

# THE COURTS

## Title 234—RULES OF CRIMINAL PROCEDURE

### PART I. GENERAL

[234 PA. CODE CHS. 50 AND 100]

#### Order Amending Rule 141 and Revising the Comment to Rule 83; Doc. No. 2

The Criminal Procedural Rules Committee has prepared a *Final Report* explaining the February 13, 1998 amendment of Rule of Criminal Procedure 141 (Preliminary Hearing) and the revision of the *Comment* to Rule of Criminal Procedure 83 (Trial in Summary Cases). These changes clarify the procedures in summary trials and preliminary hearings when an attorney for the Commonwealth is not present to prosecute. The *Final Report* follows the Court's Order.

#### Order

*Per Curiam:*

Now, this 13th day of February, 1998, upon the recommendation of the Criminal Procedural Rules Committee; this Recommendation having been submitted without publication pursuant to Pa.R.J.A. 103(a)(3), and a *Final Report* to be published with this Order:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that:

- (1) Pa.R.Crim.P. 141 is hereby amended, and
- (2) the revision of the Comment to Pa.R.Crim.P. 83 is hereby approved, in the following form.

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

#### Annex A

### TITLE 234. RULES OF CRIMINAL PROCEDURE

#### PART I. GENERAL

#### CHAPTER 50. PROCEDURE IN SUMMARY CASES

#### PART VI. GENERAL PROCEDURES IN SUMMARY CASES

#### Rule 83. Trial in Summary Cases.

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**Official Note:** Adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986; effective date extended to July 1, 1986; amended February 2, 1989, effective March 1, 1989; amended October 28, 1994, effective as to cases instituted on or after January 1, 1995; Comment revised April 18, 1997, effective July 1, 1997; amended October 1, 1997, effective October 1, 1998; **Comment revised February 13, 1998, effective July 1, 1998.**

#### Comment

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Paragraph (E)(2)(b) is included in the rule in light of *North v. Russell*, 427 U.S. 328 (1976). For the procedures

for taking, perfecting, and handling an appeal, see Rule 86.

As the judicial officer presiding at the summary trial, the issuing authority controls the conduct of the trial generally. When an attorney appears on behalf of the Commonwealth, or on behalf of a municipality pursuant to paragraph (C), the prosecution of the case is under the control of that attorney. When no attorney appears at the summary trial on behalf of the Commonwealth or a municipality, the issuing authority may ask questions of any witness who testifies, and the affiant may request the issuing authority to ask specific questions. In the appropriate circumstances, the issuing authority may also permit the affiant to question Commonwealth witnesses, cross-examine defense witnesses, and make recommendations about the case to the issuing authority.

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For the statutory authority to sentence a defendant to pay restitution, see 42 Pa.C.S. § 9721(c) and 18 Pa.C.S. § 1106(c). See also 18 Pa.C.S. [ , ], § 1106(c)(2)(iv), which prohibits the court from ordering the incarceration of a defendant for failure to pay restitution if the failure results from the defendant's inability to pay.

Before imposing both a fine and restitution, the issuing authority must determine that the fine will not prevent the defendant from making restitution to the victim. See 42 Pa.C.S. [ , ], §§ 9726(c)(2) and [ § ] 9730(b)(3).

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#### Committee Explanatory Reports:

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Final Report explaining the October 1, 1997 amendments to paragraph (E) and the Comment concerning the procedures at the time of sentencing published with the Court's Order at 27 Pa.B. 5414 (October 18, 1997).

Final Report explaining the February 13, 1998 Comment revision concerning questioning of witnesses published with the Court's Order at 28 Pa.B. 1127 (February 28, 1998).

#### CHAPTER 100. PROCEDURE IN COURT CASES

#### PART IV. PROCEEDINGS BEFORE ISSUING AUTHORITIES

#### Rule 141. Preliminary Hearing.

[ (a) ] (A) The attorney for the Commonwealth may appear at a preliminary hearing and:

- (1) assume charge of the prosecution; and
- (2) recommend to the issuing authority that the defendant be discharged or bound over to court according to law.

[ (b) ] (B) When no attorney appears on behalf of the Commonwealth at a preliminary hearing, the affiant may [ request the issuing authority ] be permitted to ask questions of any witness who testifies.

[ (c) ] (C) The defendant shall be present at any preliminary hearing except as provided in these rules, and may [ , if he desires ]:

- (1) be represented by counsel;
  - (2) cross-examine witnesses and inspect physical evidence offered against [him] the defendant;
  - (3) call witnesses on [his own] the defendant's behalf, other than witnesses to [his] the defendant's good reputation only [ , ];
  - (4) offer evidence on [his] the defendant's own behalf and testify; and
- [ (4) ] (5) make written notes of the proceedings, or have [his] counsel do so, or make a stenographic, mechanical, or electronic record of the proceedings.

[ (d) ] (D) If a prima facie case of the defendant's guilt is not established at the preliminary hearing, and no application for a continuance, supported by reasonable grounds, is made by an interested person, and no reason for a continuance otherwise appears, the issuing authority shall discharge the defendant.

**Official Note:** Formerly Rule 120, adopted June 30, 1964, effective January 1, 1965; suspended **January 31, 1970**, effective May 1, 1970; revised January 31, 1970; effective May 1, 1970; renumbered and amended September 18, 1973, effective January 1, 1974; amended June 30, 1975, effective July 30, 1975; amended October 21, 1977, effective January 1, 1978; paragraph [ (d) ] (D) amended April 26, 1979, effective July 1, 1979; **amended February 13, 1998, effective July 1, 1998.**

#### Comment

As the judicial officer presiding at the preliminary hearing, the issuing authority controls the conduct of the preliminary hearing generally. When an attorney appears on behalf of the Commonwealth, the prosecution of the case is under the control of that attorney. When no attorney appears at the preliminary hearing [ in ] on behalf of the Commonwealth, the issuing authority may ask questions of any witness who testifies, and the affiant may request the issuing authority to ask specific questions. **In the appropriate circumstances, the issuing authority may also permit the affiant to question Commonwealth witnesses, cross-examine defense witnesses, and make recommendations about the case to the issuing authority.**

[ The 1975 modification to paragraph (c) ] Paragraph (C)(3) is intended to make clear that the defendant [ can ] may call witnesses at a preliminary hearing only to negate the existence of a prima facie case, and not merely for the purpose of discovering the Commonwealth's case. The modification changes the language of the rule interpreted by the Court in *Commonwealth v. Mullen*, [ 460 Pa. 336, ] 333 A.2d 755 (Pa. 1975). This amendment was made to preserve the limited function of a preliminary hearing.

[ For suspension of Act of Assembly see Rule 159(g). ]

#### Committee Explanatory Reports:

Final Report explaining the February 13, 1998 amendments concerning questioning of witnesses published with the Court's Order at 28 Pa.B. 1127 (February 28, 1998).

## FINAL REPORT

### Procedures in Summary Trials and Preliminary Hearings When an Attorney for the Commonwealth Is Not Present to Prosecute

#### Introduction

On February 13, 1998, upon the recommendation of the Criminal Procedural Rules Committee, the Supreme Court amended Rule of Criminal Procedure 141 (Preliminary Hearing) and approved the revision of the Comment to Rule of Criminal Procedure 83 (Trial in Summary Cases) to clarify the procedures in summary trials and preliminary hearings when an attorney for the Commonwealth is not present to prosecute. These changes will be effective July 1, 1998. This *Final Report* highlights the Committee's considerations in formulating these amendments.<sup>1</sup>

#### Discussion

In correspondence with the Committee, a few attorneys and district justices pointed out that, although Rules 83(c) and 141(b) govern procedures before a district justice in cases in which the attorney for the Commonwealth does not appear, the provisions are not identically worded. Under Rule 83(c), when "no attorney appears on behalf of the Commonwealth, the affiant may be *permitted* to ask questions of any witness who testifies." (emphasis added). Under Rule 141(b), when "no attorney appears on behalf of the Commonwealth at a preliminary hearing, the affiant may *request* to ask questions of any witness who testifies." (emphasis added). These differences in the two provisions have generated confusion and the following questions: Does the affiant ask all the questions? Does the district justice ask the questions which the affiant poses? May an affiant's questions extend to cross-examining defense witnesses? Should there be different procedures for summary trials and preliminary hearings when an attorney for the Commonwealth is not present?

After reviewing the procedures for summary trials and preliminary hearings and the questions, the Committee concluded that the procedures should be the same for summary trials and preliminary hearings. District justices should have complete discretion about how to handle a case if an attorney for the Commonwealth does not appear, including the extent of the questioning by the affiant. In view of this, Rule 141(B) has been amended so that both Rule 141(B) and Rule 83(C) provide that "the affiant may be permitted to ask questions of any witness who testifies" in cases in which the attorney for the Commonwealth does not appear.

The *Comments* to both rules have been revised to make it clear that the district justice controls the conduct of the summary trial or the preliminary hearing, including the questioning of witnesses when there is no attorney for the Commonwealth present, and to provide district justices with guidance about the various questioning options available when the attorney for the Commonwealth does not appear. For example, the district justice could ask the questions, or the district justice could permit the affiant to ask the questions, or any combination of the two.

[Pa.B. Doc. No. 98-327. Filed for public inspection February 27, 1998, 9:00 a.m.]

<sup>1</sup> The Committee's *Final Reports* should not be confused with the official Committee *Comments* to the rules. Also note that the Supreme Court does not adopt the Committee's *Comments* or the contents of the Committee's explanatory *Final Reports*.

# Title 255—LOCAL COURT RULES

## BLAIR COUNTY

### Administrative Order Re: Local Rules of Civil Procedure; 98 GN 907

#### Order

Now, this 6th day of February, 1998, pursuant to the provisions of Pennsylvania Rule of Civil Procedure No. 239, the Court Administrator of Blair County shall take the following actions for the accomplishment of implementation of the Rules of this Court relating to procedure to be followed in civil matters as set forth in this Court's Order of February 6, 1998, in order that said Order might take effect Thirty (30) days following the date of its publication in the *Pennsylvania Bulletin*:

1. File in the Administrative Office of Pennsylvania Courts seven (7) certified copies of the Order of February 6, 1998;
2. Distribute two (2) certified copies of the Order of February 6, 1998, to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*; and,
3. File one (1) certified copy of the Order of February 6, 1998, with the Civil Procedural Rules Committee of the Supreme Court of Pennsylvania.

#### Order

Now, this 6th day of February, 1998, this Court having recognized the need for revision of the Local Rules of Civil Procedure applicable to proceedings had within its jurisdiction and having accomplished such revision after full and complete study now provides the following Order:

*It Is Hereby Ordered, Directed and Decried* that the revised Rules of Civil Procedure for this Court (following hereto and made part hereof) are adopted and shall be controlling of practice before this Court effective Thirty (30) days after the date of publication of said Rules in the *Pennsylvania Bulletin* as required by the Supreme Court of Pennsylvania.

By the Court

THOMAS G. PEOPLES, Jr.,  
President Judge

#### Rule 76. Definitions.

*Local Rules*—These rules apply to any matter of business coming before this Court, unless designated otherwise.

*Status Conference*—A meeting among counsel and the Court to take place early in the litigation or at any other point the Court deems necessary to move the case toward resolution. No pretrial narratives are necessary. Counsel should be prepared to discuss the present status of the lawsuit, appropriate time limits for discovery, and possible use of Alternative Dispute Resolution. The Court may set discovery deadlines at this time and may schedule a formal pre-trial. See Rule 360.

*Pretrial Conference*—A meeting among counsel, the Court and such other persons as directed to be present or permitted to attend by the Judge. The purpose shall be to discuss the posture of the case, including settlement, in an effort to prepare the case for trial. A formal narrative is required for this conference. See Rule 365.

*Settlement Conference*—A meeting among counsel, litigants, the Court and other such persons as directed to be present or permitted to attend by the Judge with the purpose of resolving the action. All persons with settlement authority will be required to attend unless specifically excused.

*Request for Argument/Hearing*—An order of Court setting a date, time and location for hearing on a petition or motion requiring a decision of Court. See Rule 275.

*Summary Jury Trial*—An alternative dispute resolution tool to be scheduled upon request of the parties and/or at the direction of the Court. The purpose of the Summary Jury Trial is to provide an expedited proceeding which promotes settlement of the action. The attendance of the parties with authority to settle, including insurance adjuster, is mandatory. See Rule 1400.

*Blair County Bar Association Mediation Program*—An alternative dispute resolution tool which utilizes the time and skills of several experienced members of the Blair County Bar who act as voluntary, neutral mediators providing the parties with an opportunity to expand and develop areas of agreement which can resolve their dispute at considerable savings of financial and human resources to everyone involved. Submission of cases to the Blair County Bar Association Mediation Program is completely voluntary. See Rule 1500.

#### Rule 211. Oral Arguments.

(a) It is the preference of the Court to decide all motions on briefs. Oral arguments are difficult to timely schedule and act to delay the progress of cases.

(b) Counsel may request oral argument in situations where a brief is insufficient to properly set forth the argument. The request for oral argument must be made in writing within ten (10) days of the filing of the motion.

(c) The request for argument shall be submitted to the Court Administrator's Office along with a statement setting forth the reasons for the necessity of oral argument.

(d) The Court Administrator's Office shall refer the matter to the trial Judge and it shall be within the discretion of the Judge whether the argument will be scheduled.

(e) The Court, upon its own motion, may schedule oral argument as it deems necessary.

#### Rule 216. Continuances.

(a) The Court disfavors continuances due to the difficulty in promptly rescheduling matters. All applications for continuance shall be made by written motion. The motion shall specify the factual basis for the request of the proposed continuance. The request for continuance shall be filed with the Court Administrator's Office and will be forwarded to the assigned Judge.

(b) Any request must specify the position of the opposing party/parties. Failure to specify the position of opposing party/parties may result in automatic denial of the request.

(c) Requests for continuances shall be made at least two (2) weeks in advance of the hearing date. Where the continuance is not timely filed, the reasons for the delay shall be specifically set forth in the motion.

(d) Any continuance request shall contain certification that the client has been notified and does not oppose the request.

(e) The Court Administrator's Office shall notify the requesting party of the Court's decision on the motion and it shall be the requesting party's obligation to notify all parties of record.

(f) Continuance forms shall be prescribed by the Court and obtained from the Court Administrator's Office.

**Rule 275. Request for Argument/Hearing.**

(a) All petitions requiring a decision of Court, except for Motions for Summary Judgment, Judgment on Pleadings or Preliminary Objections, shall have attached a request similar in form to that reproduced below.

(b) All petitions containing a request shall be forwarded to the Court Administrator's Office by the Prothonotary.

(c) Once a request has been signed by a Judge, the Court Administrator's Office shall phone the moving party to inform them of the date, time and location of the argument/hearing.

(d) It shall be the responsibility of the moving party to notify all other parties of record of the date, time and location of the argument/hearing.

(e) Counsel shall be afforded the option of obtaining dates and times for requests for hearing by presenting the motion or petition to the Assistant Court Administrator immediately prior to the beginning of Motions Court. The District Court Administrator will submit the request for argument/hearing to the Motions Court Judge for signature. The moving party remains responsible for notice to the other parties of record.

IN THE COURT OF COMMON PLEAS OF  
BLAIR COUNTY, PENNSYLVANIA

VS: NO: \_\_\_\_\_

REQUEST FOR ARGUMENT/HEARING

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 199 \_\_, argument/hearing is set for the \_\_\_\_\_ day of \_\_\_\_\_, 199 \_\_, at \_\_\_\_\_ o'clock \_\_ M. in Courtroom No. \_\_\_\_\_.

BY THE COURT:

\_\_\_\_\_ J.

**Rule 310. Presentation of Motions and Petitions.**

(a) All motions and petitions requesting an Order of Court shall be filed with the Prothonotary's Office, which shall forward the motion or petition to the Court Administrator's Office for placement with the assigned Judge.

*Exceptions:*

The following motions or petitions may be filed directly with the Court Administrator's Office, which will forward them to the appropriate Judge:

1. Motions for continuance, except with respect to juvenile and domestic matters [see (d) below].
2. Petitions for Court approval of stipulations or agreements.
3. Requests for Argument/Hearing or agreed upon Order may be presented to the Assistant Court Administrator immediately prior to the beginning of Motions Court. The Assistant Court Administrator will then assign a date and time and will submit the Request for Argument/

Hearing or Order for the Judge to execute said Order without counsel being present. See Rule 275.

(b) All Protection from Abuse Petitions shall be filed with the Court Administrator's Office.

(c) Any motion or petition may be submitted directly to the assigned Judge where leave of Court to do so has been requested and granted.

(d) All juvenile and domestic petitions, agreements and continuances shall be filed with the juvenile or domestic offices.

(e) Counsel shall always prepare and submit with any motion or petition a suggested Order granting the requested relief.

(f) Any such motion or petition which is based upon a statute or Rule of Court shall cite the specific statute or rule which authorizes the requested relief.

(g) The movant and respondent shall serve copies of their respective filings upon the opposing party at the time such filings are clocked in with the Prothonotary's Office in order to afford opposing counsel immediate notice of the filing. After receiving a date for hearing, counsel for the moving party shall inform the opposing counsel of the date and time of the hearing. Counsel shall likewise serve the opposing party with signed Orders for hearings.

**Rule 320. Motions for Decision.**

(a) This rule shall apply to Preliminary Objections, Motions for Judgment on the Pleadings and Summary Judgment Motions.

(b) The original motion and brief shall be filed with the Prothonotary with the exception of Preliminary Objections (See Rule 325 Briefs), who shall then transfer the motion and brief to the Court Administrator's Office.

(c) The Court Administrator shall transfer the file to the assigned Judge for decision once all briefs are received or in the event a brief is not received, in accordance with Rule 325, the Court Administrator's Office shall notify the assigned Judge so an appropriate Order may be issued.

**Rule 325. Briefs.**

1. *Timing of Briefs*

a. No later than twenty (20) days after the filing of Preliminary Objections, the moving party must file a supporting brief.

b. Motions for Summary Judgment and Motions for Judgment on Pleadings shall be accompanied by a supporting brief.

c. The motions and briefs shall be filed with the office of the Prothonotary.

d. All response briefs shall be filed no later than twenty (20) days of receipt of the moving party's brief.

e. Service shall be made in conformance with Pa.R.C.P. § 440.

f. All requests for extensions of the twenty (20) day period to file responsive briefs shall be submitted in writing to the Court Administrator's Office and will be referred to the trial Judge for consideration.

2. *Failure to File Briefs*

a. If a Motion for Summary Judgment or a Motion for Judgment on the Pleadings is filed without a supporting brief, the Motion will be dismissed by Order of Court.

b. If a brief in support of Preliminary Objections is not filed within twenty (20) days after the Preliminary Objections have been filed, they shall be dismissed by Order of Court.

c. If a reply brief is not timely filed, the Court may dispose of the motion without such response brief and/or a monetary sanction may be imposed by the Court.

d. If any motion is settled or withdrawn prior to disposition, the moving party shall so inform the Court Administrator in writing.

**Rule 330. Format and Contents of Briefs.**

(a) The brief of the moving party shall contain a statement of the questions involved, a history of the case, and argument. The brief of the adverse party need contain only his argument, but may add a counter-statement of the questions involved and a counter-history of the case.

(b) The statement of the questions involved shall set forth each question separately.

(c) The history of the case shall begin with a statement of the form of the action or proceeding followed by a concise, chronological statement.

(d) The argument shall be divided into as many parts as there are questions to be argued, each part with a heading indicating the particular question discussed therein. If reference is made to the evidence or charge, the arguments shall set forth an immediate connection therewith or in a footnote thereto as reference to the page of the transcript where the matter referred to appears.

**Rule 350. Faxed Documents.**

(a) Faxed documents may not be filed directly with the Prothonotary in the absence of the specific direction of the trial Judge.

(b) The Court Administrator's Office shall be contacted prior to faxing any documents to be docketed. A hard copy shall be mailed to the attention of the Court Administrator's Office within seventy-two (72) hours of faxing the document. Failure to comply may result in appropriate sanctions.

**Rule 360. Status Conference.**

(a) This rule shall govern the conduct of status conferences.

(b) In any complex case or other action which the Court deems applicable, a status conference may be scheduled by the Court for purposes of discussing the following, including but not limited to:

1. The facts of the case;
2. The status of discovery and what discovery is anticipated in the case;
3. Any novel legal questions which are or may be at issue in the case;
4. The status of the settlement demand and any responsive offers; and
5. Setting of discovery deadlines.

(c) Status conferences shall be scheduled upon request of the parties or in the discretion of the Court after the pleadings are closed.

(d) Subsequent to the status conference, the Court may issue any Order deemed necessary providing counsel with dates and times for any future proceedings that may be required.

(e) No written narratives need be filed for status conferences.

**Rule 365. Pretrial Procedure.**

I.

A. Pretrial conferences shall be scheduled in accordance with the Civil Case Management rules, or at the direction of the trial Judge.

B. The pretrial Judge shall generally be the trial judge.

C. Notice of the pretrial conference shall be contained within an order issued by the trial judge. Notice shall be provided, in most cases, at least thirty (30) days in advance of the pretrial.

D. Narratives shall be required for the first pretrial and shall be filed fifteen (15) days prior to the date of conference.

E. The narrative shall contain the following:

1. A brief summary of the facts;
2. All items of economic damages which the Plaintiff intends to prove, including medical bills, property damage bills and loss of earnings;
3. The names and addresses of all persons who may be called as witnesses, classifying them as liability and/or damage witnesses;
4. Copies of all reports of any expert who treated, examined, or was consulted in connection with the injuries complained of, and who may be called as an expert witness;
5. Copies of all reports of any expert whose opinion will be offered in evidence at the time of trial. Such reports shall include the findings and conclusions of the expert;
6. Any special legal or evidentiary issues;
7. The estimated length of trial;
8. Any scheduling problems;
9. The settlement demand and any responsive offers; and
10. A list of exhibits anticipated to be used at the time of trial.

F. At least one week prior to the time fixed for the pretrial conference, all parties shall confer and consult with each other as often as may be necessary for the following purposes:

1. To explore in every respect the possibility of settlement, including exchange of good faith demand and offer; and
2. To consider the factual and legal issues involved.

G. Supplements to a written pretrial memorandum may be filed by any party after their original pretrial memorandum has been filed. However, no supplemental pretrial may be filed later than thirty (30) days prior to the scheduled jury selection. Should any party need additional time for preparation or discovery as a result of a supplemental pretrial memorandum being filed, a petition must be promptly filed with the Court seeking such an extension of time prior to the scheduled trial date.

H. Any narrative and/or supplement not timely filed may result in a fine and a copy of the sanctioning order shall be sent to the litigants by the Court.

II.

Counsel attending the pretrial conference must have complete authority to stipulate regarding items of evi-

dence and admissions, and must have full settlement authority. Counsel shall have the client and/or those with settlement authority available either in person or by phone for consultations regarding settlement.

### III.

At the pretrial conference, counsel shall be prepared to discuss fully with the Court the possibility of settlement of the case. At the conclusion of the conference, the judge shall make an order reciting the actions taken at the conference, including: the agreements made by the parties as to any of the matters considered, the issues of trial, and the admissions of fact obtained at the conference. The pretrial conference Order shall include a date for the filing of any pretrial motions and supporting briefs, voir dire questions, and a scheduled date for argument relative thereto.

### IV.

Motions for Summary Judgment, consolidation, bifurcation, and severance must be made at least 30 days before the date of the pretrial conference.

Such motions generally require a decision before meaningful progress can be made in preparing a case for trial or negotiating a resolution to the lawsuit. It is the preference of the Court to resolve these matters prior to the pretrial conference if possible.

#### **Rule 375. Discontinuance.**

(a) Any discontinuance of an action shall be in accordance with Pennsylvania Rules of Civil Procedure and therefore entered by praecipe for discontinuance upon the docket of said action by a Plaintiff or by an attorney for the Plaintiff at the Plaintiff's direction. A discontinuance may also be entered by a written direction to the Prothonotary signed by the Plaintiff's attorney or by the Plaintiff, if duly notarized, and the same shall be accepted by the Prothonotary if all costs due the Prothonotary have been paid.

(b) Counsel shall provide a copy of any praecipe for discontinuance to the Court Administrator's Office simultaneous with providing the original to the Prothonotary's Office in order for scheduled matters to be promptly removed from the Court schedule so that counsel's appearance will not be expected by the Court. Any written direction to the Prothonotary complying with this rule may be sent to the Prothonotary by mail and shall be accepted for filing.

(c) Failure of Plaintiff's counsel of record to file a praecipe for discontinuance upon the settlement or withdrawal of such action shall result in a fine of up to One Hundred (\$100.00) Dollars within the discretion of the Court and/or a hearing will be set for the attorney to explain the reasons for their failure to discontinue the action. Their client(s) must also attend.

#### **Rule 1301. Arbitration.**

##### 1. Cases for Submission:

a. *By the Court Administrator*—The Court Administrator, through Civil Case Management, will schedule all Civil Cases which are at issue wherein the amount in controversy (exclusive of interest and costs) shall be Twenty-five Thousand Dollars (\$25,000.00) or less, per the pleadings. This includes all appeals from a civil judgment of District Justices, except those involving title to real estate or actions in equity. The above cases identified shall be submitted to, heard and decided by a Board of Arbitration, consisting of three (3) members of the Bar of the Court of Common Pleas to be selected as hereinafter provided.

b. *By the Parties*—Cases, whether or not at issue, regardless of amount or subject in controversy, may be referred to a Board of Arbitration by Agreement of Reference signed by all parties or their counsel, and may contain stipulations with respect to facts submitted or agreed upon or defenses waived. In such cases, the Agreement of Reference shall take the place of the pleading in the case and shall be filed of record.

c. *By Arbitration Certificate of Readiness*—Counsel for either party may prepare and file with the Prothonotary an Arbitration Certificate of Readiness as hereinafter set forth. Certificate of Readiness forms shall be prescribed by the Court and obtained from the Court Administrator's Office. Counsel and/or pro se parties shall serve a copy of the Certificate of Readiness on each party and attorney of record.

d. *By the Court*—Cases may be referred to arbitration where the Court is satisfied that the matter involves Twenty-five Thousand Dollars (\$25,000.00) or less, in accordance with Pa.R.C.P. § 1021(d).

#### **Rule 1302A. Arbitrators.**

Arbitrators will be selected from a Court-approved list after consultation with the Bar. No attorneys from the same law firm or office will serve on the same panel. One attorney will serve as the Case Manager, as designated by the Court.

a. Three (3) attorneys will serve on one panel. There will be weekly panels selected each year. Panels will meet on Thursdays in the designated Courtroom. The Case Manager will be responsible for:

1. Assuring readiness for arbitration—discovery completion, outstanding motions status.
2. Reviewing estimated trial time.
3. Discussing and encouraging resolution through pro bono mediation or other forms of alternative dispute resolution prior to hearing.

b. Following receipt of assigned case list, the Case Manager will contact the attorneys and/or parties in each case within ten (10) days after receiving the assignment.

c. The Case Manager shall obtain files and award forms from the Court Administrator and return files and awards to the Court Administrator, who files the awards with the Prothonotary.

d. The Case Manager will swear in the panel and take the oath.

e. Substitutions for panel members will be processed by the Court Administrator, who will secure a Court Order naming any substitute panel member.

#### **Rule 1303A. Hearings.**

All hearings shall be held in the Courthouse unless necessity dictates otherwise.

a. Counsel shall work diligently to assure settlements will be reached prior to the arbitration hearing. Earlier agreements allow for more efficient use of everyone's time.

b. In the event of a settlement agreement reached prior to hearing date, Plaintiff's counsel shall notify the Case Manager in writing before the hearing date. Otherwise, the Plaintiff will be charged arbitrators' fees for the total arbitration panel.

c. In the event both sides fail to appear for any reason without a continuance having been granted, each party shall be responsible proportionately for the arbitrators'

fees. Said fees must be paid to the Prothonotary within thirty (30) days from date of the scheduled arbitration. Fees will be established by the Court.

**Rule 1304 and 1305. Conduct of Hearing.**

a. The Board of Arbitrators shall conduct the hearing in accordance with Pa.R.C.P. 1304 and 1305.

b. Every document submitted, pursuant to Rule 1305(b) of the Pennsylvania Rules of Civil Procedure, shall state the name and present address of the individual or entity who provided the information contained in the document.

c. The Arbitration Case Manager does not have the duty or power to grant any continuance. Continuances are filed through the Court Administrator and may only be granted by the Court.

d. The panel is to be sworn in by the Case Manager who will also take the oath at the same time as the panel (in accordance with the Pa.R.C.P. 1302).

**Rule 1308. Appeal. Arbitrator's Compensation. Notice.**

a. Appeals from an award of a Board of Arbitrators shall be in conformity with Pa.R.C.P. 1308.

b. The Court of Common Pleas will establish the amount of compensation for arbitrators by Court Order. The members of the panel shall not be entitled to receive their fees until after filing the award with the Court Administrator.

c. Attorneys of record or parties who have no attorney shall be notified of an award of a Board of Arbitrators by the Prothonotary, in conformity with Pa.R.C.P. 1307.

In all other respects not clarified or established herein, the Pennsylvania Rules of Civil Procedure for Compulsory Arbitration (Rule 1301 et seq) shall be applicable. A copy of these rules is available in the Blair County Law Library.

[Pa.B. Doc. No. 98-328. Filed for public inspection February 27, 1998, 9:00 a.m.]

**WESTMORELAND COUNTY  
Orphans' Court Division**

**Order of Court**

And Now, to-wit this 12th day of February, 1998, it is Hereby Ordered, Adjudged and Decried that the following changes in the Westmoreland County Orphans' Court Rules are adopted effective March 30, 1998:

1. Rule WO102(d) is adopted.
2. Rule WO117 section (f) is rescinded and new sections (f) through (h) are adopted.
3. Rules WO405 and WO406 are renumbered as WO406 and WO407 respectively.
4. New Rule WO405 is adopted.

By the Court

BERNARD F. SCHERER,  
President Judge

(Rule WO102 is amended by adding the following subsection.)

**Rule WO102.**

\* \* \* \* \*

**(d) Audit Hearings**

A petition setting forth relevant facts in the format established by the court, together with a proposed Decree of Distribution where applicable, shall be presented to the court. When the petition and proposed Decree are given to the Court Administrator, Orphans' Court Division, prior to the audit day, attendance at the audit by counsel or personal representatives will not be required unless there are specific matters to be addressed at the audit.

Revised February 12, 1998; effective March 30, 1998.

(Rule WO117 is amended by deleting current subsection f and adding new subsections f through h)

**Rule WO117.**

\* \* \* \* \*

**(f) Notice**

Notice of the filing of the account shall be sent to all interested parties at least 20 days prior to the date set for audit. If the court finds that notice has not been timely given, the audit may be continued to the next audit date.

Cross References: 20 Pa.C.S.A. § 3503; Pennsylvania Orphans' Court Rule 6.3

Explanatory Comment: "Interested parties" includes all beneficiaries, heirs and creditors who have not received payment in full, and any other persons who are likely to be affected by the adjudication. It is usually not necessary to notify specific legatees who have received satisfaction in full of their legacies prior to the filing of the account, and creditors who have been paid in full.

**(g) Confirmation**

All accounts will be confirmed nisi as of course on the last court day which is at least 10 days prior to the date established for audit.

Explanatory Comment: Audits have traditionally been held on Tuesdays. Accounts scheduled for audit on Tuesday will be confirmed nisi on the Friday which is eleven days prior to the audit.

**(h) Objections**

Objections to an account must be submitted to the court in writing on or before the date and time set for audit. A copy of the objections shall be provided to counsel for the estate, or the personal representative where there is no counsel of record, and to every other party who has entered an appearance who may be affected by the objection. Revised February 12, 1998; effective March 30, 1998.

(Current Rules WO405 AND WO406 are renumbered as WO406 and WO407 respectively. New Rule WO405 is added as follows):

Revised February 12, 1998; effective March 30, 1998

**Rule WO405. Petitions for Distribution.**

(a) A Petition for Distribution shall contain the caption for the Estate, be addressed to the presiding judge of the Orphans' Court Division of the Court of Common Pleas of Westmoreland County, Pennsylvania, and shall contain information in paragraphs numbered as follows:

(1) The date of death of decedent, whether decedent died testate or intestate, and the city, county and state of domicile (and country if not domiciled in the United States).

(2) The type of letters granted (testamentary or of administration, etc.), date of grant and if with or without bond.

(3) The newspaper and legal journal where letters were advertised, the date of the first complete advertisement, and an averment that this date was more than four months before the filing of the account. Proofs of publication shall be attached as Exhibit "A."

(4) Whether within three months after the grant of letters written notice was sent to I) any corporations and associations named as beneficiaries in the will; ii) the Commonwealth or political subdivision having a claim for maintaining the decedent in an institution where death occurred [see §§ 3330 and 3393 of the PEF Code]; and iii) beneficiaries and intestate heirs as required by Rule 5.6 of the Pennsylvania Orphans' Court Rules.

(5) (a) Whether decedent was married and if so, to whom.

(b) Whether the spouse survived, and date of death of the spouse if applicable.

(c) Whether there is an election by the surviving spouse. A copy of any election to take under or against a will shall be attached as an exhibit.

(6) Whether the decedent married and/or children were born to or lawfully adopted by the decedent after the execution of the will or codicil; if so, relevant names and dates.

(7) Whether there is a claim for the family exemption, the amount of the claim, by whom claimed, and whether the same has been set aside. Attach as an exhibit a copy of any claim which has been filed.

(8) Whether the estate is subject to Federal Estate Tax; if so, whether it has been paid and whether a closing letter has been received. Attach as an exhibit a copy of any closing letter received.

(9) Whether the estate is subject to Pennsylvania Inheritance Tax; if so, whether it has been paid and whether a Notice of Inheritance Tax Appraisal has been received. Attach as an exhibit a copy of any Notice received.

(10) Whether the estate is subject to Pennsylvania Estate tax; if so, whether it has been paid and whether an Estate Tax Determination has been received. Attach as an exhibit a copy of any Determination received.

(11) An averment that written notice has been given of the filing of the account and of the time and date for audit to every unpaid creditor who has given written notice of his claim to the petitioner or to the petitioner's attorney of record, together with a list of all unpaid creditors, the amounts of their claims, the category of claim under § 3392 of the PEF Code, and the extent to which their claims are admitted.

(12) Whether a charitable interest is involved; if so, whether notice was given to the Attorney General as required by Rule 5.5 of the Pennsylvania Orphans' Court Rules, and whether a response has been received. Attach as an exhibit a copy of any response.

(13) Whether the decedent was an inmate of a public institution; if so, an averment that a copy of the account, certified by counsel, was filed with the Pennsylvania Department of Revenue in accordance with Rule 6.7 of the Pennsylvania Orphans' Court Rules.

(14) Whether the decedent was a veteran or the child of a veteran entitled to benefits; if so, an averment that a copy of the account, certified by counsel, was filed with

the United States Veterans Administration in accordance with Rule 6.8 of the Pennsylvania Orphans' Court Rules.

(15) Whether the decedent received medical assistance after August 15, 1994; if so, whether the Department of Public Welfare has been given notice in accordance with the provisions of 62 Pa.C.S.A. § 1412.

(16) An averment that all parties, other than creditors, known to have an interest in the estate as unpaid heirs or beneficiaries, were given written notice of the filing of the account and of the time and date for audit at least twenty days prior to the date for audit. If such notice was not given, explain the circumstances in detail.

(17) (a) The names of any parties not sui juris and not represented.

(b) The names of any parties in the military service of the United States.

(c) Any entities (estates, guardianships, etc.) of which the decedent was a fiduciary at the time of death.

(18) Whether there is a partial or entire intestacy. Explain as necessary.

(19) The names and addresses of all persons having any interest as devisees, legatees or heirs, with the names of parents where necessary to show relationship.

(20) A statement of all changes in distribution under the will, resulting from the death of persons named as beneficiaries therein, election to take against the will or otherwise, together with the date of death of any such beneficiary.

(21) Whether any elections to take in kind have been made. Attach as an exhibit any such elections.

(22) An averment that no distribution has been made other than that appearing in the account or in the petition for distribution. Attach as an exhibit receipts for all distributions, or explain why any are omitted.

(23) An averment that all personal representatives are petitioners; or the names of and the circumstances surrounding those who have not joined as petitioners, attaching as an exhibit a copy of any written notice they have been given of the filing of the account and of the audit.

(24) A statement of all changes occurring since the filing of the account, including assets and income received, and disbursements and distributions made. Where there are more than a few items, they may be attached as exhibits rather than listed in the petition.

(25) The net balance and the kind, form, and character of the property to be distributed. Real estate shall be described in an exhibit as a proposed "Certificate of Award of Real Estate in Distribution" appropriately captioned and containing the names and addresses of the distributees, the nature of their interests where there is more than one distributee, a full description of the real estate to be distributed, and the value of each parcel to be distributed.

(26) Any other matters requiring adjudication.

(27) A request that a distribution be made by the Court in accordance with the proposed Decree of Distribution, which shall be submitted with the Petition.

(b) The petition shall be signed and verified by the personal representatives, and shall indicate their capacity.



Cross Reference: 20 Pa.C.S.A § 3513; Pennsylvania Orphans' Court Rule 6.9.

Revised February 12, 1998; effective March 30, 1998.

[Pa.B. Doc. No. 98-329. Filed for public inspection February 27, 1998, 9:00 a.m.]

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## DISCIPLINARY BOARD OF THE SUPREME COURT

### Notice of Disbarment

Notice is hereby given that William H. Proctor, who resides outside the Commonwealth of Pennsylvania, having been disbarred from the practice of law in the State of Maryland, the Supreme Court of Pennsylvania issued an Order dated February 10, 1998, disbaring William H. Proctor from the Bar of this Commonwealth. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney has never practiced in Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

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

[Pa.B. Doc. No. 98-330. Filed for public inspection February 27, 1998, 9:00 a.m.]

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### Notice of Suspension

Notice is hereby given that James P. Gittens, who resides outside the Commonwealth of Pennsylvania, having been placed on indefinite temporary suspension from the practice of law in the District of Columbia on December 19, 1994, the Supreme Court of Pennsylvania issued an Order dated February 10, 1998, placing James P. Gittens on indefinite temporary suspension from the Bar of this Commonwealth. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney has never practiced in Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

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

[Pa.B. Doc. No. 98-331. Filed for public inspection February 27, 1998, 9:00 a.m.]

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