PROPOSED REVISION TO RULE 1925

Rule 1925. Opinion in Support of Order

(a) General rule. Upon receipt of the notice of appeal, the judge who entered the order appealed from, if the reasons for the order do not already appear of record, shall forthwith file of record at least a brief statement, in the form of an opinion, of the reasons for the order, or for the rulings or other matters complained of, or shall specify in writing the place in the record where such reasons may be found.

(b) Direction to file statement of matters complained of on appeal; filing and service; contents; waiver; remand.

(1) If the trial court is uncertain as to which order or orders or rulings are the subject of the appeal, or the issues on which the appellant seeks review of those orders or rulings, the trial court may enter an order directing the appellant to file of record in the lower court and serve on the trial judge a concise statement of the matters complained of on the appeal. Service on the trial judge shall be effective and complete upon mailing.

(2) An order issued under subsection (1) shall provide at least 20 days from the date on which the order is entered on the court's dockets for the filing and service of the statement of matters complained of on appeal. Upon application of the appellant, the trial court may enlarge that time period or permit a supplement to the initial statement.

(3) The statement of matters complained of on appeal shall accurately and concisely: (a) identify the orders or rulings for which the appellant seeks review; and (b) state the issues for which the appellant seeks review. The issues shall be stated in brief and general terms. The appellant's statement will be deemed to include every subsidiary issue fairly comprised therein and those raised by the trial court's opinion, if any. The concise statement shall not be required to include authorities or arguments. Neither the appellant nor the appellee shall be required to file a brief or memorandum of law or similar document with, as part of, or in response to the statement of matters complained of on appeal.

(4) An order or ruling not specified in the statement of matters complained of on appeal will be deemed by the appellate court as having been waived. An issue that is neither specified in the statement of matters complained of, nor a subsidiary issue fairly comprised within an issue expressly stated, will be deemed waived.

(5) An order directing the filing and service of a statement of matters complained of on appeal shall specify that:

(a) it is necessary to both (i) file the statement of matters complained of record and (ii) serve a copy on the trial judge.

(b) the failure to file the statement of matters complained of on appeal within the time provided in the order, or any extension thereof, shall result in a waiver of all issues on appeal.

(c) only orders or rulings and issues set forth in a timely filed and served statement of matters complained of on appeal shall be considered on appeal; and

(d) orders or rulings and issues not included in a timely filed and served statement of matters complained of on appeal shall be deemed as having been waived for all purposes.

(6) The trial court may, in its discretion, accept and address a late-filed, late-served or an amended statement of the matters complained of on appeal and waiver under this rule shall not then be found on the grounds of untimeliness.

(7) An appellate court may, in its discretion, remand the case:

(a) upon application of the appellant for cause shown, for the filing of a statement of matters complained of on appeal nunc pro tunc and for the preparation and filing of a corresponding opinion by the trial court; or

(b) upon application of the appellant for cause shown, for the filing of an amendment or amendments to a timely filed and served statement of matters complained of on appeal and for the preparation and filing of a corresponding opinion by the trial court.

(8) If no opposing party contends in its appellate brief that a Rule 1925 deficiency constitutes waiver, and if the trial judge has not found waiver, there shall be no waiver under this rule.

(c) Opinions in matters on petition for allowance of appeal. Upon receipt of notice of the filing of a petition for allowance of appeal under Rule 1112(b) (appeals by allowance), the appellate court below which entered the order sought to be reviewed, if the reasons for the order do not already appear of record, shall promptly file of record at least a brief statement, in the form of an opinion, of the reasons for the order.

EXPLANATORY COMMENT

This amendment to subdivision (b) of Pa.R.A.P. 1925 would maintain the mandatory nature of Rule 1925, as established by *Commonwealth v. Lord,* 719 A.2d 306 (Pa. 1998). The amendment (1) provides clear notice of the requirements and consequences of the rule as interpreted, and (2) provides the trial judge with discretion to permit the appellant to file a supplemental 1925(b) statement or to enlarge the time period within which the appellant must file a 1925(b) statement.

Subsection (1) permits the trial judge to ask for a statement of issues complained of on appeal, but does not set a fixed time limit for the request. The trial judge, however, must adhere to the time deadline set by the Supreme Court for filing a 1925(a) opinion. Delay by counsel in filing 1925(b) statements will not extend the time within which the trial judge must file a 1925(a) opinion.

Subsection (1) maintains the requirement that the statement must be both filed of record in the lower court and served on the trial judge. Service on the trial judge is complete upon mailing, the manner of which is provided in Pa.R.A.P. 121 and 122. A certification of service on the trial judge and the parties should be filed of record with the statement of matters complained of on appeal.

Subsection (2) allows the trial judge, to permit the appellant to file a supplemental 1925(b) statement or to enlarge the time for the filing of the 1925(b) statement. There are a number of circumstances where the trial court should permit such relief. For example, in many

cases, new counsel is retained solely to handle an appeal. It may be appropriate for the trial court to provide newly retained appellate counsel with additional time to become familiar with the record before requiring counsel to identify the issues on appeal. In the context of criminal cases, where frequently a defendant does not file post-verdict motions or order notes of testimony, requiring new appellate counsel to adhere to a strict deadline for filing a 1925(b) statement without providing counsel the opportunity to gain familiarity with the record may be particularly unjust. Furthermore, enlarging the time for the filing of a 1925(b) statement can conserve judicial resources where an attorney's failure to timely file a 1925(b) statement may result in a meritorious PCRA petition alleging ineffectiveness of counsel or other collateral litigation. Moreover, often it is not possible to identify all appellate issues before the notes of testimony are transcribed. If issues arise following a review of the notes of testimony, the trial judge should allow counsel to file a supplement to the 1925(b) statement.

Subsection (3) sets forth the required contents for a 1925(b) statement. The 1925(b) statement must contain: (a) a listing of all of the orders and rulings complained about on appeal (which is necessary because an appeal from a final order incorporates any subsidiary orders entered prior to the final order); and (b) a brief statement of the issues for which the appellant seeks review. The purpose of the statement of issues is to provide the trial court with guidance regarding the issues that it must address in the 1925(a) opinion. Thus, the statement of issues can be stated in brief and general terms, and should not be a detailed exposition of the trial court's errors. The statement of issues should only be as detailed as necessary for the trial judge to determine what issues will be presented to the appellate court (e.g., "the court erred in denying the motion to suppress because appellant had a reasonable expectation of privacy for the contents

of his glove compartment"). A statement that is too vague to permit the trial court to produce a Rule 1925 opinion (e.g., "the court erred in denying the motion to suppress" or "the verdict was against the weight of the evidence") is insufficient.

Subsection (3) also seeks to provide guidance regarding recent Superior Court decisions that found waiver under Rule 1925(b) based on 1925(b) statements that the court held were either too vague (*See Lineberger v.Wyeth,* 894 A.2d 141 (Pa. Super 2006) or too long (*See Kanter v. Epstein*, 866 A.2d 394 (Pa. Super. 2004)). By defining the required contents of the 1925(b), the amended rule seeks to establish a middle ground between the extremes that resulted in waiver in *Lineberger* and *Kanter*. The statement will be deemed to include subsidiary issues, eliminating any need to list them. *Compare* Pa.R.A.P. 1115(a)(3). The rule retains the requirement of *Kanter* that the statement be concise. Although an appellant must list all issues that will be raised on appeal, a statement that is repetitive or unnecessarily voluminous or that includes issues that the appellant does not in good faith plan to raise on the appeal violates the rule and may be stricken.

Subsection (4) makes it clear that the 1925(b) requirement is mandatory.

Subsection (5) requires the trial judge to alert the parties as to the importance of a timely 1925(b) statement. The trial judge's order must alert the appellant to the requirement to both file the statement of record and also serve the trial judge. The trial judge's order must also alert the appellant that issues not listed in the 1925(b) will be considered waived.

Subsection (6) provides relief when, for some good reason, counsel cannot comply with the time deadlines. As noted, this does not relieve the trial judge of his or her obligation to file a timely 1925(a) opinion.

Subsection (7) vests authority in the appellate court to remand a matter to allow a supplemental 1925(b) statement or a *nunc pro tunc* 1925(b) statement. See e.g. *Commonwealth v. Castillo,* 888 A.2d 775, 780 (Pa. 2005), fn. 6. There are a variety of reasons where a rule that is too rigid could result in injustice. This will avoid the situation where the remedy would have to be an ineffectiveness of counsel claim or a malpractice suit against the attorney. This solution makes it clear that in general counsel is required to comply with the requirements to supply the trial judge with enough information in a timely manner so that the trial judge can timely file a 1925(a) opinion, but that there are circumstances where a rigid rule does not speed up the process but in fact may actually delay it by requiring further litigation.

Subsection (8) covers the situation where neither the trial judge nor any party has requested waiver for 1925(b) violations. If the appellate court believes that the 1925(a) opinion does not allow it to conduct meaningful and effective appellate review, the appellate court may always remand the matter to the trial judge.