

# THE COURTS

## Title 225—RULES OF EVIDENCE

Comment

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[225 PA. CODE ARTICLES I and VI]

### Proposed Amendments to General Provisions; and Witnesses

The Committee on Rules of Evidence is planning to recommend that the Supreme Court of Pennsylvania approve the revision of the Comments to Rules of Evidence 103, 104, and 601. These Comment revisions are being proposed to alert the bench and bar to the per se rule created by the Supreme Court in *Commonwealth v. Washington* that child witness competency hearings are to be conducted outside the hearing of the jury. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's considerations in formulating this proposal. Please note that the Committee's 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 explanatory Reports.

The text of the proposed Comment revisions precedes the Report.

We request that interested persons submit suggestions, comments, or objections concerning this proposal to the Committee through counsel: Anne T. Panfil, Chief Staff Counsel, Supreme Court of Pennsylvania, Committee on Rules of Evidence, 5035 Ritter Road, Mechanicsburg, PA 17055, no later than Tuesday, June 1, 1999.

THOMAS C. RAUP,  
*Chair*

#### Annex A

#### TITLE 225. RULES OF EVIDENCE

#### ARTICLE I. GENERAL PROVISIONS

#### Rule 103. Rulings on Evidence.

\* \* \* \* \*

#### Comment

\* \* \* \* \*

Paragraphs 103(b) and (c) are identical to F.R.E. 103(b) and (c) and are consistent with Pennsylvania practice.

**Pa.R.E. 104(c) addresses hearings on preliminary questions outside the presence of the jury.**

\* \* \* \* \*

**Official Note: Adopted May 8, 1998, effective October 1, 1998; Comment revised \_\_\_\_\_, 1999, effective \_\_\_\_\_, 1999.**

\* \* \* \* \*

#### Committee Explanatory Reports:

Report explaining the proposed revision of the Comment adding a cross-reference to Pa.R.E. 104 published at 29 Pa.B. 2263 (May 1, 1999).

#### Rule 104. Preliminary Questions.

\* \* \* \* \*

The second sentence of paragraph 104(c) is identical to the second sentence of F.R.E. 104(c). Paragraph 104(c) indicates that hearings on other preliminary matters, both criminal and civil, shall be conducted outside the jury's presence when required by the interests of justice. Certainly, the court should conduct the hearing outside the presence of the jury when the court believes that it is necessary to prevent the jury from hearing prejudicial information. **See *Commonwealth v. Washington*, 722 A.2d 643 (Pa. 1998) (creating per se rule requiring the trial judge to conduct child witness competency hearings outside the presence of the jury).** The right of an accused to have his or her testimony on a preliminary matter taken outside the presence of the jury does not appear to have been discussed in Pennsylvania law.

Paragraph 104(d) is identical to F.R.E. 104(d). In general, when a party offers himself or herself as a witness, the party may be questioned on all relevant matters in the case. See *Agate v. Dunleavy*, 398 Pa. 26, 156 A.2d 530 (1959). Under Pa.R.E. 104(d), however, when the accused in a criminal case testifies only with regard to a preliminary matter; he or she may not be cross-examined as to other matters. Although there is no Pennsylvania authority on this point, it appears that this rule is consistent with Pennsylvania practice. This approach is consistent with paragraph 104(c) in that it is designed to preserve the defendant's right not to testify generally in the case.

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**Official Note: Adopted May 8, 1998, effective October 1, 1998; Comment revised \_\_\_\_\_, 1999, effective \_\_\_\_\_, 1999.**

#### Committee Explanatory Reports:

Report explaining the proposed revision of the Comment adding a citation to *Commonwealth v. Washington*, published at 29 Pa.B. 2263 (May 1, 1999).

#### ARTICLE VI. WITNESSES

#### Rule 601. Competency.

#### Comment

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Pa.R.E. 601(a) is consistent with Pennsylvania statutory law. 42 Pa.C.S. [A.] §§ 5911 and 5921 provide that all witnesses are competent except as otherwise provided. Pennsylvania statutory law provides several instances in which witnesses are incompetent. See, e.g., 42 Pa.C.S. [A.] § 5922 (persons convicted in a Pennsylvania court of perjury incompetent in civil cases); 42 Pa.C.S. [A.] § 5924 (spouses incompetent to testify against each other in civil cases with certain exceptions set out in 42 Pa.C.S. [A.] §§ 5925, 5926 and 5927); 42 Pa.C.S. [A.] §§ 5930—5933 and 20 Pa.C.S. [A.] § 2209 ("Dead Man's statutes").

\* \* \* \* \*

**See Pa.R.E. 104(c) which provides that certain hearings on preliminary questions, including com-**

petency, are to be conducted outside the presence of the jury.

**Official Note:** Adopted May 8, 1998, effective October 8, 1998; Comment revised \_\_\_\_\_, 1999, effective \_\_\_\_\_, 1999.

**Committee Explanatory Reports:**

**Report explaining the proposed revision of the Comment adding a cross-reference to Pa.R.E. 104 published at 29 Pa.B. 2263 (May 1, 1999).**

**Report**

*Proposed Revision of the Comments to Pa.Rs.E. 103, 104, and 601*

*HEARINGS OUTSIDE THE PRESENCE OF JURY;  
COMPETENCY*

The Committee is proposing the revision of the Comments to Rules of Evidence 103 (Rulings on Evidence), 104 (Preliminary Questions), and 601 (Competency). These revisions highlight the necessity of conducting certain hearings on preliminary questions, in particular competency questions, outside the hearing of the jury.

Since the Rules of Evidence became effective in October 1998, the Committee has been monitoring the new rules in practice, and the continuing development of evidence law in Pennsylvania. One recent case that the Committee has considered is *Commonwealth v. Washington*, 722 A.2d 643 (Pa. 1998), a case addressing the competency of a child witness to testify. The Court created a per se rule requiring that competency hearings are to be conducted outside the presence of the jury.

After reviewing *Washington, supra*, and the rules, the Committee agreed that the per se rule created by the Court falls within the parameters of Rule 104(c), which requires hearings on preliminary matters to be conducted outside the hearing of the jury "when the interests of justice require," and therefore a rule change is not necessary. The Committee majority also agreed that, as an aid to the bench and bar, this important procedural change in evidence law should be referenced in the Rule 104 Comment. We, therefore, are proposing to add the following provision to the sixth paragraph of the Rule 104 Comment:

See *Commonwealth v. Washington*, 722 A.2d 643 (Pa. 1998) (creating per se rule requiring the trial judge to conduct child witness competency hearings outside the presence of the jury).

The Committee is also proposing correlative revisions of the Comments to Rules 103 and 601 that would include cross-references Rule 104(c) with regard to hearings on preliminary matters, and whether the hearing should be held in the presence of the jury. The Rule 103 Comment would be revised by adding the following language as the fourth paragraph;

Paragraph (c) of Pa.R.E. 104 addresses hearings on preliminary questions outside the presence of the jury.

Similarly, the Rule 601 Comment would be revised by adding the following language as the last paragraph;

See Pa.R.E. 104(c) which provides that certain hearings on preliminary questions, including competency, are to be conducted outside the presence of the jury.

[Pa.B. Doc. No. 99-690. Filed for public inspection April 30, 1999, 9:00 a.m.]

[225 PA. CODE ARTICLE IV]

**Proposed Amendment to Rule 408 Compromise and Offers to Compromise**

**Introduction**

The Committee on the Rules of Evidence is planning to recommend that the Supreme Court of Pennsylvania amend Rule 408 (Compromise and Offers to Compromise). This proposal would make it clear that evidence of conduct or statements made in compromise negotiations is not admissible to prove liability for or validity of a claim or its amount. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's considerations in formulating this proposal. Please note that the Committee's 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 explanatory Reports.

The text of the proposed rule changes precedes the Report.

We request that interested persons submit suggestions, comments, or objections concerning this proposal to the Committee through counsel Anne T. Panfil, Chief Staff Counsel, Supreme Court of Pennsylvania, Committee on the Rules of Evidence, 5035 Ritter Road, Mechanicsburg, PA 17055 no later than Wednesday, June 2, 1999.

THOMAS C. RAUP,  
*Chair*

**Annex A**

**TITLE 225. RULES OF EVIDENCE**

**ARTICLE IV. RELEVANCY AND ITS LIMITS**

**Rule 408. Compromise and Offers to Compromise.**

Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. **Evidence of conduct or statements made in compromise negotiations is likewise not admissible.** This rule does not require the exclusion of [ **an admission of fact** ] any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, [ **negating** ] **negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.**

**Comment**

This rule is [ **similar** ] identical to F.R.E. 408. [ **Contrary to its federal counterpart, however, Pa.R.E. 408 does not bar the use of all statements and conduct occurring during settlement negotiations. In this respect, the rule is consistent with Pennsylvania law that distinct admissions of fact made during settlement discussions are admissible. See *Rochester Machine Corp. v. Mulach Steel Corp.*, 498 Pa. 545, 449 A.2d 1366 (1982)(plurality); *Heyman v. Hanauer*, 302 Pa. 56, 152 A. 910 (1930); *Hammel v. Christian*, 416 Pa. Super. 78, 610 A.2d 979 (1992). ]**

The 1999 amendments abolish the common law rule that distinct admissions of fact made during settlement discussions are admissible, see *Rochester Marine Corp. v. Mulach Steel Corp.*, 498 Pa. 545, 449 A.2d 1366 (1982)(plurality), bringing Pennsylvania in line with F.R.E. 408 and the majority of states.

The 1999 amendments are consistent with the Mediation Act of 1996. See 42 Pa.C.S. § 5949 (Confidential mediation communications and documents).

\* \* \* \* \*

Pa.R.E. 408 is consistent with 42 Pa.C.S. [A.] § 6141 which provides, in pertinent part, as follows:

\* \* \* \* \*

See *Hatfield v. Continental Imports, Inc.*, 530 Pa. 551, 610 A.2d 446 (1992)(evidence of "Mary Carter" agreement admissible to show bias or prejudice, and not excluded by § 6141(c)).

\* \* \* \* \*

Official Note: Adopted May 8, 1998, effective October 1, 1998; amended \_\_\_\_\_, 1999; effective \_\_\_\_\_, 1999.

**Committee Explanatory Reports:**

Report explaining the proposed amendments concerning the inadmissibility of evidence of conduct or statements made in compromise negotiations published at 29 Pa.B. 2263 (May 1, 1999).

**Report**

*Proposed Amendments to Pa.R.E. 408*

*ADMISSIBILITY OF CONDUCT OR STATEMENTS MADE IN COMPROMISE NEGOTIATIONS*

The Committee is proposing that Rule 408 (Compromise and Offers to Compromise) be amended to abolish the common law rule by making it clear that evidence of conduct or statements made in compromise negotiations is not admissible to prove liability for or the validity of a claim or its amount.

The Committee undertook a review of this rule after receiving correspondence that contended that Rule 408 is a "trap for the unwary" because it inhibits talking freely in order to promote settlement, and promotes malpractice actions against lawyers who make damaging statements because they do not say, "Hypothetically speaking" prior to any compromise discussions. The correspondents suggested that Rule 408 be amended to parallel the federal rules, F.R.E. 408 and the other states that have similar rules or statutes.<sup>1</sup>

As the Committee evaluated the points raised in the correspondence, the members noted two other considerations. First, the Mediation Act, which was passed in 1996 after the ad hoc Committee on the Rules of Evidence had completed its work on Rule 408, provides that, "Mediation communications and mediation documents shall not be admissible as evidence in any action or proceeding..." Although the Mediation Act provisions abrogate the common law rule, the experience of the members of the Committee has been that the provisions are logical and work well. Furthermore, the Committee

<sup>1</sup>The Committee examined the rules and statutes in several other jurisdictions and found that Pennsylvania is the only state that continues to follow this common law principle.

noted that most states have a Mediation Act, and several of them have included provisions in their rules or statutes concerning the inadmissibility of evidence of mediation or statements made during mediation.

Second, the Committee noted that there are many situations in which an attorney will agree with opposing counsel to conduct settlement negotiations under the Federal Rules, thereby circumventing the common law and alleviating the necessity to state "Hypothetically speaking" prior to any and all settlement discussions.

Based on the foregoing considerations, the Committee agreed that Pennsylvania evidence law should be brought in line with F.R.E. 408 by amending Pa.R.E. 408 to change Pennsylvania's adherence to the common law, and make it clear that evidence of conduct or statements made in compromise negotiations is not admissible to prove liability for or invalidity of a claim or its amount. The Committee is also proposing correlative revisions to the Comment.

[Pa.B. Doc. No. 99-691. Filed for public inspection April 30, 1999, 9:00 a.m.]

[225 PA. CODE ARTICLE VI]

Proposed Amendment to Rule 613 Prior Statements of Witnesses

Introduction

The Committee on Rules of Evidence is planning to recommend that the Supreme Court amend Rule 613 (Prior Statements of Witnesses) by including "inconsistent" in the title and text of section (a). This proposal would make it clear that both sections (a) and (b) apply to attacks on credibility through prior inconsistencies. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's considerations in formulating this proposal. Please note that the Committee's Reports should not be confused with the official Comments to the rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the explanatory Reports.

The text of the proposed rule changes precedes the Report. Deletions are in bold and brackets, and additions are in bold and underlined.

We request that interested persons submit suggestions, comments, or objections concerning this proposal to the Committee through counsel, Anne T. Panfil, Chief Staff Counsel, Supreme Court of Pennsylvania, Committee on Rules of Evidence, 5035 Ritter Road, Suite 800, Mechanicsburg, PA 17055 no later than Wednesday, June 2, 1999.

THOMAS C. RAUP,  
*Chair*

Annex A

TITLE 225. RULES OF EVIDENCE

ARTICLE VI. WITNESSES

Rule 613. Prior Statements of Witnesses.

(a) *Examining Witness Concerning Prior Inconsistent Statement.* A witness may be examined concerning a prior

**inconsistent** statement made by the witness, whether written or not, and the statement need not be shown or its contents disclosed to the witness at that time, but on request the statement or contents shall be shown or disclosed to opposing counsel.

\* \* \* \* \*

**Comment**

\* \* \* \* \*

*Section (a).* This section of the Rule is [ **identical to** ] **basically the same as F.R.E. 613(a), except that the word "inconsistent" does not appear in the Federal Rule. Its inclusion makes clear that both sections (a) and (b) involve attacks on credibility through prior inconsistencies. It has been suggested that its omission from the Federal Rule was a "drafting oversight." Charles A. Wright & Victor J. Gold, *Federal Practice & Procedure* § 6203, n. 13 (1993); J. Weinstein, 3 *Weinstein's Evidence* § 613.021, n. 1 (1991).** By dispensing with the need to show the prior statement or disclose its contents to the witness before proceeding with examination about it, section (a) repudiates the decision in the *Queen's Case*, 129 Eng. Rep. 9761 (1820). Pa.R.E. 613(a) resolves the ambiguity in the scant Pennsylvania authority on this point. Compare *Kann v. Bennett*, 223 Pa. 36, 72 A. 342 (1909) (before witness may be cross-examined about prior inconsistent statement, witness must be shown the statement and asked if he wrote it) with *Commonwealth v. Petrakovich*, 459 Pa. 511, 329 A.2d 844 (1974) (overlooking *Kann* case, court stated it had never considered question of showing statement to witness, and found no need to resolve question under facts of case).

\* \* \* \* \*

**Official Note: Adopted May 1, 1998, effective October 1, 1998; amended \_\_\_\_\_, 1999, effective \_\_\_\_\_, 1999.**

***Committee Explanatory Reports:***

**Report explaining the proposed amendments adding "inconsistent" to paragraph (a) published at 29 Pa.B. 2265 (May 1, 1999).**

**Report**

*Proposed Amendments to Pa.R.E. 613*

*Impeachment of Witness Using Prior Inconsistent Statement*

The Committee is proposing that Rule 613 (Prior Statements of Witnesses) be amended to clarify that section (a) applies to prior inconsistent statements by adding the term "inconsistent" to the title and text of section (a).

As part of its ongoing review of the Rules of Evidence, and in response to some correspondence, the Committee has reexamined Rule 613, and agreed with the correspondence that by using "prior statements," section (a) could be subject to misconstruction about its application to both consistent and inconsistent statements. Since section (a) was modeled on F.R.E. 613(a), we researched the history of the federal rule, and found that authorities agree that 1) the omission of the term "inconsistent" in F.R.E. 613(a) is inadvertent, and 2) F.R.E. 613(a) is intended to apply only to inconsistent statements. See *Charles A. Wright & Victor J. Gold, Federal Practice & Procedure* § 6203, n.13 (1993) and J. Weinstein, 3 *Weinstein & Berger, Weinstein's Evidence* § 613[01], n. 1 (1991). We agreed, therefore, that it would be helpful to members of the

bench and bar to clarify that Pa.R.E. 613(a) applies only to inconsistent statements by adding the term "inconsistent" to the title and text of section (a). The Committee is also proposing correlative revisions to the Comment.

[Pa.B. Doc. No. 99-692. Filed for public inspection April 30, 1999, 9:00 a.m.]

**[225 PA. CODE ARTICLE VIII]**

**Proposed Amendment of Rule 803.1, Hearsay Exceptions; Testimony of Declarant Necessary**

**Introduction**

The Committee on Rules of Evidence is planning to recommend that the Supreme Court of Pennsylvania approve the revision of the Comment to Rule of Evidence 803.1. This Comment revision updates the subsection (1) Comment consistent with recent changes in the case law concerning the admission of prior inconsistent statements. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's considerations in formulating this proposal. Please note that the Committee's 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 explanatory *Reports*.

The text of the proposed Comment revision precedes the Report.

We request that interested persons submit suggestions, comments, or objections concerning this proposal to the Committee through counsel; Anne T. Panfil, Chief Staff Counsel, Supreme Court of Pennsylvania, Committee on Rules of Evidence, 5035 Ritter Road, Mechanicsburg, PA 17055, no later than Tuesday, June 1, 1999.

THOMAS C. RAUP,  
*Chair*

**Annex A**

**TITLE 225. RULES OF EVIDENCE**

**ARTICLE VIII. HEARSAY**

**Rule 803.1. Hearsay Exceptions; Testimony of Declarant Necessary.**

The following statements, as hereinafter defined, are not excluded by the hearsay rule if the declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement:

\* \* \* \* \*

(1) *Inconsistent Statement of Witness.* A statement by a declarant that is inconsistent with the declarant's testimony, and (a) was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition, or (b) is a writing signed and adopted by the declarant, or (c) is a verbatim contemporaneous recording of an oral statement.

**Comment**

Subsection (a) is similar to F.R.E. 801(d)(1)(A), except that **the Pennsylvania rule classifies those kinds of**

inconsistent statements that are described therein as exceptions to the hearsay rule, not exceptions to the definition of hearsay. Subsections (b) and (c) are an expansion of the exception [ as defined ] that is described in the federal rule.

Pa.R.E. 803.1(1) is consistent with prior Pennsylvania case law. See *Commonwealth v. Brady*, 510 Pa. 123, 507 A.2d 66 (1986) (seminal case that overruled close to two centuries of decisional law in Pennsylvania and held that the recorded statement of a witness to a murder, inconsistent with her testimony at trial, was properly admitted as substantive evidence, excepted to the hearsay rule); [ *Commonwealth v. Halstead*, 542 Pa. 318, 666 A.2d 655 (1995); ] *Commonwealth v. Lively*, 530 Pa. 464, 610 A.2d 7 (1992). To qualify as a "verbatim contemporaneous recording of an oral statement," the "recording" must be an electronic, audiotaped, or videotaped recording. See *Commonwealth v. Wilson*, 707 A.2d 1114 (1998). Inconsistent statements of a witness that do not qualify as exceptions to the hearsay rule may still be introduced to impeach the credibility of the witness. See Pa.R.E. 613.

\* \* \* \* \*

**Official Note:** Adopted May 8, 1998, effective October 1, 1998; Comment revised \_\_\_\_\_, 1999, effective \_\_\_\_\_, 1999.

**Committee Explanatory Reports:**

Report explaining the proposed revision of the Comment to subsection (1) published at 29 Pa.B. 2266 (May 1, 1999).

**Report**

**Proposed Revision of the Comment to Pa.R.E. 803.1**

*PRIOR INCONSISTENT STATEMENTS*

The Committee is proposing the revision of the Comment to Rule 803.1 (Hearsay Exceptions; Testimony of Declarant Necessary). This revision updates the Comment to subsection (1) by deleting the citation to *Commonwealth v. Halsted*, 542 Pa. 318, 666 A.2d 655 (1995), and replacing it with a citation to *Commonwealth v. Wilson*, 707 A.2d 1114 (Pa. 1998). In *Wilson*, the Supreme Court clarifies what statements qualify as a "verbatim contemporaneous recording of an oral statement," within the context of subparagraph (1)(c).

In addition to adding the *Wilson* citation, the Committee is revising the entire subsection (1) Comment to provide a clearer, more informative explanation of the evolution of Pennsylvania's law concerning the admission of prior inconsistent statements as substantive evidence. The revision includes a citation to *Commonwealth v. Brady*, 510 Pa. 123, 507 A.2d 66 (1986), which is the seminal case that held that it was proper to admit as substantive evidence a prior recorded statement of a witness that was inconsistent with the witness's testimony at trial.

Finally, the Comment revision includes a cross-reference to Pa.R.E. 613 (Prior Statements of Witnesses) concerning the use of an inconsistent statement to impeach the credibility of a witness.

[Pa.B. Doc. No. 99-693. Filed for public inspection April 30, 1999, 9:00 a.m.]

# Title 231—RULES OF CIVIL PROCEDURE

## PART I. GENERAL

[231 PA. CODE CHS. 100, 200, 1000 AND 1300]

Technical Amendment of Rules 76—1361; No. 310, Doc. No. 5

### Order

*Per Curiam:*

And Now, this 12th day of April, 1999, the Pennsylvania Rules of Civil Procedure are amended as follows:

Rules 76, 102, 201, 206.5, 206.6, 210, 211, 213, 216, 217, 222, 224, 227.2, 227.3, 229, 230, 230.1, 234.6, 234.9, 237, 237.1, 237.6, 239, 240, 249, 1002, 1006, 1007.1, 1019, 1021, 1024, 1031, 1037, 1038, 1054, 1065, 1066, 1073.1, 1075.1, 1075.2, 1075.3, 1075.4, 1076, 1077, 1081, 1083, 1084, 1085, 1095, 1144, 1147, 1304, 1307, 1312, 1354, 1361 are amended to read as follows.

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

### Annex A

## TITLE 231. RULES OF CIVIL PROCEDURE

### PART I. GENERAL

#### CHAPTER 100. RULES OF CONSTRUCTION

##### Rule 76. Definitions.

The following words and phrases when used in any rule promulgated by the Supreme Court under the authority of Article V, Section 10(c) of the Commission of 1968, or of any Act of Assembly, shall have the following meanings, respectively, unless the context clearly indicates otherwise or the particular word or phrase is expressly defined in the chapter in which the particular rule is included.

\* \* \* \* \*

*Affidavit*—A statement in writing of a fact or facts, signed by the person making it, that either (1) is sworn to or affirmed before an officer authorized by law to administer oaths, or before a particular officer or individual designated by law as one before whom it may be taken, and officially certified to in the case of an officer under [ his ] seal of office, or (2) is unsworn and contains a statement that it is made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

\* \* \* \* \*

*Signature*—Includes mark when the individual cannot write, [ his ] the individual's name being written near it, and witnessed by another who writes his or her own name.

\* \* \* \* \*

##### Rule 102. Number. [ Gender. ] Tense.

The singular shall include the plural, and the plural, the singular. [ Words used in the masculine gender shall include the feminine and neuter. ] Words used in the past or present tense shall include the future.

#### CHAPTER 200. BUSINESS OF COURTS

##### Rule 201. Agreements of Attorneys.

Agreements of attorneys relating to the business of the court shall be in writing, except such agreements at bar

as are noted by the prothonotary upon the minutes or by the stenographer on [ his ] the stenographer's notes.

Official Note:

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The word "prothonotary" refers to the court official, irrespective of [ his ] title, who keeps the minutes of the court.

Rule 206.5. Rule to Show Cause. Discretionary Issuance. Stay. Form of Order.

\* \* \* \* \*

(d) The form of order required by subdivision (b) shall be substantially in the following form:

(CAPTION)
ORDER

AND NOW, this \_\_\_ day of \_\_\_, [ 199 ]\_, upon consideration of the foregoing petition, it is hereby ordered that

\* \* \* \* \*

(5) argument shall be held on \_\_\_, [ 199 ] \_\_\_ in Courtroom \_\_\_ of the \_\_\_ County Courthouse; and

\* \* \* \* \*

Official Note: In counties in which an evidentiary hearing is held, the order should be modified by deleting paragraphs (4) and (5) and substituting new paragraph (4) to read as follows:

(4) an evidentiary hearing on disputed issues of material fact shall be held on \_\_\_, [ 199 ]\_ in Courtroom \_\_\_ of the \_\_\_ County Courthouse.

\* \* \* \* \*

Rule 206.6. Rule to Show Cause. Issuance as of Course. Stay. Form of Order.

\* \* \* \* \*

(c) The petitioner shall attach to the petition a proposed order substantially in the following form:

(CAPTION)
ORDER

AND NOW, this \_\_\_ day of \_\_\_, [ 199 ]\_, upon consideration of the foregoing petition, it is hereby ordered that

\* \* \* \* \*

(5) argument shall be held on \_\_\_, [ 199 ]\_ in Courtroom \_\_\_ of the \_\_\_ County Courthouse; and

\* \* \* \* \*

Official Note: Paragraphs (4) and (5) are optional in a county adopting the alternative procedure. This accommodates local procedures which do not fix a hearing date until the answer and depositions have been filed.

In counties in which an evidentiary hearing is held, the order should be modified by deleting paragraphs (4) and (5) and substituting new paragraph (4) to read as follows:

(4) an evidentiary hearing on disputed issues of material fact shall be held on \_\_\_[, 199\_] in Courtroom \_\_\_ of the \_\_\_ County Courthouse.

\* \* \* \* \*

Rule 210. Form of Briefs.

If briefs are filed they shall be typewritten, printed or otherwise duplicated and endorsed with the name of the case, the court[, term] and number and name and address of the attorney.

Rule 211. Oral Arguments.

Any party or [ his ] the party's attorney shall have the right to argue any motion and the court shall have the right to require oral argument. With the approval of the court oral argument may be dispensed with by agreement of the attorneys and the matter submitted to the court either on the papers filed of record, or on such briefs as may be filed by the parties. The person seeking the order applied for shall argue first[, ] and [ he ] may also argue in reply, but such reply shall be limited to answering arguments advanced by the respondent. In matters where there may be more than one respondent, the order of argument by the respondents shall be as directed by the court.

Rule 213. Consolidation, Severance and Transfer of Actions and Issues within a County. Actions for Wrongful Death and Survival Actions.

\* \* \* \* \*

(e) A cause of action for the wrongful death of a decedent and a cause of action for [ his ] the injuries of the decedent which survives his or her death may be enforced in one action, but if independent actions are commenced they shall be consolidated for trial.

\* \* \* \* \*

Rule 216. Grounds for Continuance.

(A) The following are grounds for a continuance:

\* \* \* \* \*

(3) Inability to subpoena or to take testimony by deposition, commission, or letters rogatory, of any material witness, shown by affidavit which shall state:

(a) The facts to which the witness would testify if present or if [ his deposition should be taken ] deposed;

(b) The grounds for believing that the absent witness would so testify [ or give his deposition ];

\* \* \* \* \*

(d) The reasons for believing that the witness will attend the trial at a subsequent date, or that [ his ] the deposition of the witness can and will be obtained.

\* \* \* \* \*

Rule 217. Costs on Continuance.

\* \* \* \* \*

[ If the ] A party upon whom such costs are so imposed and who was at fault in delaying the application for continuance [ he ] may not recover such costs, if ultimately successful in the action; otherwise such costs shall follow the judgment in the action.

Rule 222. Attorneys as Witnesses.

Where any attorney acting as trial counsel in the trial of an action is called as a witness [ in ] on behalf of a party whom [ he ] the attorney represents, the court may determine whether such attorney may thereafter continue to act as trial counsel during the remainder of the trial.

**Rule 224. Regulation of Order of Proof.**

The court may compel the plaintiff in any action to produce all [ his ] evidence upon the question of the defendant's liability before [ he calls ] calling any witness to testify solely to the extent of the injury or damages. The defendant's attorney may then move for a nonsuit. If the motion is refused, the trial shall proceed. The court may, however, allow witnesses to be called out of order if the court deems it wise so to do.

**Rule 227.2. Court en Banc.**

All post-trial motions and other post-trial matters shall be heard and decided by the trial judge unless [ he ] the trial judge orders that the matter be heard by a court en banc of which [ he ] the trial judge shall be a member. If the trial judge for any reason cannot hear the matter, another judge shall be designated to act. No more than three judges shall constitute the court en banc.

**Rule 227.3. Transcript of Testimony.**

\* \* \* \* \*

**Official Note:** Pa.R.J.A. 5000.5(a) requires the request to be delivered to (1) the reporter, (2) the clerk of the trial court in which the proceeding took place or in which the reporter is employed, (3) the district court administrator or [ his ] the administrator's designee, and (4) in the case of an appeal, to the clerk of the appellate court. The request for transcription of the record may also be made in open court. See Pa.R.J.A. 5000.5(b).

\* \* \* \* \*

**Rule 229. Discontinuance.**

\* \* \* \* \*

**Official Note:** Court approval of a discontinuance must be obtained in any action in which a minor is a party, Rule 2039(a), an action for wrongful death in which a minor is beneficially interested, Rule 2206(a), an action in which an [ incompetent ] incapacitated person is a party, Rule 2064, and a class action, Rule 1714.

A plaintiff who asserts a cause of action ex contractu and joins as defendants persons liable to [ him ] the plaintiff in different capacities may not discontinue as to a defendant primarily liable without discontinuing as to all defendants secondarily liable. Rule 2231(e).

**Rule 230. Voluntary Nonsuit.**

\* \* \* \* \*

**Official Note:** A plaintiff who asserts a cause of action ex contractu and joins as defendants persons liable to [ him ] the plaintiff in different capacities may not suffer a voluntary nonsuit as to a defendant primarily liable without suffering a voluntary nonsuit as to all defendants secondarily liable. Rule 2231(e).

(b) [ After a ] A plaintiff who has rested [ his ] the case in chief [ he ] may not suffer a voluntary nonsuit without leave of court and cannot do so after the close of all the evidence.

**Rule 230.1. Compulsory Nonsuit at Trial.**

\* \* \* \* \*

**Official Note:** See (1) Rule 231(b) respecting the plaintiff's right to bring a second action on the same cause of action if a nonsuit has been entered; (2) Rule 227.1(c) as to the time for filing a motion to remove a nonsuit; (3) Rule 224 authorizing nonsuit on the question of liability

before testimony as to injury or damages; (4) Rules 2035 and 2057 forbidding motions for nonsuit against unrepresented minors or [ incompetents ] incapacitated persons on the ground of nonrepresentation; (5) Rule 2231(g) and (h) respecting the right to enter a compulsory nonsuit where plaintiffs or defendants have been joined in the alternative; and (6) Rule 2232(d) governing nonsuit in cases in which defendants have been joined but plaintiff has failed to prove a case against all of them.

**Rule 234.6. Form of Subpoena.**

A subpoena issued pursuant to Rule 234.1 shall be substantially in the following form:

\* \* \* \* \*

*Return of Service:* (Reverse side of Subpoena)

On the \_\_\_\_ day of \_\_\_\_\_, [ 19 ]\_, I, \_\_\_\_\_, served \_\_\_\_\_ (name of person served)

with the foregoing subpoena by:  
(Describe method of service)

\* \* \* \* \*

**Rule 234.9. Notice and Acknowledgment of Receipt of Subpoena by Mail.**

The notice and acknowledgment of receipt of subpoena by mail required by Rule 234.2(b)(3) shall be substantially in the following form:

**ACKNOWLEDGMENT OF RECEIPT OF SUBPOENA**

I acknowledge receipt of a copy of the subpoena in the above captioned matter. Date: \_\_\_\_\_ [ ,19\_ ]

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Relationship to entity or  
[ Authority ] authority to receive the subpoena

**Rule 237. Notice of Praecipe for Final Judgment or Decree.**

No praecipe for judgment on a verdict, or for judgment on a decision in a trial without a jury or for a final decree following a decree nisi in equity shall be accepted by the prothonotary unless it includes a certificate that a copy of the praecipe has been mailed to each other party who has appeared in the action or to [ his ] the attorney of record for each other party.

**Rule 237.1. Notice of Praecipe for Entry of Judgment of Non Pros for Failure to File Complaint or by Default for Failure to Plead.**

\* \* \* \* \*

(2) No judgment of non pros for failure to file a complaint or by default for failure to plead shall be entered by the prothonotary unless the praecipe for entry includes a certification that a written notice of intention to file the praecipe was mailed or delivered

\* \* \* \* \*

(ii) in the case of a judgment by default, after the failure to plead to a complaint and at least ten days prior to the date of the filing of the praecipe to the party against whom judgment is to be entered and to [ his ] the party's attorney of record, if any.

\* \* \* \* \*

**Rule 237.6. Form of Agreement to Extend Time.**

An agreement to extend time required by Rule 237.2 shall be substantially in the following form:

(Caption)

AGREEMENT PURSUANT TO RULE 237.2 TO  
EXTEND TIME TO PLEAD  
FOLLOWING TEN-DAY NOTICE

It is agreed that \_\_\_\_\_

(Plaintiff(s)) (Defendant(s))

(is)(are) granted an extension of time through \_\_\_\_\_  
[ , 19 ] in which to file

- \_\_\_\_\_ 1. a complaint.
- \_\_\_\_\_ 2. an answer.
- \_\_\_\_\_ 3. an answer or preliminary objections.

\* \* \* \* \*

**Rule 239. Local Rules.**

\* \* \* \* \*

(c) To be effective and enforceable:

\* \* \* \* \*

(4) One certified copy of the local rule shall be filed by the court promulgating the rule with the Civil Procedural Rules Committee, unless the rule relates to domestic relations matters, in which case it shall be filed with the Domestic Relations **Procedural Rules** Committee.

\* \* \* \* \*

**Rule 240. In Forma Pauperis.**

\* \* \* \* \*

(d)(1) If the party is represented by an attorney, the prothonotary shall allow the party to proceed in forma pauperis upon the filing of a praecipe which

(i) contains a certification by the attorney that he or she is providing free legal service to the party and [ that he ] believes the party is unable to pay the costs, and

(ii) is accompanied by the affidavit required by subdivision (c).

\* \* \* \* \*

(e) A party permitted to proceed in forma pauperis has a continuing obligation to inform the court of improvement in [ his ] the party's financial circumstances which will enable [ him ] the party to pay costs.

\* \* \* \* \*

**Rule 249. Authority of Individual Judge.**

\* \* \* \* \*

(b) [ When a ] A law judge may perform a function of the court, other than trying an action, [ he may act ] at any time and at any place within the judicial district.

\* \* \* \* \*

**CHAPTER 1000. ACTIONS AT LAW**

**Subchapter A. CIVIL ACTION**

**GENERAL**

**Rule 1002. Authority of Attorney.**

Any act other than verification required or authorized by this chapter to be done by a party may be done by [ his ] the party's attorney.

**VENUE AND PROCESS**

**Rule 1006. Venue. Change of Venue.**

(a) Except as otherwise provided by Subdivisions (b) and (c) of this rule, an action against an individual may be brought in and only in a county in which [ he ] the individual may be served or in which the cause of action arose or where a transaction or occurrence took place out of which the cause of action arose or in any other county authorized by law.

\* \* \* \* \*

**Rule 1007.1. Jury Trial. Demand. Waiver.**

(a) In any action in which the right to jury trial exists, that right shall be deemed waived unless a party files and serves a written demand for a jury trial not later than twenty [ (20) ] days after service of the last permissible pleading. The demand shall be made by endorsement on a pleading or by a separate writing.

(b) Where an appeal is taken from an award in compulsory arbitration and a jury trial has not theretofore been demanded, the right to a jury trial shall be deemed waived unless the appellant endorses a demand for a jury trial on [ his ] the appeal, or unless the appellee files and serves a written demand for a jury trial not later than ten [ (10) ] days after being served with the notice of appeal.

\* \* \* \* \*

**PLEADINGS**

**Rule 1019. Contents of Pleadings. General and Specific Averments.**

\* \* \* \* \*

(h) A pleading shall state specifically whether any claim or defense set forth therein is based upon a writing. If so, the pleader shall attach a copy of the writing, or the material part thereof, but if the writing or copy is not accessible to [ him ] the pleader, it is sufficient so to state, together with the reason, and to set forth the substance of the writing.

**Rule 1021. Claim for Relief. Determination of Amount in Controversy.**

(a) Any pleading demanding relief shall specify the relief sought [ to which the party deems himself entitled ]. Relief in the alternative or of several different types, including an accounting, may be demanded.

\* \* \* \* \*

**Rule 1024. Verification.**

(a) Every pleading containing an averment of fact not appearing of record in the action or containing a denial of fact shall state that the averment or denial is true upon the signer's personal knowledge or information and belief and shall be verified. The signer need not aver the source of [ his ] the information or expectation of ability to prove the averment or denial at the trial. A pleading may be verified upon personal knowledge as to a part and upon information and belief as to the remainder.

**Official Note:** See Definition Rule 76 for definition of "verified."

(b) If a pleading contains averments which are inconsistent in fact, the verification shall state that the signer has been unable after reasonable investigation to ascertain which of the inconsistent averments, specifying



them, are true but that [ **he** ] **the signer** has knowledge or information sufficient to form a belief that one of them is true.

(c) The verification shall be made by one or more of the parties filing the pleading unless all the parties (1) lack sufficient knowledge or information, or (2) are outside the jurisdiction of the court and the verification of none of them can be obtained within the time allowed for filing the pleading. In such cases, the verification may be made by any person having sufficient knowledge or information and belief and shall set forth the source of [ **his** ] **the person's** information as to matters not stated upon his **or her** own knowledge and the reason why the verification is not made by a party.

**Rule 1031. Counterclaim.**

(a) The defendant may set forth in the answer under the heading "Counterclaim" any cause of action heretofore asserted in assumpsit or trespass which [ **he** ] **the defendant** has against the plaintiff at the time of filing the answer.

\* \* \* \* \*

**JUDGMENT UPON DEFAULT OR ADMISSION**

**Rule 1037. Judgment Upon Default or Admission. Assessment of Damages.**

(a) If an action is not commenced by a complaint, the prothonotary, upon praecipe of the defendant, shall enter a rule upon the plaintiff to file a complaint. If a complaint is not filed within twenty [ **(20)** ] days after service of the rule, the prothonotary, upon praecipe of the defendant, shall enter a judgment of non pros.

**Official Note:** See Rule 237.1(a)(2) which requires the praecipe for judgment of non pros to contain a certification of written notice of intent to file the praecipe.

(b) The prothonotary, on praecipe of the plaintiff, shall enter judgment against the defendant for failure to file within the required time a pleading to a complaint which contains a notice to defend or for any relief admitted to be due by the defendant's pleadings.

\* \* \* \* \*

(2) In all actions in which the only damages to be assessed are the cost of repairs made to property

\* \* \* \* \*

(ii) the praecipe shall be accompanied by an affidavit of the [ **repairman** ] **person making the repairs**; the affidavit [ **of the repairman** ] shall contain an itemized repair bill setting forth the charges for labor and material used in the repair of the property; it shall also state the qualifications of the person who made or supervised the repairs, that the repairs were necessary, and that the prices for labor and material were fair and reasonable and those customarily charged;

(iii) the plaintiff shall send a copy of the affidavit and repair bill to the defendant by registered mail directed to [ **his** ] **the defendant's** last known address, together with a notice setting forth the date of the intended assessment of damages, which shall not be less than ten [ **(10)** ] days from the mailing of the notice and a statement that damages will be assessed in the amount of the repair bill unless prior to the date of assessment the defendant by written praecipe files with the prothonotary

a request for trial on the issue of such damages; an affidavit of mailing of notice shall be filed.

\* \* \* \* \*

**Rule 1038. Trial Without Jury.**

\* \* \* \* \*

(b) The decision of the trial judge may consist only of general findings as to all parties but shall dispose of all claims for relief. The trial judge may [ **, if he wishes,** ] include as part of the decision specific findings of fact and conclusions of law with appropriate discussion.

(c) The decision may be made orally in open court at the end of the trial, and in that event shall be forthwith transcribed and filed in the office of the prothonotary, or it may be made thereafter in writing and filed forthwith. In either event the prothonotary shall notify all parties or their attorneys of the date of filing. The trial judge shall render [ **his** ] **a** decision within seven [ **(7)** ] days after the conclusion of the trial except in protracted cases or cases of extraordinary complexity.

\* \* \* \* \*

**Subchapter C. ACTION IN EJECTMENT**

**Rule 1054. Specific Averments. Abstract of Title.**

(a) The plaintiff shall describe the land in [ **his** ] **the** complaint.

(b) A party shall set forth in [ **his** ] **the** complaint or answer an abstract of the title upon which [ **he** ] **the party** relies at least from the common source of the adverse titles of the parties.

**Subchapter D. ACTION TO QUIET TITLE**

**Rule 1065. Specific Averments.**

The plaintiff shall describe the land in [ **his** ] **the** complaint.

**Rule 1066. Form of Judgment or Order.**

\* \* \* \* \*

(b) Upon granting relief to the plaintiff, the court

(1) shall order that the defendant be forever barred from asserting any right, lien, title or interest in the land inconsistent with the interest or claim of the plaintiff set forth in [ **his** ] **the** complaint, unless the defendant takes such action as the order directs within thirty [ **(30)** ] days thereafter. If such action is not taken within the [ **30** ] **thirty**-day period, the prothonotary on praecipe of the plaintiff shall enter final judgment;

\* \* \* \* \*

**Subchapter E. ACTION IN REPLEVIN**

**Rule 1073.1. Complaint. Specific Averments. Verification.**

\* \* \* \* \*

(b) The complaint shall be verified by the plaintiff upon personal knowledge or information and belief or by any other person having sufficient knowledge or information and belief, who shall set forth the source of [ **his** ] **the** information as to matters not stated upon his **or her** own knowledge and the reason why the verification is not made by the plaintiff.

**Rule 1075.1. Writ of Seizure Upon Notice and Hearing.**

(a) After the complaint has been filed, the plaintiff may move for the issuance of a writ of seizure whether or not the complaint has been served. The court shall fix the date and time of the hearing which shall not be less than forty-eight [ (48) ] hours after filing the motion for the writ of seizure.

\* \* \* \* \*

(c) Notice of the hearing shall be substantially in the form provided by Rule 1353. It shall inform the defendant and any other person found in possession of the property of the place, date and time of the hearing. Service of the notice shall be made not less than twenty-four [ (24) ] hours before the hearing. When perishable property is to be seized or if other cause is shown, the court may set a shorter time for notice and hearing.

\* \* \* \* \*

(e) The hearing shall be held whether or not the defendant or other person found in possession of the property appears. If the court is satisfied that notice as provided by this rule has been given or a reasonable attempt to give notice has been made, it shall determine from the complaint, affidavits, testimony, admissions or other evidence, whether the plaintiff has established the probable validity of [ his ] the claim and, if so, it may order a writ of seizure to be issued upon the filing of a bond as provided by Rule 1075.3.

\* \* \* \* \*

(g) If the notice of the hearing has not been actually received notwithstanding a reasonable attempt to give notice, the defendant or any other person claiming the right to possession may, within seventy-two [ (72) ] hours after seizure, petition to vacate the writ of seizure.

**Rule 1075.2. Ex Parte Issuance of Writ of Seizure.**

(a) After the complaint has been filed, a writ of seizure may be issued by the court ex parte at any time upon motion of the plaintiff, upon the filing of a bond as provided by Rule 1075.3 if plaintiff satisfies the court of the probable validity of [ his ] the claim to possession and that there is probable cause to believe that before notice can be given or hearing held,

\* \* \* \* \*

(c) If a writ has been issued and the property has been seized, a hearing shall be held within seventy-two [ (72) ] hours after the seizure of the property. The notice of the hearing shall be substantially in the form provided by Rule 1353. It shall inform the defendant and any other person found in possession of the property of the place, date and time of the hearing. Service of the notice shall be in the manner provided by Rule 1075.1(d).

(d) The hearing shall be held whether or not the defendant or other person found in possession of the property is served or appears. If the court determines that no notice as required by this rule has been given or no reasonable attempt to give such notice has been made, it shall vacate the writ and the property shall be returned to the person from whom it was taken. If the court is satisfied that notice as required by this rule has been given or a reasonable attempt to give such notice has been made, it shall determine from the complaint, affidavits, testimony, admissions or other evidence whether the plaintiff has established the probable validity of [ his ]

the claim to possession and of the grounds for the ex parte issuance of the writ. If the court has determined that plaintiff has established such validity, it shall enter an order confirming the ex parte issuance of the writ.

(1) If the plaintiff fails to establish [ his ] the probable right to possession, the court shall vacate the writ and the property shall be returned to the person from whom it was taken. Thereafter, subject to the payment of expenses as hereinafter provided, the action shall then proceed as if no writ of seizure has been issued.

(2) If the plaintiff establishes [ his ] the probable right to possession but fails to establish the probable validity of the grounds for ex parte issuance of the writ, the court, upon payment by the plaintiff of the expenses as hereinafter provided, may permit [ him ] the plaintiff to retain possession pending judgment subject to the right of a party to file a counterbond or to exercise any other right under these rules.

\* \* \* \* \*

**Rule 1075.3. Writ of Seizure. Bond.**

\* \* \* \* \*

(b) The plaintiff's bond shall be in double the value of the property averred in the complaint with security approved by the prothonotary, naming the Commonwealth as obligee, conditioned that if the plaintiff fails to maintain [ his ] the right to possession of the property [ he ] the plaintiff shall pay to the party entitled thereto the value of the property and all legal costs, fees and damages sustained by reason of the issuance of the writ.

**Rule 1075.4. Service of the Writ of Seizure.**

\* \* \* \* \*

(b) When a person in possession of the property who is not a party to the action is served with a writ of seizure, the sheriff shall notify [ him ] the person that he or she has been added as a defendant and is required to defend the action and shall so state in [ his ] the return and [ said ] the person shall thereupon become a defendant in the action. Copies of all prior pleadings and motions not previously furnished to [ him ] the person shall be forthwith served upon him or her by the plaintiff in the manner provided by Rule 440.

**Rule 1076. Counterbond.**

(a) A counterbond may be filed with the prothonotary by a defendant or intervenor claiming the right to the possession of the property, except a party claiming only a lien thereon, within seventy-two [ (72) ] hours after the property has been seized, or within seventy-two [ (72) ] hours after service upon the defendant when the taking of possession of the property by the sheriff has been waived by the plaintiff as provided by Rule 1077(a), or within such extension of time as may be granted by the court upon cause shown.

**Official Note:** A person not a party to the action who claims the right to possession of the property may intervene in the action as a defendant. See Rule 2327. Since intervention will ordinarily require more than seventy-two hours, the applicant for intervention should also apply for an extension of the time within which to file a counterbond if he or she desires to obtain possession of the property after [ he is permitted to intervene ] intervention has been allowed.

After the allowance of intervention, the intervenor has the same status as an original party. See Rule 2330(a).

Extensions of time may be needed when there are hearings under Rule 1075.2.

(b) The counterbond shall be in the same amount as the original bond, with security approved by the prothonotary, naming the Commonwealth of Pennsylvania as obligee, conditioned that if the party filing it fails to maintain [ his ] the right to possession of the property he or she shall pay to the party entitled thereto the value of the property, and all legal costs, fees and damages sustained by reason of the delivery of the seized property to the party filing the counterbond.

**Rule 1077. Disposition of Seized Property. Sheriff's Return.**

(a) When a writ of seizure is issued, the sheriff shall leave the property during the time allowed for the filing of a counterbond in the possession of the defendant or of any other person found in possession of the property if the plaintiff so authorizes [ him ] the sheriff in writing.

(b) Property taken into possession by the sheriff shall be held by [ him ] the sheriff until the expiration of the time for filing a counterbond. If the property is not ordered to be impounded and if no counterbond is filed, and if no proceedings are pending and undecided under Rule 1075.1(g) or Rule 1075.2(c), the sheriff shall deliver the property to the plaintiff.

(c) If the property is not ordered to be impounded and the person in possession at the time the sheriff executed the writ of seizure files a counterbond, the property shall be delivered to [ him, but if he ] that person. If that person does not file a counterbond, the property shall be delivered to the party first filing a counterbond.

\* \* \* \* \*

(e) The return of the sheriff to the writ of seizure shall state the disposition made by [ him ] the sheriff of the property and the name and address of any person found in possession of the property.

**Rule 1081. Concealment of Property. Examination of Defendant.**

The court, at any time during the pendency of the action, upon the petition of the plaintiff setting forth

(1) that [ he ] the plaintiff is without knowledge of the location of the property and has not [ with reasonable diligence ] been able with reasonable diligence to ascertain its location; or

\* \* \* \* \*

**Rule 1083. Judgment in Rem for Property When Defendant Is Not Served and Does Not Appear.**

If the property has been seized by the sheriff, the court, upon motion of the plaintiff after forty-five [ (45) ] days from seizure of the property, may enter judgment in rem for the property against any defendant who has not been served and who has not appeared in the action.

**Rule 1084. Judgment Before Trial When Defendant is Served or Appears.**

(a) If the defendant is served or appears in the action and judgment is entered before trial for the party in possession of the property, the judgment shall determine the party's right to

(1) [ his right to ] retain possession of the property, and  
(2) [ his right to ] recover special damages, if any.

(b) If judgment is entered before trial for a party not in possession of the property, the judgment shall determine

(1) [ his ] the party's right to recover possession of the property,

(2) the money value of the property based upon the value set forth in the plaintiff's complaint, and

(3) [ his ] the party's right to recover special damages, if any.

\* \* \* \* \*

**Rule 1085. Judgment After Trial.**

(a) If judgment is entered after trial for the party in possession of the property, the judgment shall determine

(1) [ his ] the party's right to retain possession of the property, and

(2) the amount of any special damages sustained.

(b) If judgment is entered after trial for a party not in possession of the property, the judgment shall determine

(1) [ his ] the party's right to recover possession of the property,

\* \* \* \* \*

**Subchapter F. ACTION IN MANDAMUS**

**Rule 1095. The Complaint.**

The plaintiff shall set forth in the complaint:

\* \* \* \* \*

(3) the act or duty the defendant is required to perform and [ his ] the refusal to perform it;

\* \* \* \* \*

(7) a prayer for the entry of a judgment against the defendant commanding [ him to perform the act or duty he is required to perform ] that the defendant perform the act or duty required to be performed and for damages, if any, and costs.

**Subchapter I. ACTION OF MORTGAGE FORECLOSURE**

**Rule 1144. Parties. Release of Liability.**

(a) The plaintiff shall name as defendants

\* \* \* \* \*

(3) the real owner of the property, or if [ he ] the real owner is unknown, the grantee in the last recorded deed.

(b) Unless named as real owner, neither the mortgagor nor [ his ] the personal representative, heir or devisee of the mortgagor, need be joined as defendant if the plaintiff sets forth in [ his ] the complaint that [ he ] the plaintiff releases [ him ] such person from liability for the debt secured by the mortgage.

**Rule 1147. The Complaint.**

The plaintiff shall set forth in the complaint:

\* \* \* \* \*

(3) the names, addresses and interest of the defendants in the action and that the present real owner is unknown if [ he ] the real owner is not made a party;

\* \* \* \* \*

**Official Note:** The plaintiff may also set forth in the complaint a release of the mortgagor and [ his ] the mortgagor's successors in interest. See Rule 1144(b) [ supra ].

\* \* \* \* \*

**CHAPTER 1300. COMPULSORY ARBITRATION**

**Subchapter A. RULES**

**Rule 1304. Conduct of Hearing. Generally.**

\* \* \* \* \*

(c) A stenographic record or a recording of the hearing shall not be made unless a party does so at his or her own expense. If a party has a stenographic record or a recording made, he or she shall upon request furnish a copy to any other party upon payment of a proportionate share of the total cost of making the record or recording.

**Rule 1307. Award. Docketing. Notice. Lien. Judgment. Molding the Award.**

(a) The prothonotary shall

\* \* \* \* \*

(2) immediately send by ordinary mail a copy of the award, with notice of the date and time of its entry on the docket and the amount of arbitrators' compensation to be paid upon appeal, to each party's attorney of record, or to the party if [ he ] the party has no attorney of record; and

\* \* \* \* \*

**Rule 1312. Form of Oath. Award and Notice of Entry of Award.**

The oath, award of arbitrators and notice of entry shall be in substantially the following form:

(Caption)

OATH

We do solemnly swear (or affirm) that we will support, obey and defend the Constitution of the United States and the Constitution of this Commonwealth and that we will discharge the duties of our office with fidelity.

\_\_\_\_\_  
**[ Chairman ] Chair**

AWARD

We, the undersigned arbitrators, having been duly appointed and sworn (or affirmed), make the following award: (Note: If damages for delay are awarded, they shall be separately stated.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_, Arbitrator, dissents. (Insert name if applicable.)

Date of Hearing: \_\_\_\_\_

**[ Chairman ] Chair**

Date of Award \_\_\_\_\_

\_\_\_\_\_

NOTICE OF ENTRY OF AWARD

Now, the \_\_\_ day of \_\_\_\_\_, [ 19 ]\_\_\_\_\_ at \_\_\_\_\_ .M., the above award was entered upon the docket and notice thereof given by mail to the parties or their attorneys.

\* \* \* \* \*

**Subchapter B. FORMS**

**Rule 1354. Form of Writ of Seizure.**

The writ of seizure shall be directed to the sheriff and shall be in substantially the following form:

Commonwealth of Pennsylvania  
County of \_\_\_\_\_

(Caption)

WRIT OF SEIZURE

To the Sheriff of said County:

You are directed to seize the following property:  
(specifically describe property)

If the property is found in the possession of [ anyone ] a person not already a defendant, you are directed to add [ him ] the person as a defendant, and notify [ him ] the person that he or she has been added as a defendant and is required to defend the action.

Date of Writ \_\_\_\_\_  
(Name of Prothonotary)

(SEAL) By: \_\_\_\_\_  
(Deputy)

**[ Official Note: Former Rule 1354. Form of Writ of Replevin With Bond was rescinded. ]**

**Rule 1361. Form of Notice to Plead.**

The notice to plead shall be directed to the adverse party and shall be in substantially the following form:

To \_\_\_\_\_:  
(Name of Adverse Party)

You are hereby notified to file a written response to the enclosed (name of pleading) within twenty (20) days from service hereof or a judgment may be entered against you.

\_\_\_\_\_  
(Party Filing Pleading or [ His ] the Party's Attorney)

**Explanatory Comment**

The 1999 technical amendments to the rules of civil procedure accomplish three purposes. First, the rules are made gender neutral. For example, rules which contained references to "he" have been revised by substituting the phrase "he or she" or by replacing the pronoun with the original noun, e.g., "the deponent."

Second, there are a few rules containing forms which are revised by eliminating the date reference to the 1900's in light of the turn of the century. For example, the form of order contained in Rule 206.5 governing petitions formerly began, "AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 199\_ . . ." The form is amended by substituting a blank line in place of "199\_."

Third, the rules have been inconsistent in the use of a word or a word and numeral to represent a number. For example, one rule might refer to "ten days" while another rule referred to "ten (10)" days. The rules are revised to use numerical representation by word only, e.g., "ten days." The use of a word and numeral remains only in forms such as the notice to plead prescribed by Rule 1361

which directs a party to file a response "within twenty (20) days from service hereof . . ."

By the Civil Procedural Rules Committee

EDWIN L. KLETT, Chair

[Pa.B. Doc. No. 99-694. Filed for public inspection April 30, 1999, 9:00 a.m.]

PART I. GENERAL

[231 PA. CODE CHS. 1500, 1600, 1650, 1700, 2000, 2020, 2120, 2200, 2220, 2250, 2300, 2320, 2350 AND 2980]

Technical Amendment of Rules 1501—2984; No. 311, Doc. No. 5

Order

Per Curiam:

And Now, this 12th day of April, 1999, the Pennsylvania Rules of Civil Procedure are amended as follows:

Rules 1501, 1503, 1505, 1506, 1507, 1508, 1515, 1517, 1529, 1530, 1531, 1533, 1534, 1555, 1559, 1566, 1569, 1572, 1573, 1576, 1654, 1656, 1659, 1707, 1711, 2002, 2004, 2026, 2027, 2028, 2030, 2031, 2032, 2034, 2036, 2037, 2130, 2133, 2203, 2204, 2206, 2227, 2229, 2231, 2232, 2252, 2255, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2316, 2327, 2328, 2330, 2351, 2352, 2354, 2984, are amended to read as follows.

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

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1500. ACTION IN EQUITY

Subchapter A. RULES

Rule 1501. Conformity to Civil Action.

\* \* \* \* \*

Official Note: In addition to the rules expressly [regulating the action of assumpsit] governing the civil action, Rules 1001 to [1037] 1038.2, 1351 and 1361, the following rules apply to all actions at law and in equity:

Business of courts, Rules 201 to 250;

\*Actions by real parties in interest, Rules 2001 to 2025;

Minors as parties, Rules 2026 to 2050;

[Incompetents] Incapacitated persons as parties, Rules 2051 to 2075;

\* \* \* \* \*

Rule 1503. Venue.

(a) Except as otherwise provided by an Act of Assembly, Rule of the Supreme Court or by Subdivision (b), (c) or (d), an action may be brought only in a county in which

\* \* \* \* \*

(3) but a judgment, order or decree shall not bind a defendant personally unless [he] the defendant is

served within the county, or within the Commonwealth in conformity with Rule 1504(b), or unless [he] the defendant appears or otherwise submits [himself] to the jurisdiction of the court.

\* \* \* \* \*

Rule 1505. Defendant Not Served.

A defendant who has not been served may be served at any time during the pendency of the action provided the writ or complaint has been reissued or reinstated as to [him] that defendant within [(30)] thirty days preceding service.

\* \* \* \* \*

Rule 1506. Stockholder's Derivative Action.

(a) In an action to enforce a secondary right brought by one or more stockholders or members of a corporation or similar entity because the corporation or entity refuses or fails to enforce rights which could be asserted by it, the complaint shall set forth:

\* \* \* \* \*

(3) either

(i) that each plaintiff was a stockholder or owner of an interest in the corporation or other entity at the time of the transaction of which [he] the plaintiff complains or that [his] the plaintiff's stock or interest devolved upon [him] the plaintiff by operation of law from a person who was a stockholder or owner at that time, or

\* \* \* \* \*

Rule 1507. Specific Averments. Possible Persons Interested in Property. Appointment of a Representative

When a person interested in property which is the subject of an action should be made a party but [his] the person's name or interest in the property cannot be ascertained and [he] the person is not represented in the action, the plaintiff or defendant may so aver in [his] the complaint or answer. The court shall require that appropriate notice be given such person by advertisement or in such manner as the court by local rule or special order shall direct. If appropriate notice cannot be given or if the person does not appear after notice is given, the court may appoint a trustee or guardian ad litem to represent [him] the person and the decree entered in the action shall bind [his] the person's interest in the property.

Rule 1508. Pleading More Than One Cause of Action.

The plaintiff may state in [his] the complaint two or more causes of action cognizable in equity.

\* \* \* \* \*

Rule 1515. Accountants and Experts.

In actions involving complicated accounts, or questions requiring the evidence of experts, the court may employ an accountant or other expert to aid in the proper [depositions] disposition of the action. The report or evidence of such accountant or other expert shall be available to any party and [he] the accountant or other expert shall be subject to examination or cross-examination by any party. [He] The accountant or other expert shall be paid reasonable compensation for [his] services rendered.

**Rule 1517. The Adjudication. Notice.**

\* \* \* \* \*

**Official Note:** Adopted January 4, 1952; effective July 1, 1952; amended June 27, 1969, effective September 1, 1969.

See [ **Supreme Court Rule 78** ] **Rule of Judicial Administration 703** which requires a report to the [ **Supreme Court** ] **Court Administrator of Pennsylvania** of all matters undisposed of for [ **60** ] **ninety** days or more [ **after having been submitted** ] **as of the last day of the reporting period.**

**Rule 1529. Enforcement of Orders. Execution Process.**

(a) Execution process available in actions at law may be used in actions in equity where appropriate. A party entitled to subrogation against another party shall be entitled to execution process to enforce [ **his** ] **this** right.

(b) Where appropriate, the court may order the prothonotary or sheriff to perform any act which a party fails to perform within the time specified by the order or decree. The designated officer shall act in the name of and for the delinquent party and with the same effect as though the act were performed by [ **him** ] **the delinquent party.** The court may order the recording or registration of any document thus executed and tax the costs against the delinquent party.

(c) A party who fails to comply with a decree may be arrested by attachment and [ **his** ] **the property of the delinquent party** sequestered. If arrested, [ **he** ] **the delinquent party** may, upon furnishing such bail as the court shall require, be conditionally released for the purpose of performing the decree. The attachment and sequestration shall not be dissolved until the decree has been performed and the costs of the action paid.

**Official Note:**

\* \* \* \* \*

See **Rule 3250 imposing limitations upon the right of arrest.**

**Rule 1530. Special Relief. Accounting.**

\* \* \* \* \*

(c) Each party shall be served with a copy of the account in the same manner as a pleading. Exceptions may be filed to the account within twenty [ **(20)** ] days after service.

\* \* \* \* \*

(e) The auditor shall file a report, to which exceptions may be filed within twenty [ **(20)** ] days. If no exceptions are filed to the report of the auditor, the court shall enter judgment for the amount, if any, determined by the auditor to be due. If exceptions are filed, the court shall determine the amount, if any, which may be due.

**Rule 1531. Special Relief. Injunctions.**

\* \* \* \* \*

(d) An injunction granted without notice to the defendant shall be deemed dissolved unless a hearing on the continuance of the injunction is held within five [ **(5)** ] days after the granting of the injunction or within such other time as the parties may agree or as the court upon cause shown shall direct.

\* \* \* \* \*

(f)(1) When a preliminary or special injunction involving freedom of expression is issued, either without notice or after notice and hearing, the court shall hold a final hearing within three [ **(3)** ] days after demand by the defendant. A final decree shall be filed in the office of the prothonotary within twenty-four [ **(24)** ] hours after the close of the hearing. If the final hearing is not held within the three [ **(3)** ] day period, or if the final decree is not filed within twenty-four [ **(24)** ] hours after the close of the hearing, the injunction shall be deemed dissolved.

**Official Note:** The three [ **(3)** ] day period is the maximum time. In particular cases a shorter period may be required. The equity side of the Court is always open. See Rule 1502.

\* \* \* \* \*

(3) The trial judge shall file a written memorandum supporting the final decree within five [ **(5)** ] days after it is filed.

**Rule 1533. Special Relief. Receivers.**

\* \* \* \* \*

(b) No officer of a corporation or member of a partnership shall be appointed sole temporary receiver of the property of the corporation or partnership but, after hearing, [ **he** ] **an officer or member** may be appointed sole permanent receiver.

(c) The court may refuse to appoint a receiver for property and may permit the person in possession to retain it if [ **he** ] **the person** gives such security as the court shall direct. The court may remove a receiver and restore the property to the person from whom it was taken if [ **he** ] **the person** gives such security as may be required.

(d) Except as otherwise provided by an Act of Assembly, a receiver, whether temporary or permanent, must give such security for the faithful performance of [ **his** ] **the receiver's** duty as the court shall direct. A receiver shall not act until he **or she** has given the security required.

\* \* \* \* \*

**Rule 1534. Accounting by Fiduciaries.**

(a) Except as otherwise provided by an Act of Assembly, [ **when** ] a receiver, assignee or other fiduciary [ **files his** ] **filing an account** [ **he** ] shall give notice of [ **his** ] **the intention to apply for confirmation thereof on the date fixed by the court by local rule or special order.** The notice shall also set forth that the account may be confirmed and distribution ordered unless exceptions are filed with the prothonotary before that date.

\* \* \* \* \*

**Subchapter B. PARTITION OF REAL PROPERTY**

**Rule 1555. Pleading More Than One Cause of Action.**

(a) The plaintiff may state in the complaint causes of action for the partition of all or any part of any properties in which [ **he** ] **the plaintiff** and the defendants are co-tenants, irrespective of their location in the Commonwealth or of the proportion of the plaintiff's interest in the several properties.

\* \* \* \* \*

**Rule 1559. Master. Hearing.**

[ If the court appoints a ] A master [ he ] who is appointed by the court shall make such examinations and hold such hearings as may be necessary, giving reasonable notice thereof. [ He ] The master may employ appraisers and, with the authorization of the court, such other experts as are necessary to enable [ him ] the master to perform his or her duties.

\* \* \* \* \*

**Rule 1566. Preliminary Determination. Notice to Accept or Reject. Private Sale Confined to the Parties.**

\* \* \* \* \*

(b)(1) The notice in the case of proposed partition under Rule 1560(b) or (c) shall require the parties within twenty [ (20) ] days after service thereof to accept or reject the proposed plan of allocation. The notice in the case of inability to partition shall state that the property will be sold unless objection is made as provided in Rule 1563(b).

\* \* \* \* \*

(c) If any party rejects the proposed allotment of the purparts or if no objection is made to a sale under Rule 1563, the property shall be offered for private sale by open bidding confined to the parties to be held upon not less than twenty [ (20) ] days' notice.

\* \* \* \* \*

**Rule 1569. Master's Report. Exceptions.**

(a) [ If the court appoints a ] A master [ he ] who is appointed by the court shall file a report with respect to the matters submitted [ to him ]. The report shall follow the form of adjudication in Rule 1570, insofar as the scope of the reference to the master permits.

(b) The master shall give all persons in interest written notice of the date on which he or she intends to file [ his ] the report and proposed decree and shall specify an address within the county where they may be examined. The master may change [ his ] the report and proposed decree as he or she deems proper before filing them, but if any changes are made written notice thereof shall be given to all parties.

\* \* \* \* \*

**Rule 1572. Sale Not Confined to Parties.**

\* \* \* \* \*

(c) [ If the ] A purchaser who is a party or a lien holder whose lien is discharged by the sale [ he ] shall be allowed a credit equal to the amount of his or her distributive interest in the purchase price, less any charges assessed against him or her. The excess of the bid shall be paid in cash.

\* \* \* \* \*

**Rule 1573. Return of Sale and Schedule of Distribution.**

(a) Where the sale has been conducted by a master [ he ], the master shall promptly file with the prothonotary a return of sale together with a proposed decree which shall

\* \* \* \* \*

(b) The master shall give all persons in interest written notice of the date on which he or she intends to file [ his ] the return of sale and proposed decree and shall specify an address within the county where they may be examined. The master may change [ his ] the return of sale and proposed decree as he or she deems proper before filing them, but if any changes are made written notice thereof shall be given to all parties.

\* \* \* \* \*

**Subchapter C. ACTIONS TO PREVENT WASTE**

**Rule 1576. Remedies in Pending Actions.**

(a) In any action at law or in equity, on petition of any party setting forth facts entitling [ him ] the party to such relief, the court may, at any time before or after judgment, in accordance with Rule 1531(a), [ 1531 ](c), [ 1531 ](d) and [ 1531 ](e), and upon such terms and conditions, including the filing of security, as it may fix, issue an injunction pendente lite to restrain waste of real property which is a subject of the action.

\* \* \* \* \*

**CHAPTER 1650. ACTIONS IN MECHANICS' LIENS**

**Rule 1654. Defendant.**

(a) The plaintiff shall name as defendant the owner [ , ] named in the claim and the owner, if known, at the time the action is commenced.

(b) If the last owner of record prior to the commencement of the action has died, the plaintiff shall name as a defendant [ his ] the personal representative, heir or devisee of such owner, if known.

\* \* \* \* \*

**Rule 1656. The Complaint.**

The plaintiff shall set forth in the complaint

\* \* \* \* \*

(2) the court [ , term, ] and number and the date of the filing of the claim and a copy thereof as an exhibit;

\* \* \* \* \*

**Rule 1659. Compelling Commencement of Action.**

If a claimant has filed a claim and does not file a complaint, the prothonotary, upon praecipe of an owner, shall enter a rule as of course upon the claimant to file a complaint within twenty [ (20) ] days after service of the rule, or be forever barred from so doing. If the claimant fails to do so, the prothonotary, upon praecipe of the owner and proof of service, shall enter judgment for the defendant.

**CHAPTER 1700. CLASS ACTIONS**

**Rule 1707. Motion for Certification of Class Action. Time for Filing. Hearing**

(a) Within thirty [ (30) ] days after the pleadings are closed or within thirty [ (30) ] days after the last required pleading was due, the plaintiff shall move that the action be certified as a class action. The court may extend the time for cause shown. If the plaintiff fails to move for certification, the court if so notified shall promptly set a date for a certification hearing.

\* \* \* \* \*

**Rule 1711. The Plaintiff Class. Exclusion. Inclusion.**

\* \* \* \* \*

(b) If the court finds that

\* \* \* \* \*

(2) other special circumstances exists which are described in the order, the court may state in its order that [ no ] a person shall not be a member of the plaintiff class or subclass unless by a specified date [ he ] the person files of record a written election to be included in the class or subclass.

**CHAPTER 2000. ACTIONS BY REAL PARTIES IN INTEREST**

**Rule 2002. Prosecution of Actions by Real Parties in Interest. Exceptions.**

\* \* \* \* \*

(b) A plaintiff may sue in his or her own name without joining as plaintiff or use-plaintiff any person beneficially interested when such plaintiff

(1) is acting in a fiduciary or representative capacity, which capacity is disclosed in the caption and in the plaintiff's initial pleading; or

(2) is a person with whom or in whose name a contract has been made for the benefit of another.

\* \* \* \* \*

**Rule 2004. Transfer of Interest in Pending Action.**

If a plaintiff has commenced an action in his or her own name and thereafter transfers [ his ] the interest therein, in whole or in part, the action may continue in the name of the original plaintiff, or upon petition of the original plaintiff or of the transferee or of any other party in interest in the action, the court may direct the transferee to be substituted as plaintiff or joined with the original plaintiff.

**CHAPTER 2020. MINORS AS PARTIES**

**Rule 2026. Definitions.**

As used in this chapter.

\* \* \* \* \*

"guardian," except where the context otherwise indicates, means the party representing the interest of a minor party in any action, whether [ he is ] as (a) the guardian of a minor appointed by any court of competent jurisdiction, (b) a person in the nature of a next friend selected to represent a minor plaintiff in an action, or (c) a guardian ad litem specially appointed by the court in which the action is pending;

**Official Note:** A testamentary guardian is not included as such within the above definition of guardian. A testamentary guardian may, however, obtain the right to represent the minor in litigation, not in [ his ] the capacity as testamentary guardian, but by qualifying as a guardian within the above definition either by selection under clause (b) or appointment under clause (c).

\* \* \* \* \*

**Rule 2027. Guardian to Represent Minor.**

When a [ minor is ] party to an action, [ he ] a minor shall be represented by a guardian who shall supervise and control the conduct of the action in behalf of the minor.

**Rule 2028. Actions By and Against Minors. Averments in Plaintiff's Pleading.**

(a) An action in which a minor is plaintiff shall be entitled "A, a Minor, by B, [ his ] Guardian," against the party defendant.

**Official Note:** Under the above rule, the representative of a minor plaintiff is termed a "guardian" regardless of whether under prior practice he or she would be termed a legal guardian or a next friend.

(b) The initial pleading filed in behalf of a minor plaintiff shall state the name and address of his or her guardian and [ his ] the guardian's relationship, if any, to the subject matter of the action or to any of the parties thereto. In case the person selected as guardian is a guardian appointed by any court of competent jurisdiction or by a will duly probated, the initial pleading shall contain a reference to the record of the appointment.

(c) An action in which a minor is the defendant shall be commenced against the minor by name in the manner in which a like action is commenced against an adult.

**Official Note:** An action against a minor is begun in the same manner as an action against an adult, although by Rule 2034, infra, as under prior practice, the subsequent appointment of a guardian to represent the minor is essential to the rendition of a valid judgment against [ him ] the minor.

\* \* \* \* \*

**Rule 2030. Setoffs and Counterclaims.**

In an action brought on behalf of a minor the defendant may assert any setoff or counterclaim which [ he ] the defendant has against the minor.

**Rule 2031. Selection and Appointment of Guardians.**

(a) A minor plaintiff may select [ his ] a guardian, but such selection shall not bar the court from removing the guardian for cause in accordance with these rules.

(b) If a minor party to an action is not represented, the court shall appoint a guardian for [ him ] the minor either upon its own motion or upon the petition of (1) the minor party, (2) a guardian of the minor appointed by any court of competent jurisdiction, or by a will duly probated, (3) any relative of the minor, or (4) any other party to the action.

(c) The petition shall state the name and address of the person proposed as guardian, and [ his ] the guardian's relationship, if any, to the subject matter of the action or to any of the parties thereto. In case the person proposed as guardian is a guardian appointed by any court of competent jurisdiction or by a will duly probated, the petition shall contain a reference to the record of such appointment.

\* \* \* \* \*

**Rule 2032. Affidavit as to Age.**

A party to an action may file and serve on any other party thereto a rule as of course to file of record an affidavit setting forth whether [ he ] the other party is an adult or a minor.

**Rule 2034. Procedure When Minority of a Party is Ascertained.**

\* \* \* \* \*



(c) If the appointment of a guardian is made during the trial, the court may grant a continuance to enable the guardian properly to present the minor's case. The court may refuse a continuance if the minor has previously filed an affidavit asserting his or her majority.

\* \* \* \* \*

**Rule 2036. Affidavits by Minors.**

Affidavits which are required to be made by a party to an action, including affidavits to the pleadings, may be made by a minor if [ he ] the minor has sufficient mental capacity to understand the contents of the paper to which the affidavit is made and to appear in court as a witness. If the minor lacks such capacity, such affidavits shall be made by any competent person having knowledge or information as to the facts averred therein and shall state the reason for the minor's lack of capacity to make such affidavit.

**Rule 2037. Minor Becoming of Age During Pendency of Action.**

(a) When a minor reaches majority during the pendency of the action, the minor or [ his ] the minor's guardian may have the record amended to remove the name of the guardian.

\* \* \* \* \*

**CHAPTER 2120. PARTNERSHIPS AS PARTIES**

**Rule 2130. Venue.**

\* \* \* \* \*

(b) Except as otherwise provided by subdivision (c) of this rule, an action against a liquidator may be brought in and only in a county where the liquidator is liquidating the partnership business or in which the partnership last regularly conducted business, or in the county where the cause of action arose or in a county where a transaction or occurrence took place out of which the cause of action arose. This rule shall not apply to an action against a liquidator deriving [ his ] authority under the laws of the United States.

\* \* \* \* \*

**Rule 2133. Indexing of judgments.**

\* \* \* \* \*

(c) A judgment against an individual partner shall be indexed against [ him ] the partner as an individual.

\* \* \* \* \*

**CHAPTER 2200. ACTIONS FOR WRONGFUL DEATH**

**Rule 2203. Procedure to remove plaintiff.**

\* \* \* \* \*

**Official Note:**

\* \* \* \* \*

This rule has the effect of making the plaintiff in the wrongful death action accountable to the court in which the action is brought for his or her conduct therein. In addition, it permits the parties beneficially interested in the damages recovered in the action to exercise some supervisory control over the conduct of the action by enabling them to obtain the assistance of the court if the action is not properly conducted on their behalf.

**Rule 2204. Averments in plaintiff's pleading.**

In addition to all other facts required to be pleaded, the initial pleading of the plaintiff in an action for wrongful death shall state the plaintiff's relationship to the decedent, [ his ] the plaintiff's right to bring the action, the names and last known residence addresses of all persons entitled by law to recover damages, their relationship to the decedent and that the action was brought in their behalf.

**Rule 2206. Settlement, compromise, discontinuance and judgment.**

\* \* \* \* \*

(b)(1) \* \* \*

\* \* \* \* \*

(4) If the minor or the incapacitated person has no such guardian, and none is to be appointed, the court may order

(i) any amount in cash of a resident or nonresident minor or incapacitated person to be deposited in one or more savings accounts in the name of the minor or the incapacitated person in banks, building and loan associations, savings and loan associations or credit unions, deposits in which are insured by a Federal governmental agency provided that the amount deposited in any one such savings institution shall not exceed the amount to which such accounts are thus insured, or in one or more accounts in the name of the minor or the incapacitated person investing only in securities guaranteed by the United States government or a Federal governmental agency managed by responsible financial institutions. Every such order shall contain a provision that no withdrawal can be made from any such account until the minor attains [ his ] majority or unless the incapacitated person is adjudicated to have capacity, except as authorized by a prior order of the court. Proof of the deposit shall be promptly filed of record;

\* \* \* \* \*

**CHAPTER 2200. JOINDER OF PARTIES**

**Rule 2227. Compulsory joinder.**

\* \* \* \* \*

(b) If a person who must be joined as a plaintiff refuses to join, he or she shall, in a proper case, be made a defendant or an involuntary plaintiff when the substantive law permits such involuntary joinder.

**Rule 2229. Permissive joinder.**

\* \* \* \* \*

(b) A plaintiff may join as defendants persons against whom [ he ] the plaintiff asserts any right to relief jointly, severally, separately or in the alternative, in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences if any common question of law or fact affecting the liabilities of all such persons will arise in the action.

\* \* \* \* \*

(d) A [ person ] plaintiff who asserts a cause of action ex contractu may join as defendants all or any one or more persons alleged to be liable to [ him ] the plaintiff on or by reason of the breach of the contractual obligation sued upon, regardless of the capacities in which such persons are respectively liable or whether they are primarily or secondarily liable or whether their liabilities arise [ form ] from the same or separate acts

or undertakings; but where the liability of any defendant is solely joint, the plaintiff shall join all other persons jointly liable with such defendant.

\* \* \* \* \*

**Rule 2231. Effect of joinder. practice in general.**

\* \* \* \* \*

(e) If two or more defendants are joined under Rule 2229(d), the plaintiff shall not be permitted to discontinue or enter a nolle prosequi or a voluntary nonsuit as to any defendant primarily liable to [ him ] the plaintiff unless [ he ] the plaintiff also does so as to all defendants secondarily liable to [ him ] the plaintiff for the default of such defendant.

\* \* \* \* \*

**Rule 2232. Defective joinder. change of parties.**

\* \* \* \* \*

(b) Joinder of unnecessary parties is not ground for dismissal of an action. After notice to all other parties, a party may be dropped by order of the court whenever [ he ] the party has been misjoined or no claim for relief is asserted against [ him ] the party in the action by any other party.

(c) At any stage of an action, the court may order the joinder of any additional person who could have joined or who could have been joined in the action and may stay all proceedings until such person has been joined. The court in its discretion may proceed in the action although such person has not been made a party if jurisdiction over [ him ] the person cannot be obtained and [ he ] the person is not an indispensable party to the action.

\* \* \* \* \*

**CHAPTER 2250. JOINDER OF ADDITIONAL DEFENDANTS**

**Rule 2252. Right to Join Additional Defendants.**

\* \* \* \* \*

(b) If the person sought to be joined is not a party to the action the joining party may file as of course a praecipe for a writ or a complaint.

(1) If the joinder is by writ the joining party shall file [ his ] a complaint within [ 20 ] twenty days from the filing of the praecipe for the writ. If the joining party fails to file [ his ] the complaint within the required time, the plaintiff or the additional defendant joined may seek a rule to file the complaint and an eventual judgment of non pros in the manner provided by Rule 1037(a) for failure to file a complaint.

\* \* \* \* \*

(c) The writ to join an additional defendant shall be directed to [ him ] the additional defendant and shall be substantially in the following form:

\* \* \* \* \*

(d) If the person sought to be joined is a party, the joining party shall, without moving for severance or the filing of a praecipe for a writ or a complaint, assert in [ his ] the answer as new matter that such party is alone liable to the plaintiff or liable over to the joining party or jointly or severally liable to the plaintiff or liable to the joining party directly setting forth the ground therefor. The case shall proceed thereafter as if such party had been joined by a writ or a complaint.

**Rule 2255. Procedure.**

\* \* \* \* \*

(b) No pleadings shall be filed between the additional defendant and any party other than the one joining [ him ] the additional defendant except that the additional defendant may file a counterclaim against the plaintiff.

(c) No judgment on the pleadings may be entered in favor of any party against an additional defendant for failure to answer the complaint of the party joining [ him ] the additional defendant, but all allegations of fact in such complaint to which an answer is required and which are not sufficiently answered shall be conclusive upon the additional defendant.

(d) The plaintiff shall recover from an additional defendant found liable to [ him ] the plaintiff alone or jointly with the defendant as though such additional defendant had been joined as a defendant and duly served and the initial pleading of the plaintiff had averred such liability.

**CHAPTER 2300. INTERPLEADER BY DEFENDANTS**

**Rule 2303. Allegations required in petition; stay of proceedings.**

(a) The petition for interpleader shall allege

\* \* \* \* \*

(3) the interest, if any, which the defendant claims in the money or property in controversy and whether [ he ] the defendant is able (or if not, the reasons therefor) to pay or deliver that part of the money or property as to which he or she claims no interest into court or to such person as the court may direct.

(4) whether [ he ] the defendant has admitted the claim of, or subjected himself or herself to independent liability to, the plaintiff or any claimant in respect to the subject matter of the action.

\* \* \* \* \*

**Rule 2304. Order of court.**

The petition shall be accompanied by a form of order of the court substantially as follows:

**(Caption of the Action)  
Commonwealth of Pennsylvania**

Now, this \_\_\_\_ day of \_\_\_\_ [ A.D. ], \_\_\_\_, the petition of \_\_\_\_ (insert name of party seeking interpleader) is granted and \_\_\_\_ (insert name of the claimant not a party to the action) is added to the record as a party plaintiff and enjoined from commencing or further prosecuting any action in any court against \_\_\_\_ (the petitioner) to enforce in whole or in part any claim against [ him ] the petitioner set forth in said petition, except as a party to the above entitled action.

Now, therefore, we command you, the Sheriff of the County of \_\_\_\_ to direct the claimant, \_\_\_\_ (insert name and address of the claimant [ and his address ]) to file in the above entitled action in the office of the \_\_\_\_ (insert title of officer and court) a complaint within twenty days after being served with copies of the petition for interpleader and this order and all pleadings heretofore filed in the above entitled action if said service was made within your county, or

within thirty days of said service if said service was made within any other county of this Commonwealth.

By the court  
\_\_\_\_\_, J.

**Rule 2305. Service on and answer of plaintiff.**

(a) A copy of the petition shall be served upon the plaintiff or **[ his ] the plaintiff's** attorney.

(b) The plaintiff's answer, if any, to the petition shall be filed within twenty days of such service and a copy thereof shall be served upon the defendant or **[ his ] the defendant's** attorney.

**Rule 2306. Action of court on petition.**

(a) The court shall direct an interpleader if the petition is in conformity with these rules and the allegations thereof are established either by proof or by the failure of the plaintiff to file a sufficient answer; but the court may deny the petition if the defendant

(1) has unreasonably delayed in filing the petition, or

(2) has admitted the claim of, or subjected himself or herself to independent liability to, the plaintiff or any claimant, with knowledge that an inconsistent claim would be later asserted against him or her by any known or unknown person.

\* \* \* \* \*

(c) The court shall not deny the petition merely because

(1) the defendant has an interest in the action or asserts that he or she is not liable in whole or in part to any or all of the claimants and the plaintiff;

\* \* \* \* \*

**Rule 2307. Order for payment; delivery or sale of property; effect of compliance therewith.**

\* \* \* \* \*

(b) When the defendant has complied with such order, the court shall enter an order discharging **[ him ] the defendant** of all liability to the plaintiff and to any interpleaded claimant who has been served as required by these rules in respect to the money or property so paid or delivered. If the defendant has disclaimed all interest in the action the court in its order shall also discharge **[ him ] the defendant** from all liability for any costs accruing after the entry of the order and shall allow **[ him ] the defendant** the costs incurred by him or her in the action, to be paid from such money or property in the first instance and taxed as costs in the action.

\* \* \* \* \*

**Rule 2308. Service of process on interpleaded claimants.**

\* \* \* \* \*

(b) A copy of such order shall be served upon the plaintiff or **[ his ] the plaintiff's** attorney.

\* \* \* \* \*

**Rule 2309. Claimant's statement of claim; service thereof.**

(a) Within the time required by the order, each claimant interpleaded shall file a statement of **[ his ]** claim

against the defendant and any money or property paid or delivered by said defendant pursuant to an order of the court.

\* \* \* \* \*

(c) Following the allegations relating to **[ his ] the** claim against the defendant, the interpleaded claimant may include in his or her statement, under the heading of "Additional Matter" any allegations relevant to the claim of any other claimant or party.

(d) A copy of the statement shall be served upon the plaintiff, and any other interpleaded claimant and upon the defendant if **[ he ] the defendant** has not disclaimed all interest in the action.

**Rule 2310. Answers by defendant, plaintiff and other claimants.**

(a) **[ The ] A** defendant, **[ if he ] who** has not disclaimed all interest in the action, may within twenty days after service of a claimant's statement, file **[ his ] an** answer thereto, except to any "Additional Matter" thereof.

\* \* \* \* \*

**Rule 2316. Recovery of property and execution.**

The party to the interpleader ultimately found entitled to recover shall be entitled to payment or delivery of money or property awarded **[ him ]** under Rule 2315 and to execution upon any judgment entered in his or her favor against any party to the interpleader although an interpleaded claimant has not been served as required by Rule 2308.

**CHAPTER 2320. INTERVENTION**

**Rule 2327. Who may intervene.**

At any time during the pendency of an action, a person not a party thereto shall be permitted to intervene therein, subject to these rules if

\* \* \* \* \*

(4) the determination of such action may affect any legally enforceable interest of such person whether or not **[ he ] such person** may be bound by a judgment in the action.

**Rule 2328. Petition to intervene.**

(a) Application for leave to intervene shall be made by a petition in the form of and verified in the manner of a plaintiff's initial pleading in a civil action, setting forth the ground on which intervention is sought and a statement of the relief or the defense which the petitioner desires to demand or assert. The petitioner shall attach to the petition a copy of any pleading which **[ he ] the petitioner** will file in the action if permitted to intervene or shall state in the petition that **[ he ] the petitioner** adopts by reference in whole or in part certain named pleadings or parts of pleadings already filed in the action.

\* \* \* \* \*

**Rule 2330. Practice.**

\* \* \* \* \*

(b) Any party to the action may amend any pleading filed by **[ him ] the party** to include any claim or defense available against an intervening party.

**CHAPTER 2350. SUBSTITUTION OF PARTIES**

**Rule 2351. Definitions.**

\* \* \* \* \*

**Official Note:** See Rule 2004 governing the substitution of a person to whom a voluntary transfer is made. See also **the following rules governing the removal of a particular party and substitution of a successor:** Rule 2033, [ **Minors as parties** ] (guardian of a minor), [ **and** ] Rule 2060, [ **Incompetents as parties, governing the removal of an ad litem fiduciary and the substitution of a successor** ] (guardian ad litem of an incapacitated person), and Rule 2203, [ **governing the removal and substitution of plaintiffs in an action for wrongful death** ] (plaintiffs in an action for wrongful death).

**Rule 2352. Substitution of successor.**

\* \* \* \* \*

(b) If the successor does not voluntarily become a party, the prothonotary, upon praecipe of an adverse party setting forth the material facts shall enter a rule upon the successor to show cause why [ **he** ] **the successor** should not be substituted as a party.

**Rule 2354. Status of successor; continuance.**

If the successor voluntarily becomes a party to the action or the rule is made absolute, [ **he** ] **the successor** shall have all the rights and liabilities of a party to the action. The court may order such continuances and extensions as may be necessary to afford [ **him** ] **the successor** a reasonable opportunity to appear and prosecute or defend the action.

**CHAPTER 2980. STATUTORY ACTION TO CONFORM CONFESSED JUDGMENT**

**Rule 2984. Complaint.**

The complaint shall include:

(1) the names of the parties to the confessed judgment which is the subject matter of the action and the court [ **, term** ] and number, and the date and amount thereof;

\* \* \* \* \*

**Explanatory Comment**

The 1999 technical amendments to the rules of civil procedure accomplish three purposes. First, the rules are made gender neutral. For example, rules which contained references to "he" have been revised by substituting the phrase "he or she" or by replacing the pronoun with the original noun, e.g., "the deponent."

Second, there are a few rules containing forms which are revised by eliminating the date reference to the 1900's in light of the turn of the century. For example, the form of order contained in Rule 206.5 governing petitions formerly began, "AND NOW, this \_\_\_\_ day of \_\_\_\_\_, 199\_ . . ." The form is amended by substituting a blank line in place of "199\_."

Third, the rules have been inconsistent in the use of a word or a word and numeral to represent a number. For example, one rule might refer to "ten days" while another rule referred to "ten (10)" days. The rules are revised to use numerical representation by word only, e.g., "ten days." The use of a word and numeral remains only in forms such as the notice to plead prescribed by Rule 1361

which directs a party to file a response "within twenty (20) days from service hereof . . ."

*By the Civil Procedural Rules Committee*

EDWIN L. KLETT,  
*Chair*

[Pa.B. Doc. No. 99-695. Filed for public inspection April 30, 1999, 9:00 a.m.]

**PART I. GENERAL**

**[231 PA. CODE CHS. 3000 AND 4000]**

**Technical Amendment of Rules of Civil Procedure 3101—4020; No. 312, Doc. No. 5**

**Order**

*Per Curiam:*

*And Now,* this 12th day of April, 1999, the Pennsylvania Rules of Civil Procedure are amended as follows:

Rules 3101, 3105, 3106, 3109, 3110, 3111, 3112, 3118, 3121, 3123, 3126, 3128, 3129.2, 3133, 3136, 3137, 3139, 3140, 3141, 3143, 3144, 3145, 3165, 3170, 3182, 3201, 3204, 3205, 3206, 3207, 3252, 3253, 3255, 4003.3, 4003.5, 4004, 4007.1, 4007.2, 4007.4, 4008, 4014, 4015, 4017, 4017.1, 4019, 4020 are amended to read as follows.

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

**Annex A**

**TITLE 231. RULES OF CIVIL PROCEDURE**

**PART I. GENERAL**

**CHAPTER 3000. JUDGMENTS**

**Subchapter D. ENFORCEMENT OF MONEY JUDGMENTS FOR THE PAYMENT OF MONEY**

**Rule 3101. Definitions; garnishee.**

\* \* \* \* \*

(b) Any person may be a garnishee and shall be deemed to have possession of property of the defendant if [ **he** ] **the person**

- (1) owes a debt to the defendant;
- (2) has property of the defendant in his **or her** custody, possession or control;

\* \* \* \* \*

**Rule 3105. Writ; notation of time of receipt.**

The sheriff shall note on the writ the date and time when [ **he receives** ] **it is received.**

**Rule 3106. Substitution, reissuance and expiration of writ.**

\* \* \* \* \*

(d) A writ shall not be served nor shall a levy or attachment be made thereunder after the expiration of ninety [ **(90)** ] days from the date of issuance or reissuance. After levy or attachment has been made under the writ within the ninety [ **(90)** ] -day period it shall remain valid without further reissuance for the purpose of completing the pending execution proceedings under the levy or attachment.

**Rule 3109. Manual possession; retention of possession.**

(a) The sheriff may, or at the direction of the plaintiff shall, take manual possession or custody of any tangible personal property of the defendant upon which [ he ] the sheriff has made a levy.

\* \* \* \* \*

(c) If the sheriff does not retain possession of the property taken, [ he shall return ] it shall be returned to the person from whom it was taken.

\* \* \* \* \*

**Rule 3110. Execution against contents of safe deposit box.**

\* \* \* \* \*

(c) The court, on petition of the plaintiff, shall grant a rule on the defendant, the depository or custodian, and any person who has the right to open the box, to show cause why the box should not be opened in the presence of the sheriff, by force if necessary, and the property of the defendant found therein delivered to the sheriff. If the defendant, the depository or custodian, or a person who has the right to open the box cannot be served personally with the petition and rule, [ he ] that person shall be served by sending [ him ] a copy of the petition and rule by registered mail directed to his or her last known address or, if no address is known and an affidavit to that effect is filed, by publication in such manner as the court by local rule or special order shall direct.

\* \* \* \* \*

**Rule 3111. Service of the writ on garnishee; effect.**

\* \* \* \* \*

(b) Service of the writ upon the garnishee shall attach all property of the defendant which may be attached under these rules which is in the possession of the garnishee. It shall also attach all property of the defendant which may be attached under these rules and which comes into the garnishee's possession thereafter until judgment against [ him ] the garnishee even though no such property of the defendant was in [ his ] the garnishee's possession at the time of service.

(c) Service of the writ upon the garnishee shall also subject [ him ] the garnishee to the mandate and injunctive orders of the writ restraining [ him ] the garnishee from paying any debt to or for the account of the defendant and from delivering any property of the defendant which may be attached under these rules to anyone except the sheriff or otherwise disposing thereof until further order of the court or discontinuance or termination of the attachment.

\* \* \* \* \*

**Rule 3112. Service of the writ upon garnishee; real property of defendant in name of third party.**

(a) The sheriff shall execute the writ against real property of the defendant, title to which is recorded in the name of a third party, by serving the third party as garnishee and noting upon the writ a description of the real property and a statement that [ he ] the sheriff has levied upon defendant's interest therein.

\* \* \* \* \*

(c) [ If the ] A garnishee who cannot be served as provided in Rules 3111(a) or 3112(b)[, he ] shall be

served by (1) posting a copy of the writ on a public part of the property and (2) handing a copy of the writ to the person in actual possession of the property or, if no one is in actual possession, by sending the garnishee a copy of the writ together with an inventory of the property attached, by registered mail directed to [ his ] the garnishee's last known address or, if no address is known and an affidavit to that effect is filed, by publication in such manner as the court by special order shall direct.

**Rule 3118. Supplementary relief in aid of execution.**

\* \* \* \* \*

**Official Note: Service of a writ of execution against a garnishee enjoins the garnishee as provided in Rule 3111 but supplementary aid may be obtained under this rule against any party or person without the necessity of separate proceedings in equity in aid of execution.**

**Rule 3121. Stay of execution; setting aside execution.**

\* \* \* \* \*

(e) All objections by the defendant shall be raised at one time.

**Official Note:** The garnishee may however raise the defenses of exemption or immunity of property from execution by preliminary objection or in [ his ] answers to interrogatories. See Rules 3142(a) and (c) and 3145(b).

\* \* \* \* \*

**Rule 3123. Debtor's exemption.**

(a) A defendant entitled to a statutory exemption may claim it in kind or in cash at any time before the date of sale by notifying the sheriff of his or her claim and, if the exemption is claimed in kind, by designating the property which he or she elects to retain as exempt. Failure of the defendant to claim [ his ] the statutory exemption shall not constitute a waiver thereof.

**Official Note:** See *Mayhugh v. Coon*, 460 Pa. 128, 331 A.2d 452 (1975).

(b) Upon receipt of a claim for exemption in kind the sheriff shall set aside, from the designated property, enough thereof as appraised by [ him ] the sheriff, to equal the value of the exemption, unless the property is incapable of division. In the event of failure of the defendant to claim [ his ] the statutory exemption, the sheriff shall similarly choose, appraise, and set aside property in kind. Real property claimed shall be described by metes and bounds and the description shall be included in the sheriff's return.

(c) If the property held by the sheriff in kind cannot be set aside [ property in kind ] because [ the property in his hands ] it is not capable of appropriate division, [ he ] the sheriff shall set aside from the proceeds of the sale and pay to the defendant in cash the amount of [ his ] the statutory exemption.

\* \* \* \* \*

**Rule 3126. Sale of inventory in course of trade.**

Merchandise, inventory, or stock in trade of a defendant engaged in trade or business may, after levy, be sold by the defendant for cash in the ordinary course of trade or business if the plaintiff shall consent by writing directed to the sheriff. If the sheriff [ has in his hands ] holds writs of more than one plaintiff against the defendant, all

the plaintiffs must consent in writing to the sale. The sale shall be under the supervision of the sheriff. The proceeds of sale shall be immediately collected by or delivered to the sheriff until all writs [ **in his hands** ] held by the sheriff against the defendant are satisfied. Any plaintiff may withdraw his or her consent at any time.

**Rule 3128. Notice of sale; personal property.**

\* \* \* \* \*

(b) The notice of sale shall include a notice that all claims to the property must be filed with the sheriff before sale and all claims to the proceeds before distribution; that a sheriff's schedule of distribution will be filed in [ **his** ] the sheriff's office on a date specified by [ **him** ] the sheriff, not later than five [ **(5)** ] days after sale; and that distribution will be made in accordance with the schedule unless exceptions are filed within ten [ **(10)** ] days thereafter. No further notice of the filing of the schedule of distribution need be given.

\* \* \* \* \*

**Rule 3129.2. Notice of sale; handbills; written notice; publication.**

\* \* \* \* \*

(b) The handbills shall be posted by the sheriff in [ **his** ] the sheriff's office and upon the property at least thirty days before the sale, and shall include

\* \* \* \* \*

**Rule 3133. Lien creditor as purchaser.**

Whenever real or personal property sold on execution is purchased by the plaintiff or any other lien creditor entitled to receive all or part of the proceeds of the sale, the sheriff upon proof of that fact shall accept on account of the purchase price the receipt of the purchaser up to the amount of the proceeds to which [ **he** ] the purchaser is entitled. The sheriff may require payment in cash of all legal costs distributable from the proceeds of the sale.

**Rule 3136. Distribution of proceeds.**

(a) Not later than thirty [ **(30)** ] days after the sale of real property and not later than five [ **(5)** ] days after the sale of personal property, the sheriff shall prepare a schedule of proposed distribution of the proceeds of sale which shall be kept on file and shall be available for inspection in [ **his** ] the sheriff's office. No schedule of distribution or list of liens need be filed when the property is sold to the plaintiff for costs only.

(b) When a receipt of the plaintiff or other lien creditor has been accepted on account of the purchase price, the schedule shall set forth [ **his** ] the name and address of the plaintiff or lien creditor, the amount of [ **his** ] the judgment or lien, identifying it, and the amount of credit claimed and allowed upon the purchase price.

(c) In sales of real property the sheriff shall attach to the schedule a list of liens upon the property sold as certified [ **to him** ] from the record by the proper officers or a guaranteed search from any title company authorized to do business within the county. The cost of certifying the list of liens or the title search, the acknowledgment, recording and registry of the deed and transfer or documentary stamps shall be charged as an expense of distribution.

(d) The sheriff shall distribute the proceeds of sale in accordance with the proposed schedule of distribution, unless written exceptions are filed with [ **him** ] the sheriff not later than ten (10) days after the filing of the proposed schedule.

(e) Upon the filing of exceptions, [ **with** ] the sheriff [ **he** ] shall transmit them to the prothonotary together with a copy of the proposed schedule of distribution.

\* \* \* \* \*

(h) If the sheriff receives any money for costs or in connection with a stay, adjournment or postponement of sale or otherwise, [ **he** ] the sheriff shall account for it on returning the writ.

**Rule 3137. Priority of distribution as between competing plaintiffs.**

\* \* \* \* \*

(b) When property is attached by service upon the garnishee of two or more writs of separate plaintiffs, priority of distribution between them shall be determined by the date of service of their respective writs upon the garnishee as to all property then in the hands of the garnishee or coming into [ **his** ] the garnishee's possession up to time of judgment against [ **him** ] the garnishee.

\* \* \* \* \*

**Rule 3139. Sheriff's return.**

\* \* \* \* \*

(d) If real property is sold by the sheriff under a writ of execution from another county, a copy of the sheriff's return shall also be filed by [ **him** ] the sheriff with the prothonotary of the county in which the real property is located.

**Rule 3140. Notice by garnishee.**

\* \* \* \* \*

(b) Upon filing [ **his** ] answers to interrogatories the garnishee shall promptly forward a copy to the defendant.

(c) A copy is forwarded within the requirement of this rule when it is delivered to the defendant by a competent adult at any place within or without the Commonwealth in the manner prescribed by Rule 402(a) for service of original process or when it is mailed to the defendant by registered mail directed to [ **his** ] the defendant's last known address.

**Rule 3141. Garnishee's duty to defend; venue of proceedings.**

(a) [ **If the** ] A garnishee who forwards copies of the writ and [ **his** ] answers to interrogatories to the defendant, [ **he** ] shall thereafter be under no duty to resist the attachment or defend the action against the defendant in any manner but may do so as provided by these rules.

(b) When the writ is issued to another county, preliminary objections, proceedings for stay, or release of property from attachment, answers to interrogatories, or other matters relating to the attachment, may at the option of the garnishee be filed or taken by [ **him** ] the garnishee in the county to which the writ is directed or from which it issued. If filed or taken in the county to which the writ is directed, copies thereof and any order of the court thereon shall also be forwarded to the prothonotary of the

county in which the writ issued, and to the plaintiff and the defendant or their attorneys, and shall contain or have attached an election of optional venue in the garnishee county. A copy is forwarded within the meaning of this rule if it is sent in the manner provided by Rule 3140(c).

**Rule 3143. Dissolution of attachment; release of property; bond.**

\* \* \* \* \*

(b)(1) An attachment is dissolved when any person or party

\* \* \* \* \*

(ii) deposits with the prothonotary, or with the sheriff for the prothonotary, to be held by [ him ] the prothonotary or the sheriff upon the same condition as the bond, security in the form of legal tender of the United States in an amount equal to the plaintiff's judgment, including probable interest and costs, or in such lesser amount as the court may direct.

\* \* \* \* \*

(c) Specific property is released without dissolving the attachment when any person or party gives bond or security, as provided by Subdivision (b) of this rule, in an amount based upon the value of the property to be determined by the court, and conditioned to pay the plaintiff the amount of [ his ] the final judgment against the defendant or the value of the property released, whichever is less.

\* \* \* \* \*

(f) The prothonotary, on praecipe of the garnishee or defendant, shall enter a rule on the plaintiff to file interrogatories. If the plaintiff fails to comply with the rule within twenty [ (20) ] days after service, the prothonotary, upon praecipe of the garnishee, shall enter judgment of non pros against the plaintiff and in favor of the garnishee, which shall dissolve the attachment as to the garnishee.

(g) At any time after the filing of answers to the interrogatories and service of a copy upon the plaintiff, the prothonotary, on praecipe of the garnishee, shall enter a rule on the plaintiff to (1) seek judgment against the garnishee under Rule 3146(b) or (2) place the issue between the plaintiff and garnishee upon the list for trial. If the plaintiff fails to comply with the rule within twenty [ (20) ] days after service, the prothonotary, on praecipe of the garnishee, shall enter judgment of non pros against the plaintiff in favor of the garnishee, which shall dissolve the attachment as to the garnishee.

\* \* \* \* \*

**Rule 3144. Interrogatories to garnishee.**

(a) The plaintiff may, at the time of issuance of the writ or thereafter, file and serve interrogatories directed to the garnishee respecting property of the defendant in [ his ] the garnishee's possession. The plaintiff in [ his ] the interrogatories may require the garnishee to include in [ his ] the answer, so far as relevant, the names and addresses of persons taking part in any transaction, the specific amount of any debt, the value and location of any property and the nature and amount of consideration given for any transfer of property.

(b) The interrogatories shall contain a notice to answer within twenty [ (20) ] days after service.

**Rule 3145. Interrogatories; procedure.**

\* \* \* \* \*

(b) The garnishee in [ his ] the answer under "new matter" may include

(1) the defenses of the immunity or exemption of property;

(2) any defense or counterclaim which [ he ] the garnishee could assert against the defendant if sued by [ him ] the defendant but [ he ] the garnishee may not assert any defense on behalf of the defendant against the plaintiff or otherwise attack the validity of the attachment;

(3) any claim which [ he ] the garnishee could assert against the plaintiff if sued by [ him ] the plaintiff.

**Subchapter E. ENFORCEMENT OF JUDGMENTS IN SPECIAL ACTIONS  
ACTION OF EJECTMENT**

**Rule 3165. Reentry by defendant; new writ of possession.**

After execution and return of the writ, if the defendant shall reenter into possession, the prothonotary, upon praecipe and affidavit setting forth the facts, filed within three [ (3) ] years after the return of the writ on which execution was completed, shall issue a new writ of possession.

**ACTIONS OF REPLEVIN**

**Rule 3170. Judgment; enforcement.**

(a) If judgment is entered for the party in possession, [ he ] that party may recover [ his ] damages and costs by execution or by recovery upon the bond.

(b) If judgment is entered for a party not in possession, [ he ] that party may obtain [ the ] possession of the property by a writ of possession, or in the alternative may obtain the value of the property by execution on the judgment or by recovery upon the bond. In any case, [ he ] the party may recover [ his ] damages and costs by execution or by recovery upon the bond.

**ACTION OF MORTGAGE FORECLOSURE**

**Rule 3182. Service of writ; levy.**

Service of the writ shall be made by the sheriff noting upon the writ a brief description of the mortgaged property and a statement that [ he ] the sheriff has levied upon defendant's interest therein.

**SHERIFF'S INTERPLEADER**

**Rule 3201. Scope.**

\* \* \* \* \*

**Official Note:**

\* \* \* \* \*

These rules do not apply where tangible property is attached under Rule 3108(a) rather than levied upon. If the garnishee [ himself ] claims the property [ he ] the garnishee may interplead under Rules 2301 et seq. If an outside person claims the property, [ he ] such person may intervene in the [ garnishee ] garnishment proceedings or the garnishee may defend the attachment by asserting the outside person's title and denying that [ he ] the garnishee holds any property of the defendant.

**Rule 3204. Sheriff's determination of claimant's title.**

Within ten [ (10) ] days after the claim is filed the sheriff shall, with or without formal hearing, determine whether the claimant is prima facie the owner of the property in whole or in part.

**Rule 3205. Appraisal of property; appraisal fees.**

(a) Unless a party in interest files a request for appraisal with the sheriff within ten [ (10) ] days after the date specified in the sheriff's notice, the sheriff without making an appraisal shall accept the value of the property set forth in the claim.

\* \* \* \* \*

**Rule 3206. Sheriff's determination in favor of claimant; objections; amount of bond; delivery of property; interpleader.**

\* \* \* \* \*

(b) Any execution creditor or defendant may, within ten [ (10) ] days after the date of mailing of the copy of the determination and valuation, file with the prothonotary, and with the sheriff an objection to the determination substantially in the form provided by Rule 3260. The sheriff shall send by ordinary mail a copy of the objection to all other parties. Upon the filing of the objection an interpleader shall be at issue in which the claimant shall be the plaintiff and all other parties in interest shall be defendants. The only pleading shall be the claim, all averments of which shall be deemed to be denied.

\* \* \* \* \*

(e) If an execution creditor or a defendant files an objection, the claimed property shall remain subject to the levy unless the claimant within ten [ (10) ] days from the filing of the objection files a bond as provided in Rules 3207(d) and 3208, in which event the sheriff shall withdraw all levies on the claimed property and deliver the same as provided in Rule 3207(d).

**Rule 3207. Sheriff's determination against claimant; objection; amount of bond; delivery of property; interpleader.**

\* \* \* \* \*

(b) The claimant may, within ten [ (10) ] days after the date of the mailing of the copy of the determination and valuation, file with the prothonotary and with the sheriff an objection to the determination substantially in the form provided by Rule 3260, with or without bond. The sheriff shall send by ordinary mail a copy of the objection to all other parties. Upon the filing of the objection an interpleader shall be at issue in which the claimant shall be the plaintiff and all other parties in interest shall be defendants. The only pleading shall be the claim, all averments of which shall be deemed to be denied.

\* \* \* \* \*

**FORMS**

**Rule 3252. Writ of execution; money judgments.**

\* \* \* \* \*

**Official Note:**

\* \* \* \* \*

Under paragraph (2) of the writ, if attachment of a named garnishee is desired, [ his ] the garnishee's name should be set forth in the space provided.

\* \* \* \* \*

**Rule 3253. Interrogatories in attachment.**

Interrogatories of the plaintiff to the garnishee shall be substantially in the following form:

[Caption]

"To \_\_\_\_\_ :

(Garnishee)

"You are required to file answers to the following interrogatories within twenty (20) days after service upon you. Failure to do so may result in judgment against you:

"1. At the time you were served or at any subsequent time did you owe the defendant any money or were you liable to [ him ] the defendant on any negotiable or other written instrument, or did [ he ] the defendant claim that you owed [ him ] the defendant any money or were liable to [ him ] the defendant for any reason?

\* \* \* \* \*

"6. At any time after you were served did you pay, transfer or deliver any money or property to the defendant or to any person or place pursuant to [ his ] the defendant's direction or otherwise discharge any claim of the defendant against you?"

\* \* \* \* \*

**Rule 3255. Writ of possession.**

The writ of possession shall be substantially in the following form:

\* \* \* \* \*

"(2) To satisfy the costs against \_\_\_\_\_ you are directed to levy upon any property of \_\_\_\_\_ and sell his or her interest therein.

\* \* \* \* \*

**CHAPTER 4000. DEPOSITIONS AND DISCOVERY**

**Rule 4003.3. Scope of Discovery. Trial Preparation Material Generally.**

Subject to the provisions of Rules 4003.4 and 4003.5, a party may obtain discovery of any matter discoverable under Rule 4003.1 even though prepared in anticipation of litigation or trial by or for another party or by or for that other party's representative, including his or her attorney, consultant, surety, indemnitor, insurer or agent. The discovery shall not include disclosure of the mental impressions of a party's attorney or his or her conclusions, opinions, memoranda, notes or summaries, legal research or legal theories. With respect to the representative of a party other than the party's attorney, discovery shall not include disclosure of his or her mental impressions, conclusions or opinions respecting the value or merit of a claim or defense or respecting strategy or tactics.

**Rule 4003.5. Discovery of Expert Testimony. Trial Preparation Material.**

(a) Discovery of facts known and opinions held by an expert, otherwise discoverable under the provisions of Rule 4003.1 and acquired or developed in anticipation of litigation or for trial, may be obtained as follows:

(1) A party may through interrogatories require

(a) \* \* \*

(b) the other party to have each expert so identified [ by him ] state the substance of the facts and opinions to which the expert is expected to testify and a summary



of the grounds for each opinion. The party answering the interrogatories may file as his or her answer a report of the expert or have the interrogatories answered by [ his ] the expert. The answer or separate report shall be signed by the expert.

\* \* \* \* \*

(b) [ If the identity of an expert witness is not disclosed ] An expert witness whose identity is not disclosed in compliance with subdivision (a)(1) of this rule[ , he ] shall not be permitted to testify on behalf of the defaulting party at the trial of the action. However, if the failure to disclose the identity of the witness is the result of extenuating circumstances beyond the control of the defaulting party, the court may grant a continuance or other appropriate relief.

(c) To the extent that the facts known or opinions held by an expert have been developed in discovery proceedings under subdivision (a)(1) or (2) of this rule, [ his ] the direct testimony of the expert at the trial may not be inconsistent with or go beyond the fair scope of his or her testimony in the discovery proceedings as set forth in [ his ] the deposition, answer to an interrogatory, separate report or supplement thereto. However, [ he ] the expert shall not be prevented from testifying as to facts or opinions on matters on which [ he ] the expert has not been interrogated in the discovery proceedings.

**Rule 4004. Procedure on Depositions by Written Interrogatories.**

(a)(1) A party taking a deposition by written interrogatories shall serve a copy of the interrogatories upon each party or [ his ] the attorney of record of each party. Within thirty days thereafter the party so served may serve cross interrogatories upon each party or [ his ] the attorney of record of each party. Subsequent interrogatories shall be similarly served within ten days.

(2) The interrogatories shall contain a notice stating the name or descriptive title and address of the officer before whom the deposition is to be taken, the time and place of taking the deposition and the name and address of each person to be examined if known, and, if the name is not known, a general description sufficient to identify [ him ] each person to be examined or the particular class or group to which [ he ] each person belongs. A deposition upon written interrogatories may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of Rule 4007.1(e).

\* \* \* \* \*

(c) A copy of all interrogatories for the taking of a deposition shall be transmitted to the person designated to take the deposition, who shall promptly give notice to the witness and thereafter propound the interrogatories to [ him ] the witness and complete, certify and send [ it ] the deposition by registered mail to the party taking the deposition, attaching thereto the copy of the interrogatories.

(d) When the deposition is received by the party taking the deposition, [ he ] the party shall promptly give notice thereof to all other parties.

\* \* \* \* \*

**Rule 4007.1. Procedure in Deposition by Oral Examination**

\* \* \* \* \*

(b) The notice shall conform with the requirements of subdivision (c) of this rule and of Rule 4007.2(b) and (c) where appropriate and shall state the time and place of taking the deposition and the name and address of each person to be examined if known, and, if the name is not known, a general description sufficient to identify [ him ] the deponent or the particular class or group to which [ he ] the deponent belongs.

\* \* \* \* \*

(e) A party may in [ his ] the notice and in a subpoena, if issued, name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters to be inquired into and the materials to be produced. In that event, the organization so named shall serve a designation of one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which [ he ] each person will testify. A subpoena shall advise a non-party organization of its duty to make such a designation. The person or persons so designated shall testify as to matters known or reasonably available to the organization. This subdivision (e) does not preclude taking a deposition by any other procedure authorized in these rules.

\* \* \* \* \*

**Rule 4007.2. When Leave of Court Required.**

\* \* \* \* \*

(b) Leave of court must be obtained if a plaintiff's notice schedules the taking of a deposition prior to the expiration of [ (30) ] thirty days after service of the original process and the defendant has not served a notice of taking a deposition or otherwise sought discovery, unless the party or person to be examined is

- (1) aged or infirm, or
- (2) about to leave the county in which the action is pending for a place outside the Commonwealth or a place more than [ (100) ] one hundred miles from the courthouse in which the action is pending.

(c) If the plaintiff proceeds under subdivision (b)(1) or (2) of this rule the notice of taking the deposition shall set forth the facts which support taking it without leave of court. The plaintiff's attorney shall sign the notice and [ his ] this signature shall constitute a certification [ by him ] that to the best of [ his ] the attorney's knowledge, information and belief the statement of facts is true.

\* \* \* \* \*

**Rule 4007.4. Supplementing Responses.**

A party or an expert witness who has responded to a request for discovery with a response that was complete when made is under no duty to supplement [ his ] the response to include information thereafter acquired, except as follows:

- (1) A party is under a duty seasonably to supplement [ his ] the response with respect to any question directly addressed to the identity and location of persons having knowledge of discoverable matters and the identity of each person expected to be called as an expert witness at trial, the subject matter on which [ he ] each person is expected to testify and the substance of [ his ] each person's testimony as provided in Rule 4003.5(a)(1).

(2) A party or an expert witness is under a duty seasonably to amend a prior response if he or she obtains information upon the basis of which he or she knows that

(a) [ he knows that ] the response was incorrect when made, or

(b) [ he knows that ] the response though correct when made is no longer true.

\* \* \* \* \*

**Rule 4008. Oral Examination. Limitation.**

If a deposition is to be taken by oral examination more than [ (100) ] one hundred miles from the courthouse, the court upon motion may make an order requiring the payment of reasonable expenses, including attorney's fees, as the court shall deem proper.

**PRODUCTION OF DOCUMENTS AND THINGS AND ENTRY FOR INSPECTION AND OTHER ACTIVITIES**

**ENTRY UPON PROPERTY FOR INSPECTION AND OTHER ACTIVITIES**

**Rule 4014. Request for Admission.**

\* \* \* \* \*

(b) Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within thirty days after service of the request, or within shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission an answer verified by the party or an objection, signed by the party or by [ his ] the party's attorney; but, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of forty-five days after service of the original process upon him or her. If objection is made, the reasons therefor shall be stated. The answer shall admit or deny the matter or set forth in detail the reasons why the answering party cannot truthfully do so. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify [ his ] the answer or deny only a part of the matter of which an admission is requested, [ he ] the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless [ he ] the answering party states that he or she has made reasonable inquiry and that the information known or readily obtainable by him or her is insufficient to enable him or her to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request. [ He ] That party may, subject to the provisions of Rule 4019(d), deny the matter or set forth reasons why he or she cannot admit or deny it.

\* \* \* \* \*

(d) Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. Subject to the provisions of Rule 212.3 governing pre-trial conferences, the court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice him or her in maintaining [ his ]

the action or defense on the merits. Any admission by a party under this rule is for the purpose of the pending action only and is not an admission by [ him ] the party for any other purpose nor may it be used against [ him ] the party in any other proceeding.

**Rule 4015. Persons Before Whom Depositions May be Taken.**

\* \* \* \* \*

(b) In a foreign country, depositions may be taken

\* \* \* \* \*

(2) before a person commissioned by the court in which the action is pending, and a person so commissioned shall have the power by virtue of [ his ] the commission to administer any necessary oath and take testimony, or

\* \* \* \* \*

**Rule 4017. Transcript of Testimony. Objections. Filing.**

(a) The person before whom the deposition is taken shall put the witness on oath or affirmation and shall personally or by someone acting under his or her direction and in his or her presence record the testimony of the witness.

\* \* \* \* \*

(c) When the testimony is fully transcribed a copy of the deposition with the original signature page shall be submitted to the witness for inspection and signing and shall be read to or by [ him ] the witness and shall be signed by [ him ] the witness, unless the inspection, reading and signing are waived by the witness and by all parties who attended the taking of the deposition, or the witness is ill or cannot be found or refuses to sign. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the person before whom it was taken with a statement of the reasons given by the witness for making the changes. If the deposition is not signed by the witness within [ (30) ] thirty days of its submission to [ him ] the witness, the person before whom the deposition was taken shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed, unless the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(d) The person before whom the deposition is taken shall certify on the deposition that the witness was duly sworn [ by him ] and that the deposition is a true record of the testimony given by the witness.

\* \* \* \* \*

**Rule 4017.1. Videotape Depositions**

\* \* \* \* \*

(b) Every notice or subpoena for the taking of a videotape deposition shall state

\* \* \* \* \*

(5) the name and address of the videotape operator and of his or her employer. The operator may be an employee of the attorney taking the deposition.

(c) The deposition shall begin by the operator stating on camera (1) his or her name and address, (2) the name and address of his or her employer, (3) the date, time

and place of the deposition, (4) the caption of the case, (5) the name of the witness, and (6) the party on whose behalf the deposition is being taken. The officer before whom the deposition is taken shall then identify himself or herself and swear the witness on camera. At the conclusion of the deposition the operator shall state on camera that the deposition is concluded. When the length of the deposition requires the use of more than one tape, the end of each tape and the beginning of each succeeding tape shall be announced on camera by the operator.

\* \* \* \* \*

**Rule 4019. Sanctions.**

(a)(1) The court may, on motion, make an appropriate order if

\* \* \* \* \*

(iv) a party or an officer, or managing agent of a party or a person designated under Rule 4007.1(e) to be examined, after notice under Rule 4007.1, fails to appear before the person who is to take [ his ] the deposition;

\* \* \* \* \*

(vi) a party or an officer, or managing agent of a party refuses or induces a person to refuse to obey an order of court made under subdivision (b) of this rule requiring [ him ] such party or person to be sworn or to answer designated questions or an order of court made under Rule 4010;

\* \* \* \* \*

(c) The court, when acting under subdivision (a) of this rule, may make

\* \* \* \* \*

(2) an order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting [ him ] such party from introducing in evidence designated documents, things or testimony, or from introducing evidence of physical or mental condition;

\* \* \* \* \*

(d) If at the trial or hearing, a party who has requested admission as authorized by Rule 4014 proves the matter which the other party has failed to admit as requested, the court on motion may enter an order taxing as costs against the other party the reasonable expenses incurred in making such proof, including attorney's fees, unless the court finds that

\* \* \* \* \*

(3) the party failing to admit had reasonable ground to believe that he or she might prevail on the matter, or

\* \* \* \* \*

(e) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay to such other party the amount of the reasonable expenses incurred by [ him ] such other party and his or her attorney in so attending, including attorney's fees.

(f) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon [ him ] the witness and because of such failure the witness does not attend, and if another party attends in person or by attorney [ because he expects ] expecting the deposition of that witness to be taken, the court may

order the party giving the notice to pay to such other party the amount of the reasonable expenses incurred by [ him ] such other party and his or her attorney in so attending, including attorney's fees.

\* \* \* \* \*

**Rule 4020. Use of Depositions at Trial.**

(a) At the trial, any part or all of a deposition, so far as admissible under the rules of evidence, may be used against any party who was present or represented at the taking of the deposition or who had notice thereof if required, in accordance with any one of the following provisions:

\* \* \* \* \*

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds

(a) that the witness is dead, or

(b) that the witness is at a greater distance than [ (100) ] one hundred miles from the place of trial or is outside the Commonwealth, unless it appears that the absence of the witness was procured by the party offering the deposition, or that the witness is unable to attend or testify because of age, sickness, infirmity or imprisonment, or that the party offering the deposition has been unable to procure the attendance of the witness by subpoena, or upon application and notice that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

(4) If only part of a deposition is offered in evidence by a party, any other party may require [ him ] the offering party to introduce all of it which is relevant to the part introduced, and any party may introduce any other parts.

\* \* \* \* \*

(b) Substitution of parties does not affect the right to use depositions previously taken; and, when an action has been dismissed and another action involving the same subject is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken [ and duly filed ] in the former action may be used in the latter as if originally taken therein.

\* \* \* \* \*

(d) A party shall not be deemed to make a person his or her own witness for any purpose by taking [ his ] the person's deposition. The introduction in evidence of the deposition or any part thereof for any purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the party introducing the deposition, but this shall not apply to the use by an adverse party of a deposition as described in subdivision (a)(2) of this rule. At the trial or hearing any party may rebut any relevant evidence contained in a deposition whether introduced by [ him ] that party or by any other party.

**Explanatory Comment**

The 1999 technical amendments to the rules of civil procedure accomplish three purposes. First, the rules are made gender neutral. For example, rules which contained references to "he" have been revised by substituting the

phrase "he or she" or by replacing the pronoun with the original noun, e.g., "the deponent."

Second, there are a few rules containing forms which are revised by eliminating the date reference to the 1900's in light of the turn of the century. For example, the form of order contained in Rule 206.5 governing petitions formerly began, "AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_ . . ." The form is amended by the substitution of a blank line in place of "199\_\_ . . ."

Third, the rules have been inconsistent in the use of a word or a word and numeral to represent a number. For example, one rule might refer to "ten days" while another rule referred to "ten (10)" days. The rules are revised to use numerical representation by word only, e.g., "ten days." The use of a word and numeral remains only in forms such as the notice to plead prescribed by Rule 1361 which directs a party to file a response "within twenty (20) days from service hereof. . . ."

*By the Civil Procedural  
Rules Committee*

EDWIN L. KLETT,  
*Chair*

[Pa.B. Doc. No. 99-696. Filed for public inspection April 30, 1999, 9:00 a.m.]

## Title 234—RULES OF CRIMINAL PROCEDURE

### PART I. GENERAL [234 PA. CODE CH. 1100]

#### Order Amending Rules 1101, 1102 and 1103; No. 240, Doc. No. 2

The Criminal Procedural Rules Committee has prepared a Final Report explaining the April 16, 1999 amendments to Rules of Criminal Procedure 1101 (Waiver of Jury Trial), 1102 (Procedure When Jury Trial is Waived), and 1103 (Agreement to be Tried by Fewer Than Twelve Jurors) that conform the rules to the 1998 amendment to article I, § 6 of the Pennsylvania Constitution that provides, "In criminal cases, the Commonwealth shall have the same right to trial by jury as does the accused." The Final Report follows the Court's Order.

#### Order

*Per Curiam:*

Now, this 16th day of April 1999, 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), with 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 1101, 1102, and 1103 are amended all in the following form.

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

#### Annex A

### TITLE 234. RULES OF CRIMINAL PROCEDURE

#### PART I. GENERAL

#### CHAPTER 1100. TRIAL

#### Rule 1101. Waiver of Jury Trial.

In all cases, the defendant **and the attorney for the Commonwealth** may waive a jury trial with approval by a judge of the court in which the case is pending, and elect to **[ be tried by a ] have the judge try the case** without a jury. The judge shall ascertain from the defendant whether this is a knowing and intelligent waiver, and such colloquy shall appear on the record. The waiver shall be in writing, made a part of the record, **and signed by the defendant, the attorney for the Commonwealth, the judge, and the defendant's attorney** as a witness.

**Official Note:** Adopted January 24, 1968, effective August 1, 1968; amended March 29, 1973, effective 30 days hence; amended November 9, 1984, effective January 2, 1985[.]; **amended April 16, 1999, effective July 1, 1999.**

#### Comment

**[ Heretofore, a defendant charged with murder was not permitted to waive a jury trial; however this Rule eliminates that limitation. ]**

The 1973 amendment ended the proscription, which had formerly appeared in this **[ Rule ] rule**, against waiver of jury trials in capital cases **[ —that is, those in which the Commonwealth refuses to certify that it is not seeking the death penalty ]**. In doing so, the Court has departed from the language expressed, in the absence of specific **[ Rules ] rules** to the contrary, in *Commonwealth v. Petrillo*, **[ 340 Pa. 33, 43, ]** 16 A.2d 50, 56 (Pa. 1949) and *Commonwealth v. Kirkland*, **[ 413 Pa. 48, 53, ]** 195 A.2d 338, 340 (Pa. 1963). **[ The 1973 modification by the Court also deleted the requirement of the approval of the attorney for the Commonwealth. ]**

**The 1999 amendment to this rule embodies the 1998 amendment to article I, § 6 of the Pennsylvania Constitution that provides that "the Commonwealth shall have the same right to trial by jury as does the accused."**

**It is intended that when deciding to permit a non-jury trial, the judge should take into account all relevant considerations. When the judge disapproves waiver of jury trial, the judge should state the reasons for its decision on the record. See *Commonwealth v. Boyd*, 467 A.2d 855 (Pa. Super. 1983) and *Commonwealth v. Giaccio*, 457 A.2d 875 (Pa. Super. 1983).**

While this rule continues to require a written waiver of jury trial, the form of the written waiver was deleted in 1985 because it is no longer necessary to control the specific form of written waiver by rule.

**When there are co-defendants, waiver of a jury trial with respect to one or more defendants does not preclude a jury trial for other defendants.**

*Committee Explanatory Reports:*

Final Report explaining the April 16, 1999 amendments concerning the 1998 Constitutional amendment published with the Court's Order at 29 Pa.B. 2290 (May 1, 1999).

**Rule 1102. Procedure when jury trial is waived.**

[ (a) ] (A) When [ a defendant waives ] a jury trial is waived, the trial judge shall determine all questions of law and fact and render a verdict which shall have the same force and effect as a verdict of a jury.

[ (b) ] (B) At any time [ prior to ] before the commencement of trial, [ the defendant may withdraw his ] a waiver of a jury trial or the judge's approval thereof may be withdrawn. [ Thereafter, at any time prior to verdict the trial judge on his own motion may order the withdrawal of such waiver or permit the defendant, upon motion, to withdraw his waiver.

(c) When a trial judge on his own motion orders the withdrawal of a waiver, it shall be without prejudice to the defendant's right once again to waive a jury trial, but if a waiver is withdrawn on the motion of a defendant, no further waiver shall be permitted. ]

Official Note: Adopted January 24, 1968, effective August 1, 1968[ . ]; amended April 16, 1999, effective July 1, 1999.

**Comment**

[ The Act of June 11, 1935, P. L. 319, No. 141, § 2, 19 P. S. § 787 is suspended by this rule. See Rule 1124. ]

The 1999 amendment conforms this rule to the 1998 amendment to article I, § 6 of the Pennsylvania Constitution providing that "the Commonwealth shall have the same right to trial by jury as does the accused."

Paragraph (B) was amended in 1999 to make it clear that the defendant, the attorney for the Commonwealth, or the judge may unilaterally withdraw the jury trial waiver or the approval at any time before the commencement of trial. After commencement of trial, Rule 1118 governs.

Paragraph (c) was deleted in 1999 to permit the defendant and the attorney for the Commonwealth to waive a jury trial with the court's approval, under Rule 1101, even after the withdrawal of a previous jury trial waiver.

When there are co-defendants, withdrawal of a waiver, or withdrawal of the judge's approval, with respect to one or more defendants does not preclude a waiver and non-jury trial for other defendants.

*Committee Explanatory Reports:*

Final Report explaining the April 16, 1999 amendments concerning the 1998 Constitutional amendment published with the Court's Order at 29 Pa.B. 2290 (May 1, 1999).

**Rule 1103. [ Consent ] Agreement to be tried by [ less ] fewer than twelve jurors.**

In all cases, at any time after a jury of twelve is initially sworn and before verdict, the [ defendant

at any time before verdict ] defendant and the attorney for the Commonwealth, with approval of the judge, may agree [ , with the consent of his attorney, and approval by a judge of the court in which the case is pending, ] to [ be tried by ] a jury of [ less ] fewer than twelve but not [ less ] fewer than six. Such [ consent ] agreement shall be made a part of the record. The verdict in such a case shall have the same force and effect as a verdict by a jury of twelve.

**Official Note:** Adopted January 24, 1968, effective August 1, 1968; amended September 22, 1976, effective November 1, 1976[ . ]; amended April 16, 1999, effective July 1, 1999.

**Comment**

[ The 1976 amendment had the effect of making this Rule applicable to capital cases. Formerly a defendant in a capital case could not consent to be tried by fewer than twelve (12) jurors.

The procedure under this Rule is intended to apply only after a jury of twelve is initially sworn, and before a verdict is rendered. ]

The 1999 amendment conforms this rule to the 1998 amendment to article I, § 6 of the Pennsylvania Constitution providing that "the Commonwealth shall have the same right to trial by jury as does the accused."

*Committee Explanatory Reports:*

Final Report explaining the April 16, 1999 amendments concerning the 1998 Constitutional amendment published with the Court's Order at 29 Pa.B. 2290 (May 1, 1999).

**FINAL REPORT<sup>2</sup>****Amendments to Pa.Rs.Crim.P. 1101, 1102 and 1103;  
Commonwealth Right to Jury Trial**

On April 16, 1999, upon the recommendation of the Criminal Procedural Rules Committee, the Supreme Court adopted changes to Pa.Rs.Crim.P. 1101 (Waiver of Jury Trial), 1102 (Procedure When Jury Trial is Waived), and 1103 (Agreement to be Tried by Fewer Than Twelve Jurors), effective July 1, 1999. These changes conform the rules to the November 3, 1998 amendment to article I, § 6 of the Pennsylvania Constitution that provides, "In criminal cases, the Commonwealth shall have the same right to trial by jury as does the accused."

*Introduction*

Before 1973, Rule 1101 provided that a defendant may waive a jury trial with the consent of the attorney for the Commonwealth. In 1973, the Court amended Rule 1101 by deleting the consent requirement. Since then, the Criminal Rules have not provided the Commonwealth with a say in the decision to proceed non-jury. In view of the 1998 Constitutional amendment, however, the Committee undertook a review of Rules 1101, 1102, and 1103, and agreed that some changes were necessary to accommodate this Constitutional change. The amended rules provide that: 1) a jury trial may be waived if both the defendant and Commonwealth agree; 2) after a jury trial waiver is approved by the court, the defendant, the attorney for the Commonwealth, or the judge may require a jury trial by withdrawal of the waiver or its approval;

<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*.

and 3) the defendant may be tried by a jury of fewer than twelve if the defendant and the attorney for the Commonwealth agree.

#### *Discussion of Rule Changes*

##### *1. Rule 1101 (Waiver of Jury Trial)*

Rule 1101 provides the procedural requirements for waiving a jury trial. Without any changes clarifying the 1998 amendment to article I, § 6 of the Pennsylvania Constitution, the Committee was concerned that Rule 1101 would be construed as abrogating the newly granted substantive jury trial rights of the Commonwealth because the rule provides a procedure by which a defendant may waive a jury trial but does not include comparable procedures for the Commonwealth.

The Committee first considered adding language to the rule that would require that the defendant may waive a jury with the consent of the Commonwealth, comparable to the pre-1973 version of Rule 1101. After discussion, we rejected this language because it could be perceived as providing the Commonwealth with a "superior right to" rather than the "same right as" the defendant, and it did not adequately provide procedures for the Commonwealth to waive a jury.

The Committee next considered merely adding "and attorney for the Commonwealth" in the first line of the first sentence of Rule 1101 immediately after "the defendant." Thus Rule 1101 would provide that the defendant and the attorney for the Commonwealth both have to agree to waive a jury trial. The Committee agreed that this change accomplishes what was intended by the Constitutional amendment and recommended it to the Court. The amended rule retains the provision for the judge's approval because it is the judge's responsibility to supervise the trial to insure the fair and orderly administration of justice. The last two sentences are retained, as they are in the present rule, with the addition of "the attorney for the Commonwealth" after "the defendant" in the last sentence. Accordingly, the rule requires the signature of both the defendant and the attorney for the Commonwealth on the written waiver.

The Rule 1101 Comment contains several correlative revisions. The first paragraph and the last sentence of the second paragraph have been deleted because they are historical references that are no longer necessary in view of the constitutional amendment. The Comment retains the explanation of the 1973 amendment concerning ending the proscription against waiver of jury trials in capital cases in order to prevent confusion about whether the proscription would continue.

The Comment language, "that is, those in which the Commonwealth refuses to certify that it is not seeking the death penalty," in the first sentence of the second paragraph, has been deleted because the death penalty procedures have changed, and this is no longer a requirement.

Finally, three new paragraphs have been added to the Comment to:

- 1) explain why the rule is being amended;
- 2) make it clear that the judge should take all relevant considerations into account when deciding whether to approve a waiver, and that when the judge disapproves a waiver, the reasons for the disapproval should be stated on-the-record; and
- 3) avoid confusion concerning jury trial waiver when there are co-defendants and make it clear that when

there are co-defendants, waiver of a jury trial by one defendant does not waive a jury trial for any other defendant(s).

##### *2. Rule 1102 (Procedure when Jury Trial is Waived)*

Rule 1102 provides the procedures for a non-jury trial and for withdrawing a waiver. Because present Rule 1102 is defendant specific, the rule changes conform to the Rule 1101 changes by deleting the references to the defendant, and referring only to the waiver. See paragraphs (A) and (B).

The Rule 1102(B) amendments make it clear that the attorney for the Commonwealth, in addition to the defendant, may withdraw the waiver, or the judge may withdraw the approval of the waiver, before the commencement of trial. The Committee reasoned that a trial without a jury can only occur when the defendant and the attorney for the Commonwealth both sign the waiver form indicating their consent to waive, and if either party withdraws consent, then the waiver becomes invalid.

In addition, the last sentence of paragraph (B) has been deleted from the rule because the withdrawal of a jury trial waiver, or the approval of the waiver, after the trial commences, would terminate the non-jury trial, resulting in a mistrial, and raise double jeopardy issues. Since Rule 1118 (Mistrials) adequately covers the issue of mistrials, the Comment has been revised to include a cross-reference to Rule 1118 for those situations in which a party seeks to withdraw waiver after the commencement of trial.

Paragraph (C) of Rule 1102 has been deleted to make it clear that a defendant may waive a jury trial after a previous withdrawal of a jury trial waiver. The rule, therefore, is silent concerning subsequent withdrawals of jury trial waivers. Although this change creates a potential for "judge shopping" and for "waiving and withdrawing" in a repeated pattern of abuse if subsequent withdrawals are permitted, these occurrences are rare because the waiver is possible only when a defendant, attorney for the Commonwealth, and judge agree to the waiver. In addition, there are circumstances in which, after a waiver is withdrawn, a second waiver is warranted, such as when a waiver is withdrawn but the subsequent jury trial ends in a mistrial, or the defendant is convicted, but a new trial is ordered. In either event, the defendant may want to proceed without a jury for the new trial or retrial. Furthermore, prohibiting waiver after the withdrawal of a waiver frustrates judicial economy by requiring a possibly lengthy jury trial when the defendant, attorney for the Commonwealth, and the judge agree that the case should be tried non-jury. In addition, the Rule 1102 Comment includes a revision further clarifying that a jury trial may be waived under Rule 1101, with the judge's approval, even after the withdrawal of a previous jury trial waiver.

The Comment also has been revised by deleting the first paragraph, which is no longer necessary in view of the constitutional amendment. Two paragraphs have been added to the Comment to make it clear that 1) the changes are the result of the amendment to the constitution, and 2) when there are co-defendants, the withdrawal of a waiver of a jury trial by a defendant does not preclude waiver of a jury trial by any other defendant(s).

##### *3. Rule 1103 (Agreement to be Tried by Fewer than Twelve Jurors)*

Rule 1103 provides that a defendant may be tried by a jury of fewer than twelve. The rule has been reorganized to clarify the purpose of the rule. The language "the attorney for the Commonwealth" has been included to

conform to the constitutional provision giving the Commonwealth the "same right to a jury trial" as the defendant. Because of continued confusion about the timing requirements of this rule, Rule 1103 has been amended by moving into the body of the rule the Comment provision that the procedure under the rule is intended to apply after a jury is sworn and before verdict. Finally, the consent of defense counsel requirement has been deleted from the rule because the decision to agree to a jury of fewer than twelve belongs to the defendant and the attorney for the Commonwealth.

Two revisions have been made to the Rule 1103 Comment. The first paragraph has been deleted because it is an historical reference that is no longer necessary in view of the amendment to the constitution, and a new paragraph has been added to make it clear that the rule was changed as a result of the 1998 constitutional amendment.

[Pa.B. Doc. No. 99-697. Filed for public inspection April 30, 1999, 9:00 a.m.]

## COMMONWEALTH COURT

Regular Sessions of Commonwealth Court for the Year 2000; No. 126 M.D. No. 3

### Order

And Now, this 12th day of April, 1999 pursuant to Pa.R.A.P. 3703, the following calendar is fixed for the year 2000:

<i>Session</i>	<i>Situs</i>
February 7-11	Pittsburgh
March 6-10	Philadelphia
April 10-14	Harrisburg
May 15-19	Philadelphia
June 5-9	Pittsburgh
September 11-15	Harrisburg
October 2-6	Philadelphia
October 30—November 3	Pittsburgh
December 4-8	Harrisburg

JAMES GARDNER COLINS,  
*President Judge*

[Pa.B. Doc. No. 99-698. Filed for public inspection April 30, 1999, 9:00 a.m.]

## DISCIPLINARY BOARD OF THE SUPREME COURT

### Notice of Disbarment

Notice is hereby given that Paul Joseph Konzelmann, II, having been disbarred from the practice of law in the State of New Jersey, the Supreme Court of Pennsylvania issued an Order dated April 12, 1999 disbaring Paul Joseph Konzelmann, II from the practice of law in this Commonwealth. In accordance with 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. 99-699. Filed for public inspection April 30, 1999, 9:00 a.m.]

### Notice of Transfer of Attorney to Inactive Status

Notice is hereby given that the following attorneys have been transferred to inactive status by Order of the Supreme Court of Pennsylvania dated March 18, 1999, pursuant to Rule 111(b) Pa.R.C.L.E., which requires that every active lawyer shall annually complete, during the compliance period for which he or she is assigned, the continuing legal education required by the Continuing Legal Education Board. The Order became effective April 17, 1999 for Compliance Group 2 due August 31, 1999.

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

Arlindo B. Araujo  
Newark, NJ

Danya L. Armenti  
Moorestown, NJ

Michael S. Berger  
Haddonfield, NJ

Amy Klein Blaker  
Cherry Hill, NJ

James Downing Brady  
Merchantville, NJ

Vladimir A. Breslav  
Brookline, MA

John Edward Bruder  
Point Pleasant, NJ

Robert William Bucknam, Jr.  
Haddonfield, NJ

Gilbert F. Casellas  
Washington, DC

Christopher N. Ciko  
Redondo Beach, CA

Lisa Carol Cohen  
Cherry Hill, NJ

Anita Colleen Cooke  
Washington, DC

Michael Jay Cornelison  
Falls Church, VA

Carl J. Dallarda  
Princeton, NJ

Joseph A. Del Duca  
Haddonfield, NJ

Beverly Dennis III  
Washington, DC

Stuart Donegan  
Cherry Hill, NJ

Jill A. Douthett  
Corrales, NM

Alexandra C. Epsilanty  
Syracuse, NY

Thomas P. Frascella  
Lawrenceville, NJ

Michael Frey  
Liberty, NY

Saul Gary Gruber  
Cherry Hill, NJ

Carol B. Guerrero  
San Francisco, CA

Paul D. Hardy  
Tampa, FL

George C. Hopkins  
Washington, DC

Nancie Susan Jennifer  
Eureka, CA

Eileen G. Jones  
Baton Rouge, LA

Mark S. Keegan  
Greer, SC

David J. Knapp  
Somerville, NJ

Gordon Douglas Lavalette  
Chester, NJ

Salvatore A. Mangione  
Rochester, NY

Kathleen M. Marshall  
Chevy Chase, MD

James Henry Maynard  
Morristown, NJ

Patrick H. McCarthy  
Washington, DC

Mark J. Molz  
Hainesport, NJ

Austin J. Murphy, Jr.  
Washington, DC

Kevin Patrick Oates  
New York, NY

Aileen O'Driscoll  
Newark, NJ

Laura Michelle Plastine  
Secaucus, NJ

John William Ray  
Miller Place, NY

Stephen A. Rudolph  
Sea Girt, NJ

Victor M. Saul  
Atlantic City, NJ

Courtney A. Schael  
Roseland, NJ

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