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- * Term expired 6-30-01
- ** Appointed chair effective 6-30-01
- + Appointed vice chair effective 6-30-01

Legal Authorization:

Pa. Constitution, Article V, § 10(c)
42 Pa. C.S., § 1722

Civil

Procedural

Rules

Committee

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History/Background

The Civil Procedural Rules Committee sets the rules of procedure and practice for civil actions in Pennsylvania's Courts of Common Pleas. This includes all aspects of civil matters except those issues relating to the work of the orphans' court and family court divisions. It was first commissioned by the Supreme Court in 1937.

Committee members are appointed to three-year terms by the Court and each may serve a maximum of two full terms. Currently, 16 lawyers and judges, including one *ex officio* member, comprise the committee.

The committee's office is located in Mechanicsburg, and the staff of three includes counsel, a research assistant and an office manager. The counsel and research assistant are both members of the bar of the Supreme Court of Pennsylvania.

2001 Activities

The Civil Procedural Rules Committee held three meetings in 2001 as follows:

March	Pittsburgh
June	Philadelphia
November	Philadelphia

A fourth meeting, scheduled for September 12 and 13, was cancelled due to the attacks on the World Trade Center and Pentagon on September 11.

Internet

The committee continued to maintain a site on the Internet. It is accessed through the home page of the Unified Judicial System at www.courts.state.pa.us and includes:

- recently promulgated rules and amendments to rules

- a schedule of effective dates
- proposed recommendations of new rules and amendments to existing rules
- the prime rate, which forms the basis for calculating damages for delay under Rule of Civil Procedure 238.

The Unified Judicial System includes a list of the members of the committee as part of its home page.

2001 Amendments to the Rules of Civil Procedure

The Supreme Court acted on several committee recommendations in 2001, promulgating new rules and amending existing ones. The committee issued several additional recommendations, which were published to the bench and bar for comment and remain pending. The recommendations are described below and are listed in the Status of Recommendations chart which follows this report.

Recommendations Promulgated by the Supreme Court

Recommendations Effective in 2001

The following recommendations promulgated in 2000 became effective January 1, 2001:

Recommendation Nos. 150 & 156: Associations as Parties; Definition of Political Subdivision Recommendation 150 modernized the definitions of the terms "partnership," "unincorporated association" and "corporation or similar entity" as set forth in Rules 2026, 2051 and 2076. The definitions in these rules contained terminology which had become obsolete since promulgation of the rules in 1939. Recommendation No. 156 revised the definition of "political subdivision" in Rule 76 to include a "municipal or other local authority." Promulgated December 29, 2000.

Recommendation No. 157: Affidavit of Non-involvement Adds new Rule 1036 governing the dismissal of an action pursuant to an affidavit of noninvolvement. Two statutes provide for such an affidavit: Section 7502 of the Judicial Code relating to construction design professionals and Section 827-A of the Health Care Services Malpractice Act relating to health care providers.* The role of the court in these procedures, not specified by the statutes, is supplied by the new rule. Promulgated December 11, 2000.

*The Health Care Services Malpractice Act was repealed by Act 13 of 2002. Section 827-A of the former act was substantially reenacted as Section 506 of the Medical Care Availability and Reduction of Error (Mcare) Act, 40 P.S. § 1303.506.

Recommendation 159: Notice of Entry of Orders and Decrees Rule 236(a)(2) provides for the prothonotary to give written notice of the entry of an order, decree or judgment, but does not prescribe the manner of giving such notice. Without limiting the prothonotary in the manner of giving notice, new subdivision (d) authorizes the prothonotary to give notice by means of facsimile or other electronic transmission and describes the requirements therefor. The new provision extends service by facsimile or other electronic transmission to “other matters.” Other matters are in addition to orders, judgments and decrees and may include court notices, scheduling notices and other matters of an administrative nature. Promulgated November 28, 2000.

Recommendation 163: Pleading a Writing Amends Rule 1019 as it applies to the pleading of a writing. Subdivision (h) of Rule 1019 was revised to apply specifically to agreements. The pleading must state if an agreement is oral or written. A note advises that a written agreement must be attached to the pleading as provided by subdivision (i). New subdivision (i) was added to govern writings generally and is derived from former subdivision (h). It provides that when a claim or defense is based on a writing, that

writing or the material part thereof must be attached to the pleading. Promulgated November 28, 2000.

Rule 239: Local Rules A second paragraph was added to the note to Rule 239(c)(5) to reference the local rules page of the Internet site of the Pennsylvania Unified Judicial System. The local rules page contains links to the rules of the Courts of Common Pleas of the various counties and enables practitioners to easily access the local rules. Promulgated November 28, 2000.

Rule 1308: Compulsory Arbitration Amended Rule 1308(a)(1) governing the time to appeal from the award of arbitrators in compulsory arbitration. The amended rule incorporates the holding of *Stellar Construction Inc. v. Ronald Sborz et al, individually and trading as Keystone Meats*, 748 A.2d 667 (Pa. 2000) that “the date of entry of an order” for purposes of the appeal period is “the day on which the prothonotary fulfills its duty to make the required notation on the docket reflecting that notice of entry of the arbitration award has been provided as required by Rule 1307(a)(3).” Promulgated November 29, 2000.

Rule 4020: Discovery Rule 4020 governs the use of depositions at trial. Subdivisions (a) and (b) of the rule were amended to accommodate the new Pennsylvania Rules of Evidence. No change in practice or procedure was effected by the amendment. Promulgated November 29, 2000.

Recommendations Promulgated in 2001

Recommendation No. 161: Venue in Actions in Equity Modernizes and simplifies venue in an action in equity by rescinding former Rule 1503 and promulgating new Rule 1503. In contrast to the former rule, new Rule 1503 simply provides for an action in equity to be brought in any county in which a civil action may be brought or, if property is involved, in the county in which the property is located. Promulgated January 19, 2001, effective July 1, 2001.

Recommendation No. 162: Motions to Exclude Expert Testimony Which Relies upon Novel Scientific Evidence Adds new Rule 207.1 governing motions to exclude expert testimony which relies upon novel scientific evidence. The principal purpose of the rule is to give the court discretion to hear such a motion pre-trial or at trial, as best befits the case. Promulgated January 22, 2001, effective July 1, 2001.

Recommendation 169: *In Forma Pauperis* Prior to amendment Rule 240(d) provided that when a party is represented by an attorney, a *praecipe* to allow the party to proceed *in forma pauperis* must be accompanied by the affidavit showing the inability of the party to pay the costs of the action. Recommendation No. 169 revised subdivision (d) by deleting the requirement that the affidavit accompany the *praecipe*. This brings the rule into conformity with Rule 552(d) of the Pennsylvania Rules of Appellate Procedure and Rule 206 E. (iii) of the Pennsylvania Rules of Civil Procedure Governing Actions and Proceedings before District Justices, neither of which contain the requirement of the affidavit in this circumstance. Promulgated June 8, 2001, effective July 1, 2001.

Recommendation No. 170: Deficiency Judgments The amendments to Rules 3276 *et seq.* were prompted by the passage of Act 144 of 1998, which amended provisions of the Judicial Code relating to deficiency judgments.

First, the act added new definitions to the Deficiency Judgment Act, including a definition of the term “judgment,” adopting, in essence, the definition set forth in Rule 3277. In view of the new statutory definitions, several of the definitions in the rule became duplicative and unnecessary and were, therefore, rescinded.

Second, the act revised Section 5122(b) (2) of the Judicial Code, specifying the date from which is calculated the six-month period for filing a petition for the establishment of a deficiency judgment. It also added new Section 8103(f) providing for “certain special

allocations.” Appropriate revisions to the deficiency judgment rules were promulgated to implement these new and revised provisions of the Judicial Code.

Promulgated July 7, 2001, effective September 4, 2001.

Rule 237.3 Note: Relief from Judgment of *Non Pros* This amendment was necessitated by the holding of the Commonwealth Court in *Peters Township Sanitary Auth. v. American Home and Land Dev. Co.*, 696 A.2d 899 (Cmwlth Ct. 1997). The revised note and explanatory comment clarify the procedure when a defendant, upon the opening of a default judgment, intends to file preliminary objections, a pleading not encompassed by Rule 237.3. The note indicates that, contrary to the holding of the Commonwealth Court, preliminary objections are not an appropriate attachment to a petition to open a default judgment under the rule. Promulgated January 19, 2001, effective July 1, 2001.

Rule 205.4: Electronic Filing and Service of Legal Papers Rule 205.4 was promulgated as a temporary rule to monitor developments in this emerging field and to evaluate the procedures of the rule. Subdivision (h) provided that the “rule shall be rescinded on December 31, 2001.” The two and one-half years since the rule was promulgated, however, have proven to be insufficient to judge the rule’s effectiveness. Thus, the rule was made permanent. As with the rules of civil procedure generally, the rule may be amended in the future if warranted by experience.

Recommendations Published to Bench and Bar

During the year the committee considered the following recommendations, which had been published for comment:

Recommendation No. 166: Damages for Delay Rule 238 provides for the implementation of

damages for delay upon a defendant who does not make an appropriate offer of settlement as required by the rule. The Superior Court in *Sonlin v. Abington Memorial Hospital*, 748 A.2d 213 (2000) imposed three requirements to bring an offer of settlement within the exclusion of that rule from the calculation of delay damages. Recommendation No. 166 proposes amendment of Rule 238(b)(1) by incorporating these requirements into the rule.

Recommendation No. 167: Summary Judgment Proposes the addition of new subdivision (e) to Rule 1035.3 to make clear that a court may decide a motion for summary judgment at any time prior to the start of trial and need not require written responses or briefs so long as the parties suffer no prejudice thereby. Such a motion “on eve of trial” may obviate a trial where, for instance, a motion *in limine* has resulted in the exclusion of testimony by an expert witness so that the party is unable to establish facts which would require the submission of the case to a jury. A note emphasizes that the decision to entertain a motion for summary judgment on the eve of trial remains entirely within the discretion of the court.

Recommendation No. 168: Entry and Withdrawal of Appearance One aspect of Recommendation No. 168 proposes to eliminate the requirements of Rules 1012(a) and 1025 that an entry of appearance state an address within the Commonwealth. Rather, the proposed amendment provides that “[t]he address shall be a street address where papers may be mailed or delivered.” The appearance, pleading or other legal paper stating or endorsed with an address must include a telephone number. A facsimile transmission number is optional.

A second aspect of the recommendation would revise Rule 1012 to provide a more detailed procedure to be followed when leave of court is required for an attorney to withdraw his or her appearance. The revised rule would include notice provisions both of the petition of the attorney for leave to withdraw the appearance and of the order of court granting

leave to withdraw. The recommendation also proposes new forms for entry and withdrawal of appearance.

Recommendation No. 171: Form of Briefs, Preference on Trial List Provides for the rescission of Rule 210, governing the form of briefs, as obsolete. The rule, dating from 1938, requires that briefs be typewritten, a requirement which has become unnecessary in an era of computers and word processing.

The recommendation also proposes revision of Rule 214 and rescission of Rule 215 governing preferences on the trial list. Both rules were promulgated in 1938 as well. Rule 214 sets forth categories of cases formerly given preferences by statutes that have been repealed. Rule 215 prescribes a procedure for assigning preferences, which is obsolete. If the recommendation is adopted, Rule 214 would remain as a general provision providing for a trial preference to be granted upon cause shown.

Recommendation No. 172: Documentary Evidence at Trial of an Appeal from Compulsory Arbitration Proposes the amendment of Rule 1311 governing the procedure on appeal from an award in compulsory arbitration. The proposed amendment recognizes that the cost of the attendance of a witness-- for example, an expert witness-- to testify to the contents of documentary evidence at a trial *de novo* upon appeal might be prohibitively expensive when compared with the potential damages to be recovered. The amendment would permit parties on appeal to take advantage of the relaxed evidentiary rules available in compulsory arbitration under Rule 1305(b). This new procedure would be limited, however, to cases in which the plaintiff stipulates to a limit on the damages recoverable to no more than \$15,000.

Recommendation No. 173: Representation of Corporations and Similar Entities Proposes amendment of Rule 2177 to permit a corporation or similar entity to be represented by a corporate officer in cases involving relatively small amounts in controversy brought in the

Courts of Common Pleas. This is consistent with the current practice of the district justice courts in which such representation is permissible.

Recommendation No. 174: Judgment Liens and Revival of Judgment Liens Rules 3025 - 3049 were promulgated in 1964 to provide the procedure in proceedings to revive and continue the lien of a judgment. The note to Rule 3025 advised the bench and bar: "For the substantive law governing the revival of judgment against defendants and terre-tenants see the Judgment Lien Law of 1947, 12 P.S. 877 *et seq.*"

The Judgment Lien Law was repealed by the Judiciary Act Repealer Act (JARA) in 1978, but no successor provisions were enacted as part of the Judicial Code or otherwise and the 1947 Act disappeared from *Purdon's Pennsylvania Statutes*. Unless the superseded volumes of former Title 12 were retained, the Judgment Lien Law became unavailable to the legal community. Yet as no general rules had been promulgated to date to replace the repealed act, the Judgment Lien Law continued as part of the common law of the Commonwealth under the fail-safe provision of JARA, 42 P.S. § 20003(b).

Recommendation No. 174 proposes to amend the rules of civil procedure to fill the void left by the repeal of the 1947 Act. It is the last of the major projects arising from the enactment of JARA.

Previously Published Recommendations

The following recommendations published to the bench and bar for comment during previous years remain pending before the committee:

Recommendation No. 160: Appeals from District Justice Courts Unlike the Courts of Common Pleas, practice in the district justice courts does not generally require an attorney or formalized pleading. Consequently, a party who appeals or defends an appeal of the decision of a district justice court to the Court of Common

Pleas may face substantial expense as the result of hiring an attorney to represent the party on appeal and to prepare the formalized pleadings. Recommendation No. 160 proposes that in certain instances the pleadings in the district justice court might constitute the pleadings on appeal in the Court of Common Pleas. The committee is continuing to review the comments elicited by the publication of the recommendation.

Recommendation No. 165: Actions in Equity Proposes the amendment of three equity rules: Rules 1508(b), 1510(a) and 1510(b) concerning joinder of claims, counterclaims and preliminary objections. It is directed toward facilitating the disposition of claims which may give rise to causes of action both equitable and legal.

The recommendation has prompted consideration of the larger issue of the consolidation of actions at law and in equity generally. It is anticipated that the amendments proposed will be incorporated into a larger recommendation to merge the action in equity into the civil action, to be issued in the summer of 2002.

Continuing Responsibilities

The committee continued to furnish assistance to the Supreme Court and to act as a clearinghouse for numerous amendments suggested by members of the bench and bar. The chair and counsel answered countless inquiries regarding the Rules of Civil Procedure from local courts and attorneys and from courts and attorneys in sister states.

Contact Person

Anyone wishing to learn more about the Civil Procedural Rules Committee or having questions regarding civil rules may contact Counsel Harold Don at (717) 795-2110 or write to him at Suite 700; 5035 Ritter Road; Mechanicsburg, PA 17055 or via e-mail at civil.rules@supreme.court.state.pa.us. AOPC

Status of Recommendations		
Recommendation	Subject	Status
150	Amendment of Rules 2126, 2151 and 2176 defining partnerships, unincorporated associations, and corporations and similar entities ; promulgated with Recommendation 156	Promulgated 12-29-00, effective 7-1-01
151	Promulgation and amendment of rules governing liens upon real property and revival of judgment liens	Superseded by Recommendation No. 174
155	Amendment of Rule 1012 governing entry of appearance and promulgation of new Rule 1012.1 governing civil cover sheet	Superseded by Recommendation No. 168
156	Amendment of Rule 76 governing definitions to include municipal authority in the term political subdivision; promulgated with Recommendation 150	Promulgated 12-29-00, effective 7-1-01
157	New Rule 1036 governing affidavit of noninvolvement	Promulgated 12-11-00, effective 1-1-01
158	Amendment of Rule 227.1 governing post-trial practice with respect to conditional post-trial motions and inconsistent verdicts	Pending with committee
159	Amendment of Rule 236 governing notice of entry of orders and decrees by the prothonotary	Promulgated 11-28-00, effective 1-1-01
160	New Rule 1042.1 governing appeals from district justice courts	Pending with committee
161	Rescission of equity Rule 1503 governing venue and promulgation of new Rule 1503	Promulgated 1-19-01, effective 7-1-01
162	New Rule 207.1 governing motions to exclude expert testimony which relies on novel scientific evidence	Promulgated 1-22-01, effective 7-1-01
163	Amendment of Rule 1019(i) governing pleading of agreements and writings	Promulgated 11-28-01, effective 1-1-01
164	Amendment of Rules 230.1 and 2231 governing compulsory nonsuit and joinder of parties	Promulgated 5-30-01, effective 7-1-02

continued...

Chart 3.3.1

Status of Recommendations, continued		
Recommendation	Subject	Status
165	Amendment of equity Rule 1508 governing pleading more than one cause of action and Rule 1510 governing counterclaims to provide for the joinder of causes of action at law	Pending with committee
166	Amendment of Rule 238 governing damages for delay	Pending with committee
167	Amendment of Rule 1035.3 governing summary judgment	Pending with committee
168	Amendment of Rules 205.1, 1012 and 1025 and new Rule 1012.1 governing the pleading stage of an action	Pending with committee
169	Amendment of Rule 240 governing proceedings <i>in forma pauperis</i>	Promulgated 6-8-01, effective 7-1-02
170	Amendment of Rules 3277, 3282, 3284 and 3285 and rescission of Rule 3286 governing deficiency judgments	Promulgated 7-7-01, effective 9-4-01
171	Amendment of Rule 214 and rescission of Rules 210 and 215 governing form of briefs and preference on the trial list	Pending with committee
172	Amendment of Rule 1311 to provide for the admission of documentary evidence at trial of an appeal from an award in compulsory arbitration	Pending with committee
173	Amendment of Rule 2177 governing representation of corporations and similar entities	Pending with committee
174	Promulgation and amendment of rules governing liens upon real property and revival of judgment liens	Pending with committee

Chart 3.3.1, cont'd.