

**Proposal 04-01  
(P.R. 0114)**

**Offered by the Special Supreme Court Committee to Study Supreme Court Rule 23**

**Rule 23. Disposition of Cases in the Appellate Court**

The decision of the Appellate Court may be expressed in one of the following forms: a full opinion, a ~~concise~~ written order, or a summary order conforming to the provisions of this rule. All dispositive opinions and orders shall contain the names of the judges who rendered the opinion or order. ~~Only~~ Opinions of the court ~~will~~ shall be published in printed form and have precedential value.

**(a) Opinions.** A case may be disposed of by an opinion ~~only~~ when a majority of the panel deciding the case determines that at least one of the following criteria is satisfied, subject to the limitations contained in the accompanying administrative order:

(1) the decision establishes a new rule of law or modifies, explains or criticizes an existing rule of law; ~~or~~

(2) the decision resolves, creates, or avoids an apparent conflict of authority within the Appellate Court; ~~or~~ or

(3) when a concurring or dissenting opinion is proposed to be filed unless the panel unanimously decides otherwise.

**(b) Written Order.** Cases which do not qualify for disposition by opinion may be disposed of by a ~~concise~~ written order which shall succinctly state:

(1) the germane facts;

(2) the issues and contentions of the parties when appropriate;

(3) the reasons for the decision; and

(4) the judgment of the court.

Such written orders entered after the effective date of this amended rule shall be made available electronically to the bar and the public.

**(c) Summary Order.** In any case in which the panel unanimously determines that any one or more of the following dispositive circumstances exist, the decision of the court may be made by summary order. A summary order may be utilized when:

- (1) the Appellate Court lacks jurisdiction;
- (2) the disposition is clearly controlled by case law precedent, statute, or rules of court;
- (3) the appeal is moot;
- (4) the issues involve no more than an application of well-settled rules to recurring fact situations;
- (5) the opinion or findings of fact and conclusions of law of the trial court or agency adequately explain the decision;
- (6) no error of law appears on the record;
- (7) the trial court or agency did not abuse its discretion; or
- (8) the record does not demonstrate that the decision of the trier of fact is against the manifest weight of the evidence or beyond a reasonable doubt.

When a summary order is issued it shall contain:

- (i) a statement describing the nature of the case and the dispositive issues without a discussion of the facts;
- (ii) a citation to controlling precedent, if any; and
- (iii) the judgment of the court and a citation to one or more of the criteria under this rule which supports the judgment, *e.g.*, "Affirmed in accordance with Supreme Court Rule 23(c)(1)."

The court may dispose of a case by summary order at any time after the case is docketed in the Appellate Court. The disposition may provide for dismissal, affirmance, remand, reversal or any combination thereof as appropriate to the case. A summary order may be entered after a dispositive issue has been fully briefed, or if the issue has been raised by motion of a party or by the court, *sua sponte*, after expiration of the time for filing a response to the motion or rule to show cause issued by the court. Summary orders and orders entered pursuant to *Anders v. California*, 386 U.S. 738, 18 L.Ed.2d 493, 87 S.Ct. 1396 (1967) and *Pennsylvania v. Finley*, 481 U.S. 551, 95 L.Ed.2d 539, 107 S.Ct. 1990 (1987) are not required to be filed electronically.

**(d) Captions.** All opinions and orders entered under this rule shall bear a caption substantially conforming to the requirements of Rule 330.

**(e) Effect of Orders.** ~~An unpublished~~ A written order of the court is not precedential, ~~and~~ However, it may not be cited by any party except to support contentions of double jeopardy, *res judicata*, collateral estoppel, or law of the case. ~~When cited for these purposes and, as to~~ orders entered subsequent to the effective date of this amended rule, as persuasive authority. “Persuasive authority” means that the decision carries some weight but is not binding on a court. In all instances where a written order is being cited, a copy of the order shall be furnished to all other counsel and the court.

**(f) Motions to Publish.** If an appeal is disposed of by order, any party may move to have the order published as an opinion. The motion shall set forth the reasons why the order satisfies the criteria for disposition as an opinion and shall be filed within 21 days of the entry of the order. The appellate court may grant or deny any motion to publish. In the event the Supreme Court relies on factual recitations made in a written order, the Supreme Court may in its discretion direct that the written order be published in printed form.