

THE COURTS

Title 207—JUDICIAL CONDUCT

[207 PA. CODE CH. 33]

Formal Opinion 2000-1

Notice is hereby given that the Ethics Committee of the Pennsylvania Conference of State Trial Judges has adopted its Formal Opinion 2000-1 which is set forth as follows.

HOWLAND W. ABRAMSON,
Chairperson
Ethics Committee
Pennsylvania Conference of State Trial Judges

FORMAL OPINION 2000-1

Judicial Ethics Committee of the Pennsylvania Conference of State Trial Judges

Signing Nominating Petitions

Majority Opinion

The Committee has received several requests for advice asking whether it is permissible for a judge to sign a candidate's nomination petition. Because of the importance of this issue throughout the Commonwealth, the Committee issues this Formal Opinion. A bare majority of the Committee is of the opinion that signing a nomination petition is prohibited; a minority of the Committee is of the opinion that signing a nomination petition is permitted.

Candidates for elective office who wish to have their names placed on the ballot for the primary election of a major political party must obtain a certain number of signatures of the voters of the party on a nomination petition. *See generally* 25 P. S. sections 2862, 2869.

Code of Judicial Conduct 7A (1)(b) prohibits a judge or candidate for judicial office from publicly endorsing a candidate for public office except as authorized by section 7A (2). Code of Judicial Conduct 7A (2) permits a judge holding an office filled by public election between competing candidates, or a candidate for such office, among other things, "to speak on behalf of any other judicial candidate for the same office."

Code of Judicial Conduct 7A (4) prohibits a judge from engaging "in other political activity except on behalf of measures to improve the law, the legal system, or the administration of justice."

A majority of the Committee joins the Florida Committee and concludes that a judge may not sign a candidate's nomination petition. Florida Committee on Standards of Conduct for Judges Opinion 92-32. A majority of the Committee declines to follow other committees which have permitted signing.¹

¹ Arizona (Judicial Ethics Advisory Opinion 96-7) permits signing under certain circumstances. New York (Advisory Committee on Judicial Ethics Opinion 89-89), which permits signing, prohibits participation in any political campaign, but unlike Pennsylvania, does not expressly prohibit publicly endorsing a candidate. Tennessee (Opinion 90-4), which permits signing, prohibits publicly endorsing a candidate and taking a public position on political issues. New Mexico (Judicial Advisory Opinion 96-01), which permits signing, has a less restrictive prohibition on endorsing than Pennsylvania. New Mexico prohibits publicly endorsing a candidate through the news media or in campaign literature. Michigan (Judicial Tenure Commission Advisory Opinion 25 (July 23, 1981)), which permits signing, unlike Pennsylvania does not have an express general prohibition against political activity.

Signing a nomination petition is the legal equivalent of a public endorsement and public endorsements are prohibited by Code of Judicial Conduct 7A (1)(b). Signing a nomination petition is not similar to exercising the right to vote.² For example, voting is private. In contrast, a nomination petition is public; it is filed with the Department of State and is available for public inspection.

Moreover, the demographics of Pennsylvania suggest that signing nomination petitions would in most, if not all, judicial districts of small population be more likely to produce more harm than good and it is not appropriate for the conduct in question to have two entirely opposite results depend solely upon the size of the population of a judicial district.

The election process routinely causes or leads candidates to seize upon whatever tactical advantages exist without regard for undesirable collateral effects. When a judge signs a nomination petition often, especially in judicial districts with small populations, the candidate may publicize it as an endorsement regardless of the signer's intent. Because the judge in exercising the right to sign a nomination petition may prove to be one of the many casualties of an election war despite the judge's best efforts to stay off the field of battle, a uniform prohibition on signing nomination petitions is required.

Further, signing a nomination petition is prohibited as other political activity under Code of Judicial Conduct 7A (4).

Therefore, a majority of the Committee concludes that a judge is prohibited from signing a nomination petition.

Dissenting Opinion

A substantial minority of the Committee is of the opinion that a judge may sign a nomination petition of a candidate.³ This opinion agrees with the clear majority of other ethics committees which have addressed the issue. New York (Advisory Committee on Judicial Ethics Opinion 89-89), Tennessee (Opinion 90-4), New Mexico (Judicial Advisory Opinion 96-01), Michigan (Judicial Tenure Commission Advisory Opinion 25 (July 23, 1981)), and Arizona (Judicial Ethics Advisory Opinion 96-7) all permit signing a nomination petition.

Signing a nomination petition is not the legal equivalent of a public endorsement. It is merely an act to permit a candidate to stand for election in a primary. It is similar to exercising the right to vote. New York (Advisory Committee on Judicial Ethics Opinion 89-89); New Mexico (Judicial Advisory Opinion 96-01); Arizona (Judicial Ethics Advisory Opinion 96-7).

The Arizona Judicial Ethics Advisory Opinion 96-7 states:

A nominating petition does not contain a promise to vote for the nominee or any endorsement of the nominee. The restriction on the number of petitions

² Although the majority is aware that other committees have concluded otherwise, e. g., New York (Advisory Committee on Judicial Ethics Opinion 89-89); New Mexico (Judicial Advisory Opinion 96-01); Arizona (Judicial Ethics Advisory Opinion 96-7), the majority of the Committee rejects that view.

³ We do not agree with the single committee, Florida's committee, which has expressed a contrary view. Florida Committee on Standards of Conduct for Judges Opinion 92-32.

that any given elector may sign appears to be a device to ensure the earnestness of signatories and does not imply an endorsement. Accordingly, we find nothing inappropriate in the signing of a petition. Such activity is normal participation in the political process by a voter that Canon 5A intends to permit.

Moreover, the right to vote is a fundamental right. A Code of Judicial of Conduct provision which infringes upon a judge's fundamental right may be unconstitutional. *E.g., Matter of Sanders*, 955 P.2d 369 (Wash. 1998) (First Amendment right outweighs Canons of Judicial Conduct).

The possibility that candidates may publicize the judge's signing as evidence of the judge's support is not sufficient to restrict judges from exercising their rights. A judge should not be stripped of the right to sign a nomination petition merely because candidates may improperly exploit the situation; the judge's right should not be lost because of the conduct of others.

Not all political activity is prohibited by Canon 7. Canon 7A (4) is a "catch-all" provision which prohibits a judge from engaging in political activity other than the activities specifically prohibited or permitted in Canon 7A (1) through 7A (3), and other than measures to improve the law, the legal system, or the administration of justice. The title to the Canon itself says that "a Judge should refrain from political activity inappropriate to his judicial office." Furthermore, Canon 7A (1)(b) and (c) specifically except from the prohibitions contained therein the activities authorized by Canon 7A (2). Canon 7A (2) authorizes the activities therein described for "[a] judge holding an office filled by public election between competing candidates . . ." This is every judge in Pennsylvania, because all judicial offices in Pennsylvania are filled by such public election. In addition, voting is part of the political process, yet obviously, it also is not prohibited by the "other political activity" mentioned in Canon 7A (4).

The political activity forbidden by Canon 7A (4) is activity, other than that specifically prohibited or authorized by Canon 7, which is designed to persuade others to achieve a political result. Simply signing a nomination petition is not activity designed to persuade others to achieve a political result. It is simply an act of one individual which when combined with the similar and independent acts of a sufficient number of other individuals permits a candidate's name to be placed on the ballot. By signing, a judge is acting as an individual, not as a judge, and he or she is not attempting to persuade others to sign the candidate's nomination petition any more than the act of voting is an attempt to persuade others to vote for a particular candidate.

In contrast, a judge may not solicit others to sign a nomination petition and may not circulate a nomination petition. *Accord* New York (Advisory Committee on Judicial Ethics Opinion 89-89); *contra* New Mexico (Judicial Advisory Opinion 96-01). Those activities are attempts to influence others which are political activities forbidden by Canon 7A (4).

[Pa.B. Doc. No. 00-692. Filed for public inspection April 28, 2000, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 1000]

Proposed Amendments Governing Pleadings in Appeals from District Justice Courts; Proposed Recommendation No. 160

The Civil Procedural Rules Committee proposes the amendment of the Rules of Civil Procedure by the adding new Rule 1042.1 governing pleadings in appeals from district justice courts. The recommendation is being published 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 May 31, 2000 to:

Harold K. Don, Jr., Counsel
Civil Procedural Rules Committee
5035 Ritter Road, Suite 700
Mechanicsburg, Pennsylvania 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 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 B. ACTION IN TRESPASS

Rule 1042.1. Appeals from District Justice Courts. Pleading.

(a) Except as otherwise provided by this rule, the pleadings in an action appealed to the court of common pleas from a district justice court shall be as prescribed by the rules of civil procedure governing a civil action.

(b) If the plaintiff in a district justice court has appealed the judgment in the action, the pleadings in the court of common pleas shall be in the form prescribed by the rules of civil procedure.

(c)(1) A defendant in the district justice court who has appealed the judgment in the action shall file with the prothonotary a copy of the complaint filed in the district justice court, either with the notice of appeal required by Pa.R.C.P.D.J. 1002 or within ten days after filing the notice of appeal. The action shall thereafter proceed as provided by paragraph (2) or paragraph (3).

(2) Within twenty days of filing of the notice of appeal, the defendant shall file an answer to the complaint, which may also include new matter, a counterclaim or both. A reply to the answer is not required. The action shall proceed in the court of common pleas upon the complaint and answer so filed except that

(i) a defendant who has filed a counterclaim in the action in the court of common pleas may seek an order to compel the plaintiff to file an answer to the counterclaim, and

(ii) a defendant who appeared at the trial in the district justice court may file preliminary objections, in lieu of an answer, within twenty days after filing the notice of appeal.

Official Note: A defendant appeared at the trial in the district justice court if the defendant or an attorney who entered an appearance on behalf of the defendant attended the hearing.

(3) Within twenty days of the filing of the notice of appeal by the defendant, the plaintiff may file a complaint in the form required by the rules governing a civil action. If the plaintiff files such a complaint, all subsequent pleadings shall be in the form prescribed by the rules governing a civil action.

Official Note: Upon an appeal by the defendant, the plaintiff has the choice of either (1) filing no pleading and proceeding on the complaint filed in the district justice court or (2) filing a complaint in the form required for a civil action in the court of common pleas.

If a plaintiff proceeds by filing a complaint as in a civil action, the defendant must respond by filing a responsive pleading as in a civil action.

Explanatory Comment

Proposed new Rule 1042.1, "Appeals from District Justice Courts. Pleading" sets forth the procedure upon an appeal from a district justice court. Specifically, it is designed to alleviate the burden on the plaintiff to file a complaint in the form usually required by the rules of civil procedure when an appeal is taken by the defendant from a judgment in a district justice court.

Subdivision (a) states the basic principle that the procedure upon an appeal from a judgment of a district justice court follows that for an action originally commenced in the court of common pleas except as otherwise provided by the rule. The pleadings are the only procedural area affected by the rule.

Appeal by the Plaintiff

Subdivision (b) of the proposed rule states that when the appeal is filed by the plaintiff in the district justice court, the procedure is that of an action originally commenced in a court of common pleas and the plaintiff must file a complaint as in such an action. This subdivision continues the present practice.

Appeal by the Defendant

Subdivision (c) represents a change in the present practice which requires the plaintiff to file a complaint in the form prescribed by the rules of civil procedure upon an appeal by the defendant in the district justice court. Rather, it is proposed under subdivision (c) that the defendant file, either with the notice of appeal or within ten days thereafter, a copy of the complaint filed in the district justice court. The plaintiff may then proceed in the court of common pleas upon the complaint filed in the district justice court or, pursuant to subdivision (c)(3), the plaintiff may file a complaint in the form required by the rules of civil procedure for an action commenced in the court of common pleas.

If the plaintiff chooses to proceed on the complaint filed in the district justice court, the action proceeds in accordance with the rules of civil procedure but with three innovations. First, as in any common pleas action, the

defendant is required to answer the complaint within twenty days of filing the notice of appeal. However, the plaintiff need not plead further as "[a] reply to the answer is not required."

The second innovation results from the provision of subdivision (c) that the plaintiff need not reply to the defendant's answer. The defendant may seek an order of court requiring that the plaintiff file an answer to a counterclaim. This is a procedure which usually will be employed only when the counterclaim is for a substantial sum of money.

The third innovation permits the filing of preliminary objections to the complaint in lieu of an answer but only if the defendant appeared at the trial in the district justice court. A defendant who does not appear at the trial may not file preliminary objections upon appeal.

As noted, subdivision (c)(3) gives the plaintiff the right to proceed as in an original action brought in a court of common pleas. The plaintiff need not be limited by the complaint filed in the district justice court but may file a new complaint in the form prescribed for a complaint in a civil action by the rules of civil procedure. Filing such a complaint is the plaintiff's choice, not a requirement dictated by the defendant or the rules. If plaintiff so chooses, then the defendant must respond and the action proceed as in an original action brought in a court of common pleas.

By the Civil Procedural Rules Committee

REA BOYLAN THOMAS,

Chair

[Pa.B. Doc. No. 00-693. Filed for public inspection April 28, 2000, 9:00 a.m.]

PART I. GENERAL

[231 PA. CODE CH. 1500]

Proposed Amendment of Rule 1503 Governing Venue in Actions in Equity; Proposed Recommendation No. 161

The Civil Procedural Rules Committee is proposing the amendment of Rule of Civil Procedure 1503 governing venue in actions in equity. 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 May 31, 2000 to:

Harold K. Don, Jr., Counsel
Civil Procedural Rules Committee
5035 Ritter Road, Suite 700
Mechanicsburg, Pennsylvania 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 neither constitute part of the rules of civil procedure nor be officially adopted or promulgated by the Court.

Annex A
TITLE 231. RULES OF CIVIL PROCEDURE
PART I. GENERAL
CHAPTER 1500. ACTION IN EQUITY
Subchapter A. RULES

Rule 1503. Venue.

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

(1) the defendant or a principal defendant may be served, or

(2) the property or a part of the property which is the subject matter of the action is located,

(3) but a judgment, order or decree shall not bind a defendant personally unless the defendant is served within the county, or within the Commonwealth in conformity with Rule 1504(b), or unless the defendant appears or otherwise submits himself to the jurisdiction of the court.

(b) An action brought in a court of common pleas by the Commonwealth or the head of an executive or administrative department, a departmental administrative board or commission or an independent administrative board or commission, or an officer or instrumentality of the Commonwealth, may be brought in any county permitted by subdivision (a) of this rule.

(c) An action brought in a court of common pleas against the head of an executive or administrative department, a departmental administrative board or commission or an independent administrative board or commission, or an officer or instrumentality of the Commonwealth may be brought only in the county in which the cause of action arose.

(d) An action relating to the administration of a trust or the removal of a trustee, except where the trustee has absconded and the action is necessary as an ancillary proceeding in aid of the court which has jurisdiction over the trust, may be brought only in the court which has jurisdiction over the trust.]

An action may be brought in any county in which a civil action may be brought or, if the subject matter of the action is property, in the county in which the property is located.

Official Note: See Rule 1006 governing venue in a civil action.

Explanatory Comment

Recommendation No. 161 proposes to rescind present Rule 1503 governing venue in an action in equity and to substitute new Rule 1503. The new rule provides for an action in equity to be brought in any county in which a civil action may be brought or, if property is involved, in the county in which the property is located. By its simplicity, the proposed rule contains several changes from the present one.

First, present Rule 1503(a)(1) requires the action to be brought in a county in which the defendant or a principal defendant may be served. The new rule broadens this provision to include all counties of venue under Rule 1006, including the cause of action county and the transaction or occurrence county. Also, the reference to a

“principal defendant” is no longer relevant and has been deleted. If venue is based upon the presence of a defendant in the forum county, the presence of any defendant is sufficient to create venue as to all defendants. The doctrine of forum non conveniens is available for venue which may be inappropriate.

Second, the last clause of subdivision (a) of present Rule 1503 relating to the effect of a judgment or decree as personally binding has been deleted. The provision does not pertain to venue and, in addition, states an outmoded principle of law.

Third, the provisions of Rule 1503(b) and (c) are no longer needed and have not been retained. They relate to venue in actions by or against the Commonwealth, its agencies, instrumentalities and officers. Venue in actions against the Commonwealth in the courts of common pleas is governed by Rule 2103(a) which provides for an action to be brought in “any county permitted by a rule of the Supreme Court.”

Finally, Rule 1503(d) relates to the administration of a trust or the removal of a trustee. This provision also is not a matter of venue but, rather, one of jurisdiction. It speaks in terms of “the court which has jurisdiction over the trust” and not in terms of a particular county in which to bring an action. Further, these matters are within the jurisdiction of the orphans’ court division of the court of common pleas, which is governed by its own rules of procedure. However, should such matters come within the scope of these rules, no special procedures are required and proposed Rule 1503 suffices. Consequently, the provisions of present Rule 1503(d) have not been carried over to the new rule.

By the Civil Procedural Rules Committee

REA BOYLAN THOMAS,

Chair

[Pa.B. Doc. No. 00-694. Filed for public inspection April 28, 2000, 9:00 a.m.]

Title 249—PHILADELPHIA RULES

PHILADELPHIA COUNTY

Family Court Administrative Regulation No. 00-01; Review of Commitment Hearing Procedure

And Now, this 18th day of April, 2000 in order to maintain an efficient Juvenile Court Hearing process, it is hereby *Ordered* and *Decreed* that effective immediately:

1. Upon commitment to Thirty (30) and Ninety (90) Day Boot Camp programs, the Court will stipulate in the disposition that the juvenile is to be discharged from the program on the graduation date provided by the Court Liaison Officer.

2. Review of Commitment Hearings for thirty (30) and ninety (90) day boot Camp Programs for the purpose of discharging the client from the program will not be required.

3. Court Liaison Officers shall maintain a listing of graduation dates for such programs and ensure that

the appropriate date is provided to the Court whenever a juvenile is committed to said programs.

PAUL P. PANEPINTO,
Administrative Judge
Family Court Division

[Pa.B. Doc. No. 00-695. Filed for public inspection April 28, 2000, 9:00 a.m.]

PHILADELPHIA COUNTY

Joint General Court Regulation; Trial and Orphans' Court Divisions; No. 2000-03 (Revised)

Distribution of Business within the Court of Common Pleas Nonprofit Corporations

The Pennsylvania Rules of Judicial Administration provide that the Orphans' Court Division of a Court of Common Pleas shall herein determine certain matters dealing with Nonprofit Corporations. See Pa.R.J.A. No. 2156. However, in certain instances, disputes concerning Nonprofit Corporations cannot, or ought not, be heard in the Orphans' Court Division, but rather should be heard in the Trial Division. The within Joint General Court Regulation is designed to clearly set forth the types of matters to be heard by the two divisions of the Court of Common Pleas of Philadelphia County.

1. *Matters to be heard by the Orphans' Court Division.* All matters wherein a Nonprofit Corporation is a party shall be heard in the Orphans' Court Division provided that a stated purpose of the Nonprofit Corporation is charitable.

2. *Matters to be heard by the Trial Division.* All matters wherein a Nonprofit Corporation is a party shall be heard in the Trial Division provided that the stated purposes of the Nonprofit Corporation are noncharitable.

3. *Effective Date.* This Joint General Court Regulation shall become effective thirty days after publication in the *Pennsylvania Bulletin*.

This General Court Regulation is promulgated in ac-

cordance with Pa.R.J.A. No. 2156, Pa.O.C. Rule No. 1.2 and Pa.R.Civ.P. No. 239. The original Joint 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 certified copies shall be submitted to the Clerk of Orphans' Court, the Civil Procedural Rules Committee, the Orphans' Court Procedural Rules Committee, the Administrative Office of Pennsylvania Courts, and the Legislative Reference Bureau. Copies of the Regulation shall also be submitted to American Lawyer Media, *The Legal Intelligencer*, Jenkins Memorial Law Library and the Law Library for the First Judicial District. The Joint General Court Regulation will also be posted on the First Judicial District's website at <http://courts.phila.gov>.

ALEX BONAVIDACOLA,
President Judge

[Pa.B. Doc. No. 00-696. Filed for public inspection April 28, 2000, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Suspension

Notice is hereby given that on April 10, 2000, pursuant to Rule 214(d)(1) of the Pa.R.D.E., Richard B. Goldberg has been placed on Temporary Suspension by the Supreme Court of Pennsylvania, to become effective May 10, 2000. Since this formerly admitted attorney resides outside the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

ELAINE M. BIXLER,
Executive Director & Secretary
The Disciplinary Board of the
Supreme Court of Pennsylvania

[Pa.B. Doc. No. 00-697. Filed for public inspection April 28, 2000, 9:00 a.m.]