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* Resigned 3-7-03

** Term expired 6-30-03

Legal Authorization:

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

About the Committee:

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.

Civil

Procedural

Rules

Committee

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2003 Activities

The committee held three meetings in 2003 as follows:

March	Philadelphia
September	Pittsburgh
November	Philadelphia

2003 Amendments to the Rules of Civil Procedure

Descriptions of the various recommended rule changes are described below and are listed in the Status of Recommendations chart that follows this report.

Recommendations Promulgated by the Supreme Court

The Supreme Court promulgated the following recommendations in 2003:

Recommendation No. 167: Summary Judgment 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. 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. Promulgated 5-16-03, effective 9-1-03.

Recommendation No. 168: Entry and Withdrawal of Appearance Elimination of the requirements in Rules 1012(a) and 1025 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 rules now require only that the address 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 revises 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 includes notice provisions both of the attorney’s petition for leave to withdraw the appearance and of the court order granting leave to withdraw. The recommendation also proposes new forms for entry and withdrawal of appearance.

Promulgated 4-29-03, effective 9-1-03.

Recommendation No. 172: Documentary Evidence at Trial of an Appeal from Compulsory Arbitration Amendment of Rule 1311 governing the procedure on appeal from an award in compulsory arbitration. The amendment recognizes that the cost of the attendance of a witness-- e.g., 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 permits parties on appeal to take advantage of the relaxed evidentiary rules available in compulsory arbitration under Rule 1305(b). This new procedure is, however, limited to cases in which the plaintiff stipulates to a limit on the damages recoverable to no more than \$15,000. Promulgated 4-30-03, effective 9-1-03.

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 referred to the Judgment Lien Law of 1947. The Judgment Lien Law, however, was repealed by the Judiciary Act Repealer Act (JARA) in 1978, and no successor provisions were enacted as part of the Judicial Code or otherwise. The 1947 act thus 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 amends the rules of civil procedure to fill the void left by the repeal of the Judgment Lien Law. It is the last of the major projects arising from the enactment of JARA.

In addition, a new chapter of rules, numbered 3020-3023, was added to govern judgment liens. Rules 3025 *et seq.*, governing the revival of judgment liens was substantially amended to include the substantive as well as procedural law governing the creation and continuing of judgment liens.

Promulgated 12-16-03, effective 7-1-04.

Recommendation No. 177: Termination of Inactive Cases Previously, the termination of inactive cases within the scope of the rules of civil procedure was governed by Rule of Judicial Administration (R.J.A.) 1901 and local rules promulgated pursuant to it. In *Shope v. Eagle*, 551 Pa. 360, 710 A.2d 1104 (1998), however, the Supreme Court held that prejudice to the defendant resulting from delay in prosecution is required before a case may be dismissed pursuant to local rules implementing R.J.A. 1901. New rule 230.2 responds to this ruling, providing a complete procedure and a uniform statewide practice, preempting local rules. In addition, R.J.A. 1901(b) was amended to accommodate the new rule of civil procedure. Promulgated 3-20-03, effective 7-1-03.

Recommendation No. 179: Deceased Persons as Parties New Rule 2355 to fill a void as the rules previously made no mention of the death of a party to an action. The rule alerts the parties to the necessity of noting the death upon the record and of substituting as a party to the action the personal representative of the deceased party. The rule incorporates the familiar procedure of Rule 2352 governing

substitution of a successor. Promulgated 4-2-03, effective 6-1-03.

Recommendation No. 180: Consolidation of the Action in Equity with the Civil Action Abolishes the separate action in equity by amending the rules governing the civil action to include equitable relief. This was done as many cases are not solely actions at law or actions in equity, but actions in which relief both equitable and legal is sought. Promulgated 12-16-03, effective 7-1-04.

Recommendation No. 181: Notice to Defend Amendment of Rule 1018.1 governing the Notice to Defend to clarify the language relating to the availability of free legal help. Conforming amendments were proposed to other civil procedural rules containing identical or similar notices. Promulgated 6-10-03, effective 9-1-03.

Recommendation No. 182: Venue in Medical Professional Liability Actions New Rule 1006 (a.1) to incorporate the provisions of Section 5101.1(b) of the Judicial Code, which state that medical professional liability action may be brought against a health care provider for a medical professional liability claim only in the county in which the cause of action arose. Further revisions to Rule 1006 clarify the procedure. Promulgated 1-27-03, effective immediately.

Recommendation No. 183: Certificate of Merit Addition of a new chapter, Rules 1042.1-1042.8, governing certificates of merit to lessen the possibility of the commencement of frivolous professional liability actions. Promulgated 1-27-03, effective immediately.

Recommendation No. 184: Juror Note-Taking New Rule 223.2 providing jurors with the right to take notes in cases expected to last more than two days is experimental and provides for its rescission on December 31, 2005. The rule also provides the court with discretion to allow note-taking in cases in which the trial is expected not to last for more than two days. An instruction for jurors respecting their notes is set forth in a

note to the rule. Promulgated 7-30-03, effective 9-1-03.

Rule 208.1 et seq.: Motion Practice New rules and amendments governing motion and petition practice to provide consistency amongst the various Courts of Common Pleas. The new rules define and establish the scope of a motion, provide basic requirements with respect to the form and content of a motion and set forth procedures for the court in determining a motion. Promulgated 10-24-03, effective 7-24-04.

Rule 1023.1: Signing of Documents Two orders making technical amendments that did not affect practice or procedure. The first order amended the note to subdivision (e) by removing the obsolete reference to the repealed Health Care Services Malpractice Act. Promulgated 4-2-03. The second order amended the Explanatory Comment to the rule by eliminating an inconsistency between the comment and the rule. Promulgated 6-10-03.

Recommendations Published to Bench and Bar

The following recommendations remain pending before the committee or the Supreme Court:

Recommendation No. 186: Delivery of Settlement Funds New Rule 229.1 to provide a procedure for the imposition of sanctions when settlement funds are not promptly delivered, (i.e., within 20 calendar days of receipt of an executed release). While the rule provides a standard for the delivery of settlement funds and a procedure for sanctions when the defendant does not comply with the standard, it also allows the parties to agree in writing to modify or waive any of the rule's provisions.

Recommendation No. 188: Joinder of an Additional Defendant Amendment of Rule 2253 governing the time for joinder of an additional defendant. The amendment would clarify the application of the cause shown standard to a

proposed joinder which is beyond the 60-day period for joinder as of right.

Recommendation No. 189: Remittitur in Medical Professional Liability Actions Proposed new Rule 1042.66 to implement section 515 of the Mcare Act, No. 13 of 2002, 40 P.S., § 1303.515, relating to medical professional liability actions. The act states that the court in deciding a motion for remittitur on the ground of excessiveness consider evidence of any impact on the access to health care in the community if the defendant health care provider is required to satisfy the verdict rendered by the jury. The rule provides for the filing in a medical professional liability action of a motion for remittitur based on the limited ground set forth in the statute. The motion would not be a substitute for a motion for post-trial relief under Rule 227.1 and any ground for the relief of a remittitur other than that set forth in the statute must be raised by a motion for post-trial relief.

Recommendation No. 191: Post-Trial Practice Proposes to amend Rule 227.1(b) to eliminate a conflict with Pennsylvania Rule of Evidence 103(a). Rule 227.1, promulgated in its present form in 1983, provided, without exception, that post-trial relief may not be granted unless the grounds were raised in pre-trial proceedings or at trial. Rule of Evidence 103(a), promulgated in 1998, however, eliminated the requirement of an objection stating the specific ground of objection or an offer of proof making known the substance of the evidence offered, in the circumstance where the specific ground or the substance of the evidence is apparent from the context.

Recommendation No. 193: Technical Amendments (unpublished) Proposed technical amendments to various rules of civil procedure. These amendments are perfunctory in nature and do not alter practice or procedure.

Recommendation No. 194: Confession of Judgment (unpublished) Proposes to amend Rule 2959 governing relief from a judgment by confession by adding new subdivision (g). The

new subdivision would prohibit a court from striking or opening a judgment because a creditor failed to provide a debtor with instructions imposed by existing statutes regarding procedures to follow to strike a judgment or regarding any rights available to an incorrectly identified debtor. The purpose of the proposed amendment is to eliminate as grounds for relief from a confessed judgment statutory notice provisions which conflict with the rules of civil procedure and thus place at risk current judgments entered by confession.

Rules Governing Pre-Trial Practice in Medical Professional Liability Actions In June 2003 the governor of Pennsylvania issued a Plan for Medical Malpractice Liability Reform, which requested that the Supreme Court take certain actions. The Supreme Court responded by creating the Ad Hoc Medical Malpractice Committee to review the plan as it related to the judiciary. (The chair of the Civil Procedural Rules Committee, the Honorable R. Stanton Wettick, Jr., was designated chair of the committee.)

The committee, in consultation with the Civil Procedural Rules Committee, developed several rules governing pre-trial practice to govern medical professional liability actions. New Rules 1042.21, 1042.26-1042.38, 1042.41 and 1042.51 set forth procedures which are designed to speed up settlements, resolutions of

meritless cases and trials. Rule 1042.21 provides a mechanism for a health care provider to obtain a settlement conference and court-ordered mediation early in the proceedings, prior to the exchange of expert reports. Rules 1042.26 *et seq.* provide schedules for the parties to serve requests for expert reports and set forth forms for the requests. Pursuant to Rule 1042.41, parties may request a scheduling order and any scheduling order entered by the court must include schedules for the completion of discovery and the production of expert reports. Finally, Rule 1042.51 governs requests for pre-trial conferences.

Note: Rules 1042.26(b) and 1042.41(c) provide that the rules governing the exchange of expert reports and the scheduling order do not apply to counties already managing medical malpractice actions.

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. AOPC

Status of Recommendations		
Recommendation	Subject	Status
167	Amendment of Rule 1035.3 governing summary judgment	Promulgated 5-16-03, effective 9-1-03
168	Amendment of Rules 205.1, 1012 and 1025 regarding entry and withdrawal of appearance	Promulgated 4-29-03, effective 9-1-03
172	Amendment of Rule 1311 to provide for the admission of documentary evidence at trial of an appeal from an award in compulsory arbitration	Promulgated 4-30-03, effective 9-1-03
174	Promulgation and amendment of rules governing liens upon real property and revival of judgment liens	Promulgated 12-16-03, effective 7-1-04
177	Promulgation of new Rule 230.2 and amendment of Rule of Judicial Administration 1901 governing termination of inactive cases	Promulgated 3-20-03, effective 7-1-03
179	Promulgation of new Rule 2355 governing deceased persons as parties	Promulgated 4-2-03, effective 6-1-03
180	Merger of the action in equity with the civil action	Promulgated 12-16-03, effective 7-1-04
181	Amendment of Rule 1018.1 governing the notice to defend	Promulgated 6-10-03, effective 9-1-03
182	Amendment of Rule 1006 to provide for venue in medical professional liability actions	Promulgated 1-27-03, effective immediately; amendatory order entered 3-5-03, effective immediately
183	New Rules 1042.1 <i>et seq.</i> governing the certificate of merit in professional liability actions	Promulgated 1-27-03, effective immediately
184	New Rule 223.2 governing note-taking by jurors	Promulgated 7-30-03, effective 9-1-03
185	Proposed new Rule 4007.5 governing conduct at a deposition	Tabled by committee

continued...

Chart 3.3.1

Status of Recommendations, continued		
Recommendation	Subject	Status
186	Proposed new Rule 229.1 governing failure to deliver settlement funds	Pending with committee
187	Proposed amendment of Rule 1026 governing time for filing pleadings	Tabled by committee
188	Proposed amendment of Rule 2253 governing late joinder of an additional defendant	Pending with committee
189	Proposed new Rule 1042.66 governing remittitur in medical professional liability actions	Pending with Court
190	Proposed new Rule 3301 <i>et seq.</i> governing wage attachment pursuant to Section 8127(a)(3.1) of the Judicial Code	Pending with committee
191	Proposed amendment of Rule 227.1(b) governing post-trial practice to accommodate Rule of Evidence 103(a)	Pending with Court
193	Proposed technical Amendments arising from the promulgation of Recommendation No. 174 relating to judgment liens and revival of judgment liens, Recommendation No. 180 relating to the consolidation of the action in equity with the civil action and the order of 10-24-03, relating to motion practice	Pending with Court
194	Proposed amendment of Rule 2959 governing confession of judgment	Pending with Court
---	Promulgation of new Rules 208.1 <i>et seq.</i> governing motions and new Rules 239.1 <i>et seq.</i> governing local rules	Promulgated 10-24-03, effective 7-24-04
---	Promulgation of new Rules 1042.21, 1042.26 <i>et seq.</i> , 1042.41 and 1042.51 governing pre-trial practice in medical professional liability actions	Pending

Chart 3.3.1, cont'd.