

THE COURTS

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

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

Proposed Amendments of Rules Governing Pleading, Business of the Courts and Discovery; Recommendation No. 141

The Civil Procedural Rules Committee proposes that the rules of civil procedure governing pleading, business of the courts and discovery be amended as set forth in this recommendation. The recommendation is being published 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 March 28, 1997 to Harold K. Don, Jr., Esquire, Counsel, Civil Procedural Rules Committee, 5035 Ritter Road, Suite 700, Mechanicsburg, Pennsylvania 17055, or E-Mail to hdon@courts.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 nor will it be officially adopted or promulgated by the Court.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 200. BUSINESS OF COURTS

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

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 may include a date by which discovery shall be completed.

Official Note: This rule takes into account existing practice in which notice is ordinarily provided at least sixty days before the earliest trial date. 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 forty-five 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) The times set forth in subdivision (b) may be made earlier by local rule, by special order or as set forth in a trial list published in the county law journal or otherwise made available to the parties.

Official Note: 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.

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

(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;

(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 marked to correspond to the exhibit list and be made available by the party filing the statement.

(c) Where unfair prejudice may occur for non-compliance with subdivisions (a) and (b), the trial judge may 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.

CHAPTER 1000. ACTIONS AT LAW

Subchapter A. CIVIL ACTION

PLEADINGS

II. Rule 1023 is amended to read as follows:

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 the best of **[(his)]** the signer's knowledge or information and belief there is good ground to support it, **that it is submitted in good faith**, and that it is not interposed solely for delay.

(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 certification in subdivision **(b)** implies 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.

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.

CHAPTER 4000. DEPOSITIONS AND DISCOVERY

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

Rule 4003.7. Discovery of Net Worth. Punitive Damages.

A party may obtain discovery of the net worth 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

Recommendation No. 141 proposes the following innovations to Pennsylvania civil practice and procedure.

I. *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.

II. Amendment of Rule 1023

Rule 1023 governing signing is amended in several respects. The category of documents subject to the requirement of signing is significantly expanded beyond pleadings. The certification which arises from the act of signing is broadened to include a clause that the document "is submitted in good faith." A provision for sanctions is added for a bad faith violation of the rule. A note elaborates on the application of the rule.

III. New Rule 4003.7

New Rule 4003.7 places under the control of the court the discovery of net worth when there is a claim for punitive damages. However, a note serves as a reminder that such discovery may be had also pursuant to agreement of the parties under Rule 4002.

By the Civil Procedural Rules Committee

EDWIN L. KLETT,
Chairperson

[Pa.B. Doc. No. 97-250. Filed for public inspection February 21, 1997, 9:00 a.m.]

Title 249—PHILADELPHIA RULES

PHILADELPHIA COUNTY

Directive Concerning Court Appointed Counsel Fees; Directive No. 1 of 1997

Pursuant to a resolution adopted on November 21, 1996, by the Board of Judges of the Court of Common Pleas, a further extension of the Guaranteed Fee System was declined, and the issue of counsel fees to court appointed counsel was referred to the Administrative Governing Board of the First Judicial District for determination.

On December 9, 1996, the Administrative Governing Board decided to continue the lapsed Guaranteed Fee System until the Administrative Governing Board adopted a new process.

Upon a comprehensive review of the underlying issue, the Administrative Governing Board at a regularly scheduled meeting held on January 14, 1997, determined that the Guaranteed Fee System shall continue to operate as amended hereunder. From time to time, the Administrative Governing Board may further amend or modify the Guaranteed Fee System as necessary.

Effective for Court appointments made on or after March 10, 1997, the Guaranteed Fee System shall be amended as follows:

I. Philadelphia Municipal Court

Compensation shall be a flat fee of \$350.00 per case. In extraordinary cases, the attorney may receive compensation in excess of \$350.00 upon petition and approval of the Municipal Court President Judge or his designee.

In appeals from the Municipal Court to the Court of Common Pleas of Philadelphia County, compensation shall be at the prevailing per diem rate in the Court of Common Pleas.

II. Court of Common Pleas of Philadelphia County

A. Family Court

1. In delinquency cases, the maximum amounts payable at disposition are as follows:

- a. Pre-trial disposition (misdemeanor or felony): \$150.00
- b. Pre-trial list room conflict counsel per diem (misdemeanor or felony): \$250.00
- c. Misdemeanor: \$300.00
- d. Felony or adult certification: \$400.00

2. In dependency cases, the maximum amounts payable at disposition are as follows:

- a. First year of proceedings per appointment: \$300.00
- b. Disposition subsequent to first year (i.e., adoption, long-term foster care, return home/supervision, placement with relative, independent living): \$150.00

3. In abuse cases, compensation shall be a flat fee of \$350.00 per case, payable at disposition.

4. In extraordinary cases, court appointed counsel may receive compensation in excess of the above rates upon petition and approval of the administrative Judge of the Family Court Division or his designee.

B. Trial Division

The maximum per diem compensation that any attorney shall receive in any given day regardless of the number of cases in which the attorney attends court shall be reduced from three half-days to two half-days.

In the event of a continuance, an attorney shall not receive any per diem compensation regardless of the reason for the continuance.

An attorney shall receive per diem compensation for a full day only when the attorney is physically present in the courtroom for more than three hours.

III. All Cases (Common Pleas Court and Municipal Court)

No Court appointed attorney shall receive compensation without first receiving mandatory training and certification from the Philadelphia Bar Association with regard to proper billing procedures in Guaranteed Fee System and non-Guaranteed Fee System cases.

Falsification of fee petitions in Guaranteed Fee System cases or non-Guaranteed Fee System cases (i.e. submission of multiple fee petitions for the same time period) shall result in automatic removal from all court appointment lists, referral to the Disciplinary Board of Pennsylvania Supreme Court and prosecution to the full extent of the law.

Any question concerning the interpretation of these amendments shall be decided by the Administrative Judge of the division to which the question pertains, or, in case the question pertains to the Municipal Court, by the Municipal Court President Judge.

This directive is issued consistent with the Order of the Supreme Court dated March 26, 1996, at No. 164 Judicial Administration Docket No. 1, and at the request of the Board of Judges of the Court of Common Pleas of Philadelphia County and Pa.R.Crim.P. No. 6, and shall become effective March 10, 1997. As required by Pa.R.Crim.P. No. 6, the original Directive shall be filed with the Prothonotary in a docket maintained for Directives issued by the Administrative Governing Board of the First Judicial District of Pennsylvania, and copies shall be submitted to the Administrative Office of Pennsylvania Courts, the Legislative Reference Bureau and the Criminal Procedure Rules Committee. Copies of the Directive

shall also be submitted to Legal Communications, Ltd.,
The Legal Intelligencer, Jenkins Memorial Library, and
the Law Library for the First Judicial District.

ALEX BONAVIDACOLA,
President Judge
Court of Common Pleas

[Pa.B. Doc. No. 97-251. Filed for public inspection February 21, 1997, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Suspension

Notice is hereby given that on February 6, 1997,
pursuant to Rule 214(d)(1) of the Pa.R.D.E., Lyndon Jay
Parker has been placed on Temporary Suspension by the
Supreme Court of Pennsylvania until further Order of the
Court.

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

[Pa.B. Doc. No. 97-252. Filed for public inspection February 21, 1997, 9:00 a.m.]
