

THE COURTS

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 4000]

Amendment of Note to Rule 4009.21(a); No. 302; Civil Procedural Rules; Doc. No. 5

Order

Per Curiam:

And Now, this 4th day of August, 1998, the note to Pennsylvania Rule of Civil Procedure 4009.21(a) is amended to read as follows.

Whereas prior distribution and publication of the amendment would otherwise be required, it has been determined that the amendment is of a perfunctory nature and that immediate promulgation is required in the interest of efficient administration.

This Order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective January 1, 1999.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 4000. DEPOSITIONS AND DISCOVERY

SUBPOENA UPON A PERSON NOT A PARTY

Rule 4009.21. Subpoena Upon a Person Not a Party for Production of Documents and Things. Prior Notice. Objections.

(a) A party seeking production from a person not a party to the action shall give written notice to every other party of the intent to serve a subpoena at least twenty days before the date of service. A copy of the subpoena proposed to be served shall be attached to the notice.

Official Note: For the form of the written notice, see Rule 4009.24(a).

These rules do not preclude (1) the issuance under Rule 234.1 et. seq. of a subpoena or request for the production of documents or things at a deposition pursuant to Rule 4007.1(d) or (2) an independent action against a person not a party for production of documents or things.

Explanatory Comment

The second paragraph added to the note to Rule 4009.21(a) is a verbatim copy of the fourth paragraph of the note to Rule 4009.1. The intent of this repetition is to make clear that there are procedures other than a

subpoena under Rule 4009.21 by which the production of documents or things may be sought from a person not a party to an action.

By the Civil Procedural Rules Committee

EDWIN L. KLETT,
Chairperson

[Pa.B. Doc. No. 98-1352. Filed for public inspection August 21, 1998, 9:00 a.m.]

PART I. GENERAL

[231 PA. CODE CH. 4000]

Amendment of Rule 4007.1 Governing Procedure in Depositions; No. 303 Civil Procedural Rules Doc. No. 5

Order

Per Curiam:

And Now, this 4th day of August, 1998, Pennsylvania Rule of Civil Procedure 4007.1 is amended to read as follows.

This Order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective January 1, 1999.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 4000. DEPOSITIONS AND DISCOVERY

Rule 4007.1. Procedure in Deposition by Oral Examination.

* * * * *

(f) An application for an order pursuant to Section 5326(a) of the Judicial Code may be filed only in the county in which the person who is the subject of the order resides, is employed or regularly transacts business in person.

Official Note: Section 5326 of the Judicial Code, 42 Pa.C.S. § 5326, a part of the Uniform Interstate and International Procedure Act, provides for assistance to tribunals and litigants outside the Commonwealth.

Explanatory Comment

Section 5326 of the Judicial Code, 42 Pa.C.S. § 5326, relating to "Assistance to tribunals and litigants outside this Commonwealth with respect to depositions" provides:

(a) *General Rule.*—A court of record of this Commonwealth may order a person who is domiciled or is found within this Commonwealth to give his testimony or statement or to produce documents or other things for use in a matter pending in a tribunal outside this Commonwealth. . . .

New subdivision (f) of Rule 4007.1 responds to the concern that there should be a limitation upon the county from which an order may be sought so that the person who is the subject of the order is not put to unreasonable

expense or burden. A resident of Erie should not have to travel to Easton to object to an order obtained in connection with litigation outside the Commonwealth.

By the Civil Procedural Rules Committee

EDWIN L. KLETT,
Chairperson

[Pa.B. Doc. No. 98-1353. Filed for public inspection August 21, 1998, 9:00 a.m.]

Title 255—LOCAL COURT RULES

DAUPHIN COUNTY

Promulgation of Rule 161 Relating to Accelerated Rehabilitative Disposition; No. 1793 S 1989

Order

And Now, this 3rd day of August, 1998, Dauphin County Local Rule of Criminal Procedure 161, regarding procedures for accelerated rehabilitative disposition in summary cases before the minor judiciary, is hereby promulgated as follows:

Rule of Criminal Procedure 161. Accelerated Rehabilitative Disposition (ARD) In Summary Cases

(a) *Eligibility*: Pursuant to the District Attorney's designation filed under Pa.R.Crim.P. 160(b)(2), all summary first offenders and summary juvenile offenders may apply for admission to the program with the following exceptions:

- i. Any offense which is excluded by statute.
- ii. Any offense under Title 75 (Vehicles).
- iii. Any offense charged by local ordinance, with the exception of local ordinances prohibiting the public display of open containers of alcoholic beverages.
- iv. Any offense which is the result of an original charge classified as a misdemeanor three or above, which is subsequently reduced.
- v. Any offense which is joined with a court case which is held or waived for trial at a preliminary hearing.

(b) *Program Costs*: The costs taxable under each docket number shall be \$50 (fifty dollars), in addition to restitution, if any, both of which shall be payable no later than the day of admission to the program. The District Justice may, in appropriate cases, waive or defer payment of the ARD fee. Restitution may not be waived. The defendant shall further agree, as a condition of the ARD program, to pay the costs of any recommended treatment and/or community service program, and further pay any assessed probation supervision fees.

(c) *Application*: Eligible offenders may apply for ARD by completing an application, waivers of Rule 1100 and applicable statutes of limitations, and submitting them to the Dauphin County District Attorney for preliminary investigation. The District Attorney shall have full authority to conduct a criminal and social background check and shall have access to any available records to confirm application information. The District Attorney shall further consider input from the victim, if any, and recom-

mend restitution when appropriate. The District Attorney may then move for the defendant's inclusion in ARD.

(d) *Program Conditions*: An offender admitted to ARD shall comply with the following:

- i. Obey all federal, state and local penal laws, and all rules of probation.
- ii. Complete a minimum of 20 hours of community service.
- iii. Undergo a drug and alcohol evaluation, if required by the District Justice, and complete any recommended treatment.
- iv. Complete any other adjudication alternative program as directed by the District Justice.

(e) *Program Admission and Completion*: An eligible offender may be admitted to ARD by the District Justice upon the motion of the District Attorney. Bail, security or other collateral shall terminate upon entry. Admission to ARD shall not affect any period of license suspension/revocation directed by statute. Upon satisfactory completion of the program, the charges against the defendant shall be dismissed. The record of arrest shall not be affected by the operation of this local rule, however upon successful completion of the program, the case record shall be sealed by the District Justice.

The District Justice, in all cases where he/she finds the defendant guilty through trial and therefore ineligible for ARD, may refer the defendant to the program as part of a post-dispositional order. In all such cases the issuing authority shall consider imposing a fine with the provision that the fine be vacated or reduced if the defendant successfully completes the program. Restitution may not be reduced under this provision.

(f) *Program Monitoring*: The Dauphin County Adult and Juvenile Probation departments, or representatives from an adjudication alternative program, or Pre-Trial Services, are hereby authorized to monitor and supervise a defendant's progress in the summary ARD program. Further such organizations shall inform the District Justice of either the offender's successful completion, or the failure to complete, and in the latter case may testify as to the reasons therefor in program revocation proceedings. An allegation that the defendant has violated a condition of ARD must be brought during the term of the program, or if filed thereafter, within a reasonable time after the alleged violation was committed.

(g) *Revocation*: Should a defendant fail to comply with any condition of the ARD program, he or she may be revoked from the program by order of the District Justice at a revocation hearing where the defendant will be afforded an opportunity to be heard. The District Justice may issue such process as is necessary to bring the defendant before the Court. Should the defendant fail to appear after receiving notice of a revocation hearing, the District Justice may issue a warrant pursuant to Pa.R.Crim.P. 75. No appeal shall be allowed from a revocation order.

Upon revocation from the summary ARD program, or if a defendant declines to accept the program, the case shall thereafter be scheduled for trial pursuant to Chapter 50 of the Pennsylvania Rules of Criminal Procedure.

(h) *Monthly Report*: District Justices shall submit a monthly report on the disposition of all cases which have applied for entry to ARD to the District Attorney. Should admission to ARD be denied, the reasons for such denial shall be included.

This Order shall become effective 30 (thirty) days after publication in the *Pennsylvania Bulletin*.

By the Court

CLARENCE C. MORRISON,
President Judge

[Pa.B. Doc. No. 98-1354. Filed for public inspection August 21, 1998, 9:00 a.m.]

FAYETTE COUNTY

Local Rule 212: Pre-Trial Procedure; Civil Division No. 1470 of 1998, G. D.

Order

And Now, this 30th day of July, 1998, it is hereby Ordered that Fayette County Rule of Civil Procedure 212 is hereby amended as follows. This amendment shall be effective 30 days after the publication in the *Pennsylvania Bulletin*.

The Prothonotary of Fayette County is Ordered and Directed to do the following:

(1) File seven (7) certified copies of this Order and Amended Rule with the Administrative Office of Pennsylvania Courts.

(2) File two (2) certified copies of this Order and Amended Rule with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

(3) File one (1) certified copy of this Order and Amended Rule with the Pennsylvania Civil Rules Committee.

(4) Forward one (1) copy for publication in the *Fayette Legal Journal*.

(5) Forward one (1) copy to the Fayette County Law Library.

(6) Keep continuously available for public inspection copies of this Order and Rule.

By the Court

WILLIAM J. FRANKS,
President Judge

Rule 212. Pre-Trial Procedure.

(a) There will be a pre-trial conference in every civil case unless counsel for all parties stipulate in writing to the contrary and approval is granted by the Court. Cases submitted to compulsory arbitration under Rule 1301 shall have a pre-trial conference only if the award of arbitrators is appealed. In paternity cases, the pre-trial conference shall be conducted by the Domestic Relations Hearing Officer, who shall file a report of same. The Prothonotary shall refer medical malpractice cases to the Health Care Conciliation Program of the Commonwealth of Pennsylvania for a conciliation conference before the pre-trial conference.

(b) The Prothonotary shall keep a Pre-Trial Docket. Cases may be placed on the Pre-Trial Docket by any party, but only if:

(1) The pleadings shall have been closed for a period of at least ninety (90) days or all parties have, by written stipulation filed, agreed to place the case on the Pre-Trial Docket within a lesser time; and

(2) Such party shall file a certification of readiness with the Prothonotary, with notice given to all parties pursuant to Pa.R.C.P. 440 at least 15 days prior to filing said certification. The certification shall state that the attorney placing the case on the Pre-Trial Docket certifies that all discovery has been completed and the case is ready for trial.

(3) Any party objecting to the certification of readiness shall file a petition setting forth the reasons and the time period within which the objecting party needs to complete the necessary discovery or investigation. A party's failure to file and present the petition in motions court within the 15 day period shall be deemed to be a consent to the certification of readiness.

(c) After the case has been placed upon the Pre-Trial Docket:

(1) All plaintiffs, within twenty (20) days of the filing of the certification of readiness, shall file their pre-trial statements; and

(2) All defendants, within twenty (20) days of the filing of the plaintiffs' pre-trial statements, shall file their pre-trial statements; and

(3) All other parties, within twenty (20) days of the filing of defendants' pre-trial statements, shall file their pre-trial statements.

(d) No discovery will be permitted after the pre-trial conference except upon express order of the Court.

(e) No case shall be listed for trial until after compliance with the pre-trial procedure set forth in these rules.

(f) The written pre-trial statement required under these rules will consist of a brief summary of the essential facts upon which liability is asserted or denied and the legal issues involved. There shall be attached to said statement:

(1) A copy of all reports containing findings or conclusions of any physician who has treated or examined a party or has been consulted in connection with any injuries complained of and who a party expects to call as a witness at the time of trial of the case. If timely production of any such report is not made, the testimony of such physician shall be excluded at the trial except upon consent of the other party or parties or upon express order of the Court.

(2) A copy of all reports containing findings and conclusions of any expert who has been consulted in connection with the matters involved in the case and who a party expects to call as a witness at the trial. If timely production of any such report is not made, the testimony of such expert shall be excluded at the trial, except upon consent of the other party or parties or upon express order of the Court.

(3) A list of the names and addresses of all witnesses the party expects to call, which witnesses shall be classified as liability or damage witnesses.

(4) The pre-trial statement of any party seeking to recover damages for personal injuries will also be accompanied by a written authorization to inspect and make copies of the records and reports of any physician, hospital or clinic by whom or where said party may have been examined, treated, or hospitalized for the injuries or disabilities complained of, and covering prior injuries or disabilities where the same may be relevant.

(5) The pre-trial statement of any party seeking to recover damages shall include a list of the damages that the party intends to claim and prove at the trial.

(6) All counsel shall attach a list of exhibits which shall contain the identifying mark of each exhibit together with a brief description of the exhibit.

(7) All parties shall set forth a realistic estimate of the trial time required for representation of their own case, as well as total trial time required.

(8) The pre-trial statement shall include a brief history of settlement negotiations.

(g) Upon failure of any party to file a pre-trial statement within the time required, the Court may impose the sanctions provided in Pa.R.C.P. No. 4019(c).

(h) Within five (5) days of the filing of the last required pre-trial statement but not later than sixty-five (65) days from the filing of the certification of readiness, the Prothonotary shall notify the Court Administrator that the case may be scheduled for the pre-trial conference. The Court Administrator will assign the case forthwith for pre-trial. The assigned Judge will by order set a time for the pre-trial conference.

(i) At the pre-trial conference, each counsel shall make available to opposing counsel for inspection and copying all exhibits which are expected to be offered in evidence at trial. In addition, the written list of exhibits will be marked to indicate those exhibits which are to be admitted into evidence by stipulation, those exhibits to which there is an agreement of authenticity and a waiver of formal proof but to which objections of admissibility are reserved, and those exhibits to which objections to admissibility and challenges to authenticity and proof are reserved generally. The nature of the objection in each instance shall be briefly stated.

If any exhibits are known to exist or probably will be required but are not available at the time of the pre-trial conference, the substance thereof must be disclosed to opposing parties and numbers or letters shall be reserved for such exhibits upon counsel's list of exhibits. If not discovered or not realized to be necessary until after the pre-trial conference, exhibits must nevertheless be marked before trial. Exhibits not submitted and marked in the manner provided herein shall not be admitted at the trial unless the trial Judge is satisfied that their existence or the necessity for introducing them could not have been determined at the earlier stages referred to in this Rule.

(j) The Judge at the pre-trial conference may consider motions to continue, to amend, to consolidate, to sever, motions in limine, and any other pertinent matters, providing proper notice is given in the pre-trial statement or otherwise.

(k) The Judge presiding at the pre-trial conference shall enter a pre-trial adjudication. Counsel must file written objections within 10 days and present the objection to Motions Court or be deemed to have accepted the pre-trial adjudication.

(l) Unless the Court directs otherwise, the Prothonotary shall add the case to the Jury Trial Docket as of the date of the pre-trial adjudication.

(m) Willful failure to fully disclose in the pre-trial statement or at the pre-trial conference the substance of the evidence as to liability, defenses, damages and the identity of all witnesses proposed to be offered at the trial will result in the exclusion of that evidence or the testimony of those witnesses at the trial. The only exceptions will be matters or witnesses which the Judge determines were not discoverable at the time of the pre-trial conference, and matters to be used solely for impeaching purposes.

(n) When a case is scheduled for pre-trial conference, it shall not be continued except for just cause and upon order of the pre-trial Judge. If there is a failure to comply with the pre-trial rules or with any order issued in the pre-trial procedure, the Judge may impose such sanctions as are warranted by the circumstances. Sanctions may include the dismissal of the plaintiff's cause of action, the grant of permission to proceed ex parte, or the barring of any defendant or other party from offering any testimony. If all parties fail to comply, the action may be dismissed.

(o) The pre-trial conference shall be attended by the attorney who will try the case or by an attorney who is fully prepared and authorized as to all matters which may reasonably be expected to arise during the conference. Parties must also be present, except where the real party in interest is an insurance company, common carrier, corporation or other artificial legal entity, in which instance a representative thereof, other than the attorney, must be present with full authority and power to discuss and settle the case. At the pre-trial conference, the Court shall encourage the amicable settlement of the controversy and the parties and their attorneys shall be prepared to discuss settlement.

(p) The Judge presiding at the pre-trial conference shall refer to arbitration all cases where the amount actually in controversy is found not to exceed the jurisdictional limits of arbitration except where title to lands or tenements may come in question.

(q) The pre-trial adjudication shall control the subsequent course of the action. The adjudication of the pre-trial Judge may include a requirement that one or more of the parties submit a trial brief, or a statement of legal authorities, to be submitted at least ten (10) days before trial. The adjudication may impose such other requirements on the parties as the circumstances may indicate in the discretion of the Judge.

(r) After the pre-trial conference and the entry of the pre-trial adjudication no amendment to any pre-trial statement or pleading shall be presented to the Prothonotary for filing unless authorized at the pre-trial conference or upon further order of Court.

(s) The Court may on motion of any party enlarge any time period set forth in these rules relating to pre-trial procedure.

[Pa.B. Doc. No. 98-1355. Filed for public inspection August 21, 1998, 9:00 a.m.]

FAYETTE COUNTY

Local Rule 214: Pre-Trial Docket and Jury Trial Docket; Civil Division No. 1471 of 1998, G. D.

Order

And Now, this 30th day of July, 1998, it is hereby *Ordered* that Fayette County Rule of Civil Procedure 214 is hereby amended as follows. This amendment shall be effective 30 days after the publication in the *Pennsylvania Bulletin*.

The Prothonotary of Fayette County is *Ordered* and *Directed* to do the following:

(1) File seven (7) certified copies of the Order and Amended Rule with the Administrative Office of Pennsylvania Courts.

(2) File two (2) certified copies of this Order and Amended Rule with the Legislative Reference Bureau for Publication in the *Pennsylvania Bulletin*.

(3) File one (1) certified copy of this Order and Amended Rule with the Pennsylvania Civil Rules Committee.

(4) Forward one (1) copy for publication in the *Fayette Legal Journal*.

(5) Forward one (1) copy to the Fayette County Law Library.

(6) Keep continuously available for public inspection copies of this Order and Rule.

By the Court

WILLIAM J. FRANKS,
President Judge

Rule 214. Pre-Trial Docket and Jury Trial Docket.

(a) The Prothonotary shall keep a Pre-Trial Docket and shall enter therein each case named in the certification of readiness of any party. Cases shall be entered in the order in which the certifications are filed and the date of entry shall be noted on the Docket.

(b) The Prothonotary shall also keep a Jury Trial Docket, in which there shall be entered each case to be tried by jury, in chronological sequence according to the date of the pre-trial adjudication.

(c) Non-jury and equity trials shall be scheduled for trial upon motion.

(d) A case shall remain on the Jury Trial Docket until it has been tried, settled, discontinued or removed by order of Court. The Prothonotary shall note the disposition of each case on the Docket.

(e) The Court may order a case removed from either docket because of the failure of the plaintiff to proceed with reasonable diligence or for other appropriate cause. Such a case may be reentered in either docket only by order of Court and only as of the date of such order.

(f) There shall be four (4) Sessions of Civil Jury Trials each year, beginning respectively on the third Monday of January, the third Monday of April, the third Monday of July and the third Monday of October, unless otherwise specifically ordered.

(g) On the first business day of the month preceding that during which the next regular Session of Civil Jury Trials is to begin, the Prothonotary shall prepare and post publicly in that office a trial list for the Session containing all pending cases entered on the Jury Trial Docket. The cases on the Jury Trial Docket shall be listed in the order in which they were entered in said Docket, and shall be numbered consecutively for trial beginning on the opening day of the Session. The posting of the list shall constitute publication of the trial list for that Session for the purposes of Pa.R.C.P. No. 216.

(h) At least twenty (20) days before the beginning of each Session, the Prothonotary shall have the posted list printed, together with a list of the jurors summoned for the Session, and shall furnish a copy thereof to each member of the Court and to all attorneys requesting it.

(i) On the Friday immediately preceding the beginning of a Session, not later than 3:30 o'clock p.m., the Court Administrator shall prepare and post in the Prothonotary's office a list of all cases to be called for trial on the following Monday, and likewise thereafter from day to day

a list of all cases expected to be called for trial on the following day. Except as otherwise directed by the Court, and subject to the preferences given by Pa.R.C.P. No. 214, the daily list shall be composed of (1) cases fixed by the Court for that day; and (2) cases taken in numerical order from the list, unless made impracticable by the conflicting engagements of counsel. The posting of the daily lists shall constitute sufficient notice of call for trial on that day. The Prothonotary shall furnish a copy of each daily list to each member of the Court and to all attorneys requesting it.

(j) The trial list shall be called for answer in the courtroom of the Motions Judge on the third Friday preceding the beginning of each Session of Civil Jury Trials at 9:30 o'clock A.M. At that time, written motions for continuance may be presented. Later motions for continuance will not be considered, unless for a cause not existing or known at the call of the list. All motions for continuance shall be in writing, after notice as required by Pa.R.C.P. No. 216 and F.C.R. 211(e). No case shall be continued for trial without a jury until an agreement of all parties to dispense with trial by jury has been filed of record.

If no answer is made, the case will be stricken from the list and reinstated only upon praecipe and placed at the end thereof.

(k) Any case on the trial list that is called for trial during the session but not reached for trial, shall, at the next session, receive priority over cases that are continued at the call of the list.

[Pa.B. Doc. No. 98-1356. Filed for public inspection August 21, 1998, 9:00 a.m.]

WESTMORELAND COUNTY

Civil Rules W205.1 and W211; No. 3 of 1998

Order

And Now This 6th day of August, 1998, it is *Hereby Ordered Adjudged And Deceaded* that Westmoreland County Rules of Civil Procedure W205.1(b) and W211 are repealed. New Rules W205.1(b) and W211 are adopted.

By the Court

CHARLES H. LOUGHRAN,
President Judge

W205.1. Filing of Motions and Petitions.

W205.1(b) The assigned judge will hear routine motions of either a contested or uncontested nature on the first and last Wednesday of each month at 10:00 a.m.

(1) Uncontested and emergency motions on civil matters assigned specifically to Judges Ackerman and Caruso may be presented at any other time convenient to and prearranged with the court.

(2) Emergency motions on civil matters assigned to Judge Loughran may be presented at any prearranged time convenient to the court.

W211. Oral Arguments.

Each judge shall establish procedures for oral argument.

Comment: All argument court matters before Judge Loughran shall be automatically scheduled by the court administrator.

All argument court matters with the exception of preliminary objections assigned to Judges Ackerman and Caruso shall be automatically scheduled by the court administrator. Oral argument on preliminary objections shall be scheduled on an individual basis after consideration of a petition or motion presented to the court.

[Pa.B. Doc. No. 98-1357. Filed for public inspection August 21, 1998, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Disbarment

Notice is hereby given that John Michael Panara, having been disbarred from the practice of law in the State of New York, the Supreme Court of Pennsylvania issued an Order dated August 5, 1998, disbaring John Michael Panara from the Bar of this Commonwealth. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside of the Common-

wealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

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

[Pa.B. Doc. No. 98-1358. Filed for public inspection August 21, 1998, 9:00 a.m.]

Notice of Suspension

Notice is hereby given that Bruce Allen Wallace, III, having been suspended from the practice of law in the State of New Jersey for a period of three months by Order dated March 25, 1998, the Supreme Court of Pennsylvania issued an Order dated August 5, 1998, Bruce Allen Wallace, III is suspended for a period of three months from the Bar of this Commonwealth. In accordance with the Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

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

[Pa.B. Doc. No. 98-1359. Filed for public inspection August 21, 1998, 9:00 a.m.]
