

THE COURTS

Title 201—RULES OF JUDICIAL ADMINISTRATION

[201 PA. CODE CH. 50]

Pennsylvania Rules of Judicial Administration
Nos. 5000, Et Seq.; No. 204 Judicial Administration Doc. No. 1

Order

Per Curiam:

And Now, this 17th day of March, 1999,

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

Pending further Order of this Court or amendment of the Pennsylvania Rules of Judicial Administration Nos. 5000, et seq. (Uniform Rules Governing Court Reporting And Transcripts), except in capital cases, the record on appeal shall include either a transcript of proceedings in the format set forth in Pennsylvania Rule of Judicial Administration No. 5000.8 or a condensed transcript. A condensed transcript is a transcript of proceedings reduced so that four pages of notes of testimony are included on a single page. Lines of testimony shall be numbered down the left side. The size of lettering for a condensed transcript shall not be less than ten points. Two-sided copying will be permitted.

This Order has been approved without publication in the interest of justice and efficient administration pursuant to Pennsylvania Rule of Judicial Administration No. 103(a)(3), (b), and shall be effective immediately.

[Pa.B. Doc. No. 99-530. Filed for public inspection April 2, 1999, 9:00 a.m.]

Title 210—APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

[210 PA. CODE CH. 3]

Title 231—RULES OF CIVIL PROCEDURE

PART II. ORPHANS' COURT RULES

[231 PA. CODE PART II]

Proposed Amendments to Pa.R.A.P. 341 and Orphans' Court Rule 7.1; Joint Recommendation 98-1

The Appellate Court Procedural Rules Committee proposes to amend Rule 341 of the Pennsylvania Rules of Appellate Procedure, together with Rule 7.1 of the Orphans' Court Rules. The proposed amendments are being submitted to the bench and bar for comments and suggestions prior to their submission to the Supreme Court.

All communications in reference to the proposed amendments should be sent not later than May 14, 1999 to the Appellate Court Procedural Rules Committee or the Orphans' Court Procedural Rules Committee, P. O. Box 447, Ridley Park, PA 19078-0447.

The Explanatory Comment which appears in connection with the proposed amendments has been inserted by the Committee for the convenience of the bench and bar. It will not constitute part of the rules nor will it be officially adopted or promulgated by the Court.

By the Appellate Court Procedural Rules Committee

HONORABLE JOSEPH M. AUGELLO,
Chair

By the Orphans' Court Procedural Rules Committee

HONORABLE JANE CUTLER GREENSPAN,
Chair

Explanatory Comment

Proposed Joint Recommendation of The Orphans' Court Procedural Rules Committee and The Appellate Court Procedural Rules Committee

The following is a Joint Recommendation made by the Orphans' Court Procedural Rules Committee and the Appellate Court Procedural Rules Committee. The proposed Recommendation would amend Orphans' Court Rule 7 (Exceptions) to require a party to file exceptions from an otherwise final order of the Orphan's Court in order to preserve issues for appeal; and would amend Pa.R.A.P. 341 by redefining final orders in Orphans' Court proceedings to include orders determining an interest in realty or personalty or determining the status of an individual without regard to whether the order ends the case as to all claims or parties. The following is an explanation of the proposed Joint Recommendation.

Summary of Proposed Amendment To Pa.R.A.P. 341

Subdivision (b) of Rule 341 currently defines final orders as orders that dispose of all claims and of all parties, orders expressly defined as final by statute, or orders entered as final pursuant to subdivision (c) (requiring an express determination by the trial court that an immediate appeal of an order dismissing less than all claims and parties would facilitate resolution of the entire case.)

The proposed amendment adding subdivision (f) provides:

In addition to final orders pursuant to subdivision (b), an order of the Orphans' Court Division determining: (1) an interest in realty or personalty or (2) the status of individuals or entities shall constitute a final order upon determination of finality by the Orphan's Court judge.

The proposed amendment would allow for an immediate appeal from orders determining realty or personalty, at the sole discretion of the Orphan's Court judge.

The following sections address the problems which have led to the Joint Recommendation.

Summary of Proposed Amendments to Orphans' Court Rules 7.1 and 7.3

Rule 7.1 Exceptions

The proposed amendment would replace Rule 7.1 governing exceptions to make exceptions mandatory in order to preserve issues for appeal. Under the current rule,

exceptions are only required where mandated by local rule and in some counties may be required following entry of otherwise interlocutory orders. Under the proposed new Rule, exceptions would only be permitted with respect to final orders under subdivision (b) of Pa.R.A.P. 341 which, under the proposed new subdivision (f), would or could include orders determining an interest in realty or personalty or the status of individuals. A party would not be permitted to file exceptions to interlocutory orders appealable as of right (Pa.R.A.P. 311), interlocutory orders appealable by permission (Pa.R.A.P. 312), collateral orders (Pa.R.A.P. 313) or orders certified for immediate appeal under Pa.R.A.P. 341(c).

The proposed amendment to Orphans' Court Rule 7 would drastically alter existing practice which leaves to the local courts the right to require (or to not require) exceptions. It is warranted because of the need for uniformity in practice.

Rule 7.1 would provide for a 120 day limit for the Orphan's Court to decide exceptions. Failure to decide would result in a deemed denial. This is a modification from the proposal originally considered by the Committees which would have set a 60 day time limit subject to one 60 day extension. The Orphans' Court Procedural Rules Committee decided to increase the proposed time limit for decision to be consistent with the time limit set by Pa.R.A.P. 227 for decisions on post-trial motions. With respect to the procedure to be followed after a "deemed denial," see Pa.R.A.P. 301(d).

The proposed amendment to Rule 7.1 would make exceptions the exclusive method of review by the Orphans' Court of its orders. A party would not be able to file a motion for reconsideration. See proposed subdivision (e) to proposed Rule 7.1.

Rule 7.3

New Rule 7.3 would address the question of transcripts and would require a party filing exceptions to make a request for that portion of the transcript necessary for the Orphan's Court to dispose of the exceptions. This proposed new rule would be consistent with Pa.R.A.P. 1911 (Order for Transcript).

The proposed amendment conforms the practice with respect to obtaining transcripts with the civil practice pursuant to Pa.R.C.P. 227.3.

The Finality Problem (Pa.R.A.P. 341)—What Is An Appealable Order?

Prior to the 1992 amendments to Rule 341 of the Rules of Appellate Procedure, a final order was incapable of precise definition. The appellate courts permitted appeals on a case by case basis where the court determined that the order had a "final aspect." This "final aspect" doctrine was particularly useful in Orphans' Court practice because estate and trust administration inevitably results in many orders which do not end the entire administration process but which effectively dispose of property or irrevocably alter beneficiaries' or other parties' rights. This is also true in matters, like guardianship where orders may affect an individual's legal status. The collateral order doctrine provided an additional common law vehicle to allow appeals from orders which were not truly final and did not fall under the specific enumerated categories for an immediate appeal as of right under Pa.R.A.P. 311. Collateral orders were defined by case law as orders determining rights collateral to the main cause of action and which might be irretrievably lost if review were postponed until the termination of the case.

To simplify the process, the 1992 amendments redefined a final order to include only orders that end a case as to all claims and all parties. See Pa.R.A.P. 341. Collateral orders were acknowledged under new Pa.R.A.P. 313, but continued to be defined by the case law. It is impossible to catalog each and every type of order which would fall within the collateral order doctrine and its definition has been subject to diverse interpretation in the appellate courts.

The 1992 amendments to Rule 341 have reduced delay in achieving final resolution of disputes without causing substantial harm to parties aggrieved by orders previously appealable as final pursuant to the final aspect doctrine. Unfortunately, however, strict finality is difficult to achieve in estate administration where a single estate or trust may involve sale or other disposition of numerous pieces of real or personal property over a period of years. Moreover, other Orphans' Court matters, like guardianship, may involve a series of orders over time, each of which would substantially affect individual rights.

Prior to 1992, personal representatives, guardians and trustees typically sought the "comfort and finality" of judicial approval of sales, mortgages, leases and options of estate property under Section 548 of the Fiduciaries Act of 1949, now Section 3353 of the Probate, Estates and Fiduciaries Code (P.E.F. Code). See Houston, *Fiduciary Review*, June, 1997. Immediate appeal of such orders would have been permissible under the final aspect doctrine which then controlled.

The P.E.F. Code includes authorization for the personal representative to take action which would dispose of or resolve property interest with respect to a portion of an estate, including:

§ 3314 Order authorizing continuation of business including designation of portion of estate subject to business operation liabilities;

§ 3315 Order authorizing incorporation of decedent's business;

§ 3323 Order approving compromise of controversy;

§ 3328 Order directing exercise or non-exercise of powers where fiduciaries are evenly divided on the issue;

§ 3352 Order approving lease for term exceeding one year;

§ 3353 Order approving sale, mortgage, lease or option of estate property;

§ 3355 Order restraining sale by personal representative;

§ 3356 Order approving fiduciary's purchase, taking mortgage on, lease or exchange of real or personal property of the estate;

§ 3390 Order for specific performance of agreement to sell real or personal property; and,

§ 3706 Order apportioning Federal estate tax and enforcing contribution.

It has been argued that the authority granted under these sections of the P.E.F. Code is worthless if the personal representative faces second guessing on appeal at the time of the termination of the estate administration which, in many cases, will not take place until years after the order is entered. Moreover, potential purchasers and others doing business with the estate may be reluctant to pay full market value for property subject to such belated appeals.

The immediate appealability of such orders, even where there has been no final accounting of a personal representative, is necessary. Otherwise, it may be impossible for the personal representative to dispose of assets in an orderly manner. Every sale, mortgage, lease or option would remain uncertain, perhaps for years, until the entire estate has been resolved and a final account approved by the Orphan's Court. Under such uncertain conditions, it is difficult for a personal representative to dispose of estate property in a manner consistent with the interests of beneficiaries.

The problem is illustrated by *Habazin Estate*, 679 A.2d 1293 (Pa.Super. 1996), a recent panel decision of the Superior Court. It appropriately held under present Pa.R.A.P. 341 that an order approving the sale of real estate to one of three children executors was interlocutory and not subject to appeal by the remaining executors. The panel in *Habazin* further determined that such an order would not be appealable under Pa.R.A.P. 342 because there was neither an order of distribution, nor a certification by the trial court that "the order is sufficiently definite to determine the substantial issues between the parties." While this decision was technically correct under the existing appellate rules, it illustrates the problem described above.

Shortly after *Habazin*, another Superior Court panel reached a different, and perhaps contradictory result in *Estate of Petro*, 694 A.2d 627 (Pa.Super. 1997). In *Petro*, an administrator's appeal from an order denying his petition for the return of property to the estate was allowed by Superior Court under the collateral order doctrine. While the panel probably reached a sound practical result, use of the collateral order doctrine, which constitutes a discrete exception to the final order doctrine, may have been an inappropriate procedural device for addressing orders such as the one considered in *Habazin* and *Petro*. Such orders typically are not separable from the main cause of action and, as such, fail to satisfy the first prong of the collateral doctrine. See Pa.R.A.P. 313.

In many respects, petitions related to disposition of real or personal property in an estate pursuant to the Fiduciary Code are more closely akin to separate and distinct causes of action than to ancillary or collateral proceedings. Accordingly, the Committees have recommended that certain orders pursuant to the Code be treated as "final orders" rather than as interlocutory orders appealable as of right.

When Are Exceptions Required? (Orphans' Court Rule 7) The Waiver and Uniformity Problems.

The Waiver Problem

If exceptions are required by local rule and an aggrieved party does not file them, issues are not preserved for appeal. See *In Re Estate of Volkhardt*, 484 Pa. 52, 398 A.2d 656 (1979). Consequently, if exceptions are filed to a final appealable order and an appeal is not filed within 30 days of the underlying order, the appeal is untimely and will be quashed. See *Johnson v. Johnson*, 515 A.2d 960 (Pa.Super. 1986). In *The Matter of Edward James Waldron*, 669 A.2d 415 (Pa.Super. 1995) (unpublished memorandum opinion), the trial court refused to hear exceptions to an order appointing a plenary guardian. Appellee moved to quash an appeal from the guardianship order on the ground that it was untimely because appellant should have appealed immediately instead of filing exceptions. The Superior Court refused to quash the appeal. Instead, it remanded to the trial court for disposition on the exceptions and entry of a final decree. The

Waldron case exemplifies the pitfalls of current exceptions' practice for several reasons. It illustrates the risk of waiver that a party takes when deciding whether exceptions are required or not.

The Uniformity Problem

The *Waldron* case also illustrates that, ultimately, even the local rules are subject to interpretation by the appellate courts. In *Waldron* a panel of Superior Court reversed the Orphan's Court's interpretation of its own local rule. The lack of statewide uniformity has made it challenging and costly to lawyers with multi-county practices and has increased the likelihood of inadvertent waiver as a result of misinterpretation of local rules. Moreover, the lack of uniformity makes it difficult to draw statewide conclusions from appellate decisions which interpret different local rules governing exceptions. It is significant that the civil and criminal procedural rules mandate a uniform statewide practice pertaining to post-trial motions within their respective subject matter. See Pa.R.C.P. 227 and Pa.R.Crim.P. 1410 and 1411. The proposed recommendation provides for uniformity and certainty with respect to when exceptions are required in Orphans' Court matters.

Annex A

**TITLE 210. APPELLATE PROCEDURE
PART I. RULES OF APPELLATE PROCEDURE
ARTICLE I. PRELIMINARY PROVISIONS
CHAPTER 3. ORDERS FROM WHICH APPEALS
MAY BE TAKEN
FINAL ORDERS**

Rule 341. Final Orders; Generally.

* * * * *

(f) Orphans' Court Division Final Orders. In addition to final orders pursuant to subdivision (b), an order of the Orphans' Court Division determining: (1) an interest in realty or personalty or (2) the status of individuals or entities shall constitute a final order determination of finality by the Orphans' Court judge.

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[Rule 342. Final Distribution Orders.

An appeal may be taken as of right from any order of distribution entered in an orphan's court division which is not final within the meaning of Rule 341 (final orders generally) if the lower court shall certify that the order is sufficiently definite to determine the substantial issues between the parties.]

**TITLE 231. RULES OF CIVIL PROCEDURE
PART II. ORPHANS' COURT RULES
RULE 7. EXCEPTIONS**

Rule 7.1 is deleted in its entirety and replaced with the following:

Rule 7.1. Post-Trial Practice.

(a) General Rule. No later than twenty (20) days after entry of an order, decree or adjudication, a party may file exceptions to any order, decree or adjudication which would become a final appealable order under Pa.R.A.P. 341(b) or (f) following disposition of the exceptions. No appeal shall be filed until the disposition of exceptions.

(b) *Waiver.* Exceptions may not be sustained unless the grounds are specified in the exceptions and were raised in pretrial proceedings or by petition, answer, claim, objection, offer of proof or other appropriate method and are specified in the exceptions. Grounds not specified in the exceptions and not previously raised are deemed waived unless the interest of justice requires otherwise.

(c) *Time for Filing Exceptions.* If a party files timely exceptions, any other party may file cross exceptions within ten (10) days after the final exceptions.

(d) *Time Limits for Decision on Exceptions.* The judge shall decide exceptions including supplemental exceptions and cross exceptions within one hundred and twenty (120) days of the filing of the initial exceptions. If the judge fails to decide the exceptions within one hundred and twenty (120) days, the exceptions shall be deemed denied by operation of law on the one hundred and twenty first (121st) day and the clerk is directed to enter the deemed denial on the docket as of that date. The appeal period shall begin to run as of the one hundred and twenty first (121st) day.

(e) *Exceptions.* Exceptions shall be the exclusive procedure for review by the Orphans' Court of an order, decree or adjudication. A party may not file a motion for reconsideration.

Official Note: The 1999 amendment discontinues the prior practice not permitting local rules to govern whether exceptions are required after entry of an order, decree or adjudication. The 1999 amendment limits the filing of exceptions to order, decree or adjudication which are final appealable orders after disposition of exceptions under Pa.R.A.P. 341(b) or new subdivision (f) added by the parallel 1999 amendment to Pa.R.A.P. 341. If an aggrieved party appeals from such order, that appeal shall not affect proceedings with regard to other aspects of the case.

It is understood that failure to appeal may constitute a waiver of any issues in the order which the Judge has determined as final.

The 30 day appeal period pursuant to Pa.A.R.A.P. 903 from such final orders begins to run from the date of entry of an order disposing of exceptions or on the date of a deemed denial pursuant to subdivision (d) of this rule.

If an order would not become final within the definition of Pa.R.A.P. 341(b) or (f) following disposition of exceptions, then no exceptions may be filed until subsequent entry of a final order within the definition of Pa.R.A.P. 341(b) or (f). This will eliminate the practice in some counties of permitting issues to be raised by exception following entry of an otherwise interlocutory order and raising the same issues in exceptions to a final order, decree or adjudication. See, e.g., *Estate of McCutcheon*, 699 A.2d 746 (Pa.Super. 1997).

The 1999 amendments to this Rule and to Pa.R.A.P. 341 resolves the dilemma that the judiciary and litigants have faced in determining whether exceptions are required under local practice and which has required the appellate courts to determine whether issues have been preserved for appeal in accordance with the disparate rules throughout the Commonwealth. The prior practice

also made it difficult to draw conclusions as to whether an appellate decision constituted controlling authority on a statewide basis or whether the holding was based in whole or part on the vagaries of a local rule.

Local practice shall continue to govern with respect to place of filing, briefs, oral argument, courts en banc, etc. Neither Pa.R.C.P. 227.1 nor 1517 shall apply to Orphans' Court matters.

Rule 7.3. Transcript of Testimony.

All exceptions shall contain a request designating a portion of the record to be transcribed in order to enable the court to dispose of the exceptions. Within ten days after the filing of the exceptions, any other party may file an objection requesting that an additional, lesser or different portion of the record be transcribed. If no portion is indicated, the transcription of the record shall be deemed unnecessary to the disposition of the exceptions. The trial judge shall promptly decide the objection to the portion of the record to be transcribed.

[Pa.B. Doc. No. 99-531. Filed for public inspection April 2, 1999, 9:00 a.m.]

Title 225—RULES OF EVIDENCE

[225 PA. CODE ARTICLES IV, VI AND VIII]

Order Adopting Changes to Rules 410, 612, 613, 802 and 803; No. 218 Supreme Court Rules Doc. No. 1

Order

Per Curiam:

Now, this 23rd day of March, 1999, upon the recommendation of the Committee on Rules of Evidence; this Recommendation for technical and clerical changes 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 Rules of Evidence 410, 612, 613, 802, and 803 are hereby amended as follows.

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

Annex A

TITLE 225. RULES OF EVIDENCE

ARTICLE IV. RELEVANCY AND ITS LIMITS

Rule 410. Inadmissibility of Pleas, Plea Discussions and Related Statements.

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Comment

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In addition, Pa.R.E. 410 does not govern the admissibility of pleas in summary proceedings involving motor vehicle matters, which is addressed in 42 [Pa.C.S.A.] Pa.C.S. § 6142. § 6142 provides:

* * * * *

Official Note: Adopted May 8, 1998, effective October 1, 1998; Comment revised March 23, 1999, effective immediately.

Committee Explanatory Reports:

Final Report explaining the March 23, 1999 technical revisions of the Comment published with the Court's Order at 29 Pa.B. 1714 (April 3, 1999).

ARTICLE VI. WITNESSES

Rule 612. Writing or Other Item Used to Refresh Memory.

(a) *Right to Refresh Memory and Production of Refreshing Materials.*

A witness may use a writing or other item to refresh memory for the purpose of testifying. If the witness does so, either—

- (1) while testifying, or
- (2) before testifying, if the court in its discretion determines it is necessary in the interests of justice, **[an adverse party is entitled to have the writing or other item produced at the hearing, trial or deposition, to inspect it, to cross-examine the witness on it and to introduce in evidence those portions which relate to the testimony of the witness.]**

an adverse party is entitled to have the writing or other item produced at the hearing, trial or deposition, to inspect it, to cross-examine the witness on it and to introduce in evidence those portions that relate to the testimony of the witness.

* * * * *

Official Note: Adopted May 8, 1998, effective October 1, 1998; amended March 23, 1999, effective immediately.

Committee Explanatory Reports:

Final Report explaining the March 23, 1999 technical amendments to paragraph (a) published with the Court's Order at 29 Pa.B. 1714 (April 3, 1999).

Rule 613. Prior Statements of Witnesses.

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(b) *Extrinsic Evidence of Prior Inconsistent Statement of Witness.*

Unless the interests of justice otherwise require, extrinsic evidence of a prior inconsistent statement by a witness is admissible only if, during the examination of the witness,

- (1) the statement, if written, is shown to, or if not written, its contents are disclosed to, the witness;
- (2) the witness is given an opportunity to explain or deny the making of the statement; and
- (3) the **[opposite] opposing** party is given an opportunity to question the witness.

This section does not apply to admissions of a party-opponent as defined in Rule 803(25) (relating to admissions by a party opponent).

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Official Note: Adopted May 8, 1998, effective October 1, 1998; amended March 23, 1999, effective immediately.

Committee Explanatory Reports:

Final Report explaining the March 23, 1999 technical amendments to paragraph (b)(3) published with the Court's Order at 29 Pa.B. 1714 (April 3, 1999).

ARTICLE VIII. HEARSAY

Rule 802. Hearsay Rule.

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Comment

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Also, hearsay may be admitted pursuant to a state statute. Examples include:

- 1. A public record may be admitted pursuant to 42 **[Pa.C.S.A.] Pa.C.S. § 6104.** See Comment located at Pa.R.E. 803(8) [Not Adopted].
- 2. A record of vital statistics may be admitted pursuant to 35 **[Pa.C.S.A.] Pa.C.S. § 450.810.** See Comment located at Pa.R.E. 803(9) [Not Adopted].
- 3. In an action arising out of a contract under the Uniform Commercial Code, a document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher's or inspector's certificate, consular invoice, or any other document authorized or required by the contract to be issued by a third party, may be introduced as prima facie evidence of the document's own authenticity and of the facts stated therein by the third party, pursuant to 13 **[Pa.C.S.A.] Pa.C.S. § 1202.**
- 4. In a civil case, a deposition of a licensed physician may be admitted pursuant to 42 **[Pa.C.S.A.] Pa.C.S. § 5936.**
- 5. In a criminal case, a deposition of a witness may be admitted pursuant to 42 **[Pa.C.S.A.] Pa.C.S. § 5919.**
- 6. In a criminal case, an out-of-court statement of a witness under 13 years of age, describing certain kinds of sexual abuse, may be admitted pursuant to 42 **[Pa.C.S.A.] Pa.C.S. § 5985.1.**

[7. In a dependency hearing, an out-of-court statement of a witness under 14 years of age, describing certain types of sexual abuse, may be admitted pursuant to 42 Pa.C.S.A. § 5986.]

7. In a dependency hearing, an out-of-court statement of a witness under 14 years of age, describing certain types of sexual abuse, may be admitted pursuant to 42 Pa.C.S. § 5986.

7. In a dependency hearing, an out-of-court statement of a witness under 14 years of age, describing certain types of sexual abuse, may be admitted pursuant to 42 Pa.C.S.A. § 5986.]

[7. In a dependency hearing, an out-of-court statement of a witness under 14 years of age, describing certain types of sexual abuse, may be admitted pursuant to 42 Pa.C.S.A. § 5986.]

7. In a dependency hearing, an out-of-court statement of a witness under 14 years of age, describing certain types of sexual abuse, may be admitted pursuant to 42 Pa.C.S. § 5986.

8. In a prosecution for speeding under the Pennsylvania Vehicle Code, a certificate of accuracy of an electronic speed timing device (radar) from a calibration and testing station appointed by the Pennsylvania Department of Motor Vehicles may be admitted pursuant to 75 **[Pa.C.S.A.] Pa.C.S. § 3368(d).**

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Official Note: Adopted May 8, 1998, effective October 1, 1998; Comment revised March 23, 1999, effective immediately.

Committee Explanatory Reports:

Final Report explaining the March 23, 1999 technical revisions to the Comment published with the Court's Order at 29 Pa.B. 1714 (April 3, 1999).

Rule 803. Hearsay Exceptions; Availability of Declarant Immaterial.

The following statements, as hereinafter defined, are not excluded by the hearsay rule, even though the declarant is available as a witness:

* * * * *

(25) *Admission by Party-Opponent.*

The statement is offered against a party and is (A) the party's own statement in either an individual or a representative capacity, or (B) a statement of which the party has manifested an adoption or belief in its truth, or (C) a statement by a person authorized by the party to make a statement concerning the subject, or (D) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship, or (E) a statement by a [**coconspirator**] **co-conspirator** of a party during the course and in furtherance of the conspiracy. The contents of the statement may be considered but are not alone sufficient to establish the declarant's authority under subdivision (C), the agency or employment relationship and scope thereof under subdivision (D), or the existence of the conspiracy and the participation therein of the declarant and the party against whom the statement is offered under subdivision (E).

Comment

Pa.R.E. 803(25) differs from F.R.E. 801(d)(2), in that the word "shall" in the second sentence has been replaced with the word "may."

The federal rules call an admission by a party-opponent an exception to the definition of hearsay, and place it in [**rule**] **Rule 801** under the heading of "Definitions." The Pennsylvania rules, like the common law, call an admission by a party-opponent an exception to the hearsay rule. The Pennsylvania rules, therefore, place admissions by a party-opponent in Pa.R.E. 803 with other exceptions to the hearsay rule in which the availability of the declarant is immaterial. The difference between the federal and Pennsylvania formulations is organizational. It has no substantive effect.

The second sentence of Pa.R.E. 803(25), as amended, is consistent with Pennsylvania law. See *Commonwealth v. Smith*, 523 Pa. 577, 568 A.2d 600 (1989); *Commonwealth v. Dreibelbis*, 493 Pa. 466, 426 A.2d 1111 (1981).

The personal knowledge rule (Pa.R.E. 602) is not applicable to admissions. See *Salvitti v. Throppe*, 343 Pa. 642, 23 A.2d 445 (1942).

A. *Party's Own Statement.* The admissibility of a party's own statement offered against the party as an exception to the hearsay rule is consistent with Pennsylvania law. See *Salvitti v. Throppe*, supra.

B. *Adoptive Admission.* Pa.R.E. 803(25) [**(b)**] **(B)** is consistent with Pennsylvania law. See *Commonwealth v. Cheeks*, 429 Pa. 89, 239 A.2d 793 (1968)(party expressly adopted statement); *Commonwealth v. Coccioletti*, 493 Pa. 103, 425 A.2d 387 (1981) (party impliedly adopted statement by failing to deny the truth of a statement that party would be expected to deny under the circumstances).

* * * * *

E. *Statement by a Co-conspirator.* The admissibility of a statement by a [**coconspirator**] **co-conspirator** as provided by this rule is consistent with Pennsylvania law. See *Commonwealth v. Mayhue*, 536 Pa. 271, 639 A.2d 421 (1994); *Commonwealth v. Dreibelbis*, 493 Pa. 466, 426 A.2d 1111 (1981).

Official Note: Adopted May 8, 1998, effective October 1, 1998; Comment revised March 23, 1999, effective immediately.

Committee Explanatory Reports:

Final Report explaining the March 23, 1999 technical revisions to the Comment for paragraph 25 published with the Court's Order at 29 Pa.B. 1714 (April 3, 1999).

Final Report¹

*Amendments of Pa.Rs.E. 410, 612, 613, 802 and 803
Editorial Changes and Technical Corrections*

On March 23, 1999, upon the recommendation of the Committee on Rules of Evidence, the Supreme Court adopted changes to Pa.Rs.E. 410, 612, 613, 802, and 803, effective immediately. These changes correct some technical and clerical errors in the text or Comments to the Rules of Evidence that have come to the Committee's attention since the final printing of the rules following their adoption in 1998. In addition, the changes include a few other stylistic or editorial corrections that make the Rules of Evidence consistent with the Court's other rules. None of the rule changes are substantive in nature, but have been made to ensure that the errors do not create confusion concerning the interpretation of the rules. The rule changes are described below.

(1) The current citations to Pennsylvania statutes in the rules appear as "Pa.C.S.A." So that these citations in the Rules of Evidence will be consistent with the statutory citations in the Court's other rules, it was agreed that "Pa.C.S.A.," as used in the Rules of Evidence, should be replaced with "Pa.C.S." This change has been made in the rules that are the subject of the Court's March 23, 1999 Order. The citations in the remainder of the rules will be corrected when a rule is being amended for other reasons.

(2) The fourth paragraph of the Rule 410 Comment has been revised by adding "410" after "Pa.R.E." in the first line.

(3) Rule 612(a) has been amended by moving the last phrase of paragraph (a)(2) from (a)(2) into the text of paragraph (a). The change was made to make it clear that the concept expressed in the phrase applied to both paragraphs (a)(1) and (a)(2).

(4) Rule 613(b)(3) has been amended by changing "opposite" to "opposing."

(5) The margin of section seven of the third paragraph of the Comment to Rule 802 has been corrected.

(6) Paragraph (25) of Rule 803 has been amended by adding a hyphen to "co-conspirator" in the seventh line of text, and the correlative Comment has been revised by adding hyphens to "party-opponent" in the fourth line of

¹ 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.

the second paragraph and to "co-conspirator" in the first line of paragraph E.

[Pa.B. Doc. No. 99-532. Filed for public inspection April 2, 1999, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 2970]

Amendment of Note to Rule 2973.3(a); No. 308 Civil Procedural Rules Doc. No. 5

Order

Per Curiam:

And Now, this 19th day of March, 1999, the note to Pennsylvania Rule of Civil Procedure 2973.3(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. No. 103(b) and shall be effective July 1, 1999.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 2970. CONFESSION OF JUDGMENT FOR POSSESSION OF REAL PROPERTY

Rule 2973.3. Notice Served with Writ of Possession. Prompt Hearing Limited to Issue of Waiver of Due Process Rights.

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Official Note: If notice is served under this rule [at least thirty days prior to the filing of the praecipe] with the writ of possession, notice need not be given under Rule 2973.2.

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[Pa.B. Doc. No. 99-533. Filed for public inspection April 2, 1999, 9:00 a.m.]

PART I. GENERAL

[231 PA. CODE CH. 4000]

Amendment of Rule 4007.2 and Note to Rule 4001(a); No. 309 Civil Procedural Rules Doc. No. 5

Order

Per Curiam:

And Now, this 19th day of March, 1999, the Pennsylvania Rules of Civil Procedure are amended as follows:

1. Rule 4007.2 is amended to read as follows.

2. The note to Rule 4001(a) is amended to read as follows.

Whereas publication of proposed rulemaking would otherwise be required, it has been determined under Pennsylvania Rule of Judicial Administration No. 103(a)(3) that the immediate amendment of these rules is required in the interest of justice and efficient administration.

This Order shall be processed in accordance with Pennsylvania Rule of Judicial Administration No. 103(b) and shall be effective July 1, 1999.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 4000. DEPOSITIONS AND DISCOVERY

I. The preface to the Discovery Rules which immediately precedes Rule 4001 is amended to read as follows:

Explanatory Note

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Finally, the Rules are expressly made applicable to eminent domain proceedings. [**Leave of court is required**] They are also applicable in divorce and in support and custody proceedings to the extent provided by the rules governing those proceedings.

* * * * *

II. The note to Rule 4001(a) and the Explanatory Note to Rule 4001 are amended, and an Explanatory Note 1999 is added, to read as follows:

Rule 4001. Scope. Definitions.

* * * * *

Official Note: Rule 1701(b)(4) of the Pennsylvania Rules of Appellate Procedure permits a lower court to authorize the taking of depositions or the preservation of testimony in the interest of justice after an appeal is taken. The procedure under these rules is applicable to such depositions.

See Rule 1930.5 governing discovery in domestic relations matters and specifying when leave of court is and is not required. See also Rules 1910.9 and 1915.5(c) governing discovery in actions for support and custody, respectively.

Explanatory Note

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[**Prior to the 1968 Constitution, support proceedings were considered quasi-criminal and were docketed with the clerk of the Quarter Sessions Court. This applied to support proceedings brought pursuant to the complaint procedure of the Civil Procedural Support Law. After the consolidation of the former separate courts into a unified Common Pleas Court, lower courts were not agreed on the applicability of discovery in support proceedings.**

The amendment excludes any automatic right to discovery in support proceedings. The vast majority of support proceedings involve wage earners of relatively modest means. The present intake and conference procedures and questionnaires to employers supply the basic discovery needed as to earnings. The parties are generally familiar with the extent of each other's finances. Further discovery will not be needed in routine cases. To avoid

the possibility of a defendant spouse using discovery as a tool for harassment, abuse and delay, the amendment requires leave of court in all support proceedings. This should be freely given where it is essential to a just disposition of the matter.

Proceedings for custody of minor children are subject to the same provision for leave of court.

In actions for divorce, lower courts were divided as to the availability and extent of discovery. Some courts held that the bill of particulars procedure authorized by Divorce Rule 1128 was intended to supply all the discovery permitted. The amendment adopts a more flexible rule. With leave of court, the full scope of discovery is now available in divorce. In the vast majority of divorce actions, discovery may be unnecessary and will not be allowed. But where it is essential to the just disposition of a contested action, it should be freely granted.]

* * * * *

Explanatory Note—1999

Rule of Civil Procedure 4001(a) was amended in 1997 to eliminate reference to discovery in the domestic relations actions of support, custody of minor children and divorce or annulment of marriage. Discovery in those actions is governed by Rule 1930.5.

III. Rule 4007.2(a) and the Explanatory Note to Rule 4007.2 are amended, and an Explanatory Note 1999 is added, to read as follows:

Rule 4007.2. When Leave of Court Required.

(a) Except as provided by [Rules 4001(a) and] Rule 4003.5(a)(2) and by subdivisions (b) and (d) of this rule, a deposition may be taken without leave of court.

Official Note: See Rule 1930.5(a) providing that there shall be no discovery in specified domestic relations matters unless authorized by the court. See also Rules 1910.9 and 1915.5(c) governing discovery in actions for support and custody, respectively.

* * * * *

Explanatory Note

This Rule consolidates in one Rule various provisions for leave of court which are now scattered through the prior rules. It substantially follows present practice.

[As noted in the comment to Rule 4001, supra, which is incorporated by reference, leave of court

will be required in actions of support, divorce, and custody of minor children.] Rule 4003.5(a)(2), [also] incorporated by reference, requires leave of court for further examination of experts whose opinions or reports have already been disclosed in response to the interrogatories.

* * * * *

Explanatory Note—1999

Rule 4007.2(a) has been amended to delete the reference to Rule 4001(a). Rule 4001(a) was amended in 1997 by the deletion of the reference to domestic relations actions, the rules of which formerly contained a broad prohibition against discovery except upon leave of court. That broad prohibition has now been narrowed and discovery is available to the extent provided by Rule 1930.5 governing discovery in domestic relations matters generally and Rules 1910.9 and 1915.5 governing discovery in the actions of support and custody, respectively. At the same time, those rules continue to require leave of court in specified instances.

[Pa.B. Doc. No. 99-534. Filed for public inspection April 2, 1999, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Disbarment

Notice is hereby given that Steven M. Kramer, having been disbarred from the practice of law in the State of New York, the Supreme Court of Pennsylvania issued an Order dated March 15, 1999, disbaring Steven M. Kramer 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 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. 99-535. Filed for public inspection April 2, 1999, 9:00 a.m.]
