[of the lower court]** shall indicate, by endorsement on the face of the **certified** record or otherwise, the date upon which the **certified** record is transmitted to the **[appellate court] prothonotary**.

(d) **[Service] Notice of the list of [record] documents.**—**[The clerk of the lower court shall, at the time of the transmittal of the record to the appellate court prothonotary,] At the time of transmission pursuant to paragraph (c)(6),** the clerk shall **[mail] send** a copy of the list of **[record]** documents to all counsel of record, or if unrepresented by counsel, to the parties at the address they have provided to the clerk. The clerk shall note on the docket the giving of such notice.

(e) *Multiple appeals.*—Where more than one appeal is taken from the same order, it shall be sufficient to transmit a single **certified** record, without duplication.

(f) *Inconsistency between list of [record] documents and documents actually transmitted.*—If the clerk **[of the lower court]** fails to transmit to the **[appellate court] prothonotary** all of the documents identified in the list of **[record]** documents, such failure shall be deemed a breakdown in **the** processes of the court. Any omission shall be corrected promptly pursuant to Pa.R.A.P. 1926 (correction or modification of the **certified** record) and shall not be the basis for any **[penalty] sanction** against a party.

**(g) Transmission and remand of records through PACFile.—Records may be transmitted and remanded through PACFile. The applicable general rules of court and court policies that implement the rules shall continue to apply to the transmission and remand of records on appeal regardless of whether a record is transmitted or remanded through PACFile. The transmission of a record through PACFile by a court or other government unit to an appellate court shall not excuse the court or other government unit from submitting a paper version of the record transmitted through PACFile to the appellate court should the appellate court require it.**

**(1) The transmission or remand of a record through PACFile by a court or other government unit shall constitute the transmission or remand of the record under the Pennsylvania Rules of Appellate Procedure.**

**(2) The transmission or remand of a record through PACFile is effectuated when a court or other government unit utilizes PACFile to transmit or give notice of the remand or remittal of the record to a court or other government unit.**

**(3) The date of the transmission or remand of a record through PACFile by a court or other government unit shall be noted on the docket of the transmitting or remanding court or other government unit, and on the docket of the receiving court or other government unit.**

**(4) Upon the transmission or remand of a record through PACFile, the record shall be considered to be in the possession of the receiving court or other government unit until the record is transmitted through PACFile to another court or government unit, or notice of remand or remittal to another court or other government unit is given.**

**(5) If a Rule of Appellate Procedure or court policy requires that a court transmit, or remand or remit a record to another court or other**



government unit, the transmission or notice of remand or remittal to the receiving court or other government unit may also be effectuated through PACFile.

(6) Any documents sealed in a court or other government unit may be transmitted or remanded through PACFile only in a manner that restricts access to the sealed documents or filings to the court or other government unit and registered users of PACFile who are authorized to view the sealed documents.

(7) The appellate courts shall retain control over access to records transmitted through PACFile, and may permit such electronic access in whole or in part.

**Official Note:**

Pa.R.A.P. 1926 (correction or modification of the record) provides the means to resolve any disagreement between the parties as to what should be included in the record on appeal.

When PACFile is used to transmit the certified record, paragraph (c)(3) requires the certified record to be consecutively pagination and compiled into the fewest number of .pdf files, as practicable. A single .pdf file containing the entire certified record is preferred; however, the entire record may require multiple .pdf files to accommodate file-size limitations, to separate confidential information, or to transmit belated items, e.g., transcribed notes of testimony, Pa.R.A.P. 1925(a) opinions, supplemental record. If the certified record is divided into several .pdf files for transmission, then pagination must continue from one .pdf filed to the next so that the entire certified record is consecutively paginated across the several .pdf files.

Paragraph (c)(4)—For the definition of “case records,” see the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* available at [www.pacourts.us/public-records](http://www.pacourts.us/public-records).

Notice of electronic remand of the record is for jurisdictional purposes.

**Rule 1951. Original Record [below] in Proceedings on Petition for Review**

(a) *Composition of the record.*—Where under the applicable law the questions raised by a petition for review may be determined by the court in whole or in part upon the **original** record before the government unit, such record shall consist of:

(1) The order or other determination of the government unit sought to be reviewed.

(2) The findings or report on which such order or other determination is based.

(3) The pleadings, evidence and proceedings before the government unit.

(b) *Omissions from or misstatements of the **original** record [below].*—If anything material to any party is omitted from the **original** record or is misstated therein, the parties may at any time supply the omission or correct the misstatement by stipulation, or the court may at any time direct that the omission or misstatement be corrected and, if necessary, that a supplemental **original** record be prepared and filed. Failure of the agency to transmit part of the record of agency proceedings to the appellate court shall not be the basis for a finding of waiver.

(c) *Reasons for order.*—The government unit shall comply with the provisions of Rule 1925 (opinion in support of order) where the petition for review relates to a quasijudicial order.

**Official Note:**

This rule and **[Rule] Pa.R.A.P. 1952** (filing of record in response to petition for review) are also applicable when permission to appeal from an order of a government unit other than a court has been granted. See **[Rule] Pa.R.A.P. 1322** (permission to appeal and transmission of record).

**Rule 1952. Filing, Certification, and Transmission of Original Record in Response to Petition for Review**

(a) *Time and notice.*—Where under the applicable law the question raised by a petition for review may be determined in whole or in part upon the **original** record before the government unit, the government unit shall **certify and** file the **original** record with the prothonotary of the court named in the petition for review within 40 days after service upon it of the petition. The court may shorten or extend the time prescribed in this paragraph. The prothonotary shall give notice to all parties of the date on which the record is filed.

(b) *Certificate of record.*—The government unit shall certify the contents of the **original** record and a list of all documents, transcripts of testimony, exhibits and other material comprising the record. The government unit shall (1) arrange the documents to be certified in chronological order, (2) number them, and (3) affix to the right or bottom edge of the first page of each document a tab showing the number of that document. These shall be bound and shall contain a table of contents identifying each document in the record. If any documents or case records were maintained as confidential in the government unit, the list of documents that comprise the record shall specifically identify such documents or the entire record as having been maintained as confidential, and the government unit shall either physically or electronically separate such documents. The certificate shall be made by the head, chairman, deputy, or secretary of the government unit. The government unit may file the entire record or such parts thereof as the parties may designate by stipulation filed with the government unit. The original **[papers] documents** in the government unit or certified copies thereof may be filed.

Instead of filing the **certified** record or designated parts thereof, the government unit may file a certified list of all documents, transcripts of testimony, exhibits, and other material comprising the **original** record, or a certified list of such parts thereof as the parties may designate, adequately describing each, and the filing of the certified list shall constitute filing of the record. If any documents or case records were maintained as confidential in the government unit, the list of documents that comprise the **certified** record shall specifically identify such documents or the entire record as having been maintained as confidential. The parties may stipulate that neither the record nor a certified list be filed with the court. The stipulation shall be filed with the prothonotary of the court, and the date of its filing shall be deemed the date on which the record is filed. If a certified list is filed, or if the parties designate only parts of the original record for filing **and certification**, or stipulate that neither the **original** record nor a certified list be filed, the government unit shall retain the **original** record or parts thereof. Upon request of the court or the request of a party, the **original** record or any part thereof thus retained shall be **certified and [transmitted to] filed with** the court notwithstanding any prior stipulation. All parts of the **original** record retained by the government unit shall be a part of the record on **[review] appeal** for all purposes.

(c) *Notice to counsel of contents of certified record.*—At the time of transmission of the **certified** record to the appellate court, the government unit shall send a copy of the list of the contents of the certified record to all counsel of record, or, if a party is unrepresented by counsel, to that party at the address provided to the government unit.

**(d) PACFile transmission requirements. Transmission of the certified record using PACFile shall be in accordance with Pa.R.A.P. 1931(g).**

**[Official Note:**

**The addition of paragraph (c) in 2012 requires government units other than courts to notify counsel of the contents of the certified record. This is an extension of the requirement in Pa.R.A.P. 1931 (transmission of the record) that trial courts give such notice.]**

## **Rule 2132. Reference to the Record in Briefs.**

**[(a) *General rule.*—References in the briefs to parts of the record appearing in a reproduced record filed with the brief of the appellant (see Rule 2154(b) (large records)) shall be to the pages in the reproduced record where those parts appear, e.g.: “(R. 26a).” If the record is reproduced after the briefs are served in advance typewritten or page proof form (see Rule 2185(c) (definitive copies)), the brief may also contain references to the pages of the parts of the original record, e.g.: “(Tr. 279-280; R. 26a-27a)”.**

**(b) *References to unreproduced record.*—If references are made in the briefs to parts of the original record not reproduced, the references shall be to the parts of the record involved, e.g., “(Answer p. 7),” “(Motion for Summary Judgment p. 2),” “(Transcript p. 279-280),” “(Notes of Testimony p. 24-26).” Where the court or other government unit below has numbered the original record for purposes of certification to the appellate court, the references shall be to such certified record pages, e.g. “(Certified Record pp. 26-27).” Intelligible abbreviations may be used. Any relevant reference in the briefs to unreproduced pleadings, evidence, rulings or charge shall be directly quoted, with the page reference to the original record.**

### **Official Note:**

**Based in part upon former Superior Court Rule 52 and former Commonwealth Court Rule 111B.]**

(This is entirely new text.)

**(a) *Reference to reproduced record.*—Unless otherwise directed by an appellate court, reference in the briefs to parts of the record appearing in a reproduced record filed with the brief of the appellant shall be to the pages in the reproduced record where those parts appear, e.g., “(R.R. 26a).”**

**(b) *Large records.*—If the record is reproduced after the briefs are served in advance text of briefs, as provided for in Pa.R.A.P. 2185(c), the brief may also contain references to the pages of the parts of the unreproduced record, e.g., “(R. 26a-27a; N.T., 4/20/2020, at 48-49).”**

**(c) *Reference to certified record.*— Where the clerk has paginated the original record for purposes of certification, reference shall be to such certified record pages, e.g. “C.R., at 26-27.” Otherwise, reference shall be to the documents contained in the original record, e.g., “(Answer at 7, ¶ 3),” “(Tr. Ct. Op. at 2),” “(N.T., 4/20/2020, at 48-49).” Intelligible abbreviations may be used.**

(d) *Parallel reference.*—An appellate court, by rule or specific order, may direct that reference in the briefs to parts of the record contain both reference to the reproduced record and the certified record. In the absence of such direction, a party may include parallel references to the certified record in addition to the references to the reproduced record.

**Official Note:**

In matters involving large records, Pa.R.A.P. 2185(c) requires the filing of definitive copies of briefs within 14 days after the filing of the reproduced record. For the deferred filing of a reproduced record for large records, see Pa.R.A.P. 2154(b). Those briefs must include references to the reproduced record and may contain parallel references to the certified record.

Where the reproduced record has been dispensed with pursuant to Pa.R.A.P. 2151, reference to the record should be made to the certified record, as specified in paragraph (c).

An appellate court may direct the use of parallel references to the reproduced and the certified record pursuant to paragraph (d). Without direction, a party may elect to use parallel citations, provided that any referenced part of the certified record is also contained in the reproduced record.

**Rule 2151. Consideration of Matters on the [Original] Certified Record Without the Necessity of Reproduction.**

**[(a) *General 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 (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 granted to a party, such party shall not be required to reproduce the record.**

**(c) *Original 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.*—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.**

**Official Note:**

**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 2189 for procedure in cases involving the death penalty.]**

(This is entirely new text)

**(a) *General rule.*— By rule of court applicable to all cases, or to classes of cases, or by order in specific cases under paragraph (d), an appellate court may dispense with the requirement of a reproduced record and permit appeals and other matters to be heard on the certified record.**

**(b) *In forma pauperis.*—A party shall not be required to reproduce the record if the party has been granted leave to proceed *in forma pauperis*.**

(c) *Original hearing cases.*—A party shall not be required to reproduce the record when, under the applicable law, the questions presented may be determined in whole or in part upon the record made before the appellate court.

(d) *On application to the court.*—Any appellant may file an application within 14 days after taking an appeal to be excused from reproducing the record for sufficient reason.

(e) *PACFile.*—A party shall not be required to reproduce the record when the original record was transmitted by the clerk using PACFile in accordance with the requirements of Pa.R.A.P. 1931.

**Official Note:**

For reference to the record in briefs, see Pa.R.A.P. 2132.

For paragraph (d), sufficient reasons may include, but are not limited to, reproductions costs disproportionate to the amount in dispute or when the certified record is otherwise compiled, paginated, and electronically accessible to the appellate court and parties.

For paragraph (e), a party has the option of filing a reproduced record. If the party elects to rely upon the certified record, the party should cite the record pursuant to Pa.R.A.P. 2132(c).

For procedure in cases involving the death penalty, see Pa.R.A.P. 2189.