



# **PENNSYLVANIA APPELLATE PITFALLS AND POINTERS FOR THE GENERAL PRACTITIONER**

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- **"Appellate advocacy is specialized work. It draws upon talents and skills which are different from those utilized in other facets of practicing law."  
-Third Circuit Judge Ruggero Aldisert**
  
- **"Appellate practice is as much a specialty as trial work or M&A."  
-David Wall, "Change Horses in Midstream *Corporate Counsel*, Jan. 2004**

# PREREQUISITES TO AN APPEAL

- Right preserved by post-trial motion
- Order entered on docket
- Order is final or otherwise appealable

# The Notice of Appeal

- When, where, and what to file
- Effect of appeal on the judgment

# Initial Post-Notice Tasks

- Appellant
  - Docketing Statement
  - Transcript
  - The Transmitted Record
- Appellee

# The Statement of Matters Complained of on Appeal

- When and where to file
- What to include
- What to leave out
- Service

# Designation and Filing of the Reproduced Record (R.A.P. 2154)

- Who is responsible
- When the designation is due
- What must be included
- What should not be included
- The large record alternative



# THE BRIEF

- **Contents**
- **Table of Contents**
- **Table of Citations**
- **Statement of Interest  
(*Amicus Curiae*)**
- **Statement of  
Jurisdiction**
- **Statement of the Order  
in Question**
- **Statement of Scope and  
Standard of Review**
- **Statement of Questions  
Involved**
- **Statement of the Case**
- **Summary of the  
Argument**
- **Summary of  
Discretionary Aspects of  
Sentence (specific  
criminal appeals)**
- **Argument**
- **Conclusion**
- **Attachment: Opinions  
below**
- **Attachment: Pleadings  
(specific cases without a  
reproduced record)**
- **Attachment: Rule 1925  
statement**

# THE DETAILS

- **They matter.**
- **The scope of review and standard of review are two different things.**
- **The statement of questions involved should be succinct.**
- **The statement of the case has several required components.**
- **The summary of the argument is a roadmap for the Court.**
- **Don't forget the attachments.**

# ARGUMENT

- **Guidelines for drafting the argument**
- **Guidelines for proofreading the argument**

# THE FINISHED PRODUCT

- **Clarity is important**
- **Proofreading is important**
- **Reread the entire document from start to finish for grammar and substance**
- **Have a colleague read it**

# THE ORAL ARGUMENT

- **Argument is slightly different in each of the 3 Pennsylvania appellate courts**
- **Supreme Court**
- **Superior Court**
- **Commonwealth Court**

# ORAL ARGUMENT PREPARATION

- **At your desk**
- **With a colleague**
- **In the courtroom**



- **The (Obvious) Mechanics**
- **Appellant's Argument**
- **Appellee's Argument**
- **Rebuttal**

- **Practical Tips for All Parties**
- **Don't be "that guy"!**
- **"Your reputation may not carry the day, but it might earn you consideration when you need it. It might break ties."**

**-Pennsylvania Supreme Court Justice J.  
Michael Eakin**

# DOES IT MATTER?

- **In the Supreme Court, cases are voted upon and assigned to an author immediately following the argument**
- **Hearing an argument is different than reading it**
- **Any new information available from the time of the briefing is important**

# AFTER THE DECISION

- **Application for reargument must be filed within 14 days after entry of the judgment or other order to be reargued. R.A.P. 2542(a).**
- **Must present "with accuracy, brevity, and clearness whatever is essential to a ready and adequate understanding of the points requiring reconsideration." R.A.P. 2544(b-d).**

# APPLICATION FOR REARGUMENT

## ■ Standard

- Where a panel decision appears inconsistent with the decision of a different panel of the same court;
- Where a court has overlooked or misapprehended a fact of record material to the outcome;
- Where the court has overlooked or misapprehended (by misquotation of text or misstatement of result) a controlling or directly relevant authority;
- Where a controlling or directly relevant authority relied upon by the court has been expressly reversed, modified, overruled, or otherwise materially affected during the pendency of the appeal

# APPEAL TO THE PENNSYLVANIA SUPREME COURT

- **Allowance Of Appeal (also known as "Allocatur")**
  - **From any final order of the Commonwealth or Superior Courts. R.A.P. 1112(a).**
  - **Allowance subject to judicial discretion, granted only where there are special and important reasons for review. R.A.P. 1114.**

# THE PETITION

- **File within 30 days of the entry of the order appealed by the lower appellate court.**
  - Time to file can be tolled up to 60 days by the filing of a Petition For Reargument to the lower appellate court. R.A.P. 1113(a).
  
- **No supporting brief may be filed. R.A.P. 1115(c).**
  
- **Must express points requiring consideration with accuracy, brevity, and clearness. R.A.P. 1115(d).**

# EXPEDITED RELIEF

- **Expedited Appeals, Generally**
- **Family Fast Track**
  - Effective March 16, 2009
  - Includes "any appeal from an order involving dependency, termination of parental rights, adoptions, custody, or paternity."
  - Appellant's brief must be filed within 30 days, rather than 40 days. Appellee's brief in 20 days, rather than 30 days. Reply brief within 7 days, rather than 14 days. Pa.R.A.P. 2185.
  - Petition for reargument in family fast track appeal must be filed within 7 days of the order, and the answer must be filed 7 days later. Pa.R.A.P. 2542.
  - Cannot opt out of fast track designation.
  - All covers of briefs and petitions must be labeled as a family fast track appeal.



# SUPERSEDEAS/STAY PENDING APPEAL

- **Appeal does not operate as an automatic stay.**
- **An applicant for a stay pending appeal must establish:**
  - A likelihood of success on the merits of the appeal;
  - Irreparable injury if the stay is denied;
  - That issuance of a stay will not substantially harm other interested parties; and,
  - That issuance of a stay will not adversely affect the public interest.
    - Pa. Public Utility Comm'n v. Process Gas Consumers Group, 467 A.2d 805, 808-09 (Pa. 1983).
- **Additionally, the applicant must satisfy the general requirements for issuance of a preliminary injunction.**

# What's Different In Federal Court?