

**SUPREME COURT OF PENNSYLVANIA
APPELLATE COURT PROCEDURAL RULES COMMITTEE**

NOTICE OF PROPOSED RULEMAKING

Proposed Amendment of Pa.R.A.P. 521

The Appellate Court Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Pa.R.A.P. 521 for the reasons set forth in the accompanying publication report. Pursuant to Pa.R.J.A. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any report accompanying this proposal was prepared by the Committee to indicate the rationale for the proposed rulemaking. It will neither constitute a part of the rules nor be adopted by the Supreme Court.

Additions to the text of the proposal are bolded and underlined; deletions to the text are bolded and bracketed.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

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All communications in reference to the proposal should be received by **June 12, 2025**. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

By the Appellate Court Procedural Rules Committee,

Peter J. Gardner
Chair

Rule 521. Notice to Attorney General of Challenge to Constitutionality of Statute.

- (a) **Notice.**~~—~~**It shall be the duty of a party who draws in question the constitutionality of any statute in any matter in an appellate court to which the Commonwealth or any officer thereof, acting in his official capacity, is not a party, upon the filing of the record, or as soon thereafter as the question is raised in the appellate court, to give immediate notice in writing to the Attorney General of Pennsylvania of the existence of the question; together with a copy of the pleadings or other portion of the record raising the issue, and to file proof of service of such notice.]**

(1) If the constitutionality of any statute is questioned in any matter in an appellate court:

(i) In criminal appeals, where the Commonwealth is represented by the district attorney, the district attorney shall give written notice to the Attorney General of Pennsylvania of the existence of the question in addition to notice previously given pursuant to Pa.R.Crim.P. 579.1.

(ii) In all other appeals, unless the Attorney General is already a party or represents a party or was previously given written notice by other authority, the party raising the question of constitutionality shall give written notice to the Attorney General of Pennsylvania of the existence of the question.

(2) A copy of the pleadings or other portion of the record raising the issue shall be attached to the notice.

(3) Notice shall be given upon the filing of the record or as soon as the question is raised in the appellate court.

(4) Proof of service of the notice shall be filed of record.

- (b) **Status of Attorney General.**~~—~~**Where notice is required under this rule, [T]the Attorney General may be heard on the question of the constitutionality of the statute involved without formal intervention. If the Attorney General files a brief concerning the question, the [Commonwealth] Attorney General shall thereafter be deemed to be an intervening party in the matter.**

- (c) Intervenor or Amicus Curiae. A court may invite the Attorney General's participation as an intervening party where a party has drawn into question the constitutionality of any statute or as *amicus curiae* in any other case in which the Attorney General's participation may be helpful in resolving an issue.
- (d) Failure to Provide Notice. If the notice required by subdivision (a) is not provided to the Attorney General, the appellate court in its discretion may direct that the notice be given to the Attorney General.

[Note] Comment: Based on Pa.R.Civ.P. 235 and [Fed.Rules.App.Proc.] Fed.R.App.P. 44.

Practitioners should be aware that subdivision (a)(1) is intended to include constitutional challenges to a statute as written and as applied.

“Other authority” as used in subdivision (a)(1)(ii) includes Pa.R.Civ.P. 235 (Notice to the Attorney General. Constitutionality of Statute. Charitable Request or Trust.); Pa.R.Crim.P. 579.1 (Notice to Attorney General. Constitutionality of Statute.); (Pa.R.O.C.P. 4.4 (Charities – Notice to the Attorney General); Pa.R.A.P. 1514(c) (service of petition for review required on Attorney General).

The provisions of subdivision (b) are intended to place the Commonwealth in a position to obtain review in the Supreme Court of Pennsylvania or the Supreme Court of the United States of an adverse decision on the constitutional question.

**SUPREME COURT OF PENNSYLVANIA
APPELLATE COURT PROCEDURAL RULES COMMITTEE**

PUBLICATION REPORT

Proposed Amendment of Pa.R.A.P. 521

The Appellate Court Procedural Rules Committee is considering proposing to the Supreme Court the amendment of Pennsylvania Rule of Appellate Procedure 521 governing notice to the Attorney General in appellate proceedings.

The Committee, in conjunction with the Criminal Procedural Rules Committee, has prepared a proposal to add procedures for the notification of the Attorney General in appellate proceedings of criminal appeals if the constitutionality of a statute is at issue. See, e.g., 71 P.S. § 732-204(a)(3) (“It shall be the duty of the Attorney General to uphold and defend the constitutionality of all statutes so as to prevent their suspension or abrogation in the absence of a controlling decision by a court of competent jurisdiction.”).

Current Pa.R.A.P. 521, based on Pa.R.Civ.P. 235 and Fed.R.App.P. 44, provides generally for notice only when the Commonwealth or any officer thereof is not already a party. To align with the new procedures of Pa.R.Crim.P. 579.1, the rule is proposed to be amended to ensure that in criminal appeals the Attorney General receives notice of all challenges to statutes regardless of the Commonwealth’s representation by a district attorney unless the Attorney General is already a party.

To that end, subdivision (a)(1)(i) would require that, in criminal appeals, the district attorney provide notice to the Attorney General when the Attorney General is not a party to the proceeding, in addition to the notice previously given pursuant to Pa.R.Crim.P. 579.1. The Committee believed that requiring notice to the Attorney General in appellate proceedings, even if previously provided in trial court proceedings, would aid the Attorney General with identifying appeals continuing to challenge the constitutionality of a statute and would apprise the Attorney General of the Commonwealth’s party status, e.g., appellant or appellee, as well as the procedural posture of the case, e.g., direct appeal, PCRA appeal, petition for permission to appeal, or petition for allowance of appeal.

Subdivision (a)(1)(ii) would govern the notice requirements to the Attorney General in all other appeals. Existing rule requirements to attach a copy of the pleadings or portion of the certified record to the notice, as well as provisions regarding timing and proof of service would be retained and set forth as subdivisions (a)(2), (a)(3), and (a)(4), respectively.

Subdivision (b) would retain the current text regarding the status of the Attorney General and permit the Attorney General to be heard on the question of the

constitutionality of the statute without formal intervention. If the Attorney General files a brief on the constitutional question, the Attorney General would be deemed to be an intervening party in the matter.

Subdivision (c) would be added to codify an appellate court's ability to invite the Attorney General to participate as an intervening party if a party draws into question the constitutionality of a statute or as an *amicus curiae* in any other case in which the Attorney General's participation may be helpful. Thus, if the Attorney General is not inclined to file a brief as permitted by subdivision (b), the Attorney General may nevertheless be "invited" to participate.

Subdivision (d) is intended to provide a remedy when notice has not been given. The Committee considered whether a district attorney's untimely notice, or absolute failure to provide notice, to the Attorney General of a defendant's constitutional challenge to a statute would foreclose the defendant from raising that issue at trial. Further, the Committee discussed whether the defendant could provide notice to the Attorney General if the district attorney did not. Ultimately, the Committee concluded that these were substantive matters to be decided by the courts rather than addressed in the rules because there is likely an aspect of prejudice to be considered on a case-by-case basis.

Commentary has been added to the rule to advise practitioners that notice should be given to constitutional challenges to a statute both as written and as applied.

The Committee invites all comments, concerns, and suggestions.