

A P P E L L A T E

A L E R T

JULY
2013

MANY PENNSYLVANIA APPELLATE RULES CHANGES BEING MADE IN 2013

By Carl A. Solano

In the first six months of this year, the Supreme Court of Pennsylvania has been very active in revising and updating its rules and procedures governing appeals. In the most significant change, which was the subject of our Alert published [here](#),* the Court required that all filed documents be printed in 14-point type and set word limits that substantially reduce the length of briefs. 43 Pa. Bull. 2007 (Apr. 13, 2013). This Alert provides a quick guide to this year's other major changes, with citations to places to find the full text.

- **Notices of appeal.** The Court clarified Appellate Rule 341 to note that if an appeal is taken from an order under more than one docket number or from more than one judgment, separate notices of appeal must be filed. 43 Pa. Code 2423 (May 4, 2013).
- **Trial court jurisdiction to proceed after appeal.** The Court clarified that, although trial courts lose jurisdiction over a case when an appeal is filed, they do not lose power to address such ancillary matters as calculation of interest. The Court also called attention to its holding in *Samuel-Bassett v. Kia Motors* (2011) that filing of a notice of appeal does not prevent adjudication of an attorneys' fee award. 43 Pa. Bull. 2271 (Apr. 27, 2013).
- **Record issues.** The Court amended the rules relating to composition and assembly of the record to address waiver issues that have troubled litigants for many years. The amendments specify that, although parties continue to have a duty to ensure

that a complete record is filed in the appellate court, they will not be penalized if they rely on the inventory list provided by the trial court under Appellate Rule 1931 and that list turns out to be inaccurate. The amendments create a similar inventory list procedure to govern petitions for review. 43 Pa. Bull. 2810 (May 25, 2013).

- **Juvenile delinquency matters.** On February 8, 2013, new rules governing orders for out-of-home placement in juvenile delinquency proceedings went into effect. Petitions to review such orders must be filed within 10 days. 42 Pa. Bull. 7813 (Dec. 29, 2012).
- **Double jeopardy.** In June, the Court promulgated procedures for defendants to appeal adverse double jeopardy rulings. Unless the trial court deems the jeopardy challenge frivolous, the ruling is immediately appealable as a collateral order; otherwise it is subject to a petition for review. 43 Pa. Bull. 3327 (June 22, 2013).
- **Appellees' briefs.** The Court amended Appellate Rule 2112 to clarify that an appellee's brief may include counter-statements of sections of the appellant's brief other than just the statement of questions involved and statement of the case. 43 Pa. Bull. 2704 (May 18, 2013).
- **Mediation in Superior Court.** To the disappointment of many, the Superior Court formally abolished its mediation program, publishing a formal notice of the change in January. Many practitioners found the program helpful in resolving difficult cases, but the Court reportedly concluded that the program was not cost-effective. 43 Pa. Bull. 298 (Jan. 19, 2013).

* For those who do not receive this Alert electronically, the link to "Significant Pennsylvania Rules Change Requires Bigger Type and Much Shorter Briefs" (Apr. 2013) is at:

http://www.schnader.com/files/Uploads/Documents/Appellate%20Alert_PA%20Rules%20Change%20for%20Briefs_04-2013.pdf.

(continued from page 1)

- **Supreme Court procedures.** The Supreme Court issued new Internal Operating Procedures on January 9. While most of the changes are stylistic, the IOPs adjust some of the Court's internal deadlines to more accurately reflect the Court's practices. For example, a justice now has 90 days (up from 60) to circulate a report on whether the Court should allow an appeal, and the author of a majority opinion that addresses several issues now has 120 days (up from 90) to circulate a draft. The deadlines remain only targets, however, and decisions still will frequently take much longer to be issued. The IOPs also incorporate a number of previously uncodified materials, such as guidelines for oral argument and procedures for certification of questions of state law by federal appellate courts. 43 Pa. Bull. 514 (Jan. 26, 2013). In May, the Court amended the Appellate Rules and its IOPs to codify its criteria for allowing appeals and for certifying appeals from the federal appellate courts, and to set forth procedures for seeking stays in capital cases. 43 Pa. Bull. 3223, 3227 (June 15, 2013).
- **Commonwealth Court procedures.** On May 14, 2013, Commonwealth Court amended several Appellate Rules that apply only to that Court. Most of the amendments are technical or stylistic, but the Court also clarified Rule 3761, which deals with

procedures for enforcing government orders. 43 Pa. Bull. 3225 (June 15, 2013).

- **Stays pending U.S. Supreme Court review.** For cases in which the U.S. Supreme Court is asked to review a Pennsylvania appellate decision, an amendment enlarged the duration of a stay of the remand from 30 to 90 days, thus making it match the time allowed for filing a petition for a writ of certiorari. 43 Pa. Bull. 964 (Feb. 16, 2013). ♦

This summary of legal issues is published for informational purposes only. It does not dispense legal advice or create an attorney-client relationship with those who read it. Readers should obtain professional legal advice before taking any legal action.

For more information about Schnader's Appellate Practice Group or to speak with a member of the Firm, please contact:

*Carl A. Solano, Chair
215-751-2202
csolano@schnader.com*

www.schnader.com
©2013 Schnader Harrison Segal & Lewis LLP