

# THE COURTS

## Title 207—JUDICIAL CONDUCT

### PART IV. COURT OF JUDICIAL DISCIPLINE

[207 PA. CODE CH. 1]

Amendment to the Rules of Procedure of the Court of Judicial Discipline; Doc. No. 1 JD 94

#### Order

*Per Curiam:*

*And Now*, this 19th day of January, 2000, the Court, pursuant to Article 5, Section 18(b)(4) of the Constitution of Pennsylvania, having adopted a proposed amendment to Rule of Procedure No. 102 (Panel), as more specifically hereinafter set forth, *It Is Hereby Ordered That*:

Rule of Procedure 102 (Panel) shall become effective immediately.

#### Annex A

### TITLE 207. JUDICIAL CONDUCT

#### PART IV. COURT OF JUDICIAL DISCIPLINE

#### ARTICLE I. PRELIMINARY PROVISIONS

#### CHAPTER 1. GENERAL PROVISIONS

#### Rule 102. Definitions.

The following words and phrases when used in these rules shall have the following meanings, unless the context or subject matter otherwise requires:

\* \* \* \* \*

*Panel* is a group of no fewer than three members of the Court appointed by the President Judge.

\* \* \* \* \*

[Pa.B. Doc. No. 00-204. Filed for public inspection February 4, 2000, 9:00 a.m.]

### PART IV. COURT OF JUDICIAL DISCIPLINE

[207 PA. CODE CH. 5]

Amendment to the Rules of Procedure of the Court of Judicial Discipline; Doc. No. 1 JD 94

#### Order

*Per Curiam:*

*And Now*, this 19th day of January, 2000, the Court, pursuant to Article 5, Section 18(b)(4) of the Constitution of Pennsylvania, having adopted a proposed amendment to Rule of Procedure No. 501(B), as more specifically hereinafter set forth, *It is Hereby Ordered That*:

Rule of Procedure 501(B) shall become effective immediately.

#### Annex A

### TITLE 207. JUDICIAL CONDUCT

#### PART IV. COURT OF JUDICIAL DISCIPLINE

#### ARTICLE II. PROCEEDINGS BASED ON THE FILING OF FORMAL CHARGES

#### CHAPTER 5. TRIAL PROCEDURES

#### Rule 501. Appointment of Panel.

\* \* \* \* \*

(B) The Panel shall consist of no fewer than three members of the Court, one of whom shall be the Conference Judge, appointed pursuant to Rule 301(B), and, whenever possible, one of whom shall be a non-lawyer elector.

[Pa.B. Doc. No. 00-205. Filed for public inspection February 4, 2000, 9:00 a.m.]

## Title 231—RULES OF CIVIL PROCEDURE

### PART I. GENERAL

[231 PA. CODE CH. 200]

Proposed Amendments Governing Post-Trial Motions; Proposed Recommendation No. 158

The Civil Procedural Rules Committee proposes the amendment of Rule of Civil Procedure 227.1 governing post-trial motions. 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 March 10, 2000 to: Harold K. Don, Jr., Esquire, Counsel, Civil Procedural Rules Committee, 5035 Ritter Road, Suite 700, Mechanicsburg, Pennsylvania 17055 Or E-Mail to [civil.rules@supreme.court.state.pa.us](mailto: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 200. BUSINESS OF COURTS

#### Rule 227.1. Post-Trial Relief.

(a) [After trial and upon the written Motion for Post-Trial Relief filed by any party, the court may] Every party who seeks post-trial relief shall file a written motion therefor. The court may grant relief only to a party who has filed a motion. The court may

- (1) order a new trial as to all or any of the issues; or
  - (2) direct the entry of judgment in favor of any party;
- or

- (3) remove a nonsuit; or
- (4) affirm, modify or change the decision or decree nisi; or
- (5) enter any other appropriate order.

**Official Note:** The motion for post-trial relief replaces the following motions and exceptions: motion for new trial, motion for judgment notwithstanding the verdict, motion upon the whole record after disagreement of a jury, motion in arrest of judgment, motion to remove a nonsuit, exceptions following the decision of the judge in a trial without jury and exceptions following the adjudication of the judge in an action in equity. However, certain rules retain the filing of exceptions, e.g., Equity Rule 1530 (exceptions to an auditor's report), Equity Rule 1534 (exceptions to a fiduciary's account), Partition Rule 1569 (exceptions to a master's report) and Divorce Rule 1920.55 (exceptions to a master's report), Support Rule 1910.12(e) (exceptions to a hearing officer's report) and Execution Rule 3136(d) (exceptions to sheriff's schedule of proposed distribution).

**A party may not rely upon the motion for post-trial relief filed by another party but must file his or her own motion specifying the grounds for relief.**

(b) Post-trial relief may not be granted unless the grounds therefor,

(1) if then available, were raised in pretrial proceedings or by motion, objection, point for charge, request for findings of fact or conclusions of law, offer of proof or other appropriate method at trial; and

**Official Note:** If no objection is made, error which could have been corrected in pre-trial proceedings or during trial by timely objection may not constitute a ground for post-trial relief.

**For example, the ground that the verdict is inconsistent, which is not raised prior to the dismissal of the jury, is not deemed waived unless the inconsistency is obvious and could have been corrected.**

(2) are specified in the motion. The motion shall state how the grounds were asserted in pretrial proceedings or at trial. Grounds not specified are deemed waived unless leave is granted upon cause shown to specify additional grounds.

**Official Note: The ground that the verdict is contrary to the weight of the evidence need not be asserted prior to dismissal of the jury.**

\* \* \* \* \*  
*Explanatory Comment*

The purpose of the proposed amendments to Rule 227.1 is two-fold. First, in *Jara v. Rexworks*, 718 A.2d 788 (Pa.Super.1998), the Superior Court invited the Civil Procedural Rules Committee to consider the issue of cautionary post-trial motions. The proposed amendments to subdivision (a) are the Committee's response to that invitation. They make clear that a party seeking post-trial relief is required to file a written motion specifying the grounds for relief. A court may only grant relief if requested in a motion. The addition to the note following subdivision (a) also emphasizes that a party seeking post-trial relief must file a motion irrespective of any post-trial motions filed by the other parties to an action.

Second, the proposed amendments to the notes following Rule 227.1(b)(1) and (2) address the difference between grounds for post-trial relief based upon an inconsistent verdict and a verdict which is contrary to the weight

of the evidence. To preserve an issue with respect to an inconsistent verdict, an objection must be raised prior to the dismissal of the jury. With respect to a verdict which is contrary to the weight of the evidence which might require a review of the record of trial before the error is discovered, there is no requirement for the issue to be raised prior to the dismissal of the jury. Consequently, the motion for post-trial relief need not state how the "weight of the evidence" ground was asserted in pre-trial proceedings or at trial as usually required by Rule 227.1(b)(2).

*By the Civil Procedural Rules Committee*  
REA BOYLAN THOMAS,  
*Chair*  
[Pa.B. Doc. No. 00-206. Filed for public inspection February 4, 2000, 9:00 a.m.]

**PART I. GENERAL**  
**[231 PA. CODE CHS. 200 AND 400]**  
**Proposed Amendment of Rule 236 Governing Notice of Orders, Decrees and Judgments; Proposed Recommendation No. 159**

The Civil Procedural Rules Committee is proposing the amendment of Rule of Civil Procedure 236 to provide for notice of orders, decrees and judgments by facsimile transmission or other electronic means. 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 March 10, 2000 to Harold K. Don, Jr., Esquire, Counsel, Civil Procedural Rules Committee, 5035 Ritter Road, Suite 700, Mechanicsburg, PA 17055, or E-Mail to [civil.rules@supreme.court.state.pa.us](mailto: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 200. BUSINESS OF COURTS**

**Rule 205.4. Temporary Provisions for Electronic Filing and Service of Legal Papers.**

\* \* \* \* \*

(g) Copies of all legal papers other than original process filed in an action or served upon any party to an action may be served

\* \* \* \* \*

(2) by electronic transmission, other than facsimile transmission, if the parties agree thereto or an electronic mail address is included on an appearance or prior legal paper filed with the court in the action. Service is complete when the legal paper is sent. A paper served electronically is subject to the certifications set forth in subdivision (b)(1).

**Official Note: \* \* \***

**See Rule 236 providing for notice of orders, decrees and judgments, and also other matters, by facsimile transmission or other electronic means.**

\* \* \* \* \*

Rule 236. Notice by Prothonotary of Entry of Order, Decree, or Judgment.

\* \* \* \* \*

**(d) The prothonotary may give the notice required by subdivision (a) or notice of other matters by facsimile transmission or other electronic means if the party to whom the notice is to be given or the party's attorney has filed a written request for such method of notification or has included a facsimile or other electronic address on a prior legal paper filed in the action.**

**Official Note: Rule 236 does not prescribe a particular method of giving notice. Subdivision (d) governs facsimile transmission and other electronic means if the prothonotary chooses to use such a method.**

**A facsimile or other electronic address set forth on letterhead is not a sufficient basis under this rule to authorize the prothonotary to give notice electronically.**

**Notice by facsimile transmission or other electronic means is applicable not only to decrees, orders and judgments under subdivision (a) but also to "other matters" such as the scheduling of a conference, hearing or trial or other administrative matters.**

**CHAPTER 400. SERVICE OF ORIGINAL PROCESS**

**Rule 440. Service of Legal Papers Other than Original Process.**

\* \* \* \* \*

(d)(1) A copy may be served by facsimile transmission if the parties agree thereto or if a telephone number for facsimile transmission is included on an appearance or prior legal paper filed with the court.

\* \* \* \* \*

(3) Service is complete when transmission is confirmed as complete.

**Official Note: See Rule 236 providing for notice of orders, decrees and judgments, and also other matters, by facsimile or other electronic means.**

**Explanatory Comment**

Rule 236(a)(2) provides for the prothonotary to give written notice of the entry of an order, decree or judgment but does not prescribe the manner of giving notice. Without limiting the prothonotary in the manner of giving notice, the proposed amendment to Rule 236 adding new subdivision (d) authorizes the prothonotary to give notice by means of facsimile or other electronic transmission and describes the requirements therefor.

Proposed subdivision (d) is drafted in permissive rather than mandatory language. This permits the prothonotaries of individual counties to use facsimile or other electronic transmission as the method of notice if it is feasible in the particular county. However, the prothonotary may serve by such means only if the person to be served has either requested such service in writing or included a facsimile or other electronic address on a prior legal paper filed in the action. The provision for an agreement to be served by facsimile or other electronic

transmission is in accord with Rule 440(d) governing service by facsimile transmission and Rule 205.4(g) governing service by other electronic transmission.

New subdivision (d) extends service by facsimile or other electronic transmission to "other matters". Other matters are in addition to orders, judgments and decrees and may include court notices, scheduling notices and other matters of an administrative nature.

*By the Civil Procedural Rules Committee*

REA BOYLAN THOMAS,  
*Chair*

[Pa.B. Doc. No. 00-207. Filed for public inspection February 4, 2000, 9:00 a.m.]

**PART I. GENERAL**

**[231 PA. CODE CH. 1000]**

**Proposed Rule 1035.10 Governing Motion to Dismiss upon Affidavit of Noninvolvement; Proposed Recommendation No. 157**

The Civil Procedural Rules Committee proposes that the Rules of Civil Procedure be amended by adding new Rule 1035.10 governing a motion to dismiss upon affidavit of noninvolvement. 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 March 10, 2000 to: Harold K. Don, Jr., Esquire, Counsel, Civil Procedural Rules Committee, 5035 Ritter Road, Suite 700, Mechanicsburg, Pennsylvania 17055 or E-Mail to [civil.rules@supreme.court.state.pa.us](mailto: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 1000. ACTIONS**

**Subchapter A. CIVIL ACTION**

**PLEADINGS**

**Rule 1035.10. Dismissal Upon Affidavit of Noninvolvement.**

In an action in which an Act of Assembly provides for dismissal upon an affidavit of noninvolvement, the party seeking dismissal shall file a motion to dismiss which includes the affidavit. Upon reviewing the motion and determining that the party filing it has established a prima facie case for dismissal, the court shall enter an order scheduling a final argument and directing the plaintiff to file prior to the argument affidavits, depositions and such other evidentiary materials as would permit a jury to find that the party was involved in any activities upon which the claim is based. The final argument shall be limited to the sole issue of whether the plaintiff has met the burden.

**Official Note:** The following Acts of Assembly provide for dismissal of a party from an action pursuant to an

affidavit of noninvolvement: Section 7502 of the Judicial Code, 42 Pa.C.S. § 7502, relating to construction design professionals and Section 827-A of the Health Care Services Malpractice Act, 40 P. S. § 1301.827-A, relating to health care providers.

*Explanatory Comment*

Proposed new Rule 1035.10 sets forth a procedure to govern dismissal from an action pursuant to an affidavit of noninvolvement. Two statutes presently provide for such an affidavit: Section 7502 of the Judicial Code<sup>1</sup> relating to construction design professionals and Section 827-A of the Health Care Services Malpractice Act<sup>2</sup> relating to health care providers.

These statutes speak of having “the action against such construction design professional dismissed upon the filing of an affidavit of noninvolvement”<sup>3</sup> and of causing an action against a health care provider “to be dismissed upon the filing of an affidavit of noninvolvement with the court.”<sup>4</sup> The role of the court in these procedures, not specified by the statutes, would be supplied by the proposed rule.

*By the Civil Procedural Rules Committee*

REA BOYLAN THOMAS,  
*Chair*

[Pa.B. Doc. No. 00-208. Filed for public inspection February 4, 2000, 9:00 a.m.]

# Title 234—RULES OF CRIMINAL PROCEDURE

## PART I. GENERAL

### [234 PA. CODE CH. 1500]

#### Order Adopting Amendments to Rule 1504 and Approving the Revision of the Comments to Rules 1502, 1503 and 1506; No. 259 Criminal Procedural Rules; Doc. No. 2

The Criminal Procedural Rules Committee has prepared a Final Report explaining the January 21, 2000 amendments to Rule 1504 (Appointment of Counsel; In Forma Pauperis), and the correlative revision of the Comments to Rules 1502, 1503, and 1506, that provide for the prompt appointment of counsel in death penalty cases following the conclusion of direct appeal. The Final Report follows the Court’s Order.

#### Order

*Per Curiam:*

Now, this twenty-first day of January, 2000, upon the recommendation of the Criminal Procedural Rules Committee; this proposal having been submitted without publication pursuant to Pa.R.J.A. 103(a)(3), and a *Final Report* to be published with this Order:

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

- (1) Pa.R.Crim.P. 1504 is hereby amended; and

<sup>1</sup> 42 Pa.C.S. § 7502.  
<sup>2</sup> 40 P. S. § 1301.827-A.  
<sup>3</sup> 42 Pa.C.S. § 7502(a).  
<sup>4</sup> 40 Pa.C.S. § 1301.827-A(a).

(2) the revisions of the Comments to Pa.Rs.Crim.P. 1502, 1503, and 1506 are approved, all in the following form.

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

#### Annex A

### TITLE 234. RULES OF CRIMINAL PROCEDURE

#### PART I. GENERAL

### CHAPTER 1500. POST-CONVICTION COLLATERAL PROCEEDINGS

#### Rule 1502. Content of Petition for Post-Conviction Collateral Relief; Request for Discovery.

\* \* \* \* \*

**Official Note:** Previous Rule 1502 adopted January 24, 1968, effective August 1, 1968; rescinded December 11, 1981, effective June 27, 1982; rescission vacated June 4, 1982; rescinded February 1, 1989, effective July 1, 1989, and replaced by present Rules 1503 and 1505. Present Rule 1502 adopted February 1, 1989, effective July 1, 1989; amended August 11, 1997, effective immediately; amended July 23, 1999, effective September 1, 1999; **Comment revised January 21, 2000, effective July 1, 2000.**

#### Comment

\* \* \* \* \*

Paragraphs (A)(16) and (E) were added in 1997 to address requests for discovery. Paragraph (A)(16) requires that a request for discovery be included in the petition, if applicable. Paragraph (E) sets forth the standards for permitting discovery. Under paragraph (E)(1), which applies in all cases except on the first counseled petition in a death penalty case, no discovery is permitted at any stage of the proceedings, except upon leave of the court with a showing of exceptional circumstances. See 42 Pa.C.S. § 9545(d)(2). Under paragraph (E)(2), which applies to first counseled petitions in death penalty cases, discovery is permitted only upon leave of court for good cause shown. For purposes of paragraph (E)(2), “first counseled petition” includes petitions on which defendants have elected to proceed pro se pursuant to Rule 1504(F)(1)(a).

\* \* \* \* \*

*Committee Explanatory Reports:*

\* \* \* \* \*

**Final Report explaining the January 21, 2000 Comment revision cross-referencing Rule 1504(F)(1)(a) published with the Court’s Order at 30 Pa.B. 624 (February 5, 2000).**

#### Rule 1503. Docketing and Assignment.

[ (a) ] (A) \* \* \*

[ (b) ] (B) \* \* \*

[ (c) ] (C) \* \* \*

[ (d) ] (D) \* \* \*

**Official Note:** Previous Rule 1503 adopted January 24, 1968, effective August 1, 1968; rescinded December 11, 1981, effective June 27, 1982; rescission vacated June 4, 1982; rescinded February 1, 1989, effective July 1, 1989, and replaced by present Rule 1504. Present Rule 1503 adopted February 1, 1989, effective July 1, 1989; amended June 19, 1996, effective July 1, 1996; amended

August 11, 1997, effective immediately; **Comment revised January 21, 2000, effective July 1, 2000.**

**Comment**

\* \* \* \* \*

The transmittal of the petition to the attorney for the Commonwealth does not require a response unless one is ordered by the judge as provided in these rules, or required by Rule 1506[ (e) ] (E).

\* \* \* \* \*

**If a defendant in a death penalty case files a petition before the trial judge has made a determination concerning the appointment of counsel as required by Rule 1504(F), the clerk must promptly forward the docketed petition to the trial judge for that determination.**

*Committee Explanatory Reports:*

\* \* \* \* \*

**Final Report explaining the January 21, 2000 Comment revisions published with the Court's Order at 30 Pa.B. 624 (February 5, 2000).**

**Rule 1504. Appointment of Counsel; In Forma Pauperis.**

**[ (a) ] (A) Except as provided in paragraph (F), [ When ] when an unrepresented defendant satisfies the judge that the defendant is unable to afford or otherwise procure counsel, the judge shall appoint counsel to represent the defendant on the defendant's first petition for post-conviction collateral relief.**

**[ (b) ] (B) \* \* \***

**[ (c) ] (C) \* \* \***

**[ (d) ] (D) An appointment of counsel shall be effective throughout the post-conviction collateral proceedings, including any appeal from disposition of the petition for post-conviction collateral relief.**

**[ (e) ] (E) \* \* \***

**(F) Appointment of Counsel in Death Penalty Cases.**

**(1) At the conclusion of direct review in a death penalty case, which includes discretionary review in the Supreme Court of the United States, or at the expiration of time for seeking the review, upon remand of the record, the trial judge shall appoint new counsel for the purpose of post-conviction collateral review, unless:**

**(a) the defendant has elected to proceed pro se or waive post- conviction collateral proceedings, and the judge finds, after a colloquy on the record, that the defendant is competent and the defendant's election is knowing, intelligent, and voluntary;**

**(b) the defendant requests continued representation by original trial counsel or direct appeal counsel, and the judge finds, after a colloquy on the record, that the petitioner's election constitutes a knowing, intelligent, and voluntary waiver of a claim that counsel was ineffective; or**

**(c) the judge finds, after a colloquy on the record, that the defendant has engaged counsel who has entered, or will promptly enter, an appearance for the collateral review proceedings.**

**(2) The appointment of counsel shall be effective throughout the post- conviction proceedings, including any appeal from disposition of the petition for post-conviction collateral relief.**

**(3) When the defendant satisfies the judge that the defendant is unable to pay the costs of the post-conviction collateral proceedings, the judge shall order that the defendant be permitted to proceed in forma pauperis.**

**Official Note:** Previous Rule 1504 adopted January 24, 1968, effective August 1, 1968; rescinded December 11, 1981, effective June 27, 1982; rescission vacated June 4, 1982; rescinded February 1, 1989, effective July 1, 1989, and replaced by Rule 1507. Present Rule 1504 adopted February 1, 1989, effective July 1, 1989; amended August 11, 1997, effective immediately; **amended January 21, 2000, effective July 1, 2000.**

**Comment**

\* \* \* \* \*

**Paragraph (F) was added in 2000 to provide for the appointment of counsel for the first petition for post-conviction collateral relief in a death penalty case at the conclusion of direct review.**

*Committee Explanatory Reports:*

\* \* \* \* \*

**Final Report explaining the January 21, 2000 amendments adding paragraph (F) concerning appointment of counsel published with the Court's Order at 30 Pa.B. 624 (February 5, 2000).**

**Rule 1506. Answer to Petition for Post-Conviction Collateral Relief.**

**[ (a) ] (A) Except as provided in paragraph [ (e) ] (E), an answer to a petition for post-conviction collateral relief is not required unless ordered by the judge. When the judge has not ordered an answer, the attorney for the Commonwealth may elect to answer, but the failure to file one shall not constitute an admission of the well-pleaded facts alleged in the petition.**

**[ (b) ] (B) \* \* \***

**[ (c) ] (C) \* \* \***

**[ (d) ] (D) \* \* \***

**[ (e) ] (E) Answers in Death Penalty Cases**

**(1) First Counseled Petitions**

**[ (i) ] (a) \* \* \***

**[ (ii) ] (b) \* \* \***

**(2) Second and Subsequent Petitions**

**[ (i) ] (a) \* \* \***

**[ (ii) ] (b) \* \* \***

\* \* \* \* \*

**Official Note:** Previous Rule 1506 adopted January 24, 1968, effective August 1, 1968; Comment revised April 26, 1979, effective July 1, 1979; rule rescinded December 11, 1981, effective June 27, 1982; rescission vacated June 4, 1982; Comment revised January 28, 1983, effective July 1, 1983; rule rescinded February 1, 1989, effective July 1, 1989, and replaced by Rule 1508. Present Rule 1506 adopted February 1, 1989, effective July 1, 1989;

amended August 11, 1997, effective immediately; **Comment revised January 21, 2000, effective July 1, 2000.**

### Comment

As used in the Chapter 1500 Rules, "answer" is intended to include an amended answer filed pursuant to paragraphs [(d)] (D) and [(e)] (E)(3) of this rule, except where the context indicates otherwise.

Except as provided in paragraph [(e)] (E), when determining whether to order that the attorney for the Commonwealth file an answer, the judge should consider whether an answer will promote the fair and prompt disposition of the issues raised by the defendant in the petition for post-conviction collateral relief.

Paragraph [(e)] (E)(1) was added in 1997 to require that the Commonwealth file an answer to the first counseled petition in a death penalty case. For second and subsequent petitions, paragraph [(e)] (E)(2) would apply.

"First counseled petition," as used in paragraph [(e)] (E)(1), includes petitions on which defendants have elected to proceed pro se pursuant to Rule 1504(F)(1)(a). See also the Comment to Rule 1503.

*Committee Explanatory Reports:*

\* \* \* \* \*

**Final Report explaining the January 21, 2000 Comment revisions published with the Court's Order at 30 Pa.B. 624 (February 5, 2000).**

### FINAL REPORT<sup>1</sup>

#### Amendments to Pa.R.Crim.P. 1504 and Correlative Revisions of the Comments to Pa.Rs.Crim.P. 1502, 1503, and 1506

##### *Appointment of Counsel in Death Penalty Cases*

On January 21, 2000, effective July 1, 2000, upon the recommendation of the Criminal Procedural Rules Committee, the Court amended Rule of Criminal Procedure 1504 (Appointment of Counsel; In Forma Pauperis), and approved the revision of the Comments to Rules 1502, 1503, and 1506. The Rule 1504 amendment adds a new paragraph (F) to provide for the prompt appointment of counsel in death penalty cases following the conclusion of direct appeal.

##### *Background*

The Committee, at the Court's request following communications from the Third Circuit Court's Task Force on Management of Death Penalty Litigation, considered whether Rule 1504 should be amended to provide procedures for the prompt appointment of counsel in death penalty cases. The Committee concluded that such procedures would be beneficial for the defendant and the criminal justice system—by ensuring the prompt appointment of counsel to handle first petitions in capital cases, the procedures would likewise ensure that the first petition for post-conviction collateral relief in a capital case is timely filed and properly prepared, thereby minimizing, if not eliminating, second and subsequent petitions. Similarly, the procedures protect the defendant and promote judicial economy.

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

### Discussion

#### (1) Rule 1504

A new paragraph (F) has been added to Rule 1504 that requires the trial judge to appoint new counsel for the purpose of post-conviction collateral review at the conclusion of direct review, which includes discretionary review in the Supreme Court of the United States, in all death penalty cases, except as otherwise provided in paragraphs (1)(a)—(c). Paragraph (F)(1)(a) permits a defendant to proceed pro se or waive post-conviction collateral proceedings, but only after the trial judge conducts a colloquy on the record, and makes a finding that the defendant is competent and the election is knowing, intelligent, and voluntary.

Paragraphs (F)(1)(b) and (1)(c) set forth the exceptions to the mandatory appointment of counsel, and respect the defendant's right to counsel of his or her own choosing or to waive counsel by recognizing the possibility that a defendant may want to continue with his or her original trial counsel or direct appeal counsel or engage new counsel for collateral review. In both instances, the new procedure injects the court's supervision into the process by requiring the trial judge to conduct an on-the-record colloquy. With reference to the retention of previous counsel, the judge must determine that the defendant's election constitutes a knowing, intelligent, and voluntary waiver of an ineffective counsel claim. See Rule 1504(F)(1)(b). When the defendant intends to engage new counsel, the judge must determine that the attorney has entered, or will promptly enter, an appearance for the collateral review proceedings. See Rule 1504(F)(1)(c).

Paragraphs (F)(2) and (F)(3) parallel the procedures for all other cases in the rule. See Rule 1504(D) and (E).

#### (2) Correlative Comment Revisions

During the Committee's discussion about the procedures for the immediate appointment of counsel, the question arose as to what the clerk of courts should do if the defendant files a pro se petition for post-conviction collateral relief before the trial judge has had an opportunity to make a Rule 1504(F) determination. Agreeing that this issue should be addressed, the Committee added a clarifying statement to the Rule 1503 Comment advising the clerks of courts that they must promptly forward to the judge any petition that is filed before the judge appoints counsel.

Finally, the Comments to Rules 1502 and 1506 have been revised to cross-reference Rule 1504(F) concerning "first counseled petitions" in death penalty cases.

[Pa.B. Doc. No. 00-209. Filed for public inspection February 4, 2000, 9:00 a.m.]

## Title 25—LOCAL COURT RULES

### BEAVER COUNTY

Local Rules of Civil Procedure; No. 11989 1999

#### Order

And Now, this 10th day of December 1999, all Local Rules of Civil Procedure heretofore adopted are rescinded effective the date the new rules are effective. The new

Local Rules of Civil Procedure which follow hereto, are hereby adopted.

This Order and the new Local Rules of Civil Procedure shall be effective thirty (30) days after publication in the *Pennsylvania Bulletin*. The Court Administrator of Beaver County shall submit seven certified copies of this Order and the attachments to the Administrative Office of Pennsylvania Courts, two certified copies to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*, one certified copy to the Civil Procedural Rules Committee of the Pennsylvania Supreme Court and one with the Prothonotary of Beaver County to be kept for public inspection and copying.

By the Court

ROBERT C. REED,  
*President Judge*

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#### PREFACE

The Local Rules of the Court of Common Pleas of Beaver County are intended to supplement the Pennsylvania Rules of Civil Procedure. The latter's system of numbering has been preserved. A local rule dealing with the same or related subject matter as that dealt with by a Pennsylvania Rule of Civil Procedure has been given the same number as the Pennsylvania Rule of Civil Procedure and is preceded by the letter "L" to indicate its local character. All local rules should be read in connection with the Pennsylvania Rules of Civil Procedure bearing the same numbers.

The rules of construction found in the Pennsylvania Rules of Civil Procedure shall apply to all Local Rules of the Court of Common Pleas of Beaver County.

The Local Rules may be cited as "Beaver County L.R. No. \_\_\_\_\_."

#### Rule L205.1. Court Action On Legal Papers.

Any party who desires court action on a legal paper and who has delivered or will deliver the paper to the Prothonotary for filing in accordance with Pa. R.C.P. No. 205.1, must cause the paper to be presented to the court for entry of the order.

#### Note

The paper must be presented to the court personally by or through counsel. After action is taken on the paper, the court will return the paper to counsel for filing and service. This rule does not apply to motions for summary judgment, motions for judgment on pleadings or post-trial motions.

#### RULE L206—MOTIONS, RULES AND PETITIONS

#### Rule L206A. Motion Court.

The Court will be available to receive motions and petitions at the times and in accordance with the practice which is published with the annual court calendar.

#### Rule L206B. Notice to Opposing Counsel.

The Court will not entertain a motion or petition in any matter unless the opposing party or his counsel has consented in writing or has received three (3) business days written notice of the intention to present the motion or petition. The motion or petition shall set forth the manner in which notice has been given, attaching a copy thereof. Counsel may present a motion or petition after oral notice only in emergency situations. Ex parte motions and petitions will not be entertained without prior notice unless notice is not possible.

#### Rule L206C. Presentation of Motion.

All motions and petitions, except as set forth in Rules L206D, L206F and emergency motions and petitions, shall be presented to the appropriate Judge at the time set for Motion Court. In all cases, written notice of presentation of the motion or petition shall have been

given to counsel of record or to the opposite party in compliance with Rule L20GB.

**Rule L206D. Filing of Certain Motions.**

All Motions For Summary Judgments, Judgment on the Pleadings and Post-trial Motions shall be filed in the office of the Prothonotary.

**Rule L206E. Content of Petition or Motion.**

In addition to the requirements of Pa.R.C.P. No. 206.1 et seq., a petition or motion shall set forth the history of prior judicial activity in the case. The history shall include the nature and date of prior judicial activity and the name of the judge who handled the matter.

Any Exhibit attached thereto shall be a legible photocopy or other reproduction of the original.

**Rule L210. Form of Briefs.**

In addition to the requirements of Pa. R.C.P. No. 210, briefs shall comply with the following requirements:

A. Except for quotations, briefs shall be double spaced on white paper size 8 1/2 × 11 inches.

B. Briefs shall contain:

1. a procedural history of the case;
2. a statement or counter-statement of facts;
3. a statement of the questions involved;
4. legible copies of any documents which are attached thereto;
5. an argument with citations to the authority relied upon. Opinions of the Appellate Courts of Pennsylvania shall be cited to the official reports of the Pennsylvania Reporter as well as to Atlantic Reporter;
6. a conclusion setting forth the requested relief sought.

**Rule L211A. Oral Arguments.**

The court will be available to hear oral arguments on the dates designated on the court calendar or such other dates as may be determined by the court.

**Rule L211B. Argument Lists.**

(1) Cases shall be placed on the argument list by Praecept of a party or by order of court. Immediately after the last day to file a praecipe for argument, the Court Administrator shall compile a list of cases to be argued. Thereafter, the Court Administrator shall assign the cases to those judges assigned to preside over civil cases, schedule the cases for oral argument, cause notice of the assignment and the time and place for oral argument to be mailed to all parties unrepresented by counsel as well as all counsel of record, and publish the assigned list in the Beaver County Legal Journal.

(2) The praecipe for argument shall be in the form approved and revised from time to time by the court. The original praecipe for argument shall be filed with the Prothonotary and a copy thereof delivered to the Court Administrator.

**Rule L211C. Briefing Schedule.**

(1) The moving party's brief shall be submitted to the Court Administrator and served in accordance with the following schedule:

(a) where the moving party files the praecipe for argument, not later than simultaneously therewith;

(b) where the responding party files the praecipe for argument or the court orders the matter on the argument list, at least twenty (20) business days prior to the argument date;

If the moving party fails to timely submit a brief the court may deny the relief sought or impose other sanctions.

(2) The responding party's brief shall be submitted to the Court Administrator and served at least ten (10) business days prior to the argument date provided that the moving party's brief has been timely served. If the brief is not timely submitted, the court may prohibit the responding party from presenting oral argument or may impose other sanctions.

**Rule L211D. Miscellaneous Provisions.**

(1) Any issue which has not been raised and properly discussed in a timely submitted brief may be deemed absolutely to have been waived.

(2) Each party will be allowed fifteen (15) minutes to present oral argument subject, however, to the court's power to limit or extend the time for argument. The time for argument shall be limited to not more than thirty (30) minutes for each side notwithstanding the existence of more than two moving or responding parties. The maximum time shall be divided between or among the moving parties or between or among the responding parties as they may decide.

(3) Oral argument will not be continued except on written motion, for cause shown. Such motion shall be subject to L206B.

**Rule L212.1. Civil Actions. Certification For Trial. Time for Initiating Motions for Pre-Trial Judgment or Discovery.**

A. All civil actions which are to be tried by a jury may be tried, at the earliest, during the term of trials next following the filing of a Certificate of Readiness for Trial.

**Note**

This provision is intended to constitute Notice required by Pa. R.C.P. No.212.1(a).

B.(1) A civil action shall be certified for trial by jury, non-jury or arbitration by filing with the Prothonotary of Beaver County a Certificate of Readiness for Trial. A copy of the Certificate of Readiness for Trial shall likewise be transmitted by the moving party to the Court Administrator of Beaver County.

(2) No case may be certified for trial without having first given at least sixty (60) days written notice of intention to do so to all other parties or their counsel of record.

(3) After a case has been certified for trial, no motion for judgment on the pleadings or for summary judgment may be filed without having first secured leave of court to do so for cause shown.

(4) After a case has been certified for trial, no discovery, including an independent medical examination, may be initiated without having first secured leave of court to do so for cause shown.

(5) Any other party may file exceptions to the certificate of readiness within ten (10) days of the filing thereof. The exceptions shall be presented to the judge assigned to receive civil motions after notice pursuant to Rule L206B has been given.

**Note**

The purpose of subdivision (2) is to provide parties with an opportunity to initiate appropriate pre-trial procedures prior to the certification of the case for trial. Failure to do so prior to certification for trial may result in the waiver of the right to do so under subdivisions (3) and (4).

**C. Asbestos Cases**

Each asbestos case will be assigned by the Court Administrator to an individual Judge as soon as it comes before the court for disposition of any pre-trial motion. The case will remain with that Judge until conclusion of all proceedings. All matters concerning that case shall be presented to and scheduled by the Judge to whom the case is assigned.

**Rule L212.2. Pre-Trial Conference and Pre-Trial Statements.**

A. Unless otherwise directed by the court, a pre-trial conference shall be scheduled by the Court Administrator for every case certified for jury trial. Pre-trial conferences shall be scheduled on those dates designated for that purpose on the court calendar and on such other dates as may from time to time be designated by the court.

(1) Prior to the pre-trial conference, a party shall provide the opposing party with a copy of all documents or records secured through an authorization of the opposing party. Any such documents or records not so provided may not be used at trial for any purpose.

(2) Pre-trial statements which comply with Pa. R.C.P. No. 212.2 shall be submitted to the judge assigned to conduct the pre-trial conference not later than five (5) business days prior thereto. In addition, to the requirements of Pa. R.C.P. No. 212.2, the pre-trial statement shall contain:

(a) a statement of legal and evidentiary issues which are anticipated to arise together with a citation to authority;

(b) an itemized statement of all medical and hospital and other bills and expenses claimed;

(c) an itemized statement of lost earnings and impairment of earning power together with the basis therefore.

(d) a statement, if applicable, as to the plaintiff's selection of the limited or full tort option. If a limited tort option applies, a statement to support eligibility for recovery of non-economic damages shall be included.

**Note**

Although Pa.R.C.P. No.212.2(5) requires the inclusion of an expert report or proper answer to interrogatory and the note thereto permits physician notes or records in lieu of a report, neither copies of hospital records nor illegible office notes are to be included.

All trial exhibits are to be marked for identification but need not be attached to the pre-trial statement.

(3) Unless excused by the court upon cause shown, the pre-trial conference shall be attended by trial counsel as well as the plaintiff, a representative of the defendant's insurance carrier who has settlement authority, a representative of the CAT Fund and any defendant whose personal approval of a settlement offer is required and has not been given.

**Note**

Where a liability insurance carrier, the CAT Fund or a party has given counsel written authority to settle in an amount deemed by the court to be reasonable, the court

will probably excuse attendance at the pre-trial conference. All requests to be excused should be by formal motion or petition setting forth the reasons for the request.

If trial counsel is excused by the court from attending, substitute counsel shall be equally familiar with the case and its issues or sanctions may be imposed.

(B) After the pre-trial conference has concluded, no supplemental pre-trial statement may be filed without leave of court for cause shown.

**Rule L214. Trial Lists.**

A. The Court Administrator shall maintain a master list of cases to be tried before a jury and a master list of cases to be tried by a judge without a jury. Cases shall be placed on either list pursuant to order of court.

B. After consultation with the court, the Court Administrator shall prepare a list of cases to call for trial before a jury from the master list. The trial list shall be prepared so as to give preference in accordance with Pa. R.C.P. No. 214 and then as the court may see fit. Cases that have not been given preference shall be listed for trial, as nearly as possible, in the chronological order in which they were placed on the master trial list.

The Court Administrator shall then mail a notice of trial to counsel for each party and to each party not represented by counsel. Notice may be by regular mail addressed to counsel or the party at the address they have endorsed on their last pleading.

C. The Court Administrator shall assign cases from the master list of non-jury cases to a judge and give notice of the assignment by regular mail to counsel for each party and each party not represented by counsel. All scheduling of such cases will be done by the assigned judge.

**RULE L217—BILL OF COSTS****Rule L217A. Bill of Costs.**

Bills of costs must set forth the names of witnesses, the dates of their attendance, the number of miles actually traveled by them, and the place from which mileage is claimed. The bill shall be verified by the affidavit of the party filing it or his attorney that the witnesses named were actually present in Court, and that, in his opinion they were material witnesses. A copy of the bill of costs shall be served on opposing counsel pursuant to Pa. R.C.P. 440.

**Rule L217B. Exceptions to Bill of Costs.**

The party upon whom a bill of costs has been served waives all objections to it unless, within ten (10) days after such service, exceptions thereto are filed. Thereafter, the issue shall be determined by the Court in accordance with Pa. R.C.P. No. 206.1—206.7.

**Rule L217C. Security for Costs.**

Where the plaintiff resides out of the state, or is a foreign corporation, the defendant, upon filing a petition, may have a rule issued on the plaintiff to enter security for costs within twenty (20) days after notice. In the meantime, all proceedings may be stayed. Upon proof of default filed, the court may enter a judgment of non pros.

**Rule L220.1. Voir Dire of Prospective Jurors.**

Voir Dire of Prospective Jurors shall include the use of a written questionnaire and oral examination. Oral examination shall be conducted by an employe of Beaver County who shall be designated by the trial judge. Such oral examination shall consist of standard questions, a



established by the Court Calendar and on such other dates as may from time to time be determined by the Court.

**Rule L310. Removal of Papers.**

**A. Permission By Judge**

Except as otherwise provided herein, no original papers shall be removed from the Office of the Prothonotary without prior written permission of the court upon cause shown. No permission will be given for the removal of an original note, bond or other instrument upon which a judgment has been entered by any person other than a Judge of the court.

**B. Removal of Papers By Court Officer**

A referee, auditor, master, arbitrator or similar officer appointed by the court as well as judicial law clerks and other personal staff members of the court may remove papers for the purpose of the appointment for a period not to exceed ninety (90) days unless the time be extended by the court.

C. Prior to the removal of any papers from the Office of the Prothonotary, the person requesting removal shall give a receipt therefore. The receipt shall be signed by the person requesting removal and shall set forth the case caption and number, a description of the papers removed, the date of removal and the printed name of the person requesting removal.

D. The Prothonotary shall have no responsibility to transmit papers to any person or office other than the court. The responsibility to transmit documents to the sheriff for service of process or notice shall be that of the parties or their counsel.

**LR400.1. Service of Original Process.**

Except as provided in Pa. R.C.P. Nos. 1930.4 and 430, original process shall be served within the Commonwealth as follows:

A. By the Sheriff or a competent adult in actions in equity, partition, prevent waste, and declaratory judgment when declaratory relief is the only relief sought, and;

B. By the Sheriff of the county in which service is to occur in all other actions.

**Rule L430. Service By Publication.**

The Beaver County Legal Journal is designated as the publisher of legal notices in Beaver County. Unless the manner of publication of service of process or notice is otherwise specified by law or rule of court, such service or notice shall be made by publishing the same once in the *Beaver County Legal Journal* and once in a newspaper of general circulation in Beaver County.

**Rule L1018.1. Notice To Defend.**

The following organization shall be named in the Notice to Defend as the organization from whom legal help can be obtained.

Lawyer Referral Service of the Beaver  
County Bar Association  
788 Turnpike Street  
Beaver, PA 15009  
Telephone Number: (724) 728-4888

**Rule L1301—COMPULSORY ARBITRATION**

**Rule L1301A.** These Rules apply to the following civil matters or issues which shall be submitted to compulsory arbitration under Section 7361 of the Judicial Code:

1. All civil actions, as defined in Pa. R.C.P. No. 1001(b)(1), as amended, for money damages where the amount in controversy on any claim is \$25,000.00 or less, exclusive of interest and costs. The amount in controversy shall be determined from the pleadings, by agreement of the parties or by the court.

2. Where no appearance has been entered in a civil action and the plaintiff desires to have the damages assessed in an amount not to exceed \$25,000.00.

3. Appeals from a civil judgment of a District Justice, except judgments for possession of real property.

4. By agreement of reference signed by the parties or their counsel. Such agreement shall define the issues and contain such stipulation as to facts, admissions or waivers of defenses or proofs as are agreed upon.

**Rule L1301B. Exceptions.**

These rules shall not apply to the following matters:

1. Action in Ejectment;
2. Action to Quiet Title;
3. Action in Replevin, unless authorized by the court;
4. Action in Mandamus;
5. Action in Quo Warranto;
6. Action of Mortgage Foreclosure;
7. Actions upon Ground Rent;
8. Foreign Attachment; and
9. Fraudulent Debtors Attachment.

**Rule L1301C. Compensation of Board.**

Each member of the Board of Arbitration who has signed an award, whether as a majority or as a dissenter shall receive as compensation a fee in an amount as set by the Court from time to time by special order. In cases requiring hearings which exceed 1/2 day, the arbitrators may petition the court for additional compensation which may be granted for cause shown.

**Rule L1301D. Procedure for Payment.**

Upon the filing of the arbitrators' award, the Prothonotary shall certify such filing to the County Commissioners and to the County Controller together with the names of the members of the Board and an Order for payment. The County Commissioners and Controller shall thereupon pay the applicable fee to each member of the Board. Such fees shall not be taxed as costs in the case.

**Rule L1301.1. Hearing Continuances.**

The Board of Arbitrators shall have the powers conferred upon them by law, including but not limited to the following:

(1) To grant continuances before the hearing convenes. In the event a party requests and secures a continuance of the hearing prior to the commencement thereof, it shall be his duty to ascertain an appropriate date and time for further hearing and to see to it that all parties and arbitrators are notified both of the continuance and of the new hearing. In the event there is a dispute as to a continuance the issue shall be submitted to the Court.

(2) To permit the amendment of any pleading. Except for good cause shown, such an amendment must be filed in writing.

**Note**

1. Parties are expected to make requests for continuance as soon as the need arises.

2. See Pa. R.C.P. Nos. 1303(b) and 1304(a) for the power of arbitrators to act when a party fails to appear or is not ready.

#### **RULE L1302—ARBITRATORS**

##### **Rule L1302A. Eligibility to Serve as Arbitrators.**

Only persons actively engaged in the practice of law in Beaver County shall be eligible to serve as arbitrators. For purposes of this rule, persons "actively engaged in the practice of law" is defined as: persons who regularly maintain an office in Beaver County for the practice of law; public defenders; assistant and deputy district attorneys; and judicial law clerks of the Court of Common Pleas of Beaver County.

##### **Rule L1302B. Qualifications as Chairman.**

Only persons admitted to the practice of law for at least three (3) years are eligible to serve as chairman of the Boards of Arbitrators.

##### **Rule L1302C. List of Arbitrators.**

The Court Administrator of Beaver County shall, on or before January 1 of each year, compile a list of persons eligible to serve as arbitrators and a list of persons eligible to serve as Chairmen of Boards of Arbitrators. Persons who have been determined to be eligible shall file a written consent to serve as an arbitrator or chairman with the Court Administrator. Arbitrators and chairmen shall be selected by the Court Administrator from those persons who have filed a consent to serve in accordance with L1302D.

##### **Rule L1302D. Selection of Board.**

Upon receipt of a copy of a Certificate of Readiness for trial requesting arbitration or an Order of Court referring a case to arbitration, the Court Administrator shall select two arbitrators and a chairman from the lists of eligible persons who have consented to serve and appoint them to serve as arbitrators and chairman in the case. Should an arbitrator be disqualified from serving on the case, he or she shall be replaced by the Court Administrator and appointed to the next Board for which he or she is qualified.

##### **Rule L1302E. Notification of Appointment and Objections.**

The Court Administrator shall file the appointment of the Board of Arbitrators with the Prothonotary and shall mail a copy thereof by regular mail to each arbitrator and to each party or their counsel of record. Any party may object to the composition of the Board of Arbitration for good cause shown. The filing of such objections shall operate as a stay of proceedings. The party filing such objections shall serve a copy thereof upon all other parties or their counsel and shall give notice of intention to present the objections to the Court. Failure to file such objections within ten (10) days of mailing of notice of the appointment shall operate as a waiver of the objections.

##### **Rule L1302F. Companion Cases.**

The Court Administrator shall appoint the same Board to serve as arbitrators in a companion case or cases.

##### **Rule L1302G. Vacancies on Board—Prior to Hearing.**

Should a vacancy on the Board of Arbitration occur prior to hearing for any reason, or should a member of the Board fail to attend the hearing, a member of the Board shall notify the Court Administrator who shall immediately vacate that appointment and make an appointment to fill that vacancy. The appointment of a

substitute arbitrator shall be announced to all parties or their counsel prior to commencement of the hearing. Any objection to the substitute arbitrator shall be made forthwith or be waived.

Should a member fail to appear more than two times for hearings in any cases to which he or she has been appointed, the member's name shall be removed by the Court Administrator from the list of eligible persons.

#### **Note**

The last paragraph of Rule L1302G is intended as a sanction against those members of the Bar who fail to appear for a hearing without providing advance notice thereof to the Court Administrator. It is contemplated that a member who cannot be present would notify the Court Administrator in advance, even in an emergency. In that event, the sanction would not be applicable.

##### **Rule L1302H. Post Hearing Vacancies.**

Should a vacancy on the Board of Arbitration occur after hearing but before an award is signed by all arbitrators or should a member of the Board fail or refuse to perform his duties, the award shall be signed and filed by the remaining members of the Board. If they are unable to agree they shall notify the Court Administrator who shall appoint a third member. Thereafter, the Court Administrator shall schedule a rehearing for the new Board which shall thereafter file an award.

##### **Rule L1303. Arbitration Hearings.**

The Chairman shall fix the date, time and place of arbitration hearings, which shall be held at the Beaver County Courthouse within forty-five (45) days after appointment of the Board. Notice of the hearings shall be in writing and mailed to the Arbitrators and all parties or their counsel by regular mail not less than thirty (30) days from the hearing date.

##### **Rule L1306. Arbitrations—Timely Filing of Award.**

Failure to file the award promptly as required by Pa. R.C.P. 1306 may result in the imposition of sanctions, including forfeiture of the arbitrator's fees.

##### **Rule L1307. Arbitrations—Damages for Delay (Rescinded).**

#### **Note**

The procedure for an award of delay damages by a Board of Arbitration is now governed by Pa.R.C.P. No.238(d).

##### **Rule L1507. Equity.**

When notice is required to be given under Pa. R.C.P. No. 1507, the notice shall be directed to the persons to be notified and shall state: the names of the Court and the parties; the general nature of the action and of the relief sought; briefly inform the party of the nature of his possible interest in the action; that he may appear in the action to represent his interest; and that if he fails to do so by a day certain, which shall not be less than thirty (30) days after the notice is complete, a Decree may be entered which will bind his interests in the subject matter of the action. The manner of the notice shall be fixed by the Court in each case by special order.

##### **Rule L1703. Class Actions—Assignment to a Judge (New).**

A party who commences a class action shall forthwith deliver a copy of the complaint to the Court Administrator who shall forthwith assign the case to a Judge of the Court assigned to preside over civil cases.

**Rule L1901.5. Procedure for Enforcement of Protection From Abuse Orders.**

A. When a defendant is arrested for violation of a Protection From Abuse Order issued by the Court or a Temporary Protection Order issued by a District Justice, the defendant shall be preliminarily arraigned by a District Justice forthwith.

B. In that event, a complaint for a violation of an existing order must be filed with the District Justice by the plaintiff in such action or by the police. The complaint shall be substantially in the form following hereto as Exhibit "A."

C. At the Preliminary Arraignment, the defendant shall be notified:

(a) that he or she is charged with indirect criminal contempt for violation of the Protection From Abuse Order. A copy of the complaint shall be given to the defendant;

(b) that a hearing will be held before a judge of the Court on the first available date; and

(c) that the defendant is entitled to be represented by counsel and, if unable to afford counsel and otherwise qualifies, counsel will be appointed.

D. Bail shall be set to insure defendant's presence at the contempt hearing in accordance with Pennsylvania Rule of Criminal Procedure No. 4004 including, without limitation, the condition that the defendant not contact the petitioner or members of the petitioner's household, or anyone with whom the petitioner then resides, directly or indirectly.

E. If the defendant is not able to post bail, he shall be committed to the Beaver County Jail. Bail may be thereafter posted through Beaver County Pre-Trial Services at the earliest appropriate time.

F. The office of the District Justice shall cause the following completed forms and bail, if entered, to be forwarded immediately to the Beaver County Court Administrator's Office, Beaver County Courthouse:

(a) complaint charging a violation of the Protection From Abuse Order;

(b) probable cause affidavit, if any; and

(c) certificate of bail and commitment.

G. Upon receipt of papers from the District Justice, the Office of the Beaver County Court Administrator will forward said papers to the appropriate Judge of the Court who will set a hearing on the contempt charge at the earliest possible time.

**Rule 1906. Exhibit "A."**

IN THE COURT OF COMMON PLEAS OF BEAVER COUNTY PENNSYLVANIA CIVIL ACTION—LAW

Plaintiff, :  
vs. : No.  
Defendant. :

**COMPLAINT FOR INDIRECT CRIMINAL CONTEMPT FOR VIOLATION OF PROTECTION FROM ABUSE ORDER**

I, the undersigned, do hereby state:

1. My name is \_\_\_\_\_ and I live at \_\_\_\_\_;

2. I accuse \_\_\_\_\_, who lives at \_\_\_\_\_, with violating a Protection From Abuse Order entered by Judge \_\_\_\_\_ on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ (attach a copy of the Order if available);

3. The date (and the day of the week) when the accused committed the offense was on or about \_\_\_\_\_;

4. The place where the offense was committed in the County of Beaver;

5. The acts committed by the accused were \_\_\_\_\_;

all of which were in violation of the Protection From Abuse Order entered in accordance with the Protection From Abuse Act, 35 P. S. § 10181, et seq.;

6. If the defendant has not already been arrested, I ask that a warrant of arrest be issued and that the accused be required to answer the charges I have made.

I verify that the statements made in the complaint are true and correct to the best of my knowledge, information and belief. I further understand that any false statements made herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date \_\_\_\_\_  
(Signature of Affiant)

The above subscribed affiant personally appeared before me on \_\_\_\_\_, \_\_\_\_\_, signed the complaint in my presence and asserted that the facts therein are true and correct; and wherefore it appears that there is probable cause for the issuance of process.

\_\_\_\_\_  
(Issuing Authority) (SEAL)

**MINORS AS PARTIES**

**Rule L2039A. Approval of Compromise and Settlement by the Court.**

The Court may approve the compromise, settlement or discontinuance of an action filed on behalf of a minor or an action in which a minor has interest without a hearing provided that the petition complies with L2039B. Should the Court determine that a hearing is necessary, the Petition will be entertained pending the hearing.

**Rule L2039B. Content of Petition.**

A petition for leave to compromise, settle or discontinue an action in which a minor is a party, or an action in which a minor has an interest shall set forth:

(a) the facts out of which the cause of action arose;

(b) the elements of damage sustained;

(c) all expenses incurred or to be incurred, including the counsel fees requested;

(d) the facts relied upon by the adverse party; and,

(e) all circumstances relevant to the propriety of granting the petition including medical reports and records.

**INCAPACITATED PERSONS AS PARTIES**

**Rule L2064. Approval of Compromise and Settlement by the Court.**

The procedure to secure Court approval of the compromise and settlement of actions in which incapacitated persons have an interest shall be governed by L2039A and L2039B.

### ACTIONS FOR WRONGFUL DEATH

#### Rule 2206. Approval of Compromise and Settlement of Actions for Wrongful Death.

The procedure to secure Court approval of the compromise and settlement of an action for wrongful death in which a minor or incapacitated person has an interest shall be governed by L2039A and L2039B.

### DEPOSITIONS AND DISCOVERY (NEW)

#### Rule L4002. Place of Depositions.

Unless counsel for all parties agree otherwise, all discovery depositions shall take place in Beaver County. Depositions for use at trial may be taken outside Beaver County upon agreement of counsel or leave of court.

#### Note

It is contemplated that depositions will take place in the office of counsel for a party so long as the office is located in Beaver County.

#### Rule L4012. Discovery Motions.

No motion relating to discovery will be entertained by the court unless counsel for the parties involved shall have first conferred and attempted to resolve the issues. All such motions shall be accompanied by a written certification of counsel for the moving party. The certification shall state the date and manner of the conference with respect to each matter in dispute and that counsel was unable to resolve the issues.

In the event counsel has not conferred, counsel for the moving party shall certify the reason or reasons therefore.

#### Rule LJA1901A. Termination of Inactive Cases.

The Court Administrator shall compile a list of inactive cases as of January 1 of each year comprised of all Civil Actions, except child custody cases, in which no steps or proceedings have been taken for two (2) years or more prior thereto.

#### Rule LJA1901B. Notice of Termination.

Counsel or the parties in each case listed shall be given at least thirty (30) days written notice of the date on which the case shall be terminated. That date shall be the first Monday of April each year.

#### Rule LJA1901C. Manner of Notice.

Said written notice shall be given in person or by regular mail to the last address of the counsel of record, or if there is no counsel of record, to the last address of the party. Where notice cannot be so given or has been returned undelivered, said notice shall be by one publication in the Beaver County Legal Journal at least thirty (30) days prior to such date. The publication may combine any number of such cases in such form as the Court Administrator may determine.

#### Rule LJA1901D. Content of Notice.

Said written notice shall identify the matter and shall state the date of the termination and that the matter will be terminated by Court Order for unreasonable inactivity unless at least five (5) business days prior thereto, a party or counsel file objection to such termination stating reasons why such inactivity has not been unreasonable.

#### Rule LJA1901E. Presentation of Objection and Content.

Objections to termination shall be in writing in the form of a motion prepared in accordance with LR206 and presented to the Court Administrator no later than five (5) business days before the scheduled termination date.

Such objections shall state whether the matter has previously been listed for termination due to unreasonable inactivity and if so, the date or dates of such listing in addition to the reasons therefor. Such objections shall also certify that the notice required by sub-section F of this rule has been given.

#### Rule LJA1901F. Service of Objections.

Any party or counsel filing objections to termination shall deliver a copy of the objections to all other parties interested in such matter, or their counsel of record, either personally or by regular mail at least five (5) business days prior to presentation.

#### Rule LJA1901G. Response to Objection.

Any party or counsel who desires to respond to an objection to termination must file a response in writing with the Court Administrator on or before the termination date. If no response is filed the objection may be sustained.

#### Rule LJA1901H. Disposition of Objections.

Where objections and a response to the objections have been filed, the Court Administrator will refer the case to the Court for disposition either on the pleading, or after hearing or argument.

#### Rule LJA1901I. Reinstatement.

Any matter terminated after notice by publication may be reinstated by the Court upon motion filed and served upon all other parties to the matter and upon good cause shown.

#### Rule LJA5000. Transcripts.

A. Transcripts Ordered by Court: Where a party wishes to proceed in forma pauperis, a motion shall be presented to the trial judge setting forth the reasons for such request, the specific portion or portions of the record which it is requested that the Court order transcribed and the reasons therefor. At least three business days written notice shall be given to the adverse party of the time such motion is to be presented to the trial judge. The attorney for the adverse party is to be present at the time of the motion and may make requests for additional transcription of the record, stating the reasons therefor. The Court will consider the requests and will make an appropriate order, which order and motion shall be filed of record in the office of the Prothonotary, with a copy to the Court Reporter.

B. The Court may, on its own motion, order an original or a copy of a transcript of a record or a portion thereof for its own use. All transcripts ordered for the Court shall be paid by Beaver County at the rates provided for in Pa. R.J.A. No. 5000.7 and shall be taxed as part of the record costs.

#### Rule LJA5000.6. Fees.

Except where the Commonwealth or a subdivision is liable for the costs, the Court Reporter shall require a deposit of one-half the estimated charge for the transcript as a condition precedent to starting transcription.

After ascertaining from the Court Reporter the amount required, the said deposit shall be paid to the Prothonotary by the party requesting the transcript.

After obtaining a receipt from the Prothonotary signifying said deposit has been made, the person making said deposit shall deliver a copy of said receipt to the Court Reporter who will then proceed with the transcript, as requested, in the manner provided pursuant to Pa. R.J.A. No. 5000 et seq.

When the transcript is completed, the Court Reporter shall notify the party requesting the same.

The completed transcript shall be delivered by the Court Reporter to the office of the Prothonotary. The transcript shall be held by the Prothonotary in a transcript escrow file and shall not be delivered to the party ordering the transcript until any balance due for the transcript has been paid to the Prothonotary. The original transcript may then be filed of record and copies thereof released to requesting parties.

All transcript payments shall be remitted by the Prothonotary to the County of Beaver. When the Court Reporter has submitted the completed transcript, the Court Reporter may then bill the County of Beaver for payment for said transcripts. The County of Beaver shall then pay the same pursuant to its present practice.

### REAL ESTATE ASSESSMENT APPEALS

#### Rule L8000. Real Estate Assessment Appeals.

A. All appeals taken from a real estate assessment fixed by the Board of Assessment Appeals shall be presented or filed in the form of a Petition for Allowance of Appeal.

B. The Petition for Allowance of Appeal, whether initially presented to the Court or filed with the Prothonotary, shall have attached to it a proposed preliminary decree which shall provide:

1. that the appeal is allowed;
2. that the taxing authorities within whose jurisdiction the real estate is situate and the property owner, if the appellant is not the property owner, are hereby notified that leave to intervene in said appeal, if desired, must be sought in accordance with Pa. R.C.P. 2328—2330; and
3. that within five days from the date of the preliminary decree, appellant shall serve a copy of the petition and preliminary decree upon the Board of Assessment Appeals, the Board of Commissioners of Beaver County, the governing bodies of the school district and each municipality in which the real estate is situate, and upon the property owner, if the appellant is not the property owner.

C. If the Petition for Allowance of Appeal is initially filed in the Prothonotary's Office, the petition and proposed preliminary decree shall be presented by the appellant to the Court within five (5) days thereafter for the entry of a preliminary decree.

#### Rule L8001. Pre-Hearing Statement and Conference.

A. Within forty-five (45) days after required service of the petition and preliminary decree, all parties of record shall submit a pre-hearing statement to the Court Administrator and serve a copy on all other parties of record. The pre-hearing statement shall include:

1. A summary of the facts which will be offered by oral and documentary evidence at the hearing;
2. a list of exhibits to be offered;
3. a list of the names and addresses of all witnesses to be called;
4. copies of any appraisal reports, or if no report is available, a summary of the testimony of any expert who will be called as a witness;
5. a statement of the current valuation which is the basis for the appeal;

6. a statement setting forth the appellant's position as to the correct valuation which shall include appellant's position as to correct market value, assessment ratio, and assessment;

7. a statement that there have been negotiations between the parties and a good faith attempt to settle the case;

8. the statement shall be signed by the parties or their counsel; and

9. an affidavit that service of the petition and the preliminary decree was made on all parties as required by Rule L8000B(3)

B. Upon receipt of the pre-hearing statement of the parties of record, the Court Administrator shall refer the case to a member of the Court who shall schedule a pre-hearing conference at which the parties of record and their counsel shall be present. Notice of the pre-hearing conference shall be given by the Court Administrator to all affected taxing authorities whether or not parties of record.

C. At the pre-hearing conference, the parties of record shall consider:

1. possible stipulations as to evidence and facts;
2. simplification of the issue; and
3. settlement.

D. At the pre-hearing conference each party of record shall either be personally present, or shall be represented by counsel authorized to act on behalf of the absent party of record with respect to the trial of the case or its settlement.

E. Following the pre-hearing conference the Court will enter an appropriate order which may include the scheduling of a hearing.

[Pa.B. Doc. No. 00-210. Filed for public inspection February 4, 2000, 9:00 a.m.]

## COMMONWEALTH COURT

### Notice to the Bar

The Commonwealth Court has a limited number of books entitled *Commonwealth Court of Pennsylvania Elections Cases: January 1, 1994—December 31, 1999* available for sale. The book contains an index to reported Commonwealth Court election cases from 1970 through December 31, 1999; an index to unreported Commonwealth Court election cases from 1994 through December 31, 1999; and all unreported Commonwealth Court election cases from 1994 through December 31, 1999. This 1,000 page book is available for \$75. The book may be purchased in the Office of the Chief Clerk, Room 624, South Office Building, in Harrisburg.

DANIEL R. SCHUCKERS,  
Prothonotary

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