

RULES AND REGULATIONS

Title 61—REVENUE

BOARD OF CLAIMS

[61 PA. CODE CH. 899]

Rules of Procedure

The Board of Claims (Board) adopts amendments to the Rules of Procedure, Rules 899.201(b) and (d) and 899.801 (relating to statement of claim; and no posthearing motions).

The purpose of the amendment to Rule 899.201(b) is to reduce the number of copies of a claim which must be filed with the Board from four copies to three copies. Rule 899.201(d) is being deleted because this rule does not accurately state the time period during which some types of actions may be filed. Rule 899.801 is being added. It states the long-standing practice of the Board not to entertain posthearing motions.

Section 8 of the act of May 20, 1937 (P. L. 728, No. 193) (72 P. S. § 4651-8) and case law, *Pennsylvania Institutional Health Services, Inc. v. Commonwealth of Pennsylvania, Department of Corrections*, 167 Pa. Cmwlth. 226, 647 A.2d 692 (1994), mandate that all matters before the Board are governed by the Pennsylvania Rules of Civil Procedure (Pa.R.C.P.) as well as regulations promulgated by the Board.

In 1997, the Board amended its regulations to add new rules of procedure, see Rules 899.101—899.702. Those rules supplement the Pa.R.C.P. and provide that "(If a discrepancy between this chapter and the [Pa.R.C.P.] arises, this chapter applies." See Rule 899.102 (relating to scope of rules). Rule 227.1 of the Pa.R.C.P. (relating to post-trial relief) requires the filing of posttrial motions prior to appeal, but the Board will now amend its regulations to add Rule 899.801, which will dispose of this requirement.

The Board is an independent agency and as such may promulgate rules of practice and procedure under the proposed rulemaking omitted process. Under section 204(1) of the act of July 31, 1968 (CDL) (P. L. 769, No. 240) (45 P. S. § 1204) and the regulation thereunder, 1 Pa. Code § 7.4 (relating to filing of special petitions), proposed rulemaking has been omitted.

Notices of the Board's intention to submit new rules by final order, proposed rulemaking omitted were published at 30 Pa.B. 1755 (April 1, 2000) and 30 Pa.B. 4932 (September 23, 2000). The public was invited to review the rules and submit comments. Also, copies of the rules were sent to State agencies and attorneys who regularly appear before the Board, to the Independent Regulatory Review Commission (IRRC) and the Office of General Counsel. In preparing these amendments, the Board has considered the comments it received.

Analysis

The following is a description of the changes made by the amendments to the rules governing practice before the Board.

Rule 899.201—Statement of Claim

Rule 899.201(b) previously provided that a plaintiff shall file an original and four copies of its claim with the

Board. This rule is being changed to now require only an original and three copies be filed.

Rule 899.201(d) is being deleted. It states that a claim is timely if it is received by the Board within 6 months of accrual. Because of certain provisions added in 1998 to 62 Pa.C.S. § 101 (relating to the Commonwealth Procurement Code), Rule 899.201(d) may not be an accurate statement of the filing time for every action and will be deleted to avoid misleading any litigants.

Rule 899.801—No Posthearing Motions

Rule 899.801 provides that no posthearing motions may be filed. It has long been the practice of the Board not to accept and dispose of posthearing motions and this amendment to the regulation continues that practice and formally exempts the Board from the requirements of Pa.R.C.P. No. 227.1.

Authority

The amendments are promulgated under 72 P. S. § 4651-10. This section provides the Board with the power and duty to promulgate rules governing practice before it.

Fiscal Impact

The Board has determined that these amendments to its rules of procedure will have no significant fiscal impact.

Paperwork

The amendments will not generate substantial additional paperwork for the public or the Commonwealth. In fact, they will cut paperwork.

Effective Date

These amendments will become effective 30 days after publication in the *Pennsylvania Bulletin*.

Contact Person

The contact person for an explanation of the new rules is Louis Martin, Esquire, Senior Counsel, Board of Claims, 200 North Third Street, Suite 700, Harrisburg, PA 17101-1518.

Regulatory Review

Under section 5.1(c) of the Regulatory Review Act (71 P. S. 745.5a(c)), on March 22, 2001, the Board submitted copies of these final-omitted amendments to IRRC and the Chairpersons of the Senate and House Finance Committees. On the same date, the final-omitted amendments were submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506).

Under section 5.1(d) of the Regulatory Review Act, on April 12, 2001, these final-omitted amendments were deemed approved by the House and Senate Finance Committees. Under section 5.1(e) of the Regulatory Review Act, on April 19, 2001, IRRC met and approved the final-omitted amendments.

Findings

The Board finds that:

(1) There is good cause to amend the rules of procedure, Rules 899.201(b) and (d) and 899.801.

(2) The amendments to the rules of procedure, Rules 899.201(b) and (d) and 899.801 and are necessary and appropriate for practice before the Board.

(3) Under section 204(1) of the CDL, the proposed amendment procedures in sections 201 and 202 of the CDL (45 P. S. §§ 1201 and 1202) do not apply because these amendments relate to agency practice.

Order

The Board, acting under its authorizing statute, orders that:

(a) The regulations of the Board of Claims, 61 Pa. Code Chapter 899, are amended by amending Rule 899.201 and adding Rule 899.801 to read as set forth in Annex A.

(b) The Chief Administrative Judge shall submit this order and Annex A to the Office of Attorney General for approval as to form and legality as required by law.

(c) The Chief Administrative Judge shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect June 11, 2001.

DAVID C. CLIPPER,
Chief Administrative Judge

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 31 Pa.B. 2444 (May 5, 2001).)

Fiscal Note: 105-4. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 61. REVENUE

PART VI. BOARD OF CLAIMS

CHAPTER 899. RULES OF PROCEDURE

Subchapter B. PLEADINGS

Rule 899.201. Statement of claim.

(a) A plaintiff shall prepare a concise and specific written statement of the claim, signed and verified by the plaintiff. The caption of the claim shall contain the full names of all parties to the claim. Each claim shall contain the name, address, telephone number and Supreme Court Identification Number of counsel for the plaintiff.

(b) The plaintiff shall file an original and three copies of the claim with the Board, accompanied by a \$50 check made payable to the Commonwealth of Pennsylvania.

(c) Service of the claim and any amended claim will be made by the Board. The Board will serve one copy of the claim and any amended claim to the defendant involved, and one copy to the Attorney General.

Subchapter H. POSTHEARING

Rule 899.801. No posthearing motions.

After hearing and the issuance by the Board of its findings of fact, conclusions of law, opinion and order, posthearing motions may not be filed. The findings of fact, conclusions of law, opinion and order are a final appealable order.

[Pa.B. Doc. No. 01-820. Filed for public inspection May 11, 2001, 9:00 a.m.]