THE COURTS

Title 225—RULES OF EVIDENCE

[225 PA. CODE ARTS. I, IV AND VIII]

Order Adopting Amendments to Rule 410, and Approving the Revision of the Comments to Rules 105 and 802—804; No. 237, Supreme Court Rules; Doc. No. 1

The Committee on Rules of Evidence has prepared a Final Report explaining the March 10, 2000 amendments to Rule of Evidence 410 and approved the revision of the Comments to Rules 105, 802, 803, and 804, effective immediately. These changes correct various technical or editorial errors in the text of or Comments to the rules, and update the rules consistent with changes in rules or statutes that have been included in the Comments. The Final Report follows the Court's Order.

Order

Per Curiam:

Now, this tenth day of March, 2000, upon the recommendation of the Committee on Rules of Evidence, this Recommendation for editorial and technical changes having been submitted without publication pursuant to Pa.R.J.A. 103(a)(3) and a Final Report to be published with this Order:

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

(1) Rule of Evidence 410 is hereby amended; and

(2) the revision of the Comments to Rules of Evidence 105, 802, 803, and 804 are approved, as follows.

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

Annex A

TITLE 225. RULES OF EVIDENCE

ARTICLE I. GENERAL PROVISIONS

Rule 105. Limited Admissibility.

Comment

This rule differs from F.R.E. 105 in that the language "or on its own initiative may" has been added. This rule **[, as amended,]** is consistent with Pennsylvania law. In addition to the approach taken by Pa.R.E. 105, there are other ways to deal with evidence that is admissible as to one party or for one purpose, but not admissible as to another party or for another purpose. For example, the evidence may be redacted. See *Commonwealth v. Johnson*, 474 Pa. 410, 378 A.2d 859 (1977). Or, a severance may be an appropriate remedy. See *Commonwealth v. Young*, 263 Pa. Super. 333, 397 A.2d 1234 (1979). Where the danger of unfair prejudice outweighs probative value, the evidence may be excluded. See Pa.R.E. 403; *McShain v. Indemnity Ins. Co. of North America*, 338 Pa. 113, 12 A.2d 59 (1940).

***Official Note*: Adopted May 8, 1998, effective October 1, 1998; Comment revised March 10, 2000, effective immediately.**

***Committee Explanatory Reports*:**

Final Report explaining the March 10, 2000 revision of the Comment deleting "as amended" from the second sentence published with the Court's Order at 30 Pa.B. 1641 (March 25, 2000).

ARTICLE IV. RELEVANCY AND ITS LIMITS

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

(a) *General rule.* Except as otherwise provided in this rule, evidence of the following is not, in any civil or criminal proceeding, admissible against the defendant who made the plea or was a participant in the plea discussions:

* * * * *

(3) any statement made in the course of any proceedings under Rules 59, **64, 69,** 177, 179**,** or 319 of the Pennsylvania Rules of Criminal Procedure, Fed.R.Crim.P. 11, or any comparable rule or provision of law **[of another state] of Pennsylvania or any other jurisdiction** regarding the pleas identified in subsections (1) and (2) of this rule; or

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Comment

This rule is similar to F.R.E. 410. References to Rules 59, **64, 69,** 177, 179**,** and 319 of the Pennsylvania Rules of Criminal Procedure and the comparable rules or other provisions **[of other states] of Pennsylvania or other jurisdictions** have been added. Unlike the federal rule, subsection (b) of the Pennsylvania rule is set forth separately to indicate that it creates an exception applicable to all of subsection (a).

Pa.R.E. 410 reflects present Pennsylvania law. See *Commonwealth v. Jones*, **[375 Pa. Super. 194,]** 544 A.2d 54 (**Pa. Super.** 1988); *Commonwealth ex rel. Warner v. Warner*, **[156 Pa. Super. 465,]** 40 A.2d 886 (**Pa. Super.** 1945); Pa.R.Crim.P. 177(b), 179(b).

Pa.R.E. 410 does not prohibit the use of a conviction that results from a plea of nolo contendere, as distinct from the plea itself, to impeach in a later proceeding (subject to Pa.R.E. 609) or to establish an element of a charge in a later administrative proceeding. See *Commonwealth v. Snyder*, **[408 Pa. 253,]** 182 A.2d 495 (**Pa.** 1962) (conviction based on nolo contendere plea could be used to impeach witness in later criminal proceeding); *Eisenberg v. Commonwealth, Dep't. of Public Welfare*, **[512 Pa. 181,]** 516 A.2d 333 (**Pa.** 1986) (conviction based on nolo contendere plea permitted to establish element of charge in administrative proceeding).

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***Official Note*: Adopted May 8, 1998, effective October 1, 1998; Comment revised March 23, 1999, effective immediately; amended March 10, 2000, effective immediately.**

Committee Explanatory Reports:

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Final Report explaining the March 10, 2000 technical amendments updating the rule published with the Court's Order at 30 Pa.B. 1641 (March 25, 2000).

ARTICLE VIII. HEARSAY

Rule 802. Hearsay Rule.

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Comment

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Often, hearsay will be admissible under an exception provided by these rules. See, e.g., Pa. R**s**.E. 803, 803.1, and 804. On occasion, hearsay may be admitted pursuant to another rule promulgated by the Pennsylvania Supreme Court. For example, in civil cases, all or part of a deposition may be admitted pursuant to Pa.R.C.P. 4020, or a videotape deposition of an expert witness may be admitted pursuant to Pa.R.C.P. 4017.1(g).

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

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7. In a dependency hearing, an out-of-court statement of a witness under **[14] 16** years of age, describing certain types of sexual abuse, may be admitted pursuant to 42 Pa.C.S. § 5986.

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Official Note: Adopted May 8, 1998, effective October 1, 1998; Comment revised March 23, 1999, effective immediately**; Comment revised March 10, 2000, effective immediately.**

Committee Explanatory Reports:

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Final Report explaining the March 10, 2000 changes updating the seventh paragraph of the Comment published with the Court's Order at 30 Pa.B. 1641 (March 25, 2000).

Rule 803. Hearsay Exceptions; Availability of Declarant Immaterial.

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

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

Comment

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

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

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

C. *Statement by Authorized Agent*. Admitting, as an exception to the hearsay rule, the statement of a person authorized to speak for the party against the party is consistent with Pennsylvania law. See *McGarity v. New York Life Ins. Co.*, **[359 Pa. 308,]** 59 A.2d 47 (**Pa.** 1948).

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

Official Note: Adopted May 8, 1998, effective October 1, 1998; Comment revised March 23, 1999, effective immediately**; Comment revised March 10, 2000, effective immediately.**

Committee Explanatory Reports:

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Final Report explaining the March 10, 2000 revision of the Comment for paragraph 25 published with the Court's Order at 30 Pa.B. 1641 (March 25, 2000).

Rule 804. Hearsay Exceptions; Declarant Unavailable.

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(b) *Hearsay Exceptions*. The following statements, as hereinafter defined, are not excluded by the hearsay rule if the declarant is unavailable as a witness:

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(1) *Former Testimony*. Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered, or, in a civil action or proceeding, a predecessor in interest, had an adequate opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.

Comment

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These two statutes, which are limited in scope, have less significance than they might otherwise have because the Pennsylvania Supreme Court has recognized a broader exception to the hearsay rule for former testimony as a matter of its developing common law. See, e.g., *Commonwealth v. Graves*, **[484 Pa. 29,]** 398 A.2d 644

(**Pa.** 1979); *Commonwealth v. Rodgers*, **[472 Pa. 435,]** 372 A.2d 771 (**Pa.** 1977). The addition of an "adequate" opportunity to cross-examine is consistent with Pennsylvania law. See *Commonwealth v. Bazemore*, **[531 Pa. 582,]** 614 A.2d 684 (**Pa.** 1992) (requiring a "full and fair" opportunity to cross-examine).

Depositions

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The Judicial Code provides for the use of depositions in criminal cases. 42 Pa.C.S. **[A.]** § 5919 provides:

Depositions in criminal matters

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42 Pa.C.S. **[A.]** § 5325 sets forth the procedure for taking depositions, by either prosecution or defendant, outside Pennsylvania.

Again, the Pennsylvania Supreme Court, as a matter of common law development, has recognized an exception to the hearsay rule for depositions that is broader than the statute. See *Commonwealth v. Stasko*, **[471 Pa. 373,]** 370 A.2d 350 (**Pa.** 1977).

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(2) *Statement Under Belief of Impending Death*. A statement made by a declarant while believing that the declarant's death was imminent, concerning the cause or circumstances of what the declarant believed to be impending death.

Comment

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The rationale for this exception to the hearsay rule was set forth in *Commonwealth v. Smith*, **[454 Pa. 515, 517—18,]** 314 A.2d 224, 225 (**Pa.** 1973):

* * * * *

The common law has traditionally, but illogically, excepted a dying declaration to the hearsay rule in a criminal prosecution for homicide, but not in a criminal prosecution for another crime, or in a civil case. Prior Pennsylvania case law followed the common law. See *Commonwealth v. Antonini*, **[165 Pa. Super. 501,]** 69 A.2d 436 (**Pa. Super.** 1949).

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(3) *Statement Against Interest*. A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless believing it to be true. In a criminal case, a statement tending to expose the declarant to criminal liability is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

Comment

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Pa.R.E. 804(b)(3) is consistent with prior Pennsylvania decisional law. See *Rudisill v. Cordes*, **[333 Pa. 544,]** 5 A.2d 217 (**Pa.** 1939) (civil case); *Commonwealth v. Williams*, **[537 Pa. 1, n.8,]** 640 A.2d 1251, **1263 n.8** (**Pa.** 1994) (criminal case).

(4) *Statement of Personal or Family History*. A statement, made before the controversy arose:

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Comment

Pa.R.E. 804(b)(4) differs from F.R.E. 804(b)(4) by requiring the statement of pedigree to be made before the controversy arose, i.e., ante litem **[motem] motam**.

Pa.R.E. 804(b)(4) expands prior Pennsylvania decisional law in two respects:

1. The exception applies if the declarant is unavailable, as "unavailability" is defined in Pa.R.E. 804(a). Formerly, it was required that the declarant be dead. See *In re McClain's Estate*, **[481 Pa. 435,]** 392 A.2d 1371 (**Pa.** 1978). The need for the evidence is the same, whether the declarant is dead or unavailable to testify for one of the other reasons delineated in Pa.R.E. 804(a).

2. Under Pa.R.E. 804(b)(4)(B), the declarant need not be related to the person of whom he or she spoke. It is sufficient that the declarant be so closely associated with the person's family as to have accurate information. Formerly, a familial relationship was required. See *In re Garrett's Estate*, **[371 Pa. 284,]** 89 A.2d 531 (**Pa.** 1952). A statement of this type by a person closely associated with the person or family of which he or she spoke is likely to be sufficiently reliable to justify an exception to the hearsay rule.

Pennsylvania retains the requirement that the statement must be made before the controversy arose. See *In re McClain's Estate, supra; In re Garrett's Estate, supra*.

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***Official Note*: Adopted May 8, 1998, effective October 1, 1998; Comment revised March 10, 2000, effective immediately.**

***Committee Explanatory Reports*:**

Final Report explaining the March 10, 2000 revision of the Comment to paragraph (b)(4) published with the Court's Order at 30 Pa.B. 1641 (March 25, 2000).

FINAL REPORT[1]
Amendments to Pa.R.E. 410 and revision of the Comments to Pa.Rs.E. 105, 802, 803, and 804.

Editorial and Technical Corrections

On March 10, 2000, effective immediately, upon the recommendation of the Committee on Rules of Evidence, the Supreme Court adopted amendments to Rule of Evidence 410, and approved the revision of the Comments to Rules 105, 802, 803, and 804. These rule changes correct various technical or editorial errors in the text of or Comments to the rules, and update the rules consistent with changes in rules or statutes that have been included in the Comments.

I. BACKGROUND

The Committee has continued to monitor and review the Rules of Evidence. As part of this ongoing process, we identified a few additional rules that contain typographical and editorial errors that should be corrected,[2] and other stylistic or editorial corrections that will make the rules consistent with the Court's other rules. In addition,

[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] On March 23, 1999, the Court adopted the first "clean up" of the rules making technical and editorial corrections. See 29 Pa.B. 1712 (April 3, 1999).

we noted that since the Ad Hoc Committee's work was completed, there have been some substantive changes in statutes and cases that are cited in the Comments to the rules that require correlative updates that, although not substantive in nature, are necessary to reduce the likelihood of confusion concerning the interpretation of the rules.

II. **DISCUSSION OF CHANGES**

The rule changes that are the subject of this Order are as follows:

(1) Rule 410(a)(3) has been amended by adding Criminal Rules 64 and 69 (rules that also address plea procedures) to the list of Criminal Rules already referenced in that paragraph. In addition, to make the scope of the provision clearer, the last phrase in the paragraph has been amended by the deletion "of another state" and the addition of "of Pennsylvania or any other jurisdiction" before "regarding."

(2) The second sentence of the first paragraph of the Rule 105 Comment and the first sentence of the third paragraph of the Rule 803(25) Comment have been revised by deleting "as amended." The Committee agreed that, although the reference was intended to highlight that these new Pennsylvania rules were different from their Federal rule counterpart, the reference could be confusing, and, therefore should be deleted.

(3) The seventh paragraph of the Rule 802 Comment has been revised by changing the referenced age from 14 years to 16 years. This change conforms the Comment with 42 Pa.C.S. § 5986 that was amended after the Ad Hoc Committee had completed its work on Rule 802.

(4) The Comment to Rule 804(b)(4) has been revised by correcting the spelling of "ante litem motam" in the last line of the first paragraph.

[Pa.B. Doc. No. 00-518. Filed for public inspection March 24, 2000, 9:00 a.m.]

[225 PA. CODE ART. IV]

Order Adopting Amendments to Rule 408; No. 236, Supreme Court Rules; Doc. No. 1

The Committee on Rules of Evidence has prepared a Final Report explaining the March 10, 2000 changes to Rule of Evidence 408, effective July 1, 2000. These changes bring Pa.R.E. 408 in line with F.R.E. 408 by abolishing the common law rule and 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 Final Report follows the Court's Order.

Order

Per Curiam:

Now, this tenth day of March, 2000, upon the recommendation of the Committee on Rules of Evidence; this proposal having been published before adoption at 29 Pa. B. 2264 (May 1, 1999) 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 Rule of Evidence 408 is hereby amended as follows.

This Order shall be processed immediately in accordance with Pa.R.J.A. 103(b), and shall be effective July 1, 2000.

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, negat**iv**ing a contention of undue delay, or proving an effort to obstruct a criminal investigaton 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 2000 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.*, 449 A.2d 1366 (Pa. 1982) (plurality), bringing Pennsylvania in line with F.R.E. 408 and most of the states.

The 2000 amendments are consistent with the Mediation Act of 1996. See 42 Pa.C.S. § 5949 (Confidential mediation communications and documents).

Like the federal rule, Pa.R.E. 408 permits evidence relating to compromises and offers to compromise to be admitted for purposes other than proving liablity, such as showing bias or prejudice. See *Heyman v. Hanauer*, **[302 Pa. 56,]** 152 A. 910 (**Pa.** 1930) (if proposal was offer to settle, it could have been used to impeach witness).

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

§ 6141. Effect of certain settlements

* * * * *

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

Under Pa.R.E. 408, as under F.R.E. 408, evidence of offers to compromise or completed compromises is admissible when used to prove an effort to obstruct a criminal investigation or prosecution. This is consistent with **prior** Pennsylvania **case** law. See *Commonwealth v. Pettinato*, **[360 Pa. Super. 242,]** 520 A.2d 437 (**Pa. Super.** 1987). Pa.R.E. 408 does not permit, however, the use of evidence

relating to good faith compromises or offers to compromise when made for the purpose of reaching an agreement such as those sanctioned by Pa.R.Crim.P. 314 (relating to dismissal of criminal charges not committed by force or violence upon payment of restitution) or Pa.R.Crim.P. 145 (relating to dismissal upon satisfaction or agreement). The court may need to conduct, out of the hearing of the jury, a preliminary inquiry into the circumstances surrounding compromises in criminal matters to determine whether to permit such evidence.

Official Note: **Adopted May 8, 1998, effective October 1, 1998; amended March 10, 2000; effective July 1, 2000.**

Committee Explanatory Reports:

Final Report explaining the March 10, 2000 amendments concerning the inadmissibility of evidence of conduct or statements made in compromise negotiations published at 30 Pa.B. 1643 (March 25, 2000).

FINAL REPORT[3]

Amendment to Pa.R.E. 408

Compromise and Offers to Compromise

On March 10, 2000, upon the recommendation of the Committee on Rules of Evidence, the Supreme Court adopted amendments to Rule of Evidence 408 (Compromise and Offers to Compromise), effective July 1, 2000. The amendments bring Pa.R.E. 408 in line with F.R.E. 408 by abolishing the common law rule and 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 contending that Rule 408 is a "trap for the unwary" because it inhibits talking freely in order to promote settlement, and contributes to 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 F.R.E. 408 and the other states that have similar rules or statutes.[4]

As the Committee evaluated the points raised in the correspondence, the members noted that 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 "Mediation communications and mediation documents shall not be admissible as evidence in any action or proceeding . . . ," see 42 Pa.C.S. § 5949, thereby abrogating the common law rule for proceedings covered by the Act. The experience of the members of the Committee has been that the provisions of the Act are logical and work well. Furthermore, the Committee noted that most states have some form of a mediation act, and several of them have included provisions in their rules or statutes concerning the admissibility of statements made during mediation.

Based on their experiences concerning compromise negotiations, the Committee members acknowledged that there are many situations in which an attorney will agree with opposing counsel to conduct their state settlement negotiations under the federal rules. This is a common method by which attorneys circumvent the common law and alleviate the necessity to state "Hypothetically speaking" prior to settlement discussions.

Based on the foregoing considerations, the Committee agreed that Pennsylvania evidence law should be aligned with F.R.E. 408. Accordingly, Pa.R.E. 408 has been amended by adding "Evidence of conduct or statements made in compromise negotiations is likewise not admissible" after the first sentence, and by replacing the phrase "any admission of fact" with "any evidence otherwise discoverable." These changes abrogate Pennsylvania's adherence to the common law under which such conduct or statements are admissible, 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. Correlative revisions have been made to the Comment.

[Pa.B. Doc. No. 00-519. Filed for public inspection March 24, 2000, 9:00 a.m.]

[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]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.

[225 PA. CODE ART. VI]

Order Adopting Amendments to Rule 613; No. 238, Supreme Court Rules; Doc. No. 1

The Committee on Rules of Evidence has prepared a Final Report explaining the March 10, 2000 changes to Rule of Evidence 613, effective July 1, 2000. These changes add the term "inconsistent" to the title and the text of Rule 613(a) to make it clear that both sections (a) and (b) apply to attacks on credibility through prior inconsistencies. The Final Report follows the Court's Order.

Order

Per Curiam:

Now, this tenth day of March, 2000, upon the recommendation of the Committee on Rules of Evidence, this proposal having been published before adoption at 29 Pa.B. 2265 (May 1, 1999) 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 Rule of Evidence 613 is hereby amended in the following form.

This *Order* shall be processed immediately in accordance with Pa.R.J.A. 103(b), and shall be effective July 1, 2000.

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

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Section (a).—This section of the **[Rule] 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* § 613.02[1], 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 (1928). 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 (**Pa.** 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 (**Pa.** 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).

Section (b).—The first sentence of section (b) of Pa.R.E. 613 differs from F.R.E. 613(b). Like the **[Federal] federal [Rule] rule,** Pa.R.E. 613(b) permits introduction of extrinsic evidence of a prior inconsistent statement only if the witness was confronted with or informed of the statement, thus providing the witness with a chance to deny or explain the statement. Pa.R.E. 613(b), however, requires that the witness be confronted or informed during the examination; the **[Federal] federal [Rule] rule** sets no particular time or sequence. F.R.E. 613 advisory committee notes.

Pa.R.E. 613(b) follows the traditional common law approach. It establishes that the witness must be shown or made **[of]** aware of the prior inconsistent statement before extrinsic evidence of the statement may be introduced, unless relaxation of the rule would serve the interests of justice. This is a departure from Pennsylvania authority, which gives the trial court discretion whether to require showing or disclosure of the statement. See, e.g., *Commonwealth v. Manning*, **[495 Pa. 652,]** 435 A.2d 1207 (**Pa.** 1981); *Commonwealth v. Dennison*, **[441 Pa. 334,]** 272 A.2d 180 (**Pa.** 1971).

The rationale for the last sentence of section (b), which exempts admissions of a party-opponent, is that "parties have ample opportunities to testify and explain or deny statements attributed to them." 28 Wright & Gold, *Federal Practice and Procedure* § 6205 (1993). The exemption is in accord with Pennsylvania law. *Commonwealth by Truscott v. Binenstock*, **[358 Pa. 644,]** 57 A.2d 884 (**Pa.** 1948); *Commonwealth v. Dilworth*, **[289 Pa. 498,]** 137 A. 683 (**Pa.** 1927).

Finally, as noted in the Comment to Pa.R.E. 607(a), a prior inconsistent statement may be used only for impeachment purposes and not substantively unless it is an admission of a party opponent under Pa.R.E. 803(25), the statement of a witness other than a party-opponent within the hearsay exception of Pa.R.E. 803.1(1), or a statement of prior identification under the hearsay exception of Pa.R.E. 803.1(2).

Section (c). Pa.R.E. 613(c) does not appear in F.R.E. 613. F.R.E. 801(d)(1)(B) provides that the prior consistent statement of a testifying witness is not hearsay, and that the statement is admissible substantively if it is consistent with the witness' testimony and "is offered to rebut an express or implied charge of recent fabrication, or improper influence or motive." Pa.R.E. 613(c) adds "bias," "faulty memory," and "prior inconsistent statement" to the kind of charges that may be rebutted by a consistent statement. In addition, it specifically provides in subsection (c)(1) that the consistent statement must have been made before the fabrication, bias, etc. Although F.R.E. 801(d)(1)(B) is silent on this point, the Supreme Court held that it permits the introduction of consistent statements as substantive evidence only when they were made before the challenged fabrication, influence, or motive. See *Tome v. United States*, 513 U. S. 150 (1995). Unlike the **[Federal] federal [Rule] rule**, under Pa.R.E. 613(c), a prior consistent statement is always received for rehabilitation purposes only and not as substantive evidence.

Pa.R.E. 613(c)(1) is in accord with Pennsylvania law. See *Commonwealth v. Hutchinson*, **[521 Pa. 482,]** 556 A.2d 370 (**Pa.** 1989) (to rebut charge of recent fabrication); *Commonwealth v. Smith*, **[518 Pa. 15,]** 540 A.2d 246 (**Pa.** 1988) (to counter alleged corrupt motive); *Commonwealth v. Swinson*, **[426 Pa. Super. 167,]** 626 A.2d 627 (*Pa. Super.* 1993) (to negate charge of faulty memory); *Commonwealth v. McEachin*, **[371 Pa. Super. 188,]** 537 A.2d 883 (**Pa. Super.** 1988), appeal denied, **[520 Pa. 603,]** 553 A.2d 965 (**Pa.** 1988) (to offset implication of improper influence). All of these cases require that the consistent statement must have been made before the fabrication, bias, etc.

* * * * *

Usually, evidence of a prior consistent statement is rebuttal evidence that may not be introduced until after **a** witness has testified on direct examination and an express or implied attack has been made on the witness' testimony in one of the ways set forth in Pa.R.E. 613(c). But in at least two situations, Pennsylvania Courts have upheld the admission of a prior inconsistent statement in anticipation of an attack on the witness. See *Commonwealth v. Smith*, **[518 Pa. 15,]** 540 A.2d 246 (**Pa.** 1988) (prior consistent statements by prosecution witness admitted on direct examination where defense counsel's opening statement suggested that the witness had motives to fabricate evidence against the defendant to obtain a lenient sentence for herself); *Commonwealth v. Freeman*, **[295 Pa. Super. 467,]** 441 A.2d 1327 (**Pa. Super,** 1982) (evidence of prompt complaint of rape by alleged victim may be introduced in prosecution's case in chief because alleged victim's testimony is automatically vulnerable to attack by the defendant as recent fabrication in the absence of evidence of hue and cry on her part.").

* * * * *

Committee Explanatory Reports:

* * * * *

Final Report explaining the March 10, 2000 amendments adding "inconsistent" to section (a) published with the Court's Order at 30 Pa.B. 1645 (March 25, 2000).

FINAL REPORT[1]

Amendments to Pa.R.P. 613(a)

Prior Statements of Witnesses

On March 10, 2000, upon the recommendation of the Committee on Rules of Evidence, the Supreme Court adopted an amendment to Pa. Rules of Evidence 613(a) effective July 1, 2000. This amendment adds the term "inconsistent" to the title and the text of Rule 613(a) to make it clear that both sections (a) and (b) apply to attacks on credibility through prior inconsistencies.

As part of its ongoing review of the Rules of Evidence, and in response to some correspondence, the Committee has reexamined Rule 613. We agreed with the correspondence that the use of "prior statements" in section (a) could lead to misconstruction about its application to both consistent and inconsistent statements. However, before recommending an amendment, we wanted to be sure that our construction was consistent with the construction of F.R.E. 613(a), which was the model for the Pennsylvania rule. We looked at the history of the federal rule, and found that authorities agree (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).

In view of this construction of the federal rule by the authorities, as an aid to members of the bench and bar, Pa.R.E. 613(a) has been amended to make it clear the section applies only to inconsistent statements by adding the term "inconsistent" to both the title of the section and the text of the section. Correlative revisions have been added to the Comment.

[Pa.B. Doc. No. 00-520. Filed for public inspection March 24, 2000, 9:00 a.m.]

[225 PA. CODE ART. VIII]

Order Adopting Amendments to Rule 803.1; No. 239, Supreme Court Rules; Doc. No. 1

The Committee on Rules of Evidence has prepared a Final Report explaining the March 10, 2000 changes to Rule of Evidence 803.1, effective July 1, 2000. These changes include a technical amendment in the text of subsection (1) of Rule 803.1 (Hearsay Exceptions; Testimony of Declarant Necessary) that merely adds "a" before "declarant" in the first line of the subsection, and a Comment revision that updates subsection (1) of the Comment consistent with recent changes in the case law concerning the admission of prior inconsistent statements. The Final Report follows the Court's Order.

Order

Per Curiam:

Now, this tenth day of March, 2000, upon the recommendation of the Committee on Rules of Evidence; this proposal having been published before adoption at 29 Pa.B. 2265 (May 1, 1999) 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 Rule of Evidence 803.1 is hereby amended as follows.

This *Order* shall be processed immediately in accordance with Pa.R.J.A. 103(b), and shall be effective July 1, 2000.

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*, 507 A.2d 66 (Pa. 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 (**Pa.** 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 (Pa. 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.**

* * * * *

Comment

* * * * *

Pa.R.E. 803.1(2) is consistent with Pennsylvania law, although we have found no reported cases dealing with prior identification of a thing, as distinguished from a

[1] The Committee's Final Report 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 Report.

person. See *Commonwealth v. Ly*, **[528 Pa. 523,]** 599 A.2d 613 (**Pa.** 1991); *Commonwealth v. Saunders*, **[386 Pa. 149,]** 125 A.2d 442 (**Pa.** 1956).

* * * * *

Comment

* * * * *

Pa.R.E. 803.1(3) is consistent with Pennsylvania law. See *Commonwealth v. Cargo*, **[498 Pa. 5,]** 444 A.2d 639 (**Pa.** 1982); *Commonwealth v. Cooley*, **[484 Pa. 14,]** 398 A.2d 637 (**Pa.** 1979).

***Official Note*: Adopted May 8, 1998, effective October 1, 1998; amended March 10, 2000, effective July 1, 2000.**

***Committee Explanatory Reports*:**

Final Report explaining the amendment to subsection (1) and the updates to the Comment to subsection (1) published with the Court's Order at 30 Pa.B. 1646 (March 25, 2000).

FINAL REPORT[1]

Amendments to Pa.R.E. 803.1

PRIOR INCONSISTENT STATEMENTS

On March 10, 2000, upon the recommendation of the Committee on Rules of Evidence, the Supreme Court adopted the amendment of Rule of Evidence 803.1 and approved the revision of the Comment, effective July 1, 2000. These changes include a technical amendment in the text of subsection (1) of Rule 803.1 (Hearsay Exceptions; Testimony of Declarant Necessary) that merely adds "a" before "declarant" in the first line of the subsection, and a Comment revision that updates subsection (1) of the Comment consistent with recent changes in the case law concerning the admission of prior inconsistent statements.

Subsection (1) (Inconsistent Statement of Witness) of the Comment to Rule 803.1 has been revised in several ways. First, the change 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). *Wilson*, *supra*, clarifies what statements qualify as a "verbatim contemporaneous recording of an oral statement" within the context of subsection (1)(c).

In addition to adding the *Wilson* citation, the entire subsection (1) Comment has been revised 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.

[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.

[Pa.B. Doc. No. 00-521. Filed for public inspection March 24, 2000, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CHS. 1900, 1910, 1915, 1920 AND 1930]

Miscellaneous Technical Amendments of the Rules Relating to Domestic Relations; No. 332 Civil Procedural Rules; Doc. No. 5

Order

Per Curiam:

And Now, this 2nd day of March 2000, the Pennsylvania Rules of Civil Procedure 1905, 1910.3, 1910.9, 1910.16-4, 1915.15, 1920.42, 1920.72, 1920.73 and the Explanatory Comments to Rules 1910.10, 1910.11 and 1930.5 are amended as follows.

Whereas prior publication of proposed rulemaking would otherwise be required, it has been determined under Rule of Judicial Administration 103(a)(3) that the amendments are of a perfunctory nature and that the immediate promulgation of this Order is required in the interests of justice and efficient administration.

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

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1900. ACTIONS PURSUANT TO THE PROTECTION FROM ABUSE ACT

Rule 1905. Forms for Use in PFA Actions. Notice and Hearing. Petition. Temporary Protection Order. Final Protection Order.

(a) The Notice of Hearing and Order required by Rule 1901.3 shall be substantially in the following form:

(Caption)

NOTICE OF HEARING AND ORDER

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following papers, you must appear at the hearing scheduled herein. If you fail to do so, the case may proceed against you and a FINAL order may be entered against you granting the relief requested in the Petition. In particular, you may be evicted from your residence and lose other important rights. **Any protection order granted by a court may be considered in subsequent proceedings under Title 23 (Domestic Relations) of the Pennsylvania Consolidated Statutes, including child custody proceedings under Chapter 53 (relating to custody).**

* * * * *

(c) The Temporary Order of Court entered pursuant to the Act shall be substantially in the following form:

* * * * *

☐ 3. Except for such contact with the minor child/ren as may be permitted under Paragraph 5 of this Order, Defendant is prohibited from having ANY CONTACT with Plaintiff, **or any other person protected under this Order,** at any location, including but not limited to any contact at Plaintiff's school, business, or place of employment. Defendant is specifically ordered to stay away from the following locations for the duration of this Order:

_____

_____

_____

☐ 4. Except for such contact with the minor child/ren as may be permitted under Paragraph 5 of this Order, Defendant shall not contact Plaintiff, **or any other person protected under this Order**, by telephone or by any other means, including through third persons.

* * * * *

10. THIS ORDER APPLIES IMMEDIATELY TO DEFENDANT AND SHALL REMAIN IN EFFECT UNTIL **[insert expiration date] OR UNTIL OTHERWISE** MODIFIED OR TERMINATED BY THIS COURT AFTER NOTICE AND HEARING.

* * * * *

NOTICE TO LAW ENFORCEMENT OFFICIALS

This Order shall be enforced by the police who have jurisdiction over the plaintiff's residence OR any location where a violation of this order occurs OR where the defendant may be located. If defendant violates Paragraphs 1 through 6 of this Order, defendant **[may] shall** be arrested on the charge of Indirect Criminal Contempt. An arrest for violation of this Order may be made without warrant, based solely on probable cause, whether or not the violation is committed in the presence of law enforcement.

* * * * *

(e) The Final Order of Court entered pursuant to the Act shall be substantially in the following form:

(Caption)

FINAL ORDER OF COURT

* * * * *

☐ 3. Except as provided in Paragraph 5 of this Order, Defendant is prohibited from having ANY CONTACT with the Plaintiff**, or any other person protected under this Order,** at any location, including but not limited to any contact at the Plaintiff's school, business, or place of employment. Defendant is specifically ordered to stay away from the following locations for the duration of this Order:

_____

_____

_____

☐ 4. Except as provided in Paragraph 5 of this Order, Defendant shall not contact the Plaintiff**, or any other person protected under this Order,** by telephone or by any other means, including through third persons.

* * * * *

☐ 12. BRADY INDICATOR.

1. ☐ The Plaintiff or protected person(s) is a spouse, former spouse, a person who **[cohabitates] cohabits** or has cohabited with the Defendant, a parent of a common child, a child of that person, or a child of the Defendant.

* * * * *

CHAPTER 1910. ACTIONS FOR SUPPORT

Rule 1910.3. Parties.

An action shall be brought

[(1)] (a) by a person, including a minor spouse, to whom a duty of support is owing, or

[(2)] (b) on behalf of a minor child by a person having custody of the **[minor] child,** without appointment as guardian ad litem, or

(c) on behalf of a minor child by a person caring for the child regardless of whether a court order has been issued granting that person custody of the child, or

[(3)] (d) by a public body or private agency having an interest in the case, maintenance or assistance of a person to whom a duty of support is owing, or

[(4)] (e) by a parent, **guardian or public or private agency** on behalf of **[a] an unemancipated** child over eighteen years of age to whom a duty of support is owing**. [with the written consent of the child].**

Explanatory Comment—1999

New subdivision (c) incorporates 23 Pa.C.S. § 4341(b) to confer standing on any person who is caring for a child to seek support on behalf of that child even though there is no court order granting legal or physical custody to that person. The statutory provision effectively overrules *Larson v. Diveglia*, 700 A.2d 931 (Pa. 1997), which held to the contrary.

Subdivision (e) is amended to eliminate the requirement of consent when the child is over 18 years of age. This requirement was originally intended only for applicable child support actions for higher educational support, which actions were abolished by *Curtis v. Kline*, 666 A.2d 265 (Pa. 1995). This rule also is intended to apply to children who are unemancipated by reason of physical or mental disability, consistent with 23 Pa.C.S. § 4321(3) as interpreted by case law.

Rule 1910.9. Discovery.

(a) **Except as provided in Rule 1910.11(j) and Rule 1910.12(c), [There] there** shall be no discovery in an action for support unless authorized by special order of court**[, except as provided in Rule 1910.11(j) and Rule 1910.12(c)].**

* * * * *

Explanatory Comment—1997

Subdivision (a) is amended to permit discovery in accordance with R.C.P. 4001 et seq. in any support matter **[which has been designated complex] where a separate listing has been obtained under Rules 1910.11(j) and 1910.12(c).** In all other support matters, discovery is permitted only by leave of court. Cases should not be **[designated complex] listed separately** in order to obtain discovery, nor should a support hearing be used to conduct discovery. Instead, the court should grant leave to engage in discovery in the few **[simple]** support cases **which are not listed separately and** in which **[it] discovery** is warranted.

* * * * *

Rule 1910.10. Alternative Hearing Procedures.

* * * * *

Explanatory Comment—1995

* * * * *

Greene **[1910.12] 1910.11**

* * * * *

Rule 1910.11. Office Conference. Subsequent Proceedings. Order.

* * * * *

Explanatory Comment—1995

Rule 1910.11(e) is amended to eliminate the need for a party to request a copy of the conference summary.

In conformity with the amendment of Rule of Civil Procedure 236, subdivision (f) is amended to require that the parties be served with a copy of the order, rather than notice that it has been filed. In addition, subdivision (f) is amended to require the Court to enter an interim order on the basis of the conference summary, expediting the commencement of support payments. The language of subdivisions (g) and (l) is also changed to conform with the amended language of subdivision (f).

Because the court is required to enter a guideline order on the basis of the conference officer's recommendation, there is no need for (g)(2), which provided for a hearing before the court where an order was not entered within five days of the conference. It is eliminated accordingly.

Pursuant to subdivision (g), support payments are due and owing under the interim order which continues in effect until the court enters a final order after the hearing de novo. **The provision for an interim order serves two purposes. First, it ensures that the obligee will receive needed support for the period during which the judicial determination is sought. Second, it eliminates the motive of delay in seeking a judicial determination.** Therefore, the plaintiff and the dependent children are not prejudiced by allowing the court sixty days, rather than the original forty-five, in which to enter its final order.

Rule 1910.16-4. Support Guidelines. Calculation of Support Obligation. Formula.

* * * * *

PART III. ADDITIONAL EXPENSES (See Rule 1910.16-6)

* * * * *

11. OBLIGOR'S TOTAL **MONTHLY** SUPPORT OBLIGATION
(Add line 8 (or 9(d) if applicable) and line 10f) _____

* * * * *

CHAPTER 1915. ACTIONS FOR CUSTODY, PARTIAL CUSTODY AND VISITATION OF MINOR CHILDREN

Rule 1915.15. Form of Complaint. Caption. Order. Petition to Modify a Partial Custody or Visitation Order.

(a) The complaint in an action for custody, partial custody or visitation shall be in substantially the following form:

(Caption)

COMPLAINT FOR (CUSTODY) (PARTIAL CUSTODY) (VISITATION)

* * * * *

6. Plaintiff (has) (has not) participated as a party or witness, or in another capacity, in other litigation concerning the custody of the child in this or another court. The court, term and number, and its relationship to this action is: _____

_____

_____

Plaintiff (has) (has no) information of a custody proceeding concerning the child pending in a court of this Commonwealth **or any other state**. The court, term and number, and its relationship to this action is: _____

Plaintiff (knows) (does not know) of a person not a party to the proceedings who has physical custody of the child or claims to have custody or visitation rights with respect to the child. The name and address of such person is: _____.

* * * * *

CHAPTER 1920. ACTIONS OF DIVORCE OR FOR ANNULMENT OF MARRIAGE

Rule 1920.42. Affidavit and Decree under § 3301(c) or § 3301(d)(1) of the Divorce Code. Notice of Intention to Request Entry of Divorce Decree in § 3301(c) and § 3301(d)(1)(l) Divorces. Counter-Affidavit.

* * * * *

(e) Notice of intention to request entry of divorce decree shall not be required prior to entry of a divorce decree

(1) **[under § 3301(c)]** where the parties have executed and filed with the prothonotary a waiver of notice substantially in the form set forth in Rule 1920.72(c); or

(2) under § 3301(d) where the court finds that no appearance has been entered on defendant's behalf and that defendant cannot be located after diligent search.

* * * * *

Rule 1920.72. Form of Complaint. Affidavit under § 3301(c) or 3301(d) of the Divorce Code. Counter-affidavit. Waiver of Notice of Intention to Request Decree under § 3301(c) **and § 3301(d).**

* * * * *

(c) The waiver permitted by Rule 1920.42(e) shall be substantially in the following form:

(Caption)

Waiver of Notice of Intention to Request Entry of a Divorce Decree under § 3301(c) **and § 3301(d)** of the Divorce Code

* * * * *

(e)(1) ***

(2) The counter-affidavit prescribed by Rule 1920.42(d)(2) shall be substantially in the following form in a § 3301(d) divorce:

(Caption)

COUNTER-AFFIDAVIT UNDER § 3301(d) OF THE DIVORCE CODE

1. Check either (a) or (b):

(a) I do not oppose the entry of a divorce decree.

(b) I oppose the entry of a divorce decree because (Check (i) (ii), or both);

(i) The parties to this action have not lived separate and apart for a period of at least two years.

(ii) The marriage is not irretrievably broken.

2. Check either (a) or (b):

(a) I do not wish to make any claims for economic relief. I understand that I may lose rights concerning alimony, division of property, lawyer's fees or expenses if I do not claim them before a divorce is granted.

(b) I wish to claim economic relief which may include alimony, division of property, lawyer's fees or expenses or other important rights.

I understand that in addition to checking (b) above, I must also file all of my economic claims with the prothonotary in writing and serve them on the other party. If I fail to do so before the date set forth on the Notice of Intention to Request Divorce Decree, the divorce decree may be entered without further **[delay] notice to me, and I shall be unable thereafter to file any economic claims.**

* * * * *

Rule 1920.73. Notice of Intention to Request Entry of Divorce Decree. Praecipe to Transmit Record Forms.

* * * * *

(b) The praecipe to transmit the record prescribed by Rule 1920.42 shall be in substantially the following form:

(Caption)

PRAECIPE TO TRANSMIT RECORD

To the Prothonotary:

* * * * *

5. (Complete either (a) or (b).)

(a) Date and manner of service of the notice of intention to file praecipe to transmit record, a copy of which is attached: _____

(b) Date plaintiff's Waiver of Notice **[in § 3301(c) Divorce]** was filed with the prothonotary: _____

(c) Date defendant's Waiver of Notice **[in § 3301(c) Divorce]** was filed with the prothonotary: _____

* * * * *

CHAPTER 1930. RULES RELATING TO DOMESTIC RELATIONS MATTERS GENERALLY

Rule 1930.5. Discovery in Domestic Relations Matters.

* * * * *

Explanatory Comment—1997

Whether a support case is complex is to be determined by motion before the court **for a separate listing** pursuant to Rules 1910.11(j)(1) and 1910.12(c)(1). It is not necessary, **however**, to have a case **[designated complex] listed separately on grounds of complexity of factual or legal issues** in order to engage in discovery. If discovery is needed in a **[simple]** support case which does not require a **[complex designation] separate listing**, the court should grant leave to engage in it.

[Pa.B. Doc. No. 00-522. Filed for public inspection March 24, 2000, 9:00 a.m.]

Title 249—PHILADELPHIA RULES

PHILADELPHIA COUNTY

Amendment of Phila.R.Civ.P. No. 212.2, 1012, 1028 and 4007.1; President Judge General Court Regulation No. 2000-01

And Now, this 3rd of March, 2000, the Board of Judges of Philadelphia County having voted at the Board of Judges' meeting held February 17, 2000 to amend Phila.R.Civ.P. No. 212.2, 1012, 1028 and 4007.1 *It Is Hereby Ordered* and *Decreed* that Phila.R.Civ.P. No. 212.2, 1012, 1028 and 4007.1 are amended as follows.

This General Court Regulation is promulgated in accordance with Pa.Civ.P. No. 239 and shall become effective thirty (30) days after publication in the *Pennsylvania Bulletin*. The original General Court Regulation shall be filed with the Prothonotary in a docket maintained for General Court Regulations issued by the President Judge of the Court of Common Pleas, and copies shall be submitted to the Administrative Office of Pennsylvania Courts, the Legislative Reference Bureau and the Supreme Court's Civil Procedural Rules Committee. Copies of the Regulation shall also be submitted to American Lawyer Media, *The Legal Intelligencer*, Jenkins Memorial Library and the Law Library for the First Judicial District.

ALEX BONAVITACOLA,
President Judge

Rule *212.2. Sanctions for Failure to Settle.

* * * * *

(I) In the event the Trial Judge determines that sanctions shall be ordered against the party who refused to settle, he or she may order the party to pay to the **[County of Philadelphia] Court** all or part of the reasonable costs incurred as a result of the party's refusal to settle, which costs shall be in accordance with the following itemization, which itemization shall be **administratively** updated each year by the Court staff. **The updated itemization shall become effective no sooner than thirty (30) days after publication in the *Pennsylvania Bulletin*.**

* * * * *

ITEMIZATION OF COSTS

COST CATEGORIES	CURRENT ANNUAL COST AS OF 3/15/00	DAILY RATE @ 262 DAYS
JUDGE'S SALARY (1)	$113,789	$434
COURT PERSONNEL		
TIPSTAFF 1 - JUDICIAL (2)	$33,216	$127
JUDICIAL SECRETARY 1 (2)	$33,216	$127
LAW CLERK 1 (2)	$34,768	$133
SR. COURT REPORTER	$49,272	$188
JURY SELECTION STAFF (3)		$388
TOTAL DIRECT SALARY COSTS		$1,397
FRINGE BENEFITS @ 33%		$461
TOTAL PERSONNEL COSTS		$1,858
ADMINISTRATIVE OVERHEAD - JURY SELECTION (4)		$120
JUROR FEES - 8 JURORS @ $9 PER DAY (Applies for first three days of trial)		$72
TOTAL BASE COST		$2,050
ADDITIONAL COSTS		
CITY HALL COURTROOMS Add per day of trial (5)		$17
FOR CASES TRIED IN COURTROOMS A-E, COMPLEX LITIGATION CENTER, ADD PER DAY OF TRIAL (5)		$147
FOR CASES TRIED IN COURTROOMS F-N, COMPLEX LITIGATION CENTER, ADD PER DAY OF TRIAL (5)		$125
FOR EACH ADDITIONAL JUROR OVER 8, ADD $9.00 FOR FIRST THREE DAYS OF TRIAL		-
FOR EACH DAY OF TRIAL IN EXCESS OF 3 DAYS, ADD $25 PER JUROR		-

Footnotes:
1) PA Supreme Court No. 216 Judicial Administration Docket No. 1. Order entered December 13, 1999.
2) Step 4 - Based on Pay Scale effective March 15, 2000.
3) Based on proportion of civil jury trials to all jury trials and applied to total Class 100 expenses for Jury Selection Department.
4) Based on all Class 100, 200, 300 and 400 expenditures for Jury Selection Department and applied proportionately to Civil Jury Trials.
5) Based on providing custodial services to average courtroom of 2,000 sq. ft.
6) Based on leasing cost per square foot.

Rule 1012. Entry and Withdrawal of Appearance.

(a) Entry of Appearance. In order to prevent delay of the litigation, an attorney who enters an appearance for a party shall be deemed to be available and ready to try the case on the assigned hearing or trial date. The hearing or trial date will not be rescheduled due to the entry of appearance of counsel of any party.

(b) Simultaneous Withdrawal and Entry of Appearance. In order to prevent delay of the litigation, an attorney who enters an appearance for a party simultaneously with the withdrawal of appearance of prior counsel in an action shall be deemed to be available to try the case on the assigned hearing or trial date. The hearing or trial date will not be rescheduled due to the entry of appearance of new counsel of any party.

(c) Petition to Withdraw. Leave of Court, obtained through the filing Petition to Withdraw Appearance, is required if another attorney is not entering an appearance simultaneously with the withdrawal of current counsel. The Petition shall set forth with specificity the reasons the attorney seeks to withdraw. The attorney

seeking to withdraw must attach to the Petition to Withdraw a certification setting forth the following:

(1) that there is no outstanding motion to compel discovery, or for sanctions for failure to provide discovery; and

(2) that the attorney has met every deadline date set forth in the pertinent Case Management Order, if applicable.

Note

Pennsylvania Rule of Civil Procedure No. 1012 authorizes the entry, or change, of attorneys on behalf of a party provided that the change of attorneys does not delay any stage of the litigation. Consistently with this Rule, the Board of Judges has determined that entry of new counsel in an action shall not delay the litigation. Thus, attorneys are placed on notice that by entering an appearance, they will be deemed to be ready to proceed to trial as scheduled. The mere fact of the entry of appearance shall not be sufficient cause to postpone the previously scheduled hearing or trial. Similarly, an attorney who seeks leave of court to withdraw must establish compliance with applicable deadlines and rules.

Rule *1028. Preliminary Objections.

* * * * *

(C)(1) An answer to preliminary objections (as opposed to a responsive filing with the Motion Court under Philadelphia Civil Rule *206.1) is required only to preliminary objections **[in the nature of a petition under Pa.R.C.P. 1017(b)(1) or (b)(5)] raising an issue under Pa.R.C.P. 1028 (a)(1), (5), and (6) provided a notice to plead is attached to the preliminary objections.** An answer **[shall] need** not be filed to preliminary objections **[in the nature of a demurrer or a motion under Pa.R.C.P. 1017(b)(2), (b)(3) or (b)(4)] raising an issue under Pa.R.C.P. 1028 (a) (2), (3), and (4).**

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Rule [4007.1. Problems Arising At Depositions.

In the event a problem arises during the course of a deposition, counsel shall raise and summarize the disputed issue on the record at the deposition. Brief arguments may be placed on the record, and should consist of the reason for the dispute, an answer, and a brief rebuttal. Counsel may present the disputed issue for disposition to the team leader in Discovery Court; provided, however, if a firm trial or hearing date has been assigned, the issue may be presented in a motion in limine.]

[Pa.B. Doc. No. 00-523. Filed for public inspection March 24, 2000, 9:00 a.m.]

Title 255—LOCAL COURT RULES

FAYETTE COUNTY

Local Rule 4 Citing the Criminal Procedural Rules; Criminal Division No. 51 of 2000

Order

And Now, this 17th day of February, 2000, pursuant to Rule 6 of the Pennsylvania Rules of Criminal Procedure, it is hereby ordered that the above-stated Local Rule be adopted as follows.

The Clerk of Courts is directed as follows:

(1) Seven certified copies of the Local Rule shall be filed with the Administrative Office of Pennsylvania Courts.

(2) Two certified copies of the Local Rule shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

(3) One certified copy of the Local Rule shall be sent to the State Criminal Procedural Rules Committee.

(4) One certified copy shall be sent to the Fayette County Law Library.

(5) One certified copy shall be sent to the Editor of the *Fayette Legal Journal*.

This Local Rule shall be continuously available for public inspection and copying in the Office of the Clerk of Courts. Upon request and payment of reasonable costs of reproduction and mailing, the Clerk shall furnish to any person a copy of any local rule.

This Local Rule shall be effective 30 days after the date of publication in the *Pennsylvania Bulletin*.

By the Court

WILLIAM J. FRANKS,
President Judge

Rule 4

CITING THE CRIMINAL PROCEDURAL RULES

All criminal procedural rules adopted by the Court of Common Pleas of Fayette County, Pennsylvania, shall be known as the Fayette County Rules of Criminal Procedure and may be cited as "F.C.R.Crim.P. _____."

[Pa.B. Doc. No. 00-524. Filed for public inspection March 24, 2000, 9:00 a.m.]