

THE COURTS

Title 231—RULES OF CIVIL PROCEDURE

[231 PA. CODE CHS. 200, 1000 AND 4000]

Amendment of Rules 212 and 1023; Promulgation of New Rules 212.1, 212.2 and 4003.7; No. 284; Doc. No. 5

Order

Per Curiam:

And Now, this 11th day of August, 1997, the Pennsylvania Rules of Civil Procedure are amended as follows:

1. Rules 212 and 1023 are amended to read as follows.
2. New Rules 212.1, 212.2 and 4003.7 are promulgated to read as follows.

This Order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective December 1, 1997.

- I. Rule 1023 is amended to read as follows:

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1000. ACTIONS AT LAW

Subchapter A. CIVIL ACTION PLEADINGS

Rule 1023. Signing.

(a) Every pleading, motion, legal paper or other paper directed to the court and every discovery request or response of a party represented by an attorney shall be signed by at least one attorney of record in [his] the attorney's individual name. [A party not represented by an attorney shall sign his own pleading.] Every such document of a party not represented by an attorney shall be signed by the party.

(b) The signature to a [pleading] document described in subdivision (a) constitutes a [certificate] certification that the person signing it has read it, that to the best of [his] the signer's knowledge or information and belief there is good ground to support it, and that it is submitted in good faith [and that it is not interposed for delay]. There is good ground to support the document if the signer has a reasonable belief that existing law supports the document or that there is a good faith argument for the extension, modification or reversal of existing law.

(c) The court may impose an appropriate sanction for a bad faith violation of subdivision (b).

Official Note: The court in its discretion at any stage of the proceedings may deny a motion for sanctions without hearing or argument.

The grant or denial of relief (e.g., grant or denial of preliminary objections, motion for summary judgment or discovery application) does not, of itself, ordinarily warrant the imposition of sanctions against the party opposing or seeking the relief.

The inclusion in the rule of a provision for "an appropriate sanction" is designed to prevent the abuse of litigation. The rule is not a fee shifting rule per se although the award of reasonable attorney's fees may be an appropriate sanction in a particular case.

The following provisions of the Judicial Code, 42 Pa.C.S., provide additional relief from dilatory or frivolous proceedings: (1) Section 2503 relating to the right of participants to receive counsel fees and (2) Section 8351 et seq. relating to wrongful use of civil proceedings.

(d) Section 8355 of the Judicial Code, 42 Pa.C.S. § 8355, is suspended absolutely, in accordance with the provisions of the Constitution of 1968, Article V, Section 10(c).

Official Note: Section 8355 of the Judicial Code provides for the certification of pleadings, motions and other papers.

See also Order of January 17, 1997, Civil Procedural Rules Docket No. 5, No. 269, suspending the following sections of the Health Care Services Malpractice Act, added by Act No. 1996-135; Section 813-A, 40 P. S. § 1301.813-A, providing for the signing and certification of pleadings, motions and other papers and Section 821-A, 40 P. S. § 1301.821-A, providing for the signing and certification of a complaint.

II. Rule 212 is amended and renumbered as Rule 212.3 and new Rules 212.1 and 212.2 are promulgated to read as follows:

(Editor's Note: Rules 212.1 and 212.2 are new rules. They are printed in regular type to enhance readability.)

CHAPTER 200. BUSINESS OF COURTS

Rule 212.1. Civil actions to be tried by jury. Notice of earliest trial date. Time for completing discovery and filing pre-trial statement.

(a) In a civil action in which the damages sought exceed the jurisdictional limit for compulsory arbitration and which is to be tried by a jury, notice shall be given by the court of the earliest date on which the case may be tried. The notice should be given at least thirty days before the plaintiff's pre-trial statement is due to be filed. The notice may include a date by which discovery shall be completed.

Official Note: It is not intended by this rule to change the form and manner of notice of trial.

(b) A pre-trial statement shall be filed.

(1) by the plaintiff not later than sixty days prior to the earliest trial date,

(2) by the defendant not later than thirty days prior to the earliest trial date, and

(3) by an additional defendant not later than fifteen days prior to the earliest trial date.

Official Note: A copy of the pre-trial statement must be served upon every other party to the action. See Rule 440(a).

(c) (1) The times set forth in subdivision (b) may be made earlier by published local rule or by special order or as set forth in a trial list published in the county law journal or otherwise made available to the parties.

(2) The times set forth in subdivision (b) may be made later by published local rule or by special order in a particular case.

Official Note: In a county which requires that discovery be completed and expert reports be exchanged prior to listing a case for trial, the court by local rule may provide for the simultaneous filing of pre-trial statements.

The court by local rule may extend Rules 212.1 and 212.2 to apply to actions to be tried non-jury as well as by jury and to other forms of action in addition to civil actions.

Rule 212.2. Civil actions to be tried by jury. Pre-trial statement. Content. Sanctions.

(a) A pre-trial statement shall contain

- (1) a brief narrative statement of the case;
- (2) a list of the types and amounts of all damages claimed;
- (3) a list of the names and addresses of all persons who may be called as witnesses by the party filing the statement, classifying them as liability or damage witnesses. A reference which does not state the name of the witness shall be permitted when the witness is described by title or representative capacity;

Official Note: A listing of "anyone named in discovery" is insufficient under this rule. A listing of a "records custodian" of a specific entity is a sufficient listing.

This rule does not contemplate that the pre-trial statement include a list of witnesses for use in rebuttal or for impeachment. These matters are governed by case law.

(4) a list of all exhibits which a party intends to use at trial;

Official Note: This rule does not contemplate that the pre-trial statement include a list of exhibits for use in rebuttal or for impeachment. These matters are governed by case law.

(5) a copy of the written report, or answer to written interrogatory consistent with Rule 4003.5, containing the opinion and the basis for the opinion of any person who may be called as an expert witness;

Official Note: The notes or records of a physician may be supplied in lieu of written reports.

- (6) stipulations of the parties, if any; and
 - (7) such additional information as the court by local rule or special order may require.
- (b) The exhibits listed in the pre-trial statement, or copies thereof, shall be made available by the party filing the statement.

(c) Where the trial judge determines that unfair prejudice shall occur as the result of non-compliance with subdivisions (a) and (b), the trial judge shall grant appropriate relief which may include

- (1) The preclusion or limitation of the testimony of
 - (i) any witness whose identity is not disclosed in the pre-trial statement, or
 - (ii) any expert witness whose opinions have not been set forth in the report submitted with the pre-trial statement or otherwise specifically referred to in the pre-trial statement, consistent with Rule 4003.5, and
- (2) the preclusion of exhibits not listed in the pre-trial statement and made available.

Rule 212.3. Pre-trial conference.

(a) In any action the court, of its own motion or on motion of any party, may direct the attorneys for the parties to appear for a conference to consider:

- [(a)] (1) The simplification of the issues;
- [(b)] (2) The necessity or desirability of amendments to the pleadings;
- [(c)] (3) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;
- [(d)] (4) The limitation of the number of expert witnesses;
- [(e)] (5) The advisability of a preliminary reference of issues to a master for findings to be used as evidence when the trial is to be by jury;
- [(f)] (6) Such other matters as may aid in the disposition of the action.

(b) The court may make an order reciting the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and limiting the issues for trial to those not disposed of by admissions or agreements of the attorneys. Such order when entered shall control the subsequent course of the action unless modified at the trial to prevent manifest injustice.

(c) The court may establish by rule a pre-trial list on which actions may be placed for consideration as above provided, and may either confine the list to jury actions or to non-jury actions, or extend it to all actions.

(Editor's Note: Rule 4003.7 is a new rule. It is printed in regular type to enhance readability.)

III. New Rule 4003.7 is promulgated to read as follows:

CHAPTER 4000. DEPOSITIONS AND DISCOVERY

Rule 4003.7. Punitive damages.

A party may obtain information concerning the wealth of a defendant in a claim for punitive damages only upon order of court setting forth appropriate restrictions as to the time of the discovery, the scope of the discovery, and the dissemination of the material discovered.

Official Note: Discovery may also proceed pursuant to the agreement of the parties. See Rule 4002.

Explanatory Comment

The following innovations to Pennsylvania civil practice and procedure have recently been adopted by the Supreme Court of Pennsylvania.

I. *Amendment of Rule 1023*

Rule 1023 governing signing is revised in several respects. First, the category of documents subject to the requirement of signing is significantly expanded beyond pleadings to include a "motion, legal paper or other paper directed to the court and every discovery request or response."

Second, the certification which arises from the act of signing is broadened to provide that the document "is submitted in good faith." Since the document is submitted in good faith, the reference to a document "interposed for delay" is unnecessary and is deleted. A sentence is added defining the existing requirement that there be "good ground" to support the document.

Third, a provision for sanctions is added for a bad faith violation of the rule. In providing that the "court may

impose an appropriate sanction," the rule leaves the matter to the sound discretion of the court.

Finally, a note elaborates on the application of the rule.

II. *New Rules 212.1 and 212.2*

New Rules 212.1 and 212.2 are mandatory provisions governing pre-trial proceedings in civil actions to be tried by jury. A note to the rule advises that a court may extend the application of the rules to non-jury actions and additional forms of action.

Rule 212.1 requires the court to provide a notice which must advise the parties of the earliest trial date and which may impose a date for the completion of discovery. The rule also requires the parties to file pre-trial statements according to a specified schedule.

Rule 212.2 specifies the content of the pre-trial statement and sets forth sanctions for violation of the rule. Copies of the written reports of expert witnesses, or answers to written interrogatories consistent with Rule 4003.5, must be included as part of the pre-trial statement.

Present Rule 212 governing the pre-trial conference remains unchanged in substance but is renumbered as Rule 212.3. The paragraphs and subparagraphs of the rule are lettered and numbered to conform to the format of the rules of civil procedure.

Rule 212.3 stands in contrast to proposed Rules 212.1 and 212.2 which are of mandatory application. While Rule 212.3 specifies the nature of a pre-trial conference, it does not mandate that a conference be held.

III. *New Rule 4003.7*

New Rule 4003.7 places under the control of the court the discovery of information concerning the wealth of a defendant when there is a claim for punitive damages. A note serves as a reminder that such discovery may be had also pursuant to agreement of the parties under Rule 4002.

The term "wealth" found in the rule is used by the Supreme Court of Pennsylvania in *Kirkbride v. Contractors Inc.*, 521 Pa. 97, 555 A.2d 800 (1989) and by the Restatement of Torts Second, § 908(2), cited in *Kirkbride*. However, many cases, both appellate and common pleas court, and texts use the term "net worth" alone or in addition to "wealth."

By the Civil Procedural Rules Committee

EDWIN L. KLETT,
Chairperson

[Pa.B. Doc. No. 97-1384. Filed for public inspection August 29, 1997, 9:00 a.m.]

PART I. GENERAL

[231 PA. CODE CH. 200]

Promulgation of New Rule 220.1 Governing Voir Dire; No. 285; Doc. No. 5

Order

Per Curiam:

And Now, this 14th day of August, 1997, new Pennsylvania Rule of Civil Procedure 220.1 governing Voir Dire is promulgated to read as follows.

This Order supersedes the Order No. 202, Civil Procedural Rules Docket No. 5, dated September 15, 1993

which promulgated Rule 220.1 governing juror information questionnaire and which was subsequently suspended until further Order of the Supreme Court by the Order No. 205, Civil Procedural Rules Docket No. 5, dated December 17, 1993.

This Order shall be effective January 1, 1998 and shall be processed in accordance with Rule of Judicial Administration 103(b).

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 200. BUSINESS OF COURTS

Rule 220.1. Voir Dire.

(a) Voir dire shall be conducted to provide the opportunity to obtain at a minimum a full description of the following information, where relevant, concerning the prospective jurors and their households:

- (1) Name;
- (2) Date and place of birth;
- (3) Residential neighborhood and zip code (not street address);
- (4) Marital status;
- (5) Nature and extent of education;
- (6) Number and ages of children;
- (7) Name, age and relationship of members of prospective juror's household;
- (8) Occupation and employment history of the prospective juror, the juror's spouse and children and members of the juror's household;
- (9) Involvement as a party or a witness in a civil lawsuit or a criminal case;
- (10) Relationship, friendship or association with a law enforcement officer, a lawyer or any person affiliated with the courts of any judicial district;
- (11) Relationship of the prospective juror or any member of the prospective juror's immediate family to the insurance industry, including employee, claims adjuster, investigator, agent, or stockholder in an insurance company;
- (12) Motor vehicle operation and licensure;
- (13) Physical or mental condition affecting ability to serve on a jury;
- (14) Reasons the prospective juror believes he or she cannot or should not serve as a juror;
- (15) Relationship, friendship or association with the parties, the attorneys and prospective witnesses of the particular case to be heard;
- (16) Such other pertinent information as may be appropriate to the particular case to achieve a competent, fair and impartial jury.

(b) The court may provide for voir dire to include the use of a written questionnaire. However, the use of a written questionnaire without the opportunity for oral examination by the court or counsel is not a sufficient voir dire.

Official Note: The parties or their attorneys may conduct the examination of the prospective jurors unless the court itself conducts the examination or otherwise directs that the examination be conducted by a court employee. Any dispute shall be resolved by the court.

A written questionnaire may be used to facilitate and expedite the voir dire examination by providing the trial judge and attorneys with basic background information about the jurors, thereby eliminating the need for many commonly asked questions.

(c) The court may permit all or part of the examination of a juror out of the presence of other jurors.

Explanatory Comment

New Rule 220.1 governing voir dire, the examination of prospective jurors, furthers the goal of establishing a uniform civil practice throughout the Commonwealth with respect to the information which the parties may obtain concerning prospective jurors.

The rule specifies the information which the parties should be able to obtain through voir dire but does not require a particular manner of voir dire. Subdivision (a) is devoted to listing the information to which the parties are entitled.

The rule does not dictate the mechanics of voir dire, but leaves the method of voir dire to the local courts of common pleas. Subdivision (b) does give some guidance, however. Voir dire may include the use of a written questionnaire, but no form of questionnaire is mandated or suggested. The note observes that a written questionnaire may "facilitate and expedite" voir dire by providing basic background information. The rule provides that "the use of a written questionnaire without the opportunity for oral examination is not a sufficient voir dire." The parties are entitled to both hear prospective jurors and observe their demeanor.

The rule recognizes that service upon a jury may be a new and disquieting experience to citizens called as prospective jurors. Information may be sought which a prospective juror feels uncomfortable revealing in open court. Thus, subdivision (c) provides that the "court may permit all or part of the examination of a juror out of the presence of other jurors."

By the Civil Procedural Rules Committee

EDWIN L. KLETT,
Chairperson

[Pa.B. Doc. No. 97-1385. Filed for public inspection August 29, 1997, 9:00 a.m.]

**Title 255—LOCAL COURT
RULES**

DAUPHIN COUNTY

Amendment of Rule 1920.51; No. 1793 S 1989

Order

And Now, this 12th day of August, 1997, Dauphin County Rule of Civil Procedure 1920.51 is amended as follows:

Rule 1920.51. Appointment of Master.

(a)(1) Reserved.

(a)(2)(i) A Master shall be appointed by the Court to take testimony and file a report in the form prescribed by the Pennsylvania Rules of Civil Procedure for an action for **divorce or** annulment and the claims for alimony, alimony pendente lite, equitable distribution of marital

property, [**child support or**] counsel fees, costs or expenses, or any aspect thereof.

(a)(2)(ii) [**Reserved.**] All interim claims for alimony pendente lite or the modification or termination thereof, i.e., those which are raised during initial discovery or before a Master is appointed for purposes of conducting a full hearing on all economic claims, shall be heard by the Domestic Relations Office in accordance with Pa.R.C.P. 1910.1, et seq. and the procedures established by the Domestic Relations Office.

Comment: Claims for counsel fees, costs and expenses in any divorce action shall continue to be heard by the Master pursuant to Dauphin County Local Rule of Civil Procedure 1920.51(a)(2)(i). Copies of internal procedural guidelines are available from the Domestic Relations Office.

This amendment shall take effect 30 days after publication in the *Pennsylvania Bulletin*.

By the Court

CLARENCE C. MORRISON,
President Judge

[Pa.B. Doc. No. 97-1386. Filed for public inspection August 29, 1997, 9:00 a.m.]

DAUPHIN COUNTY

Promulgation of New Rules 1915.15 and 1930; No. 1793 S 1989

Order

And Now, this 12th day of August, 1997, it is hereby ordered that Dauphin County Rules of Civil Procedure 1915.15, 1920.1, and 1930 are rescinded in their entirety. New Rules 1915.15 and 1930 are promulgated as follows:

Rule 1915.15. Form of Complaint.

In addition to the information required by Pa.R.C.P. 1915.15(a) each complaint or Motion for Hearing relating to child custody or visitation shall contain a second cover sheet substantially in the following format:

	:	IN THE COURT OF COMMON PLEAS
	:	DAUPHIN COUNTY, PENNSYLVANIA
Plaintiff	:	
	:	CIVIL ACTION
	:	CUSTODY/VISITATION
	:	
Defendant	:	NO.

ORDER OF COURT

AND NOW, upon consideration of the attached Complaint, it is hereby directed that the parties and their respective counsel appear before the Custody Conference Officer, on the _____ day of _____, _____, at a Pre-Hearing Custody Conference. At such Conference, an effort will be made to resolve the issues in dispute; or if this cannot be accomplished, to define and narrow the issues to be heard by the Court, and to enter into a Temporary Order. All children age five or older

shall also be present at the Conference. Failure to appear at the Conference may provide grounds for entry of a temporary or permanent Order.

FOR THE COURT:

Date _____ By _____
Custody Conference Officer

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

DAUPHIN COUNTY LAWYER REFERRAL SERVICE
213 North Front Street
Harrisburg, PA 17101
(717) 232-7536

Rule 1930. Seminar for separating parents in contested custody matters.

1. In all divorce and custody proceedings filed on or after October 1, 1997, and in such other cases as the Court shall direct, where the interests of children under the age of 18 years are involved and the issue of custody and/or visitation remains in dispute and unresolved following a custody conference, the parties shall complete a program entitled "Seminar."

2. The Court Administrator, in conjunction with the provider, shall establish the dates the parties shall attend the Seminar and shall forward the file to the assigned judge in accordance with D.C.R.C.P. 1915.3C(2).

3. Both parties shall attend the Seminar prior to the date of the court hearing.

4. Any request for an extension of time within which to complete the Seminar shall be made to the provider and/or the assigned Judge.

5. The fee for the Seminar shall be determined by the provider and must be paid prior to the initial Seminar. Payment shall be made by certified check, money order or cash. NOTE: No personal checks will be accepted. Any request for waiver or reduction of the fee shall be filed with the Court and shall be accompanied by a verified affidavit of indigency or other proof of economic hardship, in accordance with Pa.R.C.P. 240, at least five days prior to the scheduled Seminar.

6. The requirements to attend the seminar may be waived if:

(a) the parties agree, subject to the approval of the Court, not to participate in the Seminar;

(b) The Court, on motion, determines that participation is not necessary; or

(c) the parties select and participate in a comparable parenting education program.

7. No hearing or trial shall be delayed or court action withheld because of the failure of a party to attend the Seminar.

8. Failure to comply with this Rule may result in the dismissal of the action, striking of pleadings, or other appropriate remedy including sanction for contempt and attorneys fees.

9. Should a party fail to attend the Seminar, the Court may sua sponte bring a contempt action against a non-complying party. A party who has complied with the Rule shall not be required to either bring the contempt action or appear at any contempt proceeding.

10. Copies of this Rule and Program Description shall be available in the Office of the Prothonotary of the Court of Common Pleas of Dauphin County.

These amendments shall be effective October 1, 1997.

By the Court

CLARENCE C. MORRISON,
President Judge

[Pa.B. Doc. No. 97-1387. Filed for public inspection August 29, 1997, 9:00 a.m.]

WYOMING AND SULLIVAN COUNTIES

Amendment to 44th Judicial District Rules; No. 97-849 Civil, 97-284—Criminal

Order of Court

And Now, the 18th day of August, 1997, *It Is Ordered* that Rule 101A of "44th Jud. Dist. Rules—Crim." is amended to provide:

Rule 101A. Approval of police complaints and arrest warrant affidavits by attorney for the Commonwealth.

The District Attorneys of Wyoming County and Sullivan County having filed a certification pursuant to Pa.R.Crim.P. 101A, criminal complaints, and arrest warrant affidavits by police officers, as defined in the Rules of Criminal Procedure, charging one or more of the following offenses, shall not hereafter be accepted by any judicial officer unless the complaint and affidavit have the approval of an attorney for the Commonwealth prior to filing:

(a) Criminal Homicide in violation of 18 Pa.C.S. Section 2501; Murder of any degree in violation of 18 Pa.C.S. Section 2502; Voluntary Manslaughter in violation of 18 Pa.C.S. Section 2503; or Involuntary Manslaughter in violation of 18 Pa.C.S., Section 2504; or

(b) Rape in violation of 18 Pa.C.S. Section 3121; Statutory Sexual Assault in violation of 18 Pa.C.S. Section 3122.1; Involuntary Deviate Sexual Intercourse in violation of 18 Pa.C.S. Section 3123; Sexual Assault in violation of 18 Pa.C.S. A. Section 3124.1; Aggravated Indecent Assault in violation of 18 Pa.C.S. A. Section 3125; Indecent Assault in violation of 18 Pa.C.S. A. 3126;

(c) Homicide by Motor Vehicle in violation of 75 P. S. Sections 3732 and 3735; Aggravated Assault by Vehicle (DUI related) in violation of 75 Pa.C.S. A. Section 3735.1; or

(d) Aggravated Assault in violation of 18 Pa.C.S. A. Section 2702.

It Is Further Ordered that Rule 2002A of "44th Jud. Dist. Rules—Crim." is amended to provide:

Rule 2002A. Approval of search warrant applications by attorney for the Commonwealth.

The District Attorneys of Wyoming County and Sullivan County having filed a certification pursuant to Pa. R. Crim. P. 2002A, search warrants, in all circumstances, shall not hereafter be issued by any judicial officer unless the search warrant application has the approval of an attorney for the Commonwealth prior to filing.

It Is Further Ordered that the said amended Rules of the 44th Judicial District shall be effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

By the Court

BRENDAN J. VANSTON,
President Judge

[Pa.B. Doc. No. 97-1388. Filed for public inspection August 29, 1997, 9:00 a.m.]

**DISCIPLINARY BOARD OF
THE SUPREME COURT****Notice of Suspension**

Notice is hereby given that Frank Thompson-McLeod having been suspended from the practice of law in the State of Tennessee for a period of one year, the Supreme Court of Pennsylvania issued an Order dated August 18, 1997, suspending Frank Thompson-McLeod from the Bar of this Commonwealth for a period of one year.

ELAINE M. BIXLER,
Secretary
The Disciplinary Board of the
Supreme Court of Pennsylvania

[Pa.B. Doc. No. 97-1389. Filed for public inspection August 29, 1997, 9:00 a.m.]