

THE COURTS

Title 207—JUDICIAL CONDUCT

PART III. JUDICIAL CONDUCT BOARD

[207 PA. CODE CH. 119]

Adoption of Rule 35

The following Rule of Procedure of the Judicial Conduct Board was adopted at the Board's meeting on April 20, 1998 and is effective immediately.

ROBERT E. J. CURRAN,
Chairperson

Annex A

TITLE 207. JUDICIAL CONDUCT

PART III. JUDICIAL CONDUCT BOARD

CHAPTER 119. SPECIAL PROCEDURES FOR CASES INVOLVING MENTAL OR PHYSICAL DISABILITY

Rule 35. Intervention.

(A) During the course of an investigation, upon the good faith belief that the alleged misconduct was caused by mental illness, drug dependency, addiction to alcohol, or temporary mental infirmity, the Board shall take one or more of the following actions:

- (1) request that the judicial officer resign from office;
- (2) request that the judicial officer seek appropriate treatment;
- (3) request that the judicial officer take a leave of absence from his or her judicial office until such time that the Board and the judicial officer agree that it is appropriate for the judicial officer to return to office;
- (4) upon application of the judicial officer, the Board may approve an appropriate treatment program.

(B) Action taken by a judicial officer in response to any action taken by the Board pursuant to Paragraph A, shall be considered by the Board in making a determination pursuant to Rule 31.

(C) The judicial officer's entrance into and participation in a rehabilitation program approved by the Board shall constitute good cause under Rule 31(C) for the Board to continue any full investigation beyond 180-days.

[Pa.B. Doc. No. 98-718. Filed for public inspection May 8, 1998, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 4000]

Amendment of Rule 4010; Promulgation of New
Rule 4010.1; No. 292; Doc. No. 5

Order

Per Curiam:

And Now, this 24th day of April, 1998, the Pennsylvania Rules of Civil Procedure are amended as follows:

1. Rules 4010 is amended to read as follows.
2. New Rule 4010.1 is promulgated to read as follows.

This Order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective July 1, 1998.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 4000. DEPOSITIONS AND DISCOVERY ENTRY UPON PROPERTY FOR INSPECTION AND OTHER ACTIVITIES

Rule 4010. Physical and Mental Examination of Persons.

(a) (1) As used in this rule, "examiner" means a licensed physician, licensed dentist or licensed psychologist.

(2) When the mental or physical condition [(including blood group)] of a party, or of a person in the custody or under the legal control of a party, is in controversy, the court in which the action is pending may order the party to submit to a physical or mental examination by [a physician] an examiner or to produce for examination the person in [his] the party's custody or legal control.

Official Note: The examination may include blood or genetic testing.

(3) The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions and scope of the examination and the person or persons by whom it is to be made.

(4) (i) The person to be examined shall have the right to have counsel or other representative present during the examination. The examiner's oral interrogation of the person to be examined shall be limited to matters specifically relevant to the scope of the examination.

Official Note: Ordinarily, the facts giving rise to liability are not germane to an examination and the information which the examiner seeks should be limited to facts of liability germane to the issue of damages.

(ii) Subdivision (a)(4)(i) shall not apply to actions for custody, partial custody and visitation of minor children.

(5) (i) The party who is being examined or who is producing for examination a person in the party's custody or legal control may have made upon reasonable notice and at the party's expense a stenographic or audio recording of the examination. Upon request and payment of reasonable cost, the party who caused the recording to be made shall provide each other party with a copy of the recording.

(ii) Subdivision (a)(5)(i) shall not apply to actions for custody, partial custody and visitation of minor children.

(b) (1) If requested by the party against whom an order is made under this rule or the person examined, the party causing the examination to be made shall deliver to

[him] the requesting party or person a copy of a detailed written report of the [examining physician] examiner setting out [his] the examiner's findings, including results of all tests made, diagnoses and conclusions, together with like reports of all earlier examinations of the same condition. After delivery the party causing the examination shall be entitled upon request to receive from the party against whom the order is made a like report of any examination, previously or thereafter made, of the same condition, unless, in the case of a report of examination of a person not a party, the party shows [that he is unable] inability to obtain it. The court on motion may make an order against a party requiring delivery of a report on such terms as are just, and if [a physician] an examiner fails or refuses to make a report the court shall exclude [his] the examiner's testimony if offered at the trial.

(2) By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the party examined waives any privilege [he] the party may have in that action or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine [him] the party in respect of the same mental or physical condition.

(3) Subdivision (b) applies to an examination made by agreement of the parties, unless the agreement expressly provides otherwise. It does not preclude discovery of a report of an [examining physician] examiner or the taking of a deposition of the [physician] examiner in accordance with the provisions of any other rule.

Rule 4010.1. Evaluation of Earning Capacity.

(a) When the earning capacity of a party, or of a person in the custody or under the legal control of a party, is in controversy, the court in which the action is pending may order the party to submit to an evaluation by a suitably licensed or certified evaluator or to produce for evaluation the person in the party's custody or legal control.

(b) The evaluation shall be subject to the provisions of Rule 4010(a)(3) through (b)(3) inclusive.

(c) The evaluator may testify as a witness on the issue of damages only and not as a witness on the issue of liability.

Explanatory Comment

Rule 4010. Physical and Mental Examination of Persons.

Rule 4010 is revised in four respects.

1. Examiner

Rule 4010 previously provided that only a physician may perform physical and mental examinations of persons. However, it had been suggested that the provision was too narrow and that the category of persons authorized to perform examinations should be expanded.

The amendment revises the rule to refer to an "examiner." An examiner is defined as "a licensed physician, licensed dentist or licensed psychologist."

2. Examination

The rule previously gave no guidance with respect to the conduct of the examination. New subdivisions (a)(4) and (5) add certain protections for the person being examined. The protections under subdivision (a)(4)(i) include the right to have counsel or another representative

present at the examination and a limitation upon the examiner's interrogation of the person to be examined. New subdivision (a)(5)(i) gives the party who is being examined or who is producing a person to be examined the right to make a stenographic or audio recording of the examination "upon reasonable notice and at the party's expense."

These new provisions, however, will not apply to an action for custody, partial custody or visitation of minor children.

3. Blood or Genetic Testing

Rule 4010(a) previously made reference to "blood group." The revised rule deletes that reference from the rule but adds a note stating that the "examination may include blood or genetic testing."

4. Gender Neutral

Additional revisions to the language make Rule 4010 gender neutral. However, these revisions do not affect practice and procedure.

Rule 4010.1. Evaluation of Earning Capacity.

Rule 4010 is entitled "Physical and Mental Examination of Persons." Subdivision (a)(2) provides that the rule may be invoked when "the mental or physical condition of a party, or of a person in the custody or under the legal control of a party, is in controversy."

In many cases, however, there may be no dispute as to physical or mental condition, but, given that condition, there is a dispute as to the ability of the party or person under the party's control to function in an employment setting. One party may seek an "evaluation" to gauge the effect of the condition upon another party's work-life or "evaluate" the other party's ability to be gainfully employed. Rule 4010.1 provides for such an evaluation "by a suitably licensed or certified evaluator."

The provisions governing the evaluation are the same as those governing physical and mental examinations since the procedure of Rule 4010 is incorporated by reference. However, subdivision (c) accords the party to be evaluated one additional protection: the evaluator "may testify as a witness on the issue of damages only and not as a witness on the issue of liability."

*By the Civil Procedural
Rules Committee*

EDWIN L. KLETT,
Chairperson

[Pa.B. Doc. No. 98-719. Filed for public inspection May 8, 1998, 9:00 a.m.]

Title 25—LOCAL COURT RULES

DELAWARE COUNTY

Judge Pro Tempore Program; Misc. Doc. No. 82-7677

Order

And Now, to wit, this 14th day of April, 1998, after successful completion of a mandatory Judge Pro Tempore program in 1997, and after agreement between the Bench and the Bar as to the benefits of extending Phase I of the aforementioned program,

It is hereby *Ordered* and *Decreed* that the Settlement Conference Phase is extended and amended, once again utilizing the volunteer services of experienced trial lawyers, from both the plaintiff and the defense bars, who have been or will be designated by the Court to preside as "Judges Pro Tempore."

It is further *Ordered* that the following procedures and qualifications will be followed with regard to this Settlement Program:

1. *Duties and Responsibilities of Judges Pro Tempore.* The Delaware County Bar Association, with the approval of the Court, will determine the names and number of Judges Pro Tem and the number of cases to be assigned to each Judge Pro Tem once the group of cases is identified by the Court Administrator.

Said designated judges may conduct conferences for the purpose of settlement and may, thereafter, make appropriate recommendations to this Court.

2. *Implementation of Program.* In order to take part in this Settlement Program, the parties must fulfill the following conditions:

a. Only cases which have not yet been assigned to a judge for trial will be considered. However, taking part in this voluntary settlement program will delay neither assignment nor trial of the case.

b. A stipulation, the form of which is available in the Office of the Court Administrator and which follows as Exhibit A, must be signed by all attorneys or unrepresented parties, stating that there is agreement to participate in the settlement program and THAT THERE IS A REASONABLE LIKELIHOOD OF SETTLEMENT. The original of the stipulation must be filed of record in the Office of Judicial Support.

c. The attorneys/unrepresented parties must complete a settlement memorandum form, the form of which follows as Exhibit B and which is available in the Office of the Court Administrator, to be filed contemporaneously with the aforementioned stipulation.

d. Copies of the completed stipulation and settlement memoranda must contemporaneously be filed with the Office of the Court Administrator. ATTENTION CIVIL COURT ADMINISTRATOR JUDGE PRO TEM PROGRAM.

e. Once the aforementioned conditions have been met and thereafter have been reviewed and approved by the Court Administrator, assignment of the case will be made to a Judge Pro Tempore within one (1) week.

f. From time to time, the President Judge may supplement the program with additional case assignments.

3. *Settlement Conferences.*

a. The assigned Judge Pro Tempore will schedule and hold a settlement conference within thirty (30) days after assignment.

b. The conference will be scheduled and held at the time and place of choosing of the individual Judge Pro Tempore.

c. Once included in the program, the parties will be required to attend the settlement conference. In the event

that a defendant is insured, then an authorized claims manager or supervisor of the defendant's insurer, with complete settlement authority and control of the claims file, is required to attend the conference. The conference must also be attended by trial counsel.

d. In cases in which the litigants or claims personnel are located out-of-state, those litigants/claims personnel are not required to be present at the settlement conference if this would entail a hardship. However, those litigants/claims personnel must be active participants by telephone (telephone conference call) and continually present throughout the settlement conference. It will not be enough for the litigants/claims personnel to be "available by telephone". Please note that, other than in the aforementioned cases, judges pro tempore have no discretion as to whether or not litigants/claims personnel will attend the settlement conference, as this is required by this order.

e. The assigned Judge Pro Tempore will submit a Judge Pro Tempore Reporting Form (the form of which follows as Exhibit C) to the Court Administrator within fifteen (15) days after the scheduled conference, advising as to his/her settlement of the case or determination that the case cannot be settled. The Court Administrator will thereafter file the Judge Pro Tempore Reporting Form with the Office of Judicial Support.

f. If there is an agreement to settle at the time of the Conference, the plaintiff's counsel will file an Order to Settle, Discontinue and End with the Office of Judicial Support within sixty (60) days of the date of the conference. Plaintiff's counsel is to contemporaneously forward a time-stamped copy of the Order to Settle, Discontinue and End to the Office of the Court Administrator. ATTENTION CIVIL COURT ADMINISTRATOR JUDGE PRO TEM PROGRAM.

4. *Noncompliance.* The judge pro tempore will immediately advise the Court Administrator in writing setting forth the reasons of noncompliance. Failure to comply with the aforementioned conditions will result in immediate withdrawal of the case from the program. No case which has been withdrawn for failure to comply will be eligible for future consideration in the program.

5. *Changes in Procedure.* The procedure set forth herein may be changed from time to time by notice appearing in the *Delaware County Legal Journal*.

6. *Effective Date.* The within procedure will become effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

As required by Pa.R.C.P. No. 239, the original Order will be filed with the Office of Judicial Support and copies will be submitted to the Administrative Office of Pennsylvania Courts, the Legislative Reference Bureau and the Civil Procedure Rules Committee. Copies of the Order will also be submitted to Legal Communications, Ltd., *The Legal Intelligencer*, and the *Delaware County Legal Journal*.

By the Court

A. LEO SERENI,
President Judge

THE COURTS

Exhibit A

IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY, PENNSYLVANIA
CIVIL DIVISION—LAW

: DOCKET NO.
:
:

STIPULATION FOR JUDGE PRO TEMPORE PROGRAM

It is hereby STIPULATED, by and among all counsel in this matter, namely (fill in names of all attorneys), that:

1. All counsel are agreed that we shall fully participate in the Judge Pro Tempore Settlement Program and shall fully comply with all requirements attendant thereto;
2. All counsel are in agreement that there is a reasonable likelihood of settlement in the matter, with the assistance of a Judge Pro Tempore; and
3. To the best of our knowledge, the above-captioned matter has not yet been assigned to a Judge of Court of Common Pleas for purposes of trial.

We, the undersigned, therefore request that the Court Administrator assign the above-captioned matter to a Judge Pro Tempore for purposes of a settlement conference.

Respectfully submitted,

(Plaintiff's counsel)

(Defendant's counsel)

(Defendant's counsel)

(Defendant's counsel)

Exhibit B

**COURT OF COMMON PLEAS
SETTLEMENT MEMORANDUM**

CASE TYPE (CHECK ONE)	
<input type="checkbox"/> ASSAULT, BATTERY <input type="checkbox"/> PREMISE LIABILITY <input type="checkbox"/> AUTO NEGLIGENCE BI <input type="checkbox"/> AUTO NEGLIGENCE PROP. <input type="checkbox"/> DEFAMATION <input type="checkbox"/> LIBEL, SLANDER <input type="checkbox"/> FALSE IMPRISONMENT <input type="checkbox"/> OTHER NEGLIGENCE BI <input type="checkbox"/> OTHER NEGLIGENCE PROP.	<input type="checkbox"/> BREACH OF CONTRACT <input type="checkbox"/> BREACH OF WARRANTY <input type="checkbox"/> DECLARATORY JUDGMENT <input type="checkbox"/> LANDLORD TENANT <input type="checkbox"/> OTHER
TRIAL ATTORNEY	COUNSEL FOR
NAME:	NAME OF PARTY:
ADDRESS:	
TELEPHONE NO.	
I. D. #	
INSURANCE COMPANY:	
NAME OF CLAIMS MANAGER OR SUPERVISOR WITH COMPLETE AUTHORITY:	
TELEPHONE NO:	
DATE OF INJURY:	
TOTAL MEDICAL EXPENSES TO DATE:	
RECOVERABLE MEDICALS CLAIMED:	
TOTAL WAGE LOSS TO DATE:	
RECOVERABLE WAGE LOSS CLAIMED:	
OTHER DAMAGES:	
LOWEST DEMAND TO DATE:	
HIGHEST OFFER TO DATE:	
ESTIMATED TRIAL TIME BY DAYS:	
ESTIMATED NUMBER OF TRIAL WITNESSES:	
TYPE OF TRIAL (Please check one)	IF AUTO (Please check one)
<input type="checkbox"/> JURY TRIAL <input type="checkbox"/> NON-JURY TRIAL	<input type="checkbox"/> FULL TORT <input type="checkbox"/> LIMITED TORT

PLEASE SUBMIT ORIGINAL AND TWO COPIES TO: COURT ADMINISTRATOR
 DELAWARE COUNTY COURTHOUSE
 201 WEST FRONT ST.
 MEDIA, PA 19063
 ATTN: JUDGE PRO TEM PROGRAM

Exhibit C

STATEMENT OF CLAIM OR DEFENSE

I. SUMMARY STATEMENT OF FACTS:

II. SUMMARY STATEMENT OF DAMAGES AND RELIEF SOUGHT:

III. SUMMARY STATEMENT OF DEFENSE:

IV. OUTSTANDING ISSUES AND MOTIONS INCLUDING DISCOVERY,
PLEASE INDICATE MOTION FILING DATE IF APPLICABLE:

TRIAL ATTORNEY

Please attach additional information, if necessary.

[Pa.B. Doc. No. 98-720. Filed for public inspection May 8, 1998, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Transfer of Attorneys to Inactive Status

Notice is hereby given that the following attorneys have been transferred to inactive status by Order of the Supreme Court of Pennsylvania dated March 27, 1998, pursuant to Rule 111(b), Pa.R.C.L.E., which requires that every active lawyer shall annually complete, during the compliance period for which he or she is assigned, the continuing legal education required by the Continuing Legal Education Board. The Order became effective April 26, 1998 for Compliance Group 2 due August 31, 1997.

Notice with respect to attorneys having Pennsylvania registration addresses, who have been transferred to inactive status by said Order, was published in the appropriate county legal journal.

Margaret Mary Allen
Pennsauken, NJ

Michael Amezcuita
New York, NY

Carlton Allen Baker
New York, NY

Scott Baker
McLean, VA

Thomas W. Barlow
Perth Amboy, NJ

John Martin Battles
Ft. Thomas, KY

Seth Shalom Baum
Fairfield, CT

Cheryle T. Bernard-Shaw
San Rafael, CA

Peter J. Bonfiglio III
Laurel Spring, NJ

Howard Bregman
West Palm Beach, FL

Jerome Kenneth Blask
Washington, DC

Clifford Andrew Brooks
Greenbelt, MD

David W. Burns
Medford, NJ

John Patrick Caponigro
Bloomfield Hills, MI

Joseph P. Cini
Chicago, IL

Michael Patrick Corcoran
Phillipsburg, NJ

David J. Cowhey
Linwood, NJ

William C. Crooks
Greenwich, CT

Donald Mark Cunningham
New York, NY

Victoria Lynn Daly
Dublin, OH

Kevin Davis
Washington, DC

Victoria De Almeida
Hackensack, NJ

Matthew V. Del Duca
Princeton, NJ

Kenneth N. Delvecchio
N. Arlington, NJ

David Allan DiBrigida
Parsippany, NJ

Charles B. Dinsmore
Ocean City, NJ

Hope E. F. Driscoll
Arlington, VA

Michael A. Fritz
Turnersville, NJ

James Dwight Gaumont
Charlottesville, VA

Marcia L. Gelber
Hightstown, NJ

Jill Ruth Ginsberg
Voorhees, NJ

Larry C. Gollub
Lyndhurst, NJ

Timothy Joseph Graham
Seattle, WA

H. Walter Haeussler
Ithaca, NY

Kenneth J. Hall
Newark, NJ

Steve Hallett
Trenton, NJ

Lisa B. Harris
Cookeville, TN

Scott Herzog
Princeton, NJ

David Bryan Himelman
Trenton, NJ

Lynne Alyce Holland
Paris, France

Stephen D. Holtzman
Linwood, NJ

Christine Jordan
Hartsdale, NY

Philip L. Kantor
Williamstown, NJ

Craig Harris Klayman
Woodbury, NJ

Joseph D. Kuchta
Gaithersburg, MD

Anthony F. LaVista
Belleville, NJ

Jae E. Lee
Ft. Lee, NJ

Martin Levine
Rockville, MD

Joyce A. Mader
Washington, DC

Nancy Jane Martin
Red Bank, NJ

Thelma E. Martinez
Milltown, NJ

Thomas R. McCarthy, Jr.
Liverpool, NY

Anthony S. McCaskey
Newark, NJ

Michele J. McDonald
Baltimore, MD

Francis J. McGovern, Jr.
Lawrenceville, NJ

Christopher L. Melvin
Manhasset, NY

Keith J. Merrill
Coral Gables, FL

Kristen Anne Morris
Sumers Point, NJ

Vincent O'Brien
Pembroke Pines, FL

Thomas Joseph O'Donnell
Sandersville, GA

Gregg F. Paster
Hackensack, NJ

David Anthony Persing
New York, NY

John Isaac Porter III
Somerset, NJ

Johan S. Powell
Mount Vernon, NY

Timothy Patrick Reilly
Absecon, NJ

William C. Schillerstrom
Silver Spring, MD

DiannaJean Smith
Pennsville, NJ

Frances L. Smith
Trenton, NJ

Walter S. Stevens
Fairport, NY

Peter Jon Torcicollo
Westfield, NJ

Anthony N. Torres
Olney, MD

John Erik Ursin
Succasunna, NJ

Robin Lee Wiessmann
New York, NY

Margaret Gig Yuschak
Princeton, NJ

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

[Pa.B. Doc. No. 98-721. Filed for public inspection May 8, 1998, 9:00 a.m.]