

THE COURTS

Title 201—RULES OF JUDICIAL ADMINISTRATION

[201 PA. CODE CH. 3]

Amendment of Rules 301, 302 and 311; No. 209
Judicial Administration Doc. No. 1

Order

Per Curiam:

And Now, this 29th day of June, 1999, Rules 301, 302 and 311 of the Pennsylvania Rules of Judicial Administration are amended to read as follows.

To the extent that notice of proposed rulemaking would be required by Rule 103 of the Pennsylvania Rules of Judicial Administration or otherwise, the immediate amendment of Rule 702 is hereby found to be required in the interest of justice and efficient administration.

This Order shall be effective immediately and shall be processed in accordance with Rule 103(b) of the Pennsylvania Rules of Judicial Administration.

Annex A

TITLE 201. RULES OF JUDICIAL ADMINISTRATION

CHAPTER 3. JUDICIAL COUNCIL OF PENNSYLVANIA

JUDICIAL COUNCIL OF PENNSYLVANIA

Rule 301. Judicial Council of Pennsylvania.

* * * * *

(b) *Composition.* The Judicial Council shall consist of [27 members as follows] the following members:

* * * * *

(11) Three non-judge members of the bar of the Supreme Court appointed by the Supreme Court from the Civil Procedural Rules Committee, the Criminal Procedural Rules Committee and the Minor Court [Civil Procedural] Rules Committee, [and] no more than one of whom shall be from the same Committee.

* * * * *

(19) Such ex officio members as may be appointed by the Chief Justice. Ex officio members shall not vote on matters before the Council.

(c) *Terms, etc.* [Each member of the Judicial Council who does not hold office ex officio shall hold office for a term of three years and until his successor has been selected or appointed, or until his earlier death, resignation, disqualification or removal. The terms of members shall commence on October 1. A vacancy on the Council shall be filled by the respective selecting or appointing authority for the balance of the term. A member may be selected or reappointed any number of times. A member shall be removed automatically if he shall for any reason become disqualified for original selection or appointment.]

(1) A member of the Council other than an ex officio member shall serve for a term of three years commencing on October 1 and may be selected or reappointed any number of times. A member shall continue to serve upon expiration of a term of membership until a successor has been selected or appointed except if the member holds membership by virtue of an office set forth in subdivision (a).

(2) Membership shall automatically terminate upon a member's death, resignation, removal or disqualification for original selection or appointment. A vacancy on the Council shall be filled by the respective selecting or appointing authority for the balance of the term.

* * * * *

Rule 302. Organization and procedure.

(a) *Officers.* The Chief Justice of Pennsylvania shall be [Chairman and the Court Administrator shall be Secretary of the Judicial Council. Annually the Council shall elect such other officers of the Council as it deems necessary, who shall hold office at the pleasure of the Council] Chair and the Justice of the Supreme Court with most seniority on the Council shall be Vice-Chair. The Chair shall appoint the Secretary of the Judicial Council.

(b) *Staff.* The [Court Administrator] Executive Director shall be the chief administrative officer of the Judicial Council [and shall provide staff assistance for the Council]. The Court Administrator shall provide staff assistance to the Council when called upon to do so.

* * * * *

(e) *Committees.* The Chair may appoint from the Council membership one or more committees and designate one of the members of each committee as committee chair. A committee chair may appoint ex officio members to a committee but such ex officio members shall neither vote on matters before the Committee nor be members of the Council.

(f) [(e)] *Procedure.* Except as otherwise [provided] prescribed by these rules, the proceedings of the Judicial Council shall be governed by internal regulations adopted by the Council.

POWERS OF THE JUDICIAL COUNCIL

Rule 311. Recommendations to the Supreme Court.

* * * * *

(b) *Council-originated matters.* The Judicial Council may [from time to time] make recommendations to the Supreme Court on matters relating to court administration.

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[Pa.B. Doc. No. 99-1119. Filed for public inspection July 16, 1999, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 1000]

Proposed Amendments Relating to Entry of Appearance and Civil Cover Sheet; Proposed Recommendation No. 155

The Civil Procedural Rules Committee proposes that Rule of Civil Procedure 1012 governing entry of appearance be amended and that new Rule 1012.1 governing civil cover sheet be adopted. The proposed recommendation is being submitted to the bench and bar for comments and suggestions prior to its submission to the Supreme Court.

All communications in reference to the proposed recommendation should be sent not later than September 1, 1999 to Harold K. Don, Jr., Esquire, Counsel, Civil Procedural Rules Committee, 5035 Ritter Road, Suite 700, Mechanicsburg, PA 17055 or E-Mail to civil.rules@supreme.court.state.pa.us.

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

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1000. ACTIONS AT LAW

Subchapter A. CIVIL ACTION VENUE AND PROCESS

Rule 1012. Entry of Appearance. Withdrawal of Appearance. Notice.

(a)(1) A party [may] shall enter a written appearance which shall state an address within the Common-

wealth at which papers may be served. Such appearance shall not constitute a waiver of the right to raise any defense including questions of jurisdiction or venue. Written notice of entry of an appearance shall be given forthwith to all parties.

Official Note: See subdivision (c) for the form of the entry of appearance.

(2) The appearance shall be the first document filed by a party or a part of the first document. When part of the first document, the appearance shall be the first page of the document unless the document is one which begins with a Notice to Defend in which case the appearance shall be the second page.

Official Note: [Entry of a written appearance is not mandatory.] Subdivision (a) is concerned with the entry of an appearance by a party. However, the appearance usually will be by an attorney representing the party.

The initial appearance by or on behalf of a plaintiff may only be filed as a part of the first document filed since an action may be commenced only by a praecipe for a writ of summons or by a complaint. The appearance by or on behalf of a plaintiff may be included as part of the cover sheet required by Rule 1012.1.

(b) An attorney's appearance for a party may not be withdrawn without leave of court unless another attorney has entered or simultaneously enters an appearance for the party and the change of attorneys does not delay any stage of the litigation.

(c) The appearance shall be substantially in the following form:

Caption Entry of Appearance

To the Prothonotary:

Kindly enter my appearance on behalf of _____
(Plaintiff/Defendant/Additional Defendant)

Papers may be served at the address set forth below.

Attorney for Party Named Above and
Identification Number

Firm

Address

City, State, Zip Code

Telephone Number

Fax Number for Service of Papers (Optional)

E-mail address for Service of Papers (Optional)

Rule 1012.1. Cover Sheet.

(a) The first document filed in an action by the plaintiff shall have attached thereto a cover sheet substantially in the form prescribed by subdivision (b). The cover sheet shall be the first page of the document unless the document is one which begins with a Notice to Defend in which case the cover sheet shall be the second page.

(b) The cover sheet shall contain the case designation list set forth in the form prescribed by

subdivision (c). The prothonotary shall note on the docket the applicable case designation as checked on the cover sheet.

Official Note: While the cover sheet is to be "substantially" in the form prescribed by subdivision (c), the case designations set forth in the case designation list are mandatory.

(c) The cover sheet shall be substantially in the following form:

_____ County Court of Common Pleas
CIVIL COVER SHEET AND ENTRY OF APPEARANCE

- 1. **Case Caption:**
- 2. **Plaintiff(s)**
(Name and address)
- 3. **Defendant(s)**
(Name and address)
- 4. **Plaintiff's Counsel**
(Name, firm, address, telephone number and attorney ID number. Fax number and E-mail address for service of papers are optional.)
- 5. **Related Cases? ___ Yes ___ No**
If yes, show Caption and Case Numbers

Case subject to Coordination Order? ___ Yes ___ No
If yes, show Caption and Date of Order
- 6. **Compulsory Arbitration? ___ Yes ___ No**
(Jurisdiction for Compulsory Arbitration is \$ _____)

7. **Entry of Appearance**

To the Prothonotary:

Kindly enter my appearance on behalf of _____ ,

(a) plaintiff in this action. Papers may be served at the address set forth above.

Attorney for Party Named Above

8. **Case Description (Choose only the one description which best reflects the principal type of case or relief sought, from the list on the reverse side of this sheet)**

Case Description

<p>Appeal</p> <p>Minor Court</p> <p> Money Judgment _____</p> <p> Landlord and Tenant _____</p> <p> Code Enforcement _____</p> <p> Other: _____</p> <p>Local Agency</p> <p> Civil Service _____</p> <p> Motor Vehicle</p> <p> Licenses and</p> <p> Inspections _____</p> <p> Liquor Control Board _____</p> <p> Tax Assessment Boards _____</p> <p> Zoning Board _____</p> <p> Other: _____</p> <p>Other: _____</p> <p>Proceedings commenced by</p> <p>Petition</p> <p>Appointment of Arbitrators _____</p> <p>Change of Name _____</p> <p>Compel Medical Examination _____</p> <p>Election Matters _____</p> <p>Eminent Domain _____</p> <p>Leave to Issue Subpoena _____</p> <p>Mental Health Proceedings _____</p> <p>Other: _____</p>	<p>Actions commenced by Writ of</p> <p>Summons or Complaint</p> <p>Contract _____</p> <p>Tort</p> <p> Assault and Battery _____</p> <p> Libel and Slander _____</p> <p>Negligence</p> <p> Motor Vehicle _____</p> <p> Real Property _____</p> <p> Product Liability _____</p> <p> Toxic Tort</p> <p> Asbestos _____</p> <p> DES _____</p> <p> Implant _____</p> <p> Toxic Waste _____</p> <p> Other: _____</p> <p>Professional Malpractice</p> <p> Dental _____</p> <p> Legal _____</p> <p> Medical _____</p> <p> Other: _____</p> <p>Equity</p> <p> Real Property _____</p> <p> Other: _____</p> <p>Declaratory Judgment _____</p> <p>Mandamus _____</p> <p>Real Property</p> <p> Ejectment _____</p> <p> Quiet Title _____</p> <p> Mortgage Foreclosure _____</p> <p> Mechanics Lien _____</p> <p> Partition _____</p> <p> Prevent Waste _____</p> <p>Replevin _____</p> <p>Other: _____</p>
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Explanatory Comment

Judges and prothonotaries have complained of the difficulty of determining the counsel of record for a party. Rule 1012(a) governing entry of appearance has added to this difficulty as it provides for the permissive rather than mandatory filing of an entry of appearance.

It is proposed that Rule 1012 be amended to provide for a mandatory entry of appearance and for a form of the entry of appearance. The entry of appearance may be a separate document or part of the first document filed by a party. It will be the first page of the document unless the document is a complaint with a notice to defend when it will follow the notice to defend as the second page.

It is also proposed that there be a cover sheet attached to the first document filed in an action. This is a requirement which already exists in many counties. The proposed cover sheet will provide specified information for the benefit of the court in which the action is commenced. In addition, the information so obtained will be uniform throughout the Commonwealth enabling the Administrative Office of Pennsylvania Courts to develop information and statistics on a statewide basis. To this end, proposed Rule 1012.1(b) requires the prothonotary to enter on the

docket the case designation checked by the plaintiff on the cover sheet.

By the Civil Procedural Rules Committee

EDWIN L. KLETT,
Chair

[Pa.B. Doc. No. 99-1120. Filed for public inspection July 16, 1999, 9:00 a.m.]

**Title 234—RULES OF
CRIMINAL PROCEDURE**

[234 PA CODE CH. 50]

**Order Amending Rules 75, 76 and 85; No. 246;
Criminal Procedural Rules Doc. No. 2**

The Criminal Procedural Rules Committee has prepared a Final Report explaining the July 2, 1999 amendments to Rules of Criminal Procedure 75, 76, and 85

concerning ability to pay hearings following the arrest of a defendant for failure to respond as provided in the ten-day notice required in Rule 75(4) and Rule 85(B). The Final Report follows the Court's Order.

Order

Per Curiam:

Now, this 2nd day of July, 1999, upon the recommendation of the Criminal Procedural Rules Committee, this proposal having been submitted without publication pursuant to Pa.R.J.A. 103(a)(3), and a Final Report to be published with this Order:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rules of Criminal Procedure 75, 76, and 85 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 August 1, 1999.

Annex A

**TITLE 234. RULES OF CRIMINAL PROCEDURE
CHAPTER 50. PROCEDURE IN SUMMARY CASES
PART V. PROCEDURES REGARDING ARREST
WARRANTS IN SUMMARY CASES**

Rule 75. Issuance of Arrest Warrant.

* * * * *

(3) A warrant for the arrest of the defendant may be issued when:

* * * * *

(c) the issuing authority has, in the defendant's absence, tried and sentenced the defendant to pay **restitution, and/or to pay** a fine and costs[,] and the collateral deposited by the defendant is less than the amount of fine and costs imposed.

(4) No warrant shall issue under Rule 75(3) unless the defendant has been given notice in person or by first class mail that failure to pay the amount due or to appear for a hearing may result in the issuance of an arrest warrant, and the defendant has not responded to this notice within 10 days. Notice by first class mail shall be considered complete upon mailing to the defendant's last known address.

Official Note: Adopted July 12, 1985, effective January 1, 1986; effective date extended to July 1, 1986; amended January 31, 1991, effective July 1, 1991; amended April 18, 1997, effective July 1, 1997; amended October 1, 1997, effective October 1, 1998; **amended July 2, 1999, effective August 1, 1999.**

Comment

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Ordinarily, pursuant to Rule 84, the issuing authority must conduct a summary trial in the defendant's absence. However, if the issuing authority determines that there is a likelihood that the sentence will [**be**] **include** imprisonment or that there is other good cause not to conduct the summary trial, the issuing authority may issue a warrant for the arrest of the defendant pursuant to paragraph (2) in order to bring the defendant before the issuing authority for the summary trial.

The arrest warrant issued under paragraph (3) should state the amount required to satisfy the sentence.

When a defendant is arrested pursuant to paragraph (3), the issuing authority must conduct a

hearing to determine whether the defendant is able to pay the amount of restitution, fine, and costs that is due. See Rule 85.

When contempt proceedings are also involved, see Chapter 30 for the issuance of arrest warrants.

See Rule 76 for the procedures when a warrant of arrest is executed.

Committee Explanatory Reports:

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Final Report explaining the July 2, 1999 amendments to paragraph (3)(c) and the Comment concerning restitution published with the Court's Order at 29 Pa.B. 3718 (July 17, 1999).

Rule 76. Procedure when Defendant Arrested with Warrant.

* * * * *

(B) When a warrant of arrest is executed, the police officer shall either:

* * * * *

(3) accept from the defendant the amount of **restitution**, fine, and costs due as specified in the warrant if the warrant is for collection of **restitution**, fine, and costs after a guilty plea or conviction; or

* * * * *

(C) When the police officer accepts **restitution**, fine, and costs, or collateral under paragraphs (B)(1), (2), or (3), the officer shall issue a receipt to the defendant setting forth the amount of **restitution**, fine, and costs, or collateral received and return a copy of the receipt, signed by the defendant and the police officer, to the proper issuing authority.

(D) When the defendant is taken before the issuing authority under paragraph (B)(4), the defendant shall be given an immediate trial unless:

* * * * *

(3) the warrant was issued for the collection of **restitution**, fine, and costs after a guilty plea or conviction, in which event the issuing authority shall proceed as specified in Rule 85.

Official Note: Adopted July 12, 1985, effective January 1, 1986; Comment revised September 23, 1985, effective January 1, 1986; January 1, 1986 effective date extended to July 1, 1986; Comment revised January 31, 1991, effective July 1, 1991; amended August 9, 1994, effective January 1, 1995; amended October 1, 1997, effective October 1, 1998; **amended July 2, 1999, effective August 1, 1999.**

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Committee Explanatory Reports:

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Final Report explaining the July 2, 1999 amendments paragraphs (B)(3) and (C) concerning restitution published with the Court's Order at 29 Pa.B. 3718 (July 17, 1999).

PART VI. GENERAL PROCEDURES IN SUMMARY CASES

Rule 85. Default Procedures: Restitution, Fines, and Costs.

* * * * *

(C) If the defendant appears [as provided in] pursuant to the 10-day notice in paragraph (B) or following an arrest for failing to respond to the 10-day notice in paragraph (B), the issuing authority shall conduct a hearing to determine whether the defendant is financially able to pay as ordered.

* * * * *

Official Note: Adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986; January 1, 1996 effective dates extended to July 1, 1986. Comment revised February 1, 1989, effective July 1, 1989; rescinded October 1, 1997, effective October 1, 1998. New Rule 85 adopted October 1, 1997, effective October 1, 1998; amended July 2, 1999, effective August 1, 1999.

Comment

* * * * *

When a defendant defaults on a payment of restitution, fines, or costs, paragraph (B) requires the issuing authority to notify the defendant of the default, and to provide the defendant with an opportunity to pay the amount due or appear within 10 days to show cause why the defendant should not be imprisoned for nonpayment. Notice by first class mail is considered complete upon mailing to the defendant's last known address. See Rule 75(4).

Pursuant to paragraph (C), the issuing authority must conduct a default hearing when a defendant responds to the 10-day notice as provided in paragraph (B), or when the defendant is arrested for failing to respond to the 10-day notice. If the default hearing cannot be held immediately, the issuing authority may set bail as provided in Chapter 4000.

Under paragraph (C)(1), when the issuing authority determines that a defendant is able to pay as ordered, the issuing authority may, as provided by law, impose imprisonment or other sanctions. In addition, delinquent restitution, fines, or court costs may be turned over to a private collection agency [,]. See 42 Pa.C.S. § 9730(b)(2) and 9730.1(a).

* * * * *

When a defendant is in default of an installment payment, the issuing authority on his or her own motion or at the request of the defendant or the attorney for the Commonwealth must schedule a rehearing to determine the cause of the default. Before an issuing authority may impose a sentence of imprisonment as provided by law for nonpayment of restitution, fines, or costs, a hearing or rehearing must be held whenever a defendant alleges that his or her ability to pay has been diminished. See 42 Pa.C.S. § 9730(b). See also Rules 316 and 318 (dealing with the right to counsel).

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Committee Explanatory Reports:

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Final Report explaining the July 2, 1999 amendments to paragraph (C) published with the Court's Order at 29 Pa.B. 3718 (July 17, 1999).

FINAL REPORT¹

Fines, Costs, and Restitution in Summary Cases; Default Procedures

I. Introduction

On July 2, 1999, upon the recommendation of the Criminal Procedural Rules Committee, the Supreme Court of Pennsylvania amended Rule 75 (Issuance of Arrest Warrant), Rule 76 (Procedure When Defendant Arrested with Warrant), and Rule 85 (Default Procedures: Restitution, Fines, and Costs). These changes, which will become effective on August 1, 1999, make it clear in the rules that the issuing authority must conduct an ability to pay hearing following the arrest of the defendant for failure to respond as provided in the ten-day notice required in Rule 75(4) and Rule 85(B).

The need for these amendments was brought to the Committee's attention through the work of the Committee's Staff with the Administrative Offices of Pennsylvania Courts' Judicial Computer Project (JCP) Staff. The Committee's Staff has been reviewing and offering suggestions about the content of the forms the JCP Staff are designing and the procedures they are developing to implement the 1997 changes to Rules 75, 76, 83, 84, 85, and 86 concerning restitution, fines and costs, default procedures, and appeals.² As part of this review, it came to our attention that the rule changes were being misconstrued as not requiring an ability to pay hearing following an arrest when a defendant fails to respond to the ten-day notice required by Rule 75(4) and Rule 85(B).

After a review of the history of the development of the 1997 amendments, the Committee, agreeing that the law is clear that a defendant who is financially unable to pay may not be incarcerated for failure to pay restitution, fines, or costs, acknowledged that the intent of the 1997 rule changes adding the ten-day notice was that district justices must conduct ability to pay hearings following an arrest for failure to respond as required by the ten-day notice. Based on these considerations, the Committee agreed that, to avoid any ambiguity in this important area, the rules should more clearly state when an ability to pay hearing should be conducted. Accordingly, the following changes have been adopted by the Court:

(1) The Rule 75 Comment has been revised to emphasize that the issuing authority must conduct an ability to pay hearing following an arrest for failure to pay the full amount of the restitution, fine, and costs.

(2) Rule 85(C) has been amended to more clearly state that the ability to pay hearing is to be conducted not only when the defendant appears pursuant to the ten-day notice, but also following an arrest for failure to respond to the ten-day notice.

(3) The term "restitution" has been added to Rule 75(3)(c), Rule 76(B), (C), and (D)(3), and the Rule 85 Comment to provide further clarification that the procedures in these rules encompass restitution.

(4) The citation to 42 Pa.C.S. § 9730 in the Rule 85 Comment has been updated to reflect an amendment to

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

² These rule changes were adopted on October 1, 1997, effective October 1, 1998.

the statute that occurred after new Rule 85 was adopted in 1997.

[Pa.B. Doc. No. 99-1121. Filed for public inspection July 16, 1999, 9:00 a.m.]

Title 255—LOCAL COURT RULES

WESTMORELAND COUNTY

Rule WJ507 Retention of Court Reporter Notes; No. 3 of 1999

Administrative Order

And Now this 1st day of July, 1999, *It Is Hereby Ordered* that Westmoreland County Rule of Judicial Administration WJ507 is adopted.

By the Court

CHARLES H. LOUGHRAN,
President Judge

Rule WJ507. Retention of Court Reporter Notes.

A. Court reporters shall, without request, transcribe notes of all Termination of Parental Rights and Adoption proceedings. The transcript shall be filed in the record. Notes of these proceedings shall be destroyed after the transcript has been filed.

B. In any case, other than an action in Divorce or Annulment, in which the court reporter has transcribed notes and filed a court-approved transcript, the court

reporter may destroy the notes 30 days after the date of filing of the transcript. In the event objections to the transcript are filed, the court reporter shall retain the notes until the court rules on the objections.

C. Notes for Divorce or Annulment cases shall be kept for 5 years after the Final Decree is entered.

D. In any case in which no transcript has been prepared, the court reporter shall sort, and the Westmoreland County Records Retention Center shall retain, court reporter notes in accordance with the following schedule:

1. In criminal cases in which the most serious crime charged is a misdemeanor of the first degree or less, the Court Administrator may direct that the notes be destroyed after being retained for 5 years.

2. In felony cases in which the defendant is found "guilty," the Court Administrator may direct that the notes be destroyed after being retained for 50 years.

3. In felony cases in which the defendant is found "not guilty," the Court Administrator may direct that the notes be destroyed after being retained for 3 years.

4. In all cases not otherwise addressed in this Rule, the Court Administrator may direct that the notes be destroyed after being retained for 7 years.

E. Notwithstanding the provisions of subsections A, B, C and D of this Rule, any party may petition the court for an order directing the retention of particular court reporter notes for a period of time beyond that required herein.

[Pa.B. Doc. No. 99-1122. Filed for public inspection July 16, 1999, 9:00 a.m.]