

# THE COURTS

## Title 249—PHILADELPHIA RULES

### PHILADELPHIA COUNTY

#### Alternative Procedure for Disposition of Uncon- tested or By Agreement Discovery Motions; Ad- ministrative Doc. No. 04 of 1998

*And Now*, this 4th day of June, 1998, to provide an alternative procedure for disposition of Uncontested or By Agreement Discovery Motions, the following protocol is adopted.

Effective immediately, attorneys who have Discovery Court motions which are either uncontested or by agreement need not personally appear before the assigned Discovery Court Judge at the listed hearing date but may, in the alternative, comply with the following procedure:

1. All discovery motions, by agreement or uncontested, may be presented to the Discovery Unit (Room 287) on the day immediately before or the morning of the listed hearing date with the following signed letter (See Exhibit A).
2. The Discovery Court Manager will screen all such motions for conflicts with the Case Management Order, a copy of which shall be furnished.
3. The assigned judge will review and sign the proposed Orders after the scheduled court session.
4. The signed Orders must be picked up from the Discovery Unit (Room 287) five (5) business days, photocopied and served on other interested counsel or the Orders will not be docketed and will be deemed invalid.

This Administrative Docket is promulgated in accordance with the April 11, 1987 Order of the Supreme Court of Pennsylvania, Eastern District, No. 55, Judicial Administration, Docket No. 1, Phila. Civ. 51 and Pa.R.C.P. 239, and shall become effective immediately. As required by Pa.R.C.P. 239, the original Administrative Docket shall be filed with the Prothonotary in a docket maintained for Administrative Dockets issued by the Administrative Judge of the Trial Division and copies shall be submitted to the Administrative Office of Pennsylvania Courts, the Legislative Reference Bureau and the Civil Procedural Rules Committee. Copies of the Administrative Docket shall also be submitted to Legal Communications, Ltd., The Legal Intelligencer, Jenkins Memorial Law Library and the Law Library for the First Judicial District.

JOHN W. HERRON,  
*Administrative Judge*  
*Trial Division*

#### Exhibit A

To the Assigned Discovery Court Judge:

Please accept this letter as certification that my oppo-  
nent in the attached motion has told me he/she will not

contest and/or agrees to the relief sought in the proposed  
Order.

Sincerely,

[Pa.B. Doc. No. 98-1005. Filed for public inspection June 26, 1998, 9:00 a.m.]

### PHILADELPHIA COUNTY

#### Protocol for Production of Expert Reports in Civil Case Programs; Administrative Doc. No. 03 of 1998

#### Order

*And Now*, this 2nd day of June, 1998 to assure uniform rulings with regard to the production of expert reports in cases governed by Case Management Order, the Court adopts the following protocol.

It has come to the Court's attention that certain counsel believe that the deadlines imposed by the Case Management Order set the time when expert reports or answers to expert interrogatories are due. Counsel have even argued that the Discovery Court has no authority to require earlier responses.

This is inaccurate. Pennsylvania Rule of Civil Procedure 4006(a)(2) reads: "The answering party shall serve a copy of the answers, and objections if any, within thirty days after the service of the interrogatories." No Case Management Order may contradict the Pennsylvania Rules of Civil Procedure requirements for the timing of discovery responses.

Day Forward Case Management has not changed longstanding Philadelphia Discovery Court practice or the authority of the presiding discovery judge. Discovery Court retains jurisdiction to enter discovery orders and counsel should file timely motions to compel discovery whenever necessary. The dates set forth in the Case Management Order are deadlines after which, in the absence of extraordinary circumstances, no new experts or theories can be identified.

The Bar should recall that the expert deadlines adopted in Day Forward Case Management are based upon the recommendations of the Bar Association. The Bar recommended that the defense expert report deadline should be one month after the deadline for plaintiff's expert report(s). This one month difference is a normal procedure for Federal Court litigation and is embodied in the Federal Rules of Civil Procedure.

Counsel may file a Motion to Compel answers to interrogatories whenever they are overdue. It should be understood, however, that the standard Case Management Order leaves to counsel the conduct of discovery. The court believes that in most cases judicial micromanagement of discovery should be unnecessary. Presenting a discovery motion demonstrates that independent management of discovery by counsel has proven inadequate.

When the Court is requested to enter an Order to require answers to expert interrogatories before the Case Management deadline, the Court should make inquiry as to what discovery is outstanding or needed before the "offending" party can reasonably provide expert reports. The Court may then enter Orders setting deadlines for the specific discovery needed to properly respond. The Court can then set a reasonable time for providing expert reports.

Of course, expert interrogatory answers or expert reports can be supplemented at any time before the deadline established by the Case Management Order. Counsel may consider filing summary judgment motions where no critical expert opinion has been provided. The dispositive motion deadline of the Case Management Order does not state that motions cannot be filed earlier.

The interpretative views expressed herein have been agreed to by all Civil Program Team Leaders and represents a uniform protocol to be followed in all Civil Case Programs governed by Case Management Orders.

This Administrative Docket is promulgated in accordance with the April 11, 1986 Order of the Supreme Court of Pennsylvania, Eastern District, No. 55, Judicial Administration, Docket No. 1, Phila. Civ. #51 and Pa.R.C.P. 239, and shall become effective immediately. As required by Pa.R.C.P. 239, the original Administrative Docket shall be filed with the Prothonotary in a docket maintained for Administrative Dockets issued by the Administrative Judge of the Trial Division and copies shall be submitted to the Administrative Office of Pennsylvania Courts, the Legislative Reference Bureau and the Civil Procedural Rules Committee. Copies of the Administrative Docket shall also be submitted to Legal Communications, Ltd., The Legal Intelligencer, Jenkins Memorial Law Library and the Law Library for the First Judicial District.

JOHN W. HERRON,  
*Administrative Judge*  
*Trial Division*

[Pa.B. Doc. No. 98-1006. Filed for public inspection June 26, 1998, 9:00 a.m.]

## PHILADELPHIA COUNTY

### SEPTA Strike; Administrative Doc. No. 02 of 1998

#### Order

*And Now*, this 1st day of June, 1998, it is hereby *Ordered and Decreed* that all arbitrations, jury and non-jury trials in which SEPTA is a party will be continued for the duration of the strike and four (4) days after it ends;

Any Order issued against SEPTA shall be stayed for the duration of the strike and twenty (20) days thereafter; and

No default judgments for failure to answer a Complaint or comply with a discovery Order will be issued for the duration of the strike and twenty (20) days thereafter.

This Administrative Docket is promulgated in accordance with the April 11, 1986 Order of the Supreme Court of Pennsylvania, Eastern District, No. 55, Judicial Administration, Docket No. 1, Phila. Civ. #51 and Pa.R.C.P. 239, and shall become effective immediately. As required by

Pa.R.C.P. 239, the original Administrative Docket shall be filed with the Prothonotary in a docket maintained for Administrative Dockets issued by the Administrative Judge of the Trial Division and copies shall be submitted to the Administrative Office of Pennsylvania Courts, the Legislative Reference Bureau and the Civil Procedural Rules Committee. Copies of the Administrative Docket shall also be submitted to Legal Communications, Ltd., The Legal Intelligencer, Jenkins Memorial Law Library and the Law Library for the First Judicial District.

JOHN W. HERRON,  
*Administrative Judge*  
*Trial Division*

[Pa.B. Doc. No. 98-1007. Filed for public inspection June 26, 1998, 9:00 a.m.]

## PHILADELPHIA COUNTY

### SEPTA Strike; Administrative Docket No. 02 of 1998

#### Amended Order

*And Now*, this 3rd day of June, 1998, it is hereby *Ordered and Decreed* that all SEPTA counsel are excused from attending all Court ordered events for the duration of the strike and four (4) days after it ends;

Any Order issued against SEPTA shall be stayed for the duration of the strike and twenty (20) days thereafter;

No default judgments for failure to answer a Complaint or comply with a discovery Order will be issued for the duration of the strike and twenty (20) days thereafter;

Following resolution of the strike, case managers will be assigned to review every Case Management Order involving SEPTA as a party and they shall advance event dates as appropriate and reissue the Case Management Order without the necessity of counsel appearing; and

Following resolution of the strike, the Program Team Leaders will reschedule all settlement conferences, pretrials and trials which were continued by reason of the strike.

This Administrative Docket is promulgated in accordance with the April 11, 1986 Order of the Supreme Court of Pennsylvania, Eastern District, No. 55, Judicial Administration, Docket No. 1, Phila. Civ. #51 and Pa.R.C.P. 239, and shall become effective immediately. As required by Pa.R.C.P. 239, the original Administrative Docket shall be filed with the Prothonotary in a docket maintained for Administrative Dockets issued by the Administrative Judge of the Trial Division and copies shall be submitted to the Administrative Office of Pennsylvania Courts, the Legislative Reference Bureau and the Civil Procedural Rules Committee. Copies of the Administrative Docket shall also be submitted to Legal Communications, Ltd., The Legal Intelligencer, Jenkins Memorial Law Library and the Law Library for the First Judicial District.

JOHN W. HERRON,  
*Administrative Judge*  
*Trial Division*

[Pa.B. Doc. No. 98-1008. Filed for public inspection June 26, 1998, 9:00 a.m.]

# Title 255—LOCAL COURT RULES

## DAUPHIN COUNTY

Promulgation of Rules; No. 1793 S 1989

### Order

*And Now*, this 10th day of June, 1998, it is hereby ordered that Dauphin County Local Rule of Civil Procedure 211 is amended as follows:

#### Rule 211. Argument Court.

##### A. Matters Considered

(1) Pre-trial matters, including preliminary objections, motions for summary judgment **and judgment** on the pleadings.

(2) Other matters, including petitions to open/strike judgment [ **and zoning appeals** ].

(3) Preliminary objections to the existence or exercise of jurisdiction or venue in any action brought under the Domestic Relations code (23 Pa.C.S.) shall be assigned to a judge for disposition in accordance with Dauphin County Local Rule of Civil Procedure 215.2.

##### B. Organization of the Court

(1) All matters for argument shall be heard by the court at the time scheduled on the court calendar for common pleas argument court. There shall be six argument courts in each calendar year, each of two days duration. The argument court shall be heard by a panel of three judges, with the senior judge on each panel presiding.

(2) After the last day to list cases for a session of argument court, the Prothonotary shall promptly deliver all papers to the Court Administrator's Office.

(3) **The panel shall hear only those cases where the briefs, record and other supporting documents demonstrate that argument before the panel is necessary to resolve the issue(s) before the court. All other cases shall be assigned to individual judges on the panel.**

[ (3) **The Court Administrator's Office shall prepare an argument list which shall be available in that office at least 15 days prior to the call of the list.** ]

(4) **The Court Administrator's Office shall prepare lists designating cases assigned to the panel and those assigned to an individual judge. The lists will be mailed to all counsel and will also be available in the Court Administrator's Office at least fifteen (15) days prior to the scheduled argument court session.**

[ (4) **The call of the list by the presiding judge shall be at 9:00 a.m. on the Friday immediately preceding argument court. Cases not answered shall be presumed for argument.** ]

##### C. Listing and Briefing Cases

(1) Moving party

(a) Within 20 days of the filing of any matter, the moving party shall file one original and three copies of a supporting brief together with affidavits, depositions, transcripts, or other supporting documents.

(b) The moving party shall serve copies of its brief on all opposing parties together with a notice to file a responsive brief within 20 days of service.

(c) Upon the failure of the moving party to timely file and serve its brief, the court may sua sponte, or upon petition of the opposing party, order the matter withdrawn with prejudice.

(2) Opposition Party

(a) Any party in opposition to the matter shall file one original and three copies of its responsive brief within 20 days of service of the moving party's brief. An additional copy shall be served on the moving party.

(b) If an opposition party fails to file and serve its brief within the time period required, the court may consider such failure to be a waiver of opposition and shall sua sponte, or upon petition of the moving party, either 1) grant the relief requested, so long as such action does not result in dismissal of the case; or 2) exclude the opposition party from oral argument.

(3) Any party may list a case for argument by the filing of a praecipe with the Prothonotary at least four weeks prior to the first day of any argument court session, and provided further that

(a) all briefs have been filed, or

(b) the opposition brief has not been timely filed.

(4) Any party listing a case for argument shall give written notice thereof to all other parties within two days. Failure to give such notice may be grounds for striking the case from the list.

##### D. General Provisions

(1) Upon agreement of counsel [ **and with consent of the court** ], cases [ **on the argument court list** ] may be submitted on briefs and determined by the court without oral argument. **The moving party shall notify the Court Administrator's Office of such agreement in writing no later than five days prior to the scheduled argument.**

(2) Briefs shall refer specifically to those portions of the record relied upon. When opinions or decrees of this court are cited, briefs shall set forth the Dauphin County Reporter citation, and note if appeals were taken.

[ **3 The brief of the moving party shall contain a procedural history of the case, a statement of facts, a statement of questions involved, and argument. The brief of the opposing party need not contain a procedural history of the case. The brief of each party, if more than fifteen (15) pages in length, shall contain an Index and a Table of Citations of cases and statutes therein, with references to the page at which they appear in the brief.** ]

(3)(a) **The brief of the moving party shall contain the following:**

(1)(i) **a concise statement setting forth the reasons why oral argument is necessary and whether the matter should be assigned to the panel or an individual judge for disposition; or (ii) a statement waiving oral argument;**

(2) **a procedural history of the case;**

(3) **a statement of facts;**

(4) **a statement of questions involved; and**

(5) **legal discussion.**

(b) The brief of the opposing party need not contain a procedural history of the case but may contain a concise statement setting forth why oral argument is necessary to resolve the issues before the court, and whether the matter should be assigned to the panel or to an individual judge for disposition.

(c) The brief of each party, if more than fifteen (15) pages in length, shall contain an Index and a Table of Citations of cases and statutes therein, with reference to the page at which they appear in the brief.

[ (4) Reply briefs may be filed only with permission of the court. ]

(4) The moving party may file an original and three copies of a reply brief within ten (10) days after service of the opposing party's brief. No further briefs may be filed without leave of court.

(5) Requests for findings of fact and exceptions to findings of fact in proceedings at law or in equity shall refer specifically to those portions of the record relied upon.

**Comment**

This revision is part of the Court's continuing effort to improve both allocation of argument/research time and the speed of dispositions. It will encourage the submission of matters on briefs, thus saving counsel's time. It will also enable the Court to focus its panel time on cases with novel, complex or dispositive issues.

Under this revision counsel may request oral argument but must delineate reasons therefor. The delineation is to be the first issue addressed in the brief. The delineation will assist counsel in focusing on whether oral argument is essential and whether a three judge panel's insight is necessary. It will also help the Court make its panel/individual judge assignment.

After the last day to list for a given session, the Court Administrator's Office will prepare lists as directed by the Court, scheduling cases for the panel session and the individual judge sessions. It is envisioned that the panel session will take place the first morning of the first day of argument, with the individual judges' sessions to take place in the afternoon and the following day, if necessary.

This revision also eliminates the call of the list, the Court having determined that the call has become an unnecessary imposition on counsel's and the Court's schedules. Counsel experiencing a problem can notify the Court Administrator's Office to arrange resolution thereof.

These amendments shall be effective thirty (30) days after publication in the *Pennsylvania Bulletin* and shall control the format of argument court sessions beginning September, 1998.

*By the Court*

CLARENCE C. MORRISON,  
*President Judge*

[Pa.B. Doc. No. 98-1009. Filed for public inspection June 26, 1998, 9:00 a.m.]

**NORTHAMPTON COUNTY**

**Orphans' Court Rule N14.2.1—Estates of Incapacitated Persons—Petition and Hearing**

**Order of Court**

*And Now*, this 4th day of June, 1998, Northampton County Orphans' Court Rule N14.2.1—Estates of Incapacitated Persons—Petition and Hearing—is hereby amended as follows, effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

Seven (7) certified copies of the within rules shall be filed 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*; and one (1) certified copy shall be filed with the Pennsylvania Orphans' Court Rules Committee. One (1) copy of these rules shall be kept available in the Office of the Clerk of Courts. A copy is directed to be published in the *Northampton County Reporter*.

*By the Court*

ROBERT A. FREEDBERG,  
*President Judge*

**Rule 14. Estates of Incapacitated Persons.**

**Rule N14.2.1. Petition and Hearing.**

(a) A petition to adjudicate a person incapacitated shall allege the existence and location of all testamentary writings by the alleged incapacitated person of which the petitioner has knowledge.

(b) Within ten (10) days of filing of the petition to adjudicate a person incapacitated, counsel for petitioner shall present to the Motions Judge a written notification to the Court, indicating whether counsel has or has not been retained by or on behalf of the alleged incapacitated person. If independent counsel has not been retained, such counsel shall be appointed by the Court. Counsel for petitioner shall present a proposed order for this purpose.

(c) At the hearing to establish incapacity, petitioner shall present testimony from individuals qualified, pursuant to statutory requirements at PEF Code § 5518, in person, or, in uncontested cases, such testimony may be presented by deposition or by telephone by use of equipment which allows all persons present at the hearing to hear the testimony simultaneously.

(d) The petition shall contain the following information:

Last Name \_\_\_\_\_ First Name \_\_\_\_\_  
Middle Name \_\_\_\_\_ Jr., etc. \_\_\_\_\_  
Maiden Name \_\_\_\_\_ Aliases \_\_\_\_\_  
Social Security No. \_\_\_\_\_ Sex \_\_\_ Race \_\_\_\_\_  
Height \_\_\_ Weight \_\_\_ Hair Color \_\_\_ Eye Color \_\_\_  
Address \_\_\_\_\_

*Comment: Section (d) has been added in order to permit the Court to comply with the requirements of 18 Pa.C.S.A. § 6111.1(f).*

[Pa.B. Doc. No. 98-1010. Filed for public inspection June 26, 1998, 9:00 a.m.]

## YORK COUNTY

**Suspension of Rule 6035 of the Local Rules and  
Providing Notice Thereof; No. 98 MI 00214****Administrative Order**

*And Now, To Wit*, This 9th day of June, 1998, it is *Ordered* that Rule 6035 Termination of Inactive Cases of this Court is *Suspended* pending further Order; and,

It Is Further *Ordered* That in Accordance With Pa.R.C.P. 230, the District Court Administrator shall:

(a) File seven certified copies hereof with the Administrative Office of the Pennsylvania Courts.

(b) Distribute two certified copies hereof to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

(c) File one certified copy hereof with the Civil Rules Committee.

(d) Cause a copy hereof to be published in the *York Legal Record* once a week for two successive weeks at the expense of the County of York.

(e) Supervise the distribution hereof to all Judges and all members of the Bar of this Court.

*By the Court*

JOHN C. UHLER,  
*President Judge*

[Pa.B. Doc. No. 98-1011. Filed for public inspection June 26, 1998, 9:00 a.m.]

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