

## **RULES OF APPELLATE PROCEDURE [ Title 210 – PA Code ]**

### **Rule 105. Waiver and Modification of Rules.**

(a) *Liberal construction and modification of rules.*—These rules shall be liberally construed to secure the just, speedy and inexpensive determination of every matter to which they are applicable. In the interest of expediting decision, or for other good cause shown, an appellate court may, except as otherwise provided in Subdivision (b) of this rule, disregard the requirements or provisions of any of these rules in a particular case on application of a party or on its own motion and may order proceedings in accordance with its direction.

(b) *Enlargement of time.*— **Intentionally Omitted.**

### **Rule 123. Application for Relief.**

(a) *Contents of applications for relief.*—Unless another form is elsewhere prescribed by these rules, an application for an order or other relief shall be made by filing a written application for such order or relief with proof of service on all other parties. The ... application, shall state with particularity the grounds on which it is based, and shall set forth the order or relief sought. ... **Published in part.**

(b) *Answer.*— **Intentionally Omitted.**

(c) *Speaking applications.*— **Intentionally Omitted.**

(d) *Oral argument.*—Unless otherwise ordered by the court, oral argument will not be permitted on any application.

(e) *Power of single judge to entertain applications.*—In addition to the authority expressly conferred by these rules or by law or rule of court, a single judge of an appellate court may entertain and may grant or deny any request for relief which under these rules may properly be sought by application, ... . Remainder **Intentionally Omitted.**

### **Rule 902. Manner of Taking Appeal.**

An appeal permitted by law as of right from a lower court to an appellate court shall be taken by filing a notice of appeal with the clerk of the lower court within the time allowed by Rule 903 (time for appeal). Remainder **Intentionally Omitted.**

Official Note

42 Pa.C.S. § 703 (place and form of filing appeals) provides that appeals, petitions for review, petitions for permission to appeal and petitions for allowance of appeal shall be filed in such office and in such form as may be prescribed by general rule.

This chapter represents a significant simplification of practice. In all appeals the appellant prepares two documents: (1) a simple notice of appeal, and (2) a proof of service. The notice of appeal is filed in the lower court and copies thereof, together with copies of the proof of service, are mailed and delivered to all who need to know of the appeal: other parties, lower court judge, official court reporter. The clerk of the trial court transmits one set of the filed papers to the appellate prothonotary (with the requisite filing fee). ... Remainder **Intentionally Omitted.**

**Rule 905. Filing of Notice of Appeal.**

(a) *Filing with clerk.* Two copies of the notice of appeal, the order for transcript, if any, and the proof of service required by Rule 906 (service of notice of appeal), shall be filed with the clerk of the trial court. If the appeal is to the Supreme Court, the jurisdictional statement required by Rule 909 shall also be filed with the clerk of the trial court. Upon receipt of the notice of appeal the clerk shall immediately stamp it with the date of receipt, and that date shall constitute the date when the appeal was taken, which date shall be shown on the docket. ... Remainder **Intentionally Omitted.**

(b) *Transmission to appellate court.* The clerk shall immediately transmit to the prothonotary of the appellate court named in the notice of appeal a copy of the notice of appeal showing the date of receipt, the related proof of service and a receipt showing collection of any docketing fee in the appellate court required under Subdivision (c). The clerk shall also transmit with such papers:

1. a copy of any order for transcript;
2. a copy of any verified statement, application or other document filed under Rule 551 through Rule 561 relating to *in forma pauperis*; and
3. if the appeal is to the Supreme Court, the jurisdictional statement required by Rule 909.

(c) *Fees.* **Intentionally Omitted.**

Official Note

Insofar as the clerk or prothonotary of the lower court is concerned, the notice of appeal is for all intents and purposes a writ in the nature of *certiorari* in the usual form issued out of the appellate court named therein and returnable thereto within the time prescribed by Chapter 19 (preparation and transmission of record and related matters).

**Rule 907. Docketing of Appeal.**

(a) *Docketing of appeal.* Upon the receipt of the papers specified in Rule 905(b) (transmission to appellate court) the prothonotary of the appellate court shall immediately enter the appeal upon the docket, note the appellate docket number upon the notice of appeal, and give written notice of the docket number assignment in person or by first class mail to the clerk of the lower court, to the appellant and to the persons named in the proof of service accompanying the notice of appeal. An appeal shall be docketed under the caption given to the matter in the lower court, with the appellant identified as such, but if such caption does not contain the name of the appellant, his name, identified as appellant, shall be added to the caption in the appellate court.

(b) *Entry of appearance.* **Intentionally Omitted.**

**Rule 1701. Effect of Appeal Generally.**

(a) *General rule.*—Except as otherwise prescribed by these rules, after an appeal is taken or review of a quasi-judicial order is sought, the trial court or other government unit may no longer proceed further in the matter.

(b) *Authority of a trial court or agency after appeal.*—After an appeal is taken or review of a quasijudicial order is sought, the trial court or other government unit may:

- (1) Take such action as may be necessary to preserve the status quo, correct formal errors in papers relating to the matter, cause the record to be transcribed, approved, filed

and transmitted, grant leave to appeal in forma pauperis, grant supersedeas, and take other action permitted or required by these rules or otherwise ancillary to the appeal or petition for review proceeding.

(2) Enforce any order entered in the matter, unless the effect of the order has been superseded as prescribed in this chapter.

(3) Grant reconsideration of the order which is the subject of the appeal or petition, if:

(i) an application for reconsideration of the order is filed in the trial court or other government unit within the time provided or prescribed by law; and

(ii) an order expressly granting reconsideration of such prior order is filed in the trial court or other government unit within the time prescribed by these rules for the filing of a notice of appeal or petition for review of a quasijudicial order with respect to such order, or within any shorter time provided or prescribed by law for the granting of reconsideration.

A timely order granting reconsideration under this paragraph shall render inoperative any such notice of appeal or petition for review of a quasijudicial order theretofore or thereafter filed or docketed with respect to the prior order. The petitioning party shall and any party may file a praecipe with the prothonotary of any court in which such an inoperative notice or petition is filed or docketed and the prothonotary shall note on the docket that such notice or petition has been stricken under this rule. Where a timely order of reconsideration is entered under this paragraph, the time for filing a notice of appeal or petition for review begins to run anew after the entry of the decision on reconsideration, whether or not that decision amounts to a reaffirmation of the prior determination of the trial court or other government unit. No additional fees shall be required for the filing of the new notice of appeal or petition for review.

(4) Authorize the taking of depositions or the preservation of testimony where required in the interest of justice.

(5) Take any action directed or authorized on application by the appellate court.

(6) Proceed further in any matter in which a non-appealable interlocutory order has been entered, notwithstanding the filing of a notice of appeal or a petition for review of the order.

(c) *Limited to matters in dispute.*—Where only a particular item, claim or assessment adjudged in the matter is involved in an appeal, or in a petition for review proceeding relating to a quasijudicial order, the appeal or petition for review proceeding shall operate to prevent the trial court or other government unit from proceeding further with only such item, claim or assessment, unless otherwise ordered by the trial court or other government unit or by the appellate court or a judge thereof as necessary to preserve the rights of the appellant.

(d) *Certain petitions for review.*— **Intentionally Omitted.**