

THE COURTS

Title 210—APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE [210 PA. CODE CH. 3]

[Correction]

Collateral Orders; No. 108; Doc. No. 1

An error appeared at 27 Pa.B. 3503, 3504 (July 19, 1997). Rule 313 (relating to collateral orders) was inadvertently rescinded. The text of the rule is being printed in Annex A.

Annex A

TITLE 210. APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

ARTICLE I. PRELIMINARY PROVISIONS

CHAPTER 3. ORDERS FROM WHICH APPEALS MAY BE TAKEN

INTERLOCUTORY APPEALS

Rule 313. Collateral Orders.

(a) *General Rule.* An appeal may be taken as of right from a collateral order of an administrative agency or lower court.

(b) *Definition.* A collateral order is an order separable from and collateral to the main cause of action where the right involved is too important to be denied review and the question presented is such that if review is postponed until final judgment in the case, the claim will be irreparably lost.

Official Note: Rule 313 is a codification of existing case law with respect to collateral orders. See *Pubar v. Greco*, 483 Pa. 68, 73, 394 A.2d 542, 545 (1978) (quoting *Cohen v. Beneficial Industrial Corp.*, 337 U.S. 541 (1949)). Examples of collateral orders include an order denying a pre-trial motion to dismiss based on double jeopardy, *Commonwealth v. Brady*, 510 Pa. 363, 508 A.2d 286, 289-91 (1986) (allowing an immediate appeal from denial of double jeopardy claim under collateral order doctrine where trial court makes a finding that motion is not frivolous); an order denying a petition to permit the payment of death taxes, *Hankin v. Hankin*, 338 Pa. Super. 442, 487 A.2d 1363 (1985); and an order denying a petition for removal of an executor, *Re: Estate of Georgianna*, 312 Pa. Super. 339, 458 A.2d 989 (1983), *aff'd*, 504 Pa. 510, 475 A.2d 744. Thorough discussions of the collateral order doctrine as it has been applied by Pennsylvania appellate courts are found in the following sources: *Darlington, McKeon, Schuckers and Brown, 1 Pennsylvania Appellate, Practice Second Edition, §§ 313:1-313:201 (1994)* and *Byer, Appealable orders under the Pennsylvania Rules of Appellate Procedures in Practice and Procedures in Pennsylvania Appellate Courts (PBI No. 1994-869); Pines, Pennsylvania Appellate Practice: Procedural Requirements and the Vagaries of Jurisdiction*, 91 Dick. L. Rev. 55, 107-115 (1986).

If an order falls under Rule 313, an immediate appeal may be taken as of right simply by filing a notice of

appeal. The procedures set forth in Rules 341(c) and 1311 do not apply under Rule 313.

[Pa.B. Doc. No. 97-97-1138. Filed for public inspection July 18, 1997, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 1000]

Proposed Recommendation No. 144; Pleadings

The Civil Procedural Rules Committee proposes to recommend the amendment of Rules of Civil Procedure 1019 and 1033 governing pleadings. The proposed recommendation is being submitted to the bench and bar for comments and suggestions prior to its submission to the Supreme Court.

All communications in reference to the proposed recommendation should be sent not later than September 12, 1997 to Harold K. Don, Jr., Esquire, Counsel, Civil Procedural Rules Committee, 5035 Ritter Road, Suite 700, Mechanicsburg, Pennsylvania 17055, or E-Mail to civil.rules@court.state.pa.us.

The Explanatory Comment which appears in connection with the proposed recommendation has been inserted by the Committee for the convenience of the bench and bar. It will not constitute part of the rules of civil procedure nor will it be officially adopted or promulgated by the Court.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1000. ACTIONS AT LAW

Subchapter A. CIVIL ACTION PLEADINGS

Rule 1019. Contents of Pleadings. General and Specific Averments.

* * * * *

(i) In an action seeking monetary relief for bodily injury, death or property damage, theories of negligence may be averred generally.

Official Note: Subdivision (i) applies only to those actions for which damages for delay may be awarded pursuant to Rule of Civil Procedure 238.

Rule 1033. Amendment.

(a) A party, either by filed consent of the adverse party or by leave of court, may at any time change the form of action, **substitute a party**, correct the name of a party or amend [**his**] a pleading. The amended pleading may aver transactions or occurrences which have happened before or after the filing of the original pleading, even though they give rise to a new cause of action or defense. An amendment may be made to conform the pleading to the evidence offered or admitted.

(b) An amendment of a pleading relates back to the date of the commencement of the action when

(1) the amendment substitutes a party against whom a claim is asserted if within the period provided by law for commencing the action or for service of original process, the party to be substituted

(i) has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits, and

(ii) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party, or

Official Note: The amendment of a pleading to substitute a party is subject to considerations of time in light of the procedural posture of the case so that there is no prejudice to the party substituted.

The period for commencing an action or for service of original process is determined by *Lamp v. Heyman*, 469 Pa. 465, 366 A.2d 882 (1976), and its progeny.

(2) the amendment substitutes as a party the personal representative of a deceased named party whether death occurred before or after commencement of the action.

Official Note: An action may be brought against a deceased individual if it is not known that the individual is deceased or if the identity of the personal representative cannot be determined. An action may not be brought against the estate of a deceased individual.

Explanatory Comment

I. Rule 1019

Rule 1029 governing denials was amended in 1994 by adding subdivision (e) to provide for a general denial in actions for bodily injury, death or property damage. Now a corresponding amendment governing pleading in those actions is proposed for Rule 1019. New subdivision (i) provides that "theories of negligence may be averred generally." Factual detail will be revealed in discovery proceedings.

II. Rule 1033

New subdivision (b) adds two provisions to the rules of civil procedure relating to the substitution of a party and the relation back of that substitution "to the date of the commencement of the action."

The first provision, subdivision (b)(1), is directed solely to the instance when the wrong party has been sued. This provision allowing the substitution of the correct party is modeled on Federal Rule of Civil Procedure 15(c)(3) but is not a verbatim copy of it.

The second provision, subdivision (b)(2), is similarly directed to the instance when the wrong party has been sued. In this case, the wrong party is a defendant who is deceased at the time the action is commenced. The rule also encompasses the situation in which the right party has been sued, i.e., the defendant is living when the action is commenced but dies thereafter. In both cases, the rule provides for the substitution of the personal representative of the decedent.

The addition of proposed subdivision (b)(2) will change the present practice stated in *Goodrich-Amram* 2d § 2351:7, and § 1033:31 as well, that "where a named defendant is dead at the time an action is commenced,

the suit is a nullity because of the lack of a party defendant and, consequently, there can be no successor to the interest or office of the defendant."

By the Civil Procedural Rules Committee

EDWIN L. KLETT,
Chairperson

[Pa.B. Doc. No. 97-1244. Filed for public inspection August 8, 1997, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

PART I. GENERAL

[234 PA. CODE CH. 305]

Order Approving the Revision of the Comment to Rule 305; No. 223: Doc. No. 2

The Criminal Procedural Rules Committee has prepared a Final Report explaining the July 28, 1997 revision of the Comment to Rule of Criminal Procedure 305 (Pretrial Discovery and Inspection). The Final Report follows the Court's Order.

Order

Per Curiam:

Now, this 28th day of July, 1997, upon the recommendation of the Criminal Procedural Rules Committee; this Recommendation having been submitted without publication pursuant to Pa.R.J.A. 103(a)(3), and a Final Report to be published with this Order:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that the revision of the Comment to Pa.R.Crim.P. 305 in the following form is approved.

This *Order* shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective immediately.

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

PART I. GENERAL

CHAPTER 300. PRETRIAL PROCEEDINGS

Rule 305. Pretrial Discovery and Inspection.

* * * * *

Official Note: Present Rule 305 replaces former Rules 310 and 312 in their entirety. Former Rules 310 and 312 adopted June 30, 1964, effective January 1, 1965. Former Rule 312 suspended June 29, 1973, effective immediately. Present Rule 305 adopted June 29, 1977 and November 22, 1977, effective as to cases in which the indictment or information is filed on or after January 1, 1978; Comment revised April 24, 1981, effective June 1, 1981; amended October 22, 1981, effective January 1, 1982; amended September 3, 1993, effective January 1, 1994; amended May 13, 1996, effective July 1, 1996; **Comment revised July 28, 1997, effective immediately.**

Comment

[In determining the extent to which pretrial discovery should be ordered under the "Discretionary with the Court" sections of this rule, judges may be guided by the following general principles

of the ABA Standards Relating to Discovery and Procedure Before Trial (Approved Draft, 1970):

Sec. 1.1: Procedural needs prior to trial.

(a) Procedure prior to trial should serve the following needs:

(i) to promote an expeditious as well as fair determination of the charges, whether by plea or trial;

(ii) to provide the accused sufficient information to make an informed plea;

(iii) to permit thorough preparation for trial and minimize surprise at trial;

(iv) to avoid unnecessary and repetitious trials by exposing any latent procedural or constitutional issues and affording remedies therefor prior to trial;

(v) to reduce interruptions and complications of trial by identifying issues collateral to guilt or innocence and determining them prior to trial; and

(vi) to effect economies in time, money, and judicial and professional talents by minimizing paperwork, repetitious assertions of issues, and the number of separate hearings.

(b) These needs can be served by:

(i) fuller discovery;

(ii) simpler and more efficient procedures; and

(iii) procedural pressures for expediting the processing of cases.

Sec. 1.2: Scope of Discovery.

In order to provide adequate information for informed pleas, expedite trials, minimize surprise, afford opportunity for effective cross-examination, and meet the requirements of due process, discovery prior to trial should be as full and free as possible consistent with protection of persons, effective law enforcement, the adversary system, and national security.]

* * * * *

[Paragraph (G) is derived in part from ABA Standards Relating to Discovery and Procedure Before Trial § 2.6(a). See Commentary contained therein. Paragraph (G), however, makes this provision applicable to the work product of the defense, while the ABA Standards refer only to the prosecution.]

* * * * *

Committee Explanatory Reports. Report explaining the September 3, 1993 amendments published at 21 Pa.B. 3681 (August 17, 1991).

Final Report explaining the May 13, 1996 amendments published with the Court's Order at 26 Pa.B. 2488 (June 1, 1996).

Final Report explaining the July 28, 1997 Comment revision deleting the references to the ABA Standards published with the Court's Order at 27 Pa.B. 3997 (August 9, 1997).

FINAL REPORT¹

Revision of the Comment to Pa.R.Crim.P. 305

PRETRIAL DISCOVERY AND INSPECTION

On July 28, 1997, upon the recommendation of the Criminal Procedural Rules Committee, the Supreme Court approved the revision of the Comment to Rule of Criminal Procedure 305 (Pretrial Discovery and Inspection). This revision deletes from the Comment the references to the ABA Standards Relating to Discovery and Procedure Before Trial (Approved Draft, 1970). The Committee agreed that, because Rule 305 has been in effect since 1977, it is no longer necessary to retain in the Comment the ABA Standards as guidance to judges in determining the extent to which pretrial discovery should be ordered under the discretionary provisions of Rule 305. The Comment revision is effective immediately.

¹The Committee's Final Reports should not be confused with the official Committee Comments to the rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the Committee's explanatory Final Reports.

[Pa.B. Doc. No. 97-1245. Filed for public inspection August 8, 1997, 9:00 a.m.]

Title 25—LOCAL COURT RULES

MONTGOMERY COUNTY

Amendment to Local Rule of Civil Procedure 1018.1*; No. 97-00001-4

Order

And Now, this 18th day of July, 1997, the Court approves and adopts the following amendment to Montgomery County Local Rule of Civil Procedure 1018.1*—*Notice to Defend—Office to be Contacted*. This Amendment shall become effective thirty (30) days from the date of publication in the *Pennsylvania Bulletin*.

The Court Administrator is directed to publish this Order once in the Montgomery County *Law Reporter* and in the *Legal Intelligencer*. In conformity with Pa.R.C.P. 239, seven (7) certified copies of the within Order shall be filed by the Court Administrator with the Administrative Office of Pennsylvania Courts. Two (2) certified copies shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*. One (1) certified copy shall be filed with the Civil Procedure Rules Committee. One (1) copy shall be filed with the Prothonotary, one (1) copy with the Clerk of Courts, and (1) copy with the Court Administrator of Montgomery County, one (1) copy with the Law Library of Montgomery County and one (1) copy with each Judge of this Court.

By the Court

JOSEPH A. SMYTH,
President Judge

Rule 1018.1*. Notice to Defend—Office to be Contacted.

As provided by Pennsylvania Rule of Civil Procedure 1018.1 the following office is designated to be named in

the Notice to Defend prescribed by that rule as the office from which advice on where to get legal help can be obtained.

Lawyer Reference Service
409 Cherry Street
Norristown, Pennsylvania 19401
(610) 279-9660

[Pa.B. Doc. No. 97-1246. Filed for public inspection August 8, 1997, 9:00 a.m.]

COMMONWEALTH COURT

Regular Sessions of Commonwealth Court for the
Year 1998; No. 126 M. D. No. 3

Order

And Now, this 17th day of July, 1997, pursuant to Pa.R.A.P. 3703, the following calendar is fixed for the year 1998:

Session

February 9-13
March 16-20
April 13-17
May 4-8
June 8-12
September 14-18
October 5-9
November 16-20
December 7-11

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Philadelphia
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By the Court

JAMES GARDNER COLINS,
President Judge

[Pa.B. Doc. No. 97-1247. Filed for public inspection August 8, 1997, 9:00 a.m.]
