

1999 Membership:

Edwin L. Klett, Esq., *Chair**
Rea Boylan Thomas, Esq., *Chair***
Honorable R. Stanton Wettick, Jr., *Vice Chair*
Morton R. Branzburg, Esq.
Ernest J. Buccino, Jr., Esq.*
Joseph H. Foster, Esq.
Professor John L. Gedid*
H. Paul Kester, Esq., *ex officio*
Honorable George E. Hoffer
Honorable D. Donald Jamieson
James D. McDonald, Jr., Esq.*
Robert A. Newman, Esq.
Edward G. O'Connor, Esq.
Honorable Keith B. Quigley*
Diane Barr Quinlin, Esq.+
Anton Henri Rosethal, Esq.
Shanin Specter, Esq.
Thomas A. Sprague, Esq.
Clayton A. Sweeney, Esq.
Paul H. Titus, Esq.
Kevin H. Wright, Esq.

Staff:

Harold K. Don, Jr., Esq., *Counsel*
Jeffrey M. Wasileski, Esq., *Research Assistant*
Sharon L. Ciminera, *Office Manager*

* Term expired 6-30-99

** Effective 7-1-99

+ Term expires 6-30-00

Legal Authorization:

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

Civil

Procedural

Rules

Committee

5035 Ritter Road, Suite 700
Mechanicsburg, PA 17055
(717) 795-2110
e-mail civil.rules@supreme.court.state.pa.us

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.

1999 Activities

The Civil Procedural Rules Committee held four meetings in 1999 as follows:

March	New Bloomfield & Harrisburg
June	Pittsburgh
September	Mechanicsburg
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.

Judicial Council of Pennsylvania

The committee continued into early 1999 to furnish assistance to the Judicial Council of Pennsylvania in revising both Rule of Judicial Administration 301 *et seq.* governing the Judicial Council and the Rules of Judicial Council as set forth in Title 204 of the Pennsylvania Code, Chapters 101 through 111. Revised Rules of the Judicial Council were promulgated August 31, 1999, effective immediately (29 *Pennsylvania Bulletin* 4941).

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 1999.

1999 Amendments to the Rules of Civil Procedure

The Supreme Court acted upon several committee recommendations in 1999, 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 with it. 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 1999

The following recommendations promulgated in 1998 became effective January 1, 1999:

Recommendation No. 138: Compulsory Arbitration Amended Rules 218 and 1303 to provide a remedy to the situation in which a party flouts the compulsory arbitration process by failing to appear for a hearing before a board of arbitrators and then filing an appeal for a trial *de novo* in the Court of Common Pleas. Promulgated July 30, 1998.

Recommendation No. 146: Filing Copies; Service by Facsimile Transmission Added new Rule 205.3 governing the filing of copies and amended Rules 440 and 1025 to provide for service of most legal papers by facsimile transmission. Promulgated August 3, 1998.

Recommendation No. 147: Discovery Amendment to Rule 4007.1, adding new subdivision (f) governing proceedings under Section 5326 of the Judicial Code, a part of the Uniform Interstate and International Procedure Act, providing aid to litigants and tribunals outside the Commonwealth with respect to depositions. Promulgated August 4, 1998.

Notice to the Attorney General: Charitable Bequest or Trust Amendment of Rule 235 to require notice to the attorney general when an action involves a charitable bequest or trust.

Subpoenas; Production of Documents and Things: The note to Rule 4009.21(a) was amended to dispel the notion that a subpoena under Rule 4009.21 *et seq.* is the sole manner of seeking production from a person not a party to an action. At the same time, a note was added to Rule 234.1(a) to alert the bench and bar that the 20-day prior notice required for the service of a subpoena under Rule 4009.21 *et seq.* does not apply to a subpoena *duces tecum*

issued in connection with the notice of an oral deposition.

Recommendations Promulgated in 1999

Recommendation No. 142: Service of Original Process Was intended to accomplish three objectives:

- service of original process by a competent adult would have been extended throughout the Commonwealth to all actions.
- Chapter 400 governing service would have been restructured, resulting in a more logical sequence of rules.
- the practice governing service of original process upon partnerships, unincorporated associations, and corporations and similar entities would have been unified and consolidated into one rule.

The recommendation was promulgated June 14, 1999, effective September 1, 1999; however, on August 30, 1999, the Supreme Court suspended the effective date until further order.

In a related matter, the Court requested that the committee consider under the existing service rules the issue of who is a competent adult for the purpose of serving original process. In response to this request, the committee recommended the addition of a definition of the term “competent adult” to Rule 76, “Definitions,” and the promulgation of conforming amendments to a number of rules in light of the new definition.

The definition of “competent adult” added to Rule 76 states that the term means “an individual 18 years of age or older who is neither a party to the action nor an employee or a relative of a party.” Thus, when a rule provides for service of original process by a competent adult, this definition will ensure that service will be made by a person who is without an interest in the litigation.

The committee's recommendation was promulgated by the Court on May 14, 1999, effective July 1, 1999, without prior publication. These amendments were not affected by the order of September 30 suspending the effective date of the amendments promulgated under Recommendation No. 142.

Recommendation No. 148: Production of Medical Records Proposed to amend 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 after 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 states that a party may obtain discovery by one or more methods and catalogs the methods. The new note provides an illustration of the rule by stating 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. 153: Electronic Filing of Legal Papers Amended the rules of civil procedure by adapting them to accommodate the electronic filing of legal papers. The rules are presently based upon a system using paper or "hard copy," and revision was required to take advantage of the technological advances heralded for the twenty-first century. New Rule 205.5 does not authorize the electronic filing of legal papers, but merely sets forth procedural guidelines to allow pilot projects and eventual general use when authorized by general rule, rule of court or special order. The rule also authorizes electronic service of legal papers

other than original process. The rule contains a sunset provision and will be rescinded December 31, 2001. Promulgated May 14, 1999, effective July 1, 1999.

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 233.1 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 question by jurors and written copies of the charge being supplied to the jury. These provisions were not included in the rule as promulgated.

Promulgated November 1, 1999, effective January 1, 2000.

Amendments Promulgated without Prior Publication

Several amendments were promulgated without prior publication either because of their perfunctory nature or because they did not change practice or procedure.

Discovery Rules -- Conforming Amendments In 1997 the Supreme Court promulgated Rule of Civil Procedure 1930.5 governing discovery in domestic relations matters. This development required that the discovery rules be amended to conform to this new rule. The Supreme Court promulgated the necessary conforming amendments on March 19, 1999, effective July 1, 1999. These amendments were promulgated without publication to the bench and bar for comment as they did not change practice or procedure.

Three revisions were made to the discovery rules:

- the last paragraph of the 1978 Explanatory Note that precedes Rule 4001 was revised to delete the reference to the former requirement of leave of court as a prerequisite to discovery in family law actions. The note now concludes with the statement that the discovery rules are applicable “in divorce and in support and custody proceedings to the extent provided by the rules governing those proceedings.”
- a new paragraph was added to the note to Rule 4001(a) cross-referring to the applicable rules governing domestic relations proceedings which pertain to discovery.
- Rule 4007.2(a) was amended to delete an obsolete cross-reference to Rule 4001(a) which, prior to its amendment in 1997, had prohibited discovery in domestic relations matters except upon leave of court.

Gender and Millennium Amendments Three Supreme Court orders completed a long process of amending the rules of civil procedure to remove gender references. The same orders also

deleted references to “19__” from several rules. The orders were promulgated without prior publication because of their perfunctory nature.

Recommendations Published to Bench and Bar

Recommendation 149: Service upon Associations Proposes to amend Rule 423 governing service of original process upon partnerships and unincorporated associations and Rule 424 governing service of original process upon corporations and similar entities. These rules currently provide, *inter alia*, a method of service whereby a copy of process may be handed to “the manager, clerk or other person for the time being in charge of any regular place of business or activity.” A barrier of a receptionist or security guard, however, often makes such service difficult to effect. The recommendation would add a provision to both rules that service may be made upon “a person responsible for receiving visitors, or business mail or deliveries addressed to” the particular association, at any office or regular place of business of the association.

Recommendation No. 150: Associations as Parties Proposes to modernize the definitions of the terms “partnership,” “unincorporated association” and “corporation or similar entity.” The definitions contain terminology which has become obsolete since the rules governing these associations were adopted in 1939.

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. 152: Judgment of Non Pros for Inactivity Proposed to codify the three-prong test for the entry of a judgment of *non pros* for inactivity as set forth in *James Brothers Lumber Co. v. Union Banking and Trust*, 432 Pa. 129, 247 A.2d 587 (1968) as reaffirmed in *Jacobs v. Halloran, et al.*, 551 Pa. 350, 710 A.2d 1098 (1998). Upon further consideration, however, including review of the comments

received upon publication, the committee determined that rule-making was not required.

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
138	Amendment of Rule 1303 governing compulsory arbitration	Promulgated 7-30-98, effective 1-1-99
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
144	Amendment of Rule 1033 governing amendment of pleadings	Not adopted by Court
146	New Rule 205.3 governing filing of copies; amendment of Rules 440 and 1025 to provide for service of legal papers by facsimile transmission	Promulgated 8-3-98, effective 1-1-99
148	Amendment of Rules 234.1 and 4007.1(d) governing issuance of a subpoena <i>duces tecum</i> for medical records and charts	Promulgated 12-1-99, effective 1-1-00
149	Amendment of Rules 423 and 424 governing service of original process upon associations	Pending with committee
150	Amendment of Rules 2126, 2151 and 2176 defining partnerships, unincorporated associations, and corporations and similar entities	Pending with committee
151	Promulgation and amendment of rules governing lines upon real property and revival of judgments	Pending with committee
152	Promulgation of New Rule 229.1 governing entry of judgment of <i>non pros</i> for inactivity	Removed from committee agenda
153	Promulgation of new Rule 205.4 and amendment of Rule 440 to provide for electronic filing and service of legal papers	Promulgated 6-14-99, effective 7-1-99
154	Amendment of Rule 223 governing conduct of the jury trial	Promulgated 11-3-99, effective 1-1-00

continued...

Chart 3.3.1

Status of Recommendations, continued		
Recommendation	Subject	Status
155	Amendment of Rule 1012 governing entry of appearance and promulgation of new Rule 1012.1 governing civil cover sheet	Pending with committee
156	Amendment of Rule 76 governing definitions to include municipal authority in the term political subdivision	Pending with committee

Chart 3.3.1, cont'd.