

THE SUPREME COURT OF PENNSYLVANIA

INTERNAL OPERATING PROCEDURES

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THE SUPREME COURT OF PENNSYLVANIA
INTERNAL OPERATING PROCEDURES

I. INTRODUCTION

This manual of internal operating procedures is intended to implement Article V of the Constitution of Pennsylvania, statutory provisions, the Pennsylvania Rules of Appellate Procedure and the customs and traditions of this Court. No substantive or procedural rights are created, nor are any such rights diminished.

II. PREAMBLE

- A. In the discharge of judicial duties, every justice is responsible to the Court.
- B. In its discharge of judicial functions, the Court is the responsibility of every justice.
- C. All justices bear an equal responsibility for the proper disposition of every matter before the Court.
- D. The assignment of a given matter to a single justice is solely for the efficiency of the Court, and neither enhances the power of the assigned justice nor diminishes the duty of the remaining justices as to its proper disposition.

In furtherance of the duties expressed in the preamble, the following procedures, which may be amended without notice as circumstances require, have been adopted by the Court:

III. DECISIONAL PROCEDURES

A. ARGUMENT SESSIONS

1. SCHEDULE

Unless otherwise ordered by the Court, argument sessions shall be scheduled for one week periods during the months of January, March, April, May, September, October and December. Argument sessions shall begin at 9:30 a.m. unless otherwise designated.

2. ARGUED CASES

a. Death penalty cases are automatically assigned to an oral argument list immediately upon completion of the briefing schedule.

b. Cases in which allowance of appeal ("allocatur") has been granted and cases which have been designated as suitable for oral argument shall be assigned to an argument list upon completion of the briefing schedule.

3. DIRECT APPEALS

Because they would, under a differently structured judicial system, have gone to intermediate appellate courts for evaluation, direct appeals shall be submitted for screening rather than automatically accepted for oral argument. Therefore, as soon as briefs are received, all direct appeals other than death penalty cases will be assigned by the prothonotary to a justice on a rotating basis by seniority for preparation of a Disposition Memorandum, which will contain a short recitation of the facts, a brief discussion of the issues, and a recommendation of whether the case should be resolved by 1) a per curiam order;¹ 2) affirmance on the opinion of the court below, plus,

¹ A per curiam order may be used when the Court's decision:

1) does not establish a new rule of law;
2) does not alter, modify, criticize or clarify an existing rule of law;
3) does not apply an established rule of law to a novel fact situation;
(continued...)

where possible/necessary a brief statement of matters not covered by that opinion; 3) submission on briefs; or 4) should be listed for oral argument. Each Disposition Memorandum shall be circulated to the Court within sixty (60) days of assignment, with contemporaneous notice to the prothonotary. It shall then be placed on a supplemental list for consideration and vote at the same time as opinions. (See IV. OPINIONS. A. CIRCULATION SCHEDULE. 3. VOTING). Disposition Memoranda must be circulated to the Court ten (10) days prior to the list date to be placed on the vote list. The case shall thereafter be disposed of or listed for oral argument in accordance with the vote of the majority. If no clear majority emerges, the case will be listed for oral argument.

4. **POST CONVICTION HEARING CASES**

These appeals are treated in accordance with Rule 2311(b), Pa.R.A.P.

B. **ASSIGNMENTS**

1. **CONFERENCE**

Each day following oral argument the Court shall meet in conference to discuss the cases argued that day. The Chief Justice shall preside at the conference, lead the Court's discussion, and call for a tentative vote on the decision of each case. The justices shall vote in an inverse order of seniority.

(...continued)

- 4) does not constitute the only, or only recent binding precedent on a particular point of law;
- 5) does not involve a legal issue of continuing public interest;
- or
- 6) whenever the Court decides such an order is appropriate.

2. DEATH PENALTY CASES

Cases in which the death penalty has been ordered shall be assigned in a separate rotation based on seniority to assure equal distribution of assignments among the members of the Court.

3. CIVIL AND CRIMINAL APPEALS

Cases shall be assigned by the senior member of the majority in such a manner as to achieve equal distribution of assignments, and to avoid delay in deciding cases. If it appears that due to illness of a justice or for some other reason this purpose is not being served, the Chief Justice may, as a matter of his or her discretion, alter the assignment order.

In the event a justice to whom a case has been assigned subsequently decides to change his or her vote on the decision of the case and ceases to be among the majority, he or she shall provide a draft opinion along with a cover letter explaining the reason for the change of position.

Where appeals other than direct appeals have been submitted, the prothonotary shall direct the case to the Court for disposition after completion of the briefing schedule. The Chief Justice will assign the case for preparation of a draft opinion to an individual justice in the rotation established by seniority.

4. DIRECT APPEALS

An argued direct appeal will be assigned to the justice who prepared the Disposition Memorandum, unless after preliminary vote his or her position is not that of the majority. In such an instance, the assignment shall be made by the senior member of the majority.

A direct appeal which the Court has determined shall be decided by opinion on the submitted briefs shall be assigned to the justice who prepared the Disposition Memorandum.

IV. OPINIONS

A. CIRCULATION SCHEDULE

1. PREPARATION OF OPINIONS

Preparation of opinions and responses to circulating opinions shall be given the highest priority. The justice to whom the drafting of an opinion has been assigned shall, absent extraordinary circumstances, circulate a proposed opinion to all members of the Court, with contemporaneous notice to the prothonotary's office, within ninety (90) days of the assignment.

2. CONCURRENCES AND DISSENTS

Concurrences and dissents shall be circulated to all members of the Court within forty (40) days of the date on which votes on the proposed majority opinions are due. Such concurrences and dissents shall be placed on the next available voting list following their circulation to the Court. The prothonotary's office shall receive contemporaneous notice of concurrences or dissents.

3. VOTING

Consideration of proposed opinions shall occur at a regularly scheduled opinion conference, either by written vote, or via telephone conference call. Lists of circulating opinions shall be supplied to the members of the Court and the prothonotary by the office of the Chief Justice on a regularly scheduled list date. The list date shall be set for the first Monday of every month, or, if that date is a holiday, on the Tuesday

following the Monday holiday. The cases listed shall include all opinions submitted for the Court's consideration as of ten (10) days prior to the list date.

a. **WRITTEN VOTES**

Written votes on listed cases shall be returned to the Chief Justice's office on the fifth business day following publication of the list. Within two (2) business days following submission of written votes, the office of the Chief Justice will circulate to all justices a compilation of all votes received. Within two (2) days after receipt of the compilation, the office of the Chief Justice must be advised of any correction to the voting list results. On the next business day, the fifth day following the voting conference, the office of the Chief Justice shall issue a confidential list to the prothonotary of all cases which are ready to be filed together with the votes of the justices. No case will appear on the confidential list unless all votes are recorded. Notice of the forthcoming filings shall be posted, by case name and number only, in the office(s) of the prothonotary,² and the prothonotary will docket opinions consistent with the information received.

b. **TELEPHONE CONFERENCES**

Any justice may request that any case be held for telephone conference by making such request in writing to the office of the Chief Justice with notice to all other justices and the prothonotary after receipt of the monthly voting list. The list will also indicate a date certain on which a telephone conference will be held for any cases so designated. Cases may be held for discussion to take place at the next scheduled court conference following oral argument by a vote of three justices.

² For the purpose of this section, the office of the prothonotary shall include all three district offices.

c. **HOLDS**

Cases may be placed on Hold for twenty (20) day periods following circulation of a letter to the members of the Court and to the prothonotary explaining the reasons for the hold, e.g., a forthcoming opinion in a pending case, or preparation of dissent or concurrence. In instances where the hold relates to preparation of a dissent or concurrence, the hold period shall commence on the original due date for the dissent or concurrence, that is, the fortieth day after votes are due on vote listed cases. In no event shall circulation of a dissent or concurrence occur beyond sixty (60) days from the date votes are due on vote listed cases. If, within sixty (60) days of the date votes are due on majority opinions no dissent or concurrence has been placed in circulation, the case will be put down, and the dissenting or concurring justice will be noted as not having participated in the decision of the case.

d. **REASSIGNMENT**

When a concurrence or dissent garners a majority of votes, the case shall be reassigned to the author of the concurrence or dissent, whose majority opinion shall then be forthcoming within thirty (30) days of the reassignment.

4. **MONITORING**

The prothonotary shall provide the Court with a monthly table showing the name, docket number, journal number, assignment, assignment date and circulation date of all argued and submitted cases. All argued and submitted cases which are open for more than one hundred fifty (150) days, and all petitions for reargument which are open for a period of more than forty-five (45) days shall be separately listed.

B. **LABELING**

1. **MAJORITY**

An opinion will be labeled “Opinion” when a majority of the Court joins the opinion.

Proposed majority opinions that involve multiple, complex issues which the Justice believes may garner disparate votes should be divided into sections. See, e.g., *Phillips v. Cricket Lighters*, 841 A.2d 1000 (Pa. 2003).

If there is a split on an opinion that has been divided into sections, the author of the lead opinion will be responsible for preparing a short introductory explanatory statement regarding the breakdown of votes.

2. **CONCURRENCES AND DISSENTS**

An opinion is a “concurring opinion” when it agrees with the result of the lead opinion. A Justice who agrees with the result of the lead opinion, but does not agree with the rationale supporting the lead opinion, in whole or in part, may write a separate “concurring opinion.” An opinion is a “dissenting opinion” when it disagrees with the result of the lead opinion. An opinion is “concurring and dissenting opinion” only when there is more than one result and the Justice agrees with one or more of the results, but not the other(s). Alternatively, a Justice may choose to “concur in result” or “dissent” without writing a separate opinion.

C. **REARGUMENT PETITIONS**

1. **ASSIGNMENT**

Upon receipt of a petition for reargument of an order of the Court disposing of an appeal, the prothonotary shall direct the petition to the author of the majority opinion. If the appeal was resolved without opinion, the petition will be directed to the office of the Chief Justice to be assigned to the most senior member of the majority. In the event

that the appeal was resolved by an equally divided Court, the petition shall be assigned to the author of the opinion in support of affirmance.

2. **CIRCULATION**

The justice to whom the reargument petition was assigned shall circulate to all members of the Court a recommended disposition of the petition within fourteen (14) days of the assignment. A justice who disagrees with the recommended disposition shall circulate a counter recommendation within fourteen (14) days of the original recommendation. A vote of the majority is required to grant reargument.

V. ALLOCATURS

A. **STANDARDS**

Petitions for allowance of appeal ("allocaturs") may be granted for any of the following reasons:

1. that the holding of the intermediate appellate court conflicts with another intermediate appellate court opinion;
2. that the holding of the intermediate appellate court conflicts with a holding of this Court or the United States Supreme Court on the same legal question;
3. that the question presented is one of first impression, and of such substantial public importance as to require prompt and definitive resolution by this Court;
4. that the issue involves the constitutionality of a statute of this Commonwealth;
5. that the intermediate appellate court has so far departed from accepted judicial practices or so abused its discretion as to call for the exercise of this Court's supervisory authority.

B. ASSIGNMENT

Petitions for allowance of appeal shall be assigned to individual justices by the prothonotary's office on a rotating basis for preparation of an allocatur report. Allocatur reports are to be circulated within sixty (60) days of the receipt of such an assignment with notice to the prothonotary's office that the report is in circulation. The proposed disposition date shall not be greater than sixty (60) days from the date of circulation.

Holds may be placed on petitions for allowance of appeal only upon written notice to the members of the Court and the prothonotary as to the reasons for the hold, e.g., the existence of another petition from another district presenting the same question. No hold may be placed on a petition without the existence of a terminus, e.g., the issuance of an opinion on a petition presenting the same question. A hold for the purpose of preparing a counter report shall not exceed thirty (30) days; only by vote of the majority can a hold be extended beyond thirty (30) days, but in no event shall a hold exceed ninety (90) days.

Petitions from the same district presenting the same question shall be consolidated; petitions from different districts presenting the same question may be consolidated at the discretion of the Court. Where a hold results from the existence of another petition presenting the same issue, the parties shall be notified of the hold and the case which will determine the issue.

C. DISPOSITION

A petition for allocatur is granted upon the affirmative vote of three or more members of the Court. Orders granting allocatur shall specify the issues upon which allocatur was granted, and whether the case is to be submitted on briefs or designated by the Court to be heard at the argument session. The order shall also contain the names of any justices not participating in the decision. In any case in which allocatur

has been denied, a justice may request that the order of denial record that he or she voted to grant the petition.

D. **RECONSIDERATION**

A vote of the majority is required to grant reconsideration.

E. **MONITORING**

The prothonotary shall issue to the Court a confidential monthly report showing the name and docket number, assignment, assignment date and circulation date of all allocatur reports. Assignments open for more than sixty (60) days shall be separately listed. Monthly reports showing the filing date, and the votes for and against the granting of each allocatur petition shall also be provided by the prothonotary's office to each justice.

Cases shall be screened by the prothonotary for compliance with applicable appellate rules. Untimely filed petitions may be dismissed by the prothonotary without further action of the Court.

VI. MOTIONS, MISCELLANEOUS PETITIONS AND APPLICATIONS FOR RELIEF

A. **ASSIGNMENTS**

All assignments of applications for relief, including emergency motions and those requesting exercise of King's Bench powers and original jurisdiction, shall originate in the prothonotary's office. No motions, petitions or applications will be considered which were not first filed in the office of the prothonotary and thence assigned unless a Rule of Appellate Procedure specifies otherwise. Once received, motions, petitions and applications will be monitored by the deputy prothonotary for compliance with applicable appellate rules. Motions, etc., which are not in compliance will not be docketed.

Matters which are in compliance will be docketed and a response will be sought. At the expiration of the response period³ the documents will be forwarded to the Court.

B. DISPOSITION

The Chief Justice will prepare memoranda setting forth the positions of the parties, and a recommended disposition. Vote proposals shall be circulated within thirty (30) days from the date of assignment, and shall contain a proposed disposition date no

³ TIME PERIODS FOR RESPONSES

FILING	RULE	RESPONSE PERIOD
APPLICATION FOR RELIEF (EXTENSIONS)	123	14 DAYS*
JURISDICTIONAL STATEMENT	909(b)	14 DAYS
PETITION FOR ALLOCATUR	1116	14 DAYS
RECONSIDERATION	1123	NO ANSWER PERMITTED
PETITION FOR PERM. TO APPEAL	1314	14 DAYS
PETITION FOR REVIEW	1516(c)	30 DAYS*

N.B. NO ANSWER REQUIRED UNLESS PETITION CONTAINS NOTICE TO PLEAD

APPLICATION FOR RELEASE (BAIL)	1762	14 DAYS
REARGUMENT	2545	14 DAYS
ORIGINAL PROCESS (e.g., HABEAS, MANDAMUS)	3307	14 DAYS*
EXTRAORDINARY RELIEF	3309	14 DAYS*

*COULD BE SHORTER IN STAY OR SUPERSEDEAS APPLICATIONS WHEN CIRCUMSTANCES REQUIRE, OR BY COURT ORDER

greater than thirty (30) days from the date of circulation. A vote of the majority of those participating is required to implement the proposed disposition.

Every motion shall be decided within (60) days. Orders disposing of motions shall include the names of any justices who did not participate in the consideration or decision of the matter. Procedural motions, e.g., requests for extension of time, requests to exceed page limits, and to proceed in forma pauperis, are to be disposed of by the prothonotary's office after screening by the deputy prothonotary.⁴

C. **EMERGENCY MOTIONS**

On or before the first Monday in January, the Chief Justice shall publish a calendar of duty assignments for the handling of emergency petitions. Two justices, one from the eastern district and one from the western district will be assigned by the Chief justice on a monthly rotating basis to review emergency petitions. Cases filed in the middle district will be assigned alternately between the Philadelphia and Pittsburgh duty justices. Any motion assigned to the duty justice may at the discretion of that justice be referred to the full Court for consideration, with or without the entry of an interim order. Moreover, emergency applications for stay of execution in death penalty cases may only be denied by a majority vote of the Court.

Emergency motions may be filed by fax with the prothonotary, who will forward the papers to the duty justice, or a substitute. No other filing by fax will be permitted.

D. **SINGLE JUSTICE MOTIONS**

A duty justice may entertain and may grant or deny* any request for relief which may, under Pa.R.App.P. 123, or 3315 properly be sought by motion, except that a single justice may not dismiss or otherwise determine an appeal or other proceeding.

* See exception under C. Emergency Motions.

⁴ Deputy prothonotaries are to be attorneys.

VII. COMMUNICATIONS FROM COUNSEL IN PENDING CASES

Whenever any matter is pending before the Court, all communications to the Court from counsel are to be addressed to the prothonotary's office with copies to all other counsel.

VIII. QUORUM

A majority of the Court shall be a quorum of the Court.

IX. SUSPENSION OF PROCEDURES

Whenever exceptional or emergency conditions require speedy action, or whenever there is other good cause for special action regarding any matter,⁵ the operation of these procedures may be suspended by affirmative vote of four members of the Court.

The Chief Justice may extend any applicable time limit on written request by a justice stating good cause and the date by which he or she expects to comply.

X. CERTIFICATION OF QUESTIONS OF LAW

A. COURT LIMITATION

This Court will accept Certification Petitions from any of the following courts:

1. The United States Supreme Court; or
2. United States Courts of Appeal.

⁵ For example, whenever in these rules an action day falls on a holiday, the action shall occur on the next business day after the holiday.

B. STANDARDS

Like granting allocatur, acceptance of certification is a matter of judicial discretion. This Court may accept certification of a question of Pennsylvania law only where there are special and important reasons therefor, including, but not limited to, any of the following:

1. The question of law is one of first impression and is of such substantial public importance as to require prompt and definitive resolution by this Court;

2. The question of law is one with respect to which there are conflicting decisions in other courts; or

3. The question of law concerns an unsettled issue of the constitutionality, construction, or application of a statute of this Commonwealth.

4. This Court shall not accept certification unless all facts material to the question of law to be determined are undisputed, and the question of law is one that the petitioning court has not previously decided.

5. This Court shall decide whether to accept or refuse certification without hearing oral argument.

C. ASSIGNMENT AND DISPOSITION

The prothonotary shall refer Certification Petitions to the Chief Justice. The Chief Justice will prepare memoranda setting forth the positions of the parties and a recommended disposition. Vote proposals shall be circulated within thirty days from the date of assignment, and shall contain a proposed disposition date no greater than thirty days from the date of circulation. A vote of the majority of those participating is required to implement the proposed disposition.

Every Certification Petition shall be decided within sixty days. Orders disposing of Certification Petitions shall include the names of any justices who did not participate in the consideration or decision of the matter.

Upon acceptance of certification, the prothonotary shall:

1. Issue an order accepting certification, which shall specify the questions of law for which certification was accepted, and whether the case is to be submitted on briefs or designated by the Court to be heard at the argument session;
2. Establish a briefing schedule;
3. If oral argument is granted, list the matter for oral argument; and
4. Take such further action as this Court directs.

D. **RECONSIDERATION**

A vote of the majority is required to grant reconsideration.

RULES REGARDING CERTIFICATION OF QUESTIONS OF PENNSYLVANIA LAW

1. Any of the following courts may file a Certification Petition with this Court:
 - a. The United States Supreme Court; or
 - b. Any United States Court of Appeals.
2. A court may file a Certification Petition either on the motion of a party or sua sponte.
3. A Certification Petition shall contain the following:
 - a. A brief statement of the nature and stage of the proceedings in the petitioning court;
 - b. A brief statement of the material facts of the case;
 - c. A statement of the question or questions of Pennsylvania law to be determined;

- d. A statement of the particular reasons why this Court should accept certification; and
- e. A recommendation about which party should be designated Appellant and which Appellee in subsequent pleadings filed with this Court.
- f. The petitioning court shall attach to the Certification Petition copies of any papers filed by the parties regarding certification, e.g., a Motion for Certification, a Response thereto, a Stipulation of Facts, etc.