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\* Term expired 6-30-04

## 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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Indexcivilrules.asp](http://www.courts.state.pa.us/Index/SupCtCmtes/CivilRulesCmte/Indexcivilrules.asp)

## Civil Rules On-line

The Rules of Civil Procedure governing motion and petition practice are now available on-line on the UJS Portal Web page at <http://ujsportal.pacourts.us/Rules/RulesSelection.aspx>. Local rules authorized by these statewide rules are also available. The page has searching capability, allowing a user to determine if a particular county has a local rule governing a specific aspect of motion or petition practice.

## 2004 Activities

The committee held three meetings in 2004 as follows:

March	Philadelphia
June	Pittsburgh
October	Philadelphia

## 2004 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 following recommendations were promulgated in 2003 with effective dates in 2004:

**Recommendation No. 174: Judgment Liens and Revival of Judgment Liens** Rules 3025-3049 were promulgated in 1964 to provide the procedure in reviving and continuing 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 The Judgment Lien Law, however, was repealed by the Judiciary Act Repealer Act (JARA) in 1978, and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. 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 Unless the superseded volumes of former Title 12 were retained, the Judgment Lien Law became unavailable to the legal community. Yet as no general rules had been promulgated to replace the repealed act, the Judgment Lien Law continued as part of the common law of the Commonwealth under the fail-safe provision of JARA, 42 P.S., § 20003(b).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. 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.

**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 10-25-03, effective 7-24-04.

The Supreme Court promulgated the following recommendations in 2004:

**Recommendation No. 186: Delivery of Settlement Funds** New Rule 229.1 provides 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. Promulgated 6-7-04, effective 7-1-04.

**Recommendation No. 191: Post-Trial Practice** Amendment of Rule 227.1(b) to eliminate a conflict with Pennsylvania Rule of Evidence (Pa.R.E.) 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, if then available, were raised in pre-trial proceedings or at trial. Pa.R.E. 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. Promulgated 7-21-04, effective immediately.

**Recommendation No. 192: Local Rules** Amendments to Rules 239 and 239.8 to provide that local rules governing motion practice must be published on the UJS Web Application Portal and will be effective and enforceable when so published. Publication of these rules in the *Pennsylvania Bulletin* is no longer required. Promulgated 6-30-04, effective immediately.

**Recommendation No. 193: Technical Amendments** Technical amendments to various rules of civil procedure governing the civil action, judgment liens and revival of judgments, and motion practice. These amendments were perfunctory in nature and did not alter practice or procedure. Promulgated 10-15-04, effective immediately.

**Recommendation No. 194: Confession of Judgment** Adds new subdivision (g) to Rule

2959 governing relief from a judgment by confession. The new subdivision prohibits a court from striking or opening a judgment because a creditor fails to provide a debtor with instructions imposed by any existing statutes regarding procedures to follow to strike a judgment or regarding any rights available to an incorrectly identified debtor. The purpose of the 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. Promulgated 9-28-04, effective immediately.

**Recommendation No. 195: Limitation on Scope of Discovery** Section 5949 of the Judicial Code provides, with specified exceptions, that all mediation communications and documents are privileged. Rule 4011 was amended to implement that section by adding new subparagraph (d) providing that discovery, including a deposition, is not permitted if it is prohibited by any law barring disclosure of mediation communications and documents. Promulgated 8-20-04, effective 10-1-04.

**Recommendation No. 199: Caption of Pleadings** The Administrative Office of Pennsylvania Courts (AOPC) is statutorily obligated to gather statistical information concerning medical professional liability actions. In 2004 the Supreme Court promulgated new Rule of Judicial Administration 1904 in furtherance of this obligation. New Rule of Civil Procedure 1042.16 provides an additional tool to the AOPC in identifying medical professional liability actions by providing that the captions or cover sheets of legal papers filed in such actions must contain the designation "Civil Action - Medical Professional Liability Action." Promulgated 12-27-04, effective immediately.

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. In

response, the Supreme Court created 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 named chair of the committee.)

The committee, in consultation with the Civil Procedural Rules Committee, developed several rules governing pre-trial practice and noneconomic loss.

**Rules Governing Pre-Trial Practice** 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. Rule 1042.51 governs requests for pre-trial conferences. Promulgated 3-29-04, effective immediately.

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.

**Rules Governing Noneconomic Loss** New Rule 223.3 provides a jury instruction to be given by the court where a claim is made for damages for noneconomic loss. The rule is of broader application than to medical professional liability actions alone, applying to all actions for bodily injury and death. Promulgated 8-20-04, effective 12-1-04.

New Rule 1042.71 implements Section 509(a) of the Mcare Act, requiring the trier of

fact to make a determination with separate findings for each plaintiff, specifying the amount of past damages and future damages for medical and other related expenses, loss of earnings and noneconomic loss. Promulgated 8-20-04, effective 12-1-04.

New Rule 1042.72 provides that a defendant may include in a motion for post-trial relief under Rule 227.1 the ground that the damage award for noneconomic loss is excessive. The rule defines what is considered excessive and sets procedures for if an award is found to be excessive. Promulgated 9-17-04, effective 12-1-04.

Note: The promulgation of new Rule 1042.72 supplants proposed Recommendation No. 189 relating to proceedings under Section 515 of the Mcare Act, No. 13 of 2002, 40 P.S. § 1303.515, relating to remittitur in medical professional liability actions

### *Recommendations Pending*

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

**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. 190: Wage Attachment in Residential Landlord-Tenant Actions** Proposes to add a new chapter of rules, 3301 *et seq.*, to govern the attachment of wages, salary and commissions pursuant to Section 8127(a)(3.1) of the Judicial Code in actions or proceedings for amounts awarded to a judgment creditor-landlord arising out of a residential lease. The proposed rules balance the interests of the landlord (plaintiff), tenant (defendant) and employer garnishee.

**Recommendation No. 197: Scope and Citation of Rules** Amendment of Rule 51 to make clear that the rules of civil procedure do not govern actions and proceedings in magisterial district judge courts.

**Recommendation No. 198: Rescission of Rule 223.2(e), Juror Note-Taking** Rule 223.2 governing note-taking by jurors in civil cases was promulgated in 2003 as a temporary rule to determine if note-taking was beneficial to the judicial system. Recommendation No. 198 rescinds subdivision (e) of the rule, the sunset provision, thereby making the rule permanent.

**Recommendation No. 200: Certificate of Merit** Rule 1042.3(a)(2) governs claims in a professional liability action that the defendant deviated from an acceptable professional standard based solely on allegations that other licensed professionals for whom this defendant is responsible so deviated. The note to the rule was intended to explain that the rule requires the filing of only a single certificate of merit as to a claim against a defendant that is based on the activities of licensed professionals who are not named defendants in the action. Recommendation 200

revises the note to clarify that there is no requirement that the licensed professional supplying the statement that serves as the basis for the certificate specifically identify the other professionals who deviated.

**Recommendation No. 201: Arbitration Awards in Consumer Credit Transactions** Proposal to add a new chapter of rules, 1326 *et seq.*, governing proceedings to compel arbitration and to confirm the award of arbitrators. The rules are limited to court proceedings where the arbitration arises from a consumer credit transaction and is a common law or statutory arbitration under applicable provisions of the Judicial Code.

## 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

<b>Status of Recommendations</b>		
<b>Recommendation</b>	<b>Subject</b>	<b>Status</b>
174	Promulgation and amendment of rules governing liens upon real property and revival of judgment liens	Promulgated 12-16-03, effective 7-1-04
180	Merger of the action in equity with the civil action	Promulgated 12-16-03, effective 7-1-04
185	New Rule 4007.5 governing conduct at a deposition	Tabled by committee
186	New Rule 229.1 governing failure to deliver settlement funds	Promulgated 6-7-04, effective 7-1-04
187	Amendment of Rule 1026 governing time for filing pleadings	Tabled by committee
188	Amendment of Rule 2253 governing late joinder of an additional defendant	Pending with Court
189	New Rule 1042.66 governing remittitur in medical professional liability actions	Superseded by promulgation of Rule 1042.72
190	New Rule 3301 <i>et seq.</i> governing wage attachment pursuant to Section 8127(a)(3.1) of the Judicial Code	Pending with Court
191	Amendment of Rule 227.1(b) governing post-trial practice to accommodate Rule of Evidence 103(a)	Promulgated 7-21-04, effective immediately
192	Amendment of Rules 239 and 239.8 governing local rules	Promulgated 6-30-04, effective immediately
193	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	Promulgated 10-15-04, effective immediately

continued...

**Chart 3.3.1**

<b>Status of Recommendations, continued</b>		
<b>Recommendation</b>	<b>Subject</b>	<b>Status</b>
194	Amendment of Rule 2959 governing confession of judgment	Promulgated 9-28-04, effective immediately
195	Promulgation of new Rule 4011(d) governing limitations upon discovery -- mediation materials	Promulgated 8-20-04, effective 10-1-04
196	Technical amendments to Rules 239(f), 2957(b) and 2958.2(a)	Promulgated 10-15-04, effective immediately
197	Amendment of Rule 51 governing scope of the rules	Pending with committee
198	Rescission of Rule 223.2(e) (sunset provision) governing juror note-taking	Pending with committee
199	Amendment of Note to Rule 1018 and promulgation of new Rule 1042.16 governing captions in medical professional liability actions	Promulgated 12-27-04, effective immediately
200	Amendment of Note to Rule 1042.3(a)(2) governing the certificate of merit	Pending with Court
201	New Rule 1326 <i>et seq.</i> governing compelling arbitration and confirmation of arbitration award in consumer credit transactions	Pending with committee
---	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	Promulgated 3-29-04, effective immediately
---	Promulgation of new Rule 223.3 governing jury instruction on noneconomic loss	Promulgated 8-20-04, effective 10-1-04

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Chart 3.3.1, cont'd.

<b>Status of Recommendations, continued</b>		
<b>Recommendation</b>	<b>Subject</b>	<b>Status</b>
---	Promulgation of new Rule 1042.71 governing findings as to damages in medical professional liability actions	Promulgated 8-20-04, effective 10-1-04
---	Promulgation of new Rule 1042.72 governing excessive damage award for noneconomic loss in medical professional liability actions; amendment of Rule 227.4 governing entry of judgment upon <i>praecipe</i> of a party	Promulgated 9-17-04, effective 12-1-04

**Chart 3.3.1, cont'd.**