

Civil
Procedural
Rules
Committee

2002 Membership:

Honorable R. Stanton Wettick, Jr., *Chair*
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* Resigned 3-7-03

Legal Authorization:

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

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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.

2002 Activities

The Civil Procedural Rules Committee held four meetings in 2002 as follows:

March	Pittsburgh
June	Philadelphia
September	Pittsburgh
November	Philadelphia

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 also includes a list of the members of the committee as part of its home page.

2002 Amendments to the Rules of Civil Procedure

The Supreme Court acted on several committee recommendations in 2002, 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

Recommendation No. 166: Damages for Delay Rule 238 provides for damages for delay on 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 amends Rule 238(b)(1) to incorporate these requirements into the rule. Promulgated 7-29-02, effective immediately.

Recommendation No. 171: Form of Briefs, Preference on Trial List Provides for the revision of Rule 214 and rescission of Rule 215. Both rules were promulgated in 1938 to govern preferences on the trial list. Rule 214 set forth categories of cases given preferences by statutes that have since been repealed. Rule 215 prescribed a procedure for assigning preferences which is obsolete. Rule 214 remains as a general provision providing for a

trial preference to be granted upon cause shown. Promulgated 7-23-02, effective immediately.

Recommendation No. 175: Voluntary Nonsuit Changes the language in Rule 230 from “suffer” a nonsuit to “obtain” a nonsuit. In addition, the right of a plaintiff to “obtain” a voluntary nonsuit was made subject to the approval of the court “upon good cause shown.” Promulgated 10-3-02, effective 1-1-03.

Recommendation No. 176: Pre-Trial Practice in Eminent Domain Adds new Rule 212.4 to conform the time for serving the name of a valuation expert and his/her statement of valuation in eminent domain cases to that of Rule 212.1. The new rule places eminent domain cases on a footing which corresponds to jury trials generally and fosters the salutary principles underlying the pre-trial rules. Promulgated 10-8-02, effective 1-1-03.

Recommendation No. 178: Signing and Certification of Pleadings Rescission of existing Rule 1023 and adoption of new Rules 1023.1 through 1023.4. Recommendation No. 178 had its origin in a proposal by the Pennsylvania Bar Association to adopt rules governing the signing and certification of pleadings and other legal papers. The rules proposed by the bar association were based on Federal Rule of Civil Procedure 11 governing the same subject matter and were intended to supplant proposed legislation amending the Judicial Code by adding a chapter relating to frivolous litigation. Promulgated 4-22-02, effective 7-1-02.

Rule 237.1: Default Judgment Rule 237.1 requires that a ten-day notice be given prior to the filing of the *praecipe* for judgment of *non pros* or by default. The rule contemplates that the notice period be calculated forward from the date of mailing or delivery of the notice; however, a ruling in *Williams v. Wade*, 704 A.2d 132 (Pa. Super. 1997) determined that the notice period should be counted back from the date of the filing of the judgment. The amendment to Rule 237.1 adds new subdivision (a)(2.1) containing an express statement that the ten-day

period is to be calculated forward from the date of mailing or delivery in accordance with Rule 106. A note advises that the new subdivision “alters” the practice as set forth in *Williams* case. Promulgated 7-23-02, effective immediately.

Recommendations Published to Bench and Bar

The following recommendations, published to the bench and bar for comment in 2002 or previously, remain pending before the committee or the Supreme Court:

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.

Recommendation No. 167: Summary Judgment Proposed 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.

Recommendation No. 168: Entry and Withdrawal of Appearance Proposal to eliminate 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. Rather, the proposed amendment provides 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 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. 172: Documentary Evidence at Trial of an Appeal from Compulsory Arbitration Proposed 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, however, be limited to cases in which the plaintiff stipulates to a limit on the damages recoverable to no more than \$15,000.

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.

Recommendation No. 177: Termination of Inactive Cases Previously, the termination of inactive cases within the scope of the Pennsylvania 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 as a result of delay in prosecution is required before a case may be dismissed pursuant to local rules implementing Rule of Judicial Administration 1901.” New Rule of Civil Procedure 230.2 was proposed in response to the Shope decision and is tailored to the needs of civil actions, 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.

Recommendation No. 179: Deceased Persons as Parties Proposes new Rule 2355 to fill a void as the rules of civil procedure previously made no mention of the death of a party to an action. The rule would alert 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.

Recommendation No. 180: Consolidation of the Action in Equity with the Civil Action

Proposes to abolish the separate action in equity by amending the rules governing the civil action to include equitable relief. The “merger of law and equity” with respect to procedure is warranted in light of a climate in which many cases are not solely actions at law or actions in equity, but actions in which relief both equitable and legal in nature is sought.

Recommendation No. 181: Notice to Defend
Proposed amendment of Rule 1018.1 governing the Notice to Defend to clarify the language of the notice relating to the availability of free legal help. Conforming amendments were proposed to other rules of civil procedure containing identical or similar notices.

Recommendation No. 182: Venue in Medical Professional Liability Actions
Proposal that new Rule 1006(a.1) be adopted, incorporating 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 were recommended to clarify the procedure. Submitted to the Court without prior publication.

Recommendation No. 183: Certificate of Merit
Proposed amendment of the rules of civil

procedure to include a new chapter, Rules 1042.1 through 1042.8, governing certificates of merit. The purpose of the proposed rules is to lessen the possibility of the commencement of frivolous professional liability actions. Submitted to the Court without prior publication.

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
160	New Rule 1042.1 governing appeals from district justice courts	Pending with committee
166	Amendment of Rule 238 governing damages for delay	Promulgated 7-29-02, effective immediately
167	Amendment of Rule 1035.3 governing summary judgment	Pending with Court
168	Amendment of Rules 205.1, 1012 and 1025 regarding entry and withdrawal of appearance	Pending with Court
171	Amendment of Rule 214 and rescission of Rules 210 and 215 governing form of briefs and preference on the trial list	Promulgated 7-23-02, effective immediately
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 Court
173	Amendment of Rule 2177 governing representation of corporations and similar entities	Declined by Court
174	Promulgation and amendment of rules governing liens upon real property and revival of judgment liens	Pending with committee
175	Amendment of Rule 230 governing voluntary nonsuit	Promulgated 10-3-02, effective 1-1-03
176	Promulgation of New Rule 212.4 governing pre-trial procedure in eminent domain cases	Promulgated 10-8-02, effective 1-1-03
177	Promulgation of new Rule 230.2 and amendment of Rule of Judicial Administration 1901 governing termination of inactive cases	Pending with Court
178	Promulgation of new Rules 1023.1 <i>et seq.</i> governing signing and certification of pleadings and other legal papers; rescission of Rule 1023	Promulgated 4-22-02, effective 7-1-02

continued...

Chart 3.3.1

Status of Recommendations, continued		
Recommendation	Subject	Status
179	Promulgation of new Rule 2355 governing deceased persons as parties	Pending with Court
180	Merger of the action in equity with the civil action	Pending with committee
181	Amendment of Rule 1018.1 governing the notice to defend	Pending with Court
--	Amendment to Rule 237.1 regarding calculation of the ten-day period of notice be given prior to the filing of the <i>praecipe</i> for judgment of <i>non pros</i> or by default	Promulgated 7-23-02, effective immediately

Chart 3.3.1, cont'd.