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- * Term expired 6-30-00
- ** Effective 6-30-00
- + Resigned 2000
- ++ Term expires 1-1-01
- # Effective 1-4-01
- ## Term expires 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.

2000 Activities

The Civil Procedural Rules Committee held four meetings in 2000 as follows:

March	Philadelphia
June	Pittsburgh
September	Pittsburgh
November	Philadelphia

Internet

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

The site includes an index page, which provides access to the following materials:

- 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.

Pennsylvania Conference of State Trial Judges

Counsel to the Civil Procedural Rules Committee was appointed in 1998 to membership on the Civil Bench Book Committee of the Pennsylvania Conference of State Trial Judges. He continued as a member in 2000.

2000 Amendments to the Rules of Civil Procedure

The Supreme Court acted upon several committee recommendations in 2000, 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 2000

The following recommendations promulgated in 1999 became effective January 1, 2000:

Recommendation No. 148: Production of Medical Records Amended Rule 234.1 governing subpoenas in light of Act No. 1998-26, which amended Section 6151 *et seq.* of the Judicial Code, relating to the production of medical

records and charts. After considering comments received following publication of the recommendation and further reviewing revisions proposed by the recommendation, the committee, with one exception, abandoned the project as too complex and unnecessary.

The one amendment resulting from the recommendation was the addition of a note to Rule 4001(d). The rule lists the methods of discovery and provides that a party may obtain documents and things from a person not a party by means of a subpoena under Rule 4009.21 *et seq.*; a subpoena *duces tecum* in connection with an oral deposition under Rule 4007.1(d); and an independent action.

Recommendation No. 154: Conduct of Jury Trial Amended existing Rule 223 and promulgated new Rule 223.1.

The recommendation effected no substantive change to Rule 223. Since the provisions of the rule applied equally to jury and non-jury trials, the title of the rule was changed from “Conduct of the Jury Trial” to “Conduct of the Trial. Generally.”

New Rule 223.1 is entitled “Conduct of the Trial. Trial by Jury.” The rule, which reflects a heightened interest in the jury trial nationwide, is directed toward providing jurors with a greater understanding of the case which they are witnessing and, if appropriate, an opportunity to participate more actively in the trial. The rule is designed to be a catalog, advising both the bench and bar of the options available and the court’s power to invoke them.

The options set forth in the new rule are:

- viewing a premises
- reading back specified testimony upon the jury’s request
- charging “the jury at any time during the trial”
- making “exhibits available to the jury during its deliberations.”

Rule 223.1, as published to the bench and bar for comment, included provisions relating to note-taking by jurors, submission to the court of questions by jurors and written copies of the charge being supplied to the jury. These provisions were not included in the rule as promulgated.

Recommendations Promulgated in 2000

Recommendation Nos. 150 & 156: Associations as Parties; Definition of Political Subdivision Recommendation 150 proposed to modernize 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 proposed to amend Rule 76 by revising the definition of “political subdivision” to include a “municipal or other local authority.”

Promulgated December 29, 2000, effective July 1, 2001.

Recommendation No. 157: Affidavit of Non-involvement Proposed the addition of 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, effective January 1, 2001.

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, effective January 1, 2001.

Recommendation 163: Pleading a Writing Proposed that Rule 1019 be amended as it applied to the pleading of a writing. Subdivision (h) of Rule 1019 governing the pleading of writings 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 a writing or the material part thereof must be attached to the pleading. Promulgated November 28, 2000, effective January 1, 2001.

Recommendations Submitted to the Supreme Court in 2000

Recommendation No. 161: Venue in Actions in Equity Proposes to modernize and simplify 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 Proposed the addition of 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.

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, effective January 1, 2001.

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 28, 2000, effective January 1, 2001.

Rule 239: Local Rules A second paragraph was added to the note to Rule 239(c)(5) to make reference to 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, effective January 1, 2001.

Recommendations Published to Bench and Bar

At the end of the year the committee published the following recommendations for comment:

Recommendation No. 166: Damages for Delay Rule of Civil Procedure 238 provides for 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 the amendment of Rule 238(b)(1) by incorporating these requirements into the rule.

The first requirement applies to offers generally and provides that the offer contain “a clause expressly validating the offer for 90 days...” The second and third requirements are limited to the offer of a structured settlement including an annuity. The offer must state the actual cost of the annuity and the identity of the underwriter to enable, in the words of *Sonlin*, a “knowledgeable appraisal of the offer’s legitimacy.”

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 of Appearance; Civil Cover Sheet Affects three aspects of the pleading stage of an action. The first is the requirement that an entry of appearance state an address within the Commonwealth and that a pleading or other legal paper be endorsed with an address within the Commonwealth. The recommendation proposed that these requirements set forth in Rules 1012(a) and 1025 be deleted. Rather, the proposed amendment is that “[t]he address shall be a street address where papers may be mailed or delivered.” The

appearance or an address must include a telephone number. A facsimile transmission number is optional.

The second aspect of practice is entry and withdrawal of an appearance by an attorney. The recommendation proposes to revise Rule 1012 to include notice provisions both of the petition and the order of court granting withdrawal of appearance by an attorney. New forms for entry and withdrawal of appearance are also proposed.

The third area is the civil cover sheet, which is not a requirement of general statewide rules, but rather a requirement of local rules in certain counties. The recommendation proposes the addition of new Rule 1012.1, which would require that the local court “file a copy of the form with the Administrative Office of Pennsylvania Courts, which shall maintain the form on its Web site.” In addition, the omission of a cover sheet from the first document filed in an action or an incorrectly completed cover sheet would not be a ground for the prothonotary to refuse the filing of the document.

The provisions with respect to appearance and cover sheet were originally published as Recommendation No. 155, making several revisions. The major revision relates to that portion of the recommendation which had proposed a uniform statewide cover sheet. In view of comments from the bench and bar and the fact that a limited number of counties require a cover sheet, the committee determined that it was not the appropriate time to impose such a requirement upon all counties and thus revised the prior recommendation as set forth above.

Recommendation 169: *In Forma Pauperis* Present Rule 240(d) provides 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 proposes that subdivision (d) be amended by deleting the

requirement that the affidavit accompany the *praecipe*. This proposed amendment would bring the rule into conformity with Rule 551(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.

Recommendation No. 170: Deficiency Judgments The proposed amendments to Rules 3276 *et seq.*, governing deficiency judgments were prompted by the passage of Act No. 144 of 1998, which amended provisions of the Judicial Code relating to the Statute of Limitations, 42 Pa.C.S. § 5122(b)(2), and the Deficiency Judgment Act, 42 Pa.C.S. § 8103. These amendments affected three aspects of the rules.

First, the act added new subsection (g) providing definitions. With respect to the definition of the term “judgment,” the act, in essence, adopted 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 are, therefore, to be rescinded.

Second, Act No. 144 revised the language in 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. Rule 3282(a)(5), which requires the petition to contain information relating to the date of the sale and delivery of the sheriff’s deed, is to be revised in light of the revision to Section 5122(b)(2) of the Code.

Finally, the Act added new subsection (f) to Section 5122, providing for “certain special allocations.” The new subsection applies only to a nonconsumer judgment creditor and to two particular types of obligations: a partial recourse obligation and an obligation of which only a portion is guaranteed. In light of this provision, the recommendation contains several revisions to

Rule 3282(a), providing for the contents of the petition to establish a deficiency judgment.

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

The recommendation also proposes revisions of Rules 214 and 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 in a case upon cause shown, and Rule 215 would be rescinded.

Previously Published Recommendations

The following recommendations published to the bench and bar for comment during 1998 and 1999 remain pending before the committee:

Recommendation No. 151: Liens upon Real Property and Revival of Judgments Rules 3025 through 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. 151, which was published for comment in late 1998, 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 JARA.


Recommendation No. 160: Appeals from District Justice Courts Addresses the interface between the two sets of procedural rules governing civil procedure in the district justice courts and the Courts of Common Pleas. 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 who defends an appeal of, the decision of a district justice court to the Court of Common Pleas may be faced with 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 to the bench and bar.

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. 

Status of Recommendations		
Recommendation	Subject	Status
142	Amendment of Rule 400 <i>et seq.</i> governing service of original process	Promulgated 6-14-99, effective 9-1-99; effective date suspended 8-29-99 until further order
148	Amendment of Rules 234.1 and 4007.1(d) governing issuance of a subpoena <i>duces tecum</i> for medical records and charts. Committee decided to discontinue the recommendation except for the addition of a note to Rule 4001(d)	Promulgated 12-1-99, effective 1-1-00
149	Amendment of Rules 423 and 424 governing service of original process upon associations	Committee decided to discontinue recommendation
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 7-1-00
151	Promulgation and amendment of rules governing lines upon real property and revival of judgments	Pending with committee
154	Amendment of Rule 223 and promulgation of new Rule 223.1 governing conduct of the jury trial	Promulgated 11-3-99, effective 1-1-00
155	Amendment of Rule 1012 governing entry of appearance and promulgation of new Rule 1012.1 governing civil cover sheet	Republished as 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 7-1-00
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

continued...

Chart 3.3.1

Status of Recommendations, continued		
Recommendation	Subject	Status
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 upon novel scientific evidence	Promulgated 1-22-01, effective 7-1-01
163	Amendment of Rule 1019(i) governing pleading of agreements and writings	Promulgated 11-28-00, effective 1-1-01
164	Amendment of Rules 230.1 and 2231 governing compulsory nonsuit and joinder of parties	Pending with committee
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>	Pending with committee
170	Amendment of Rules 3277, 3282, 3284 and 3285 and rescission of Rule 3286 governing deficiency judgments	Pending with committee
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

Chart 3.3.1, cont'd.