

Appellate Court Procedural Rules Committee

The Appellate Court Procedural Rules Committee proposes to amend Pennsylvania Rules of Appellate Procedure 102 and 311. The Committee submits the proposed amendments to the bench and bar for comments and suggestions prior to its submission to the Supreme Court.

Proposed new material is underlined and bolded, while deleted material is bracketed and bolded.

All communications in reference to the proposed amendment should be sent no later than December 31, 2010 to:

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An Explanatory Comment precedes the proposed amendment and has been inserted by this Committee for the convenience of the bench and bar. It will not constitute part of the rule nor will it be officially adopted or promulgated.

By the Appellate Court Procedural Rules Committee

Honorable Maureen Lally-Green,
Chair

Explanatory Comment

The proposed Recommendation was prompted in part by the Interbranch Commission's on Juvenile Justice. It provides a uniform mechanism for appellate review of a transfer of a case to a criminal proceeding or the denial of a request to do so as well as appellate review of a transfer of a case from criminal proceedings or the denial of a request to do so. See Interbranch Commission' Report at p. 55. The proposed Recommendation would also expedite appeals from such orders by including those appeals in the children's fast track program.

Including appeals from transfer orders in children's fast track had been under consideration prior to the Interbranch Commission's Report. The Committee has determined that a full appeal expedited under children's fast track is the best vehicle to balance the need to quickly reach finality against the need to assure that the method of appellate review is meaningful. Accordingly, the Committee has chosen not to recommend a limited appellate procedure that would result in disposition within 90 days of the appeal.

The proposed amendment to Rule 311 would add a new paragraph 10 to subdivision (a), granting juveniles a new right to an immediate appeal from an adverse transfer order while continuing to permit the Commonwealth to take an immediate appeal from an adverse transfer order, both from an order transferring from a criminal proceeding to a juvenile proceeding, see *Commonwealth v. Johnson*, 542 Pa. 568, 669 A.2d 315 (1995), or refusing to transfer from a juvenile proceeding to a criminal proceeding, see *In re McCord*, 445 Pa. Super. 137, 664 A.2d 1046 (1995). The Commonwealth has heretofore been able to appeal both under subdivision (d) of Rule 311, but only when the Commonwealth certifies that the order will terminate or substantially handicap the prosecution. No certification is required under new paragraph (a)(10).

New paragraph (a)(10) also grants juveniles a right to an immediate appeal from an order denying transfer from a criminal to a juvenile proceeding and from an order granting transfer from a juvenile to a criminal proceeding. Prior to the 2010 amendment, such orders were interlocutory and were not immediately appealable as of right.

Appeals under new paragraph (a)(10) shall be children's fast track appeals. See Rule 102 and other specific rules related to children's fast track appeals. The children's fast track program, which has previously included any appeal from an order involving dependency, termination of parental rights, adoptions, custody or paternity has been successful in providing a speedy mechanism for determining the rights of children while preserving meaningful appellate review.

The Committee is continuing to review other Interbranch Commission recommendations in cooperation with the Juvenile Court Procedural Rules Committee. For the reasons noted above, the Committee has elected to proceed with this recommendation at this time.

Rule 102. Definitions.

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Children's fast track appeal – Any appeal from an order involving dependency, termination of parental rights, adoptions, custody, [or] paternity **or the grant or denial of a transfer of a juvenile from a juvenile proceeding to a criminal proceeding or from a criminal proceeding to a juvenile proceeding.** See 42 Pa.C.S. §§ 6301 et seq.; 23 Pa.C.S. §§ 2511 et seq.; 23 Pa.C.S. §§ 2101 et seq.; 23 Pa.C.S. §§ 5301 et seq.; 23 Pa.C.S. §§ 5102 et seq. ; **42 Pa.C.S. §§ 6322 and 6355; Pa.R.A.P. 311(a)(10).**

Official Note: * * * * *

Rule 311. Interlocutory Appeals as of Right.

(a) General Rule. An appeal may be taken as of right and without reference to Pa.R.A.P. 341(c) from:

* * * * *

(10) Adverse order on motion for transfer to or from a juvenile proceeding. An order under 42 Pa.C.S. § 6322 granting or denying a juvenile's motion to transfer from a criminal proceeding to a juvenile proceeding or an order under 42 Pa.C.S. § 6355 granting or denying the Commonwealth's motion to transfer from a juvenile proceeding to a criminal proceeding. An appeal under this paragraph shall be classified as a children's fast track appeal.

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(g) Waiver of objections.

(1) Where an interlocutory order is immediately appealable under this rule, failure to appeal:

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(iii) Under Subdivisions (a)(8), (a)(10) or (e) of this rule shall constitute a waiver of all objections to such orders

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Official Note: * * * * *