

THE COURTS

Title 225—RULES OF EVIDENCE

[225 PA. CODE ART. I AND VII—IV]

Proposed Changes Corresponding to Recent Amendments to the Federal Rules of Evidence

Introduction

The Committee on Rules of Evidence is planning to recommend that the Supreme Court of Pennsylvania amend Rules of Evidence 103, 701, 803, and 902, and approve the revision of the *Comment* to Rule of Evidence 404. These changes are being proposed to update the Pennsylvania Rules of Evidence in view of the recent changes to the Federal Rules of Evidence. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory *Report* highlights the Committee's considerations in formulating this proposal. Please note that the Committee's *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 explanatory *Reports*.

The text of the proposed rule changes precedes the *Report*. Additions are shown in bold and are underlined, and deletions are in bold and brackets.

We request that interested persons submit suggestions, comments, or objections concerning this proposal to the Committee through counsel, Richard L. Kearns, Staff Counsel, Supreme Court of Pennsylvania, Committee on Rules of Evidence, 5035 Ritter Road Suite 800, Mechanicsburg, PA 17055.

no later than Wednesday, February 14, 2001.

By the Committee on Rules of Evidence

CHARLES B. GIBBONS,
Chair

Annex A

TITLE 225. EVIDENCE

ARTICLE I. GENERAL PROVISIONS

Rule 103. Rulings on Evidence

(a) *Effect of Erroneous Ruling.* Error may not be predicated upon a ruling [**which**] that admits or excludes evidence unless

* * * * *

Once the court makes a definitive ruling on the record admitting or excluding evidence, either at or before trial, a party need not renew an objection or offer of proof to preserve a claim of error for appeal.

* * * * *

Comment

Paragraph 103(a) differs from F.R.E. 103(a) in that the Federal [**Rule**] rule says, "Error may not be predicated upon a ruling which admits or excludes evidence unless a

substantial right of the party is affected, and" (emphasis added). The italicized words have been deleted because they are inconsistent with **prior** Pennsylvania **case** law in criminal cases. In criminal cases, the accused is entitled to relief for an erroneous ruling unless the court is convinced beyond a reasonable doubt that the error is harmless. See *Commonwealth v. Story*, 476 Pa. 391, 383 A.2d 155 (1978). Civil cases are governed by Pa.R.C.P. 126 which permits the court to disregard an erroneous ruling "which does not affect the substantial rights of the parties." Pa.R.E. 103(a) does not change the existing rule.

Paragraphs [**103**] (a)(1) and (a)(2) are consistent with **prior** Pennsylvania **case** law. See *Dilliaine v. Lehigh Valley Trust Co.*, [**457 Pa. 255,**] 322 A.2d 114 (Pa. 1974); *Commonwealth v. Clair*, [**458 Pa. 418,**] 326 A.2d 272 (Pa. 1974). Paragraphs [**103**] (a)(1) and (a)(2) are similar to F.R.E. 103(a)(1) and (a)(2). The term "motion in limine" has been added and the last three words have been changed. Motions in limine permit the trial court to make rulings on evidence prior to trial or at trial but before the evidence is offered. Such motions can expedite the trial and assist in producing just determinations. A ruling on a motion in limine on the record is sufficient to preserve the issue for appeal, without renewal of the objection or offer at trial. The change in language is intended to make clear that the requirement that offers of proof be made is applicable to testimonial and other types of evidence.

Pa.R.E. 103(a) was amended in 2001 by adding the second paragraph. The amendment, which is identical to the amendment to F.R.E. 103(a) that became effective December 1, 2000, is consistent with prior Pennsylvania case law. See *Bell v. City of Philadelphia*, 491 A.2d 1396 (Pa. Super 1985). It is also consistent with the second paragraph of this Comment.

Paragraphs [**103**] (b) and (c) are identical to F.R.E. 103(b) and (c) and are consistent with Pennsylvania practice.

F.R.E. 103(d) permits a court to grant relief for "plain errors affecting substantial rights although they were not brought to the attention of the court." This paragraph has been deleted because it is inconsistent with paragraphs (a)(1) and (a)(2) and with **prior** Pennsylvania **case** law as established in *Dilliaine and Clair*. [**In some capital cases, the Supreme Court has relaxed traditional waiver concepts. See *Commonwealth v. Zettlemoyer*, 500 Pa. 16, 454 A.2d 937 (1982).**]

Official Note: Adopted May 8, 1998, effective October 1, 1998; amended , 2001; effective , 2001.

Committee Explanatory Reports:

Report explaining the proposed amendments published at 31 Pa.B. 408 (January 20, 2001).

ARTICLE N. RELEVANCY AND ITS LIMITS

Rule 404. Character Evidence not Admissible to Prove Conduct; Exceptions; Other Crimes.

(a) *Character Evidence Generally.* Evidence of a person's character or a trait of character is not admissible for

the purpose of proving action in conformity therewith on a particular occasion, except as follows:

* * * * *

(3) *Character of [witness] Witness.* * * *

(b) *Other Crimes, Wrongs, or Acts.*

* * * * *

(2) Evidence of other crimes, wrongs, or acts may be admitted for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

* * * * *

Comment

The basic principle of Pa.R.E. 404 is consistent with F.R.E. 404 and prior Pennsylvania case law. Pa.R.E. 404, with certain enumerated exceptions, provides that character evidence cannot be used to prove conduct. Under this rule, evidence that an employee had a character trait of absent-mindedness would not be admissible to prove that on a particular occasion he or she failed to fasten the safety latch on a piece of equipment. The rule does not preclude the use of character evidence for other purposes, including where character is an element of a claim or defense. See, e.g., *Dempsey v. Walso Bureau, Inc.*, 431 Pa. 562, 246 A.2d 418 (1968)(negligent employment); *Commonwealth ex rel. Grimes v. Grimes*, 281 Pa. Super. 484, 422 A.2d 572 (1980)(parental fitness).

The exceptions to the [Rule] rule differ from F.R.E. 404 as indicated below.

Subsection (a). Subsection (a) of the rule differs from F.R.E. 404(a).

Paragraph (a)(1) has not been amended to conform with the December 1, 2000 amendments to F.R.E. 404(a)(1), which provide that the prosecution may respond to the accused's offer of evidence of the character of the alleged victim of a crime by offering evidence of the same trait of character of the defendant, because this is not consistent with present Pennsylvania law.

Subsection (a)(2) is consistent with prior Pennsylvania case law. See, e.g., *Commonwealth v. Dillon*, [528 Pa. 417,] 598 A.2d 963 (Pa. 1991); *Commonwealth v. Amos*, [445 Pa. 297,] 284 A.2d 748 (Pa. 1971); see also Pa.R.E. 405 (regarding means of proof of the complainant's character for violence).

The exception provided at Pa.R.E. 404(a)(2)(iii) does not appear in the Federal rule. It is consistent with Pennsylvania decisional law. See *Bell v. Philadelphia*, [341 Pa. Super. 534,] 491 A.2d 1386 (Pa. Super. 1985).

Subsection (b). This [rule] paragraph is similar to F.R.E. 404(b) in recognizing legitimate evidentiary purposes for the introduction of evidence of other crimes, wrongs, or bad acts. Unlike the Federal rule, however, Pennsylvania law provides a distinct standard for balancing the inherent prejudice of such evidence against its probative value. Under federal law, if evidence of other crimes, wrongs, or bad acts is offered for a legitimate evidentiary purpose, the evidence is admissible if it meets the general standard of F.R.E. 403. F.R.E. 403 provides that relevant evidence is admissible unless its probative value is substantially outweighed by prejudicial danger.

Under Pennsylvania law, evidence of other crimes, wrongs, or bad acts offered for a legitimate evidentiary purpose is admissible only if its probative value outweighs the potential for prejudice. See *Commonwealth v. Morris*, [493 Pa. 164,] 425 A.2d 715 (Pa. 1981). Pa.R.E. 404(b)(3) codifies Pennsylvania decisional law and is an exception to the general rule defined by Pa.R.E. 403.

Official Note: Adopted May 8, 1998, effective October 1, 1998; Comment revised , 2001; effective , 2001.

Committee Explanatory Reports:

Report explaining the proposed Comment revision published at 31 Pa.B. 408 (January 20, 2001).

ARTICLE VII. OPINIONS AND EXPERT TESTIMONY

Rule 701. Opinion Testimony by Lay Witnesses.

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are rationally based on the perception of the witness, [and] helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

Comment

* * * * *

F.R.E. 701 was amended, effective December 1, 2000, to clarify that testimony based on scientific, technical, or specialized knowledge is governed by F.R.E. 702, and not F.R.E. 701. The 2001 amendment to Pa.R.E. 701 is likewise aimed at clarifying that testimony based on scientific, technical, and specialized knowledge is governed by Pa.R.E. 702.

Pa.R.E. 701 is consistent with prior Pennsylvania case law. See *Lewis v. Mellor*, [259 Pa. Super. 509,] 393 A.2d 941 (Pa. Super. 1978)(adopting F.R.E. 701). Under Lewis, lay opinion may embrace the ultimate issue. See Pa.R.E. 704. The trial judge may exclude the opinion if the trial judge decides that it would not be helpful, or would confuse, mislead, or prejudice the jury, or would waste time. Lewis, [259 Pa. Super. at 523,] 393 A.2d at 949.

Official Note: Adopted May 8, 1998, effective October 1, 1998; amended , 2001; effective , 2001.

Committee Explanatory Reports:

Report explaining the proposed amendments published at 31 Pa.B. 408 (January 20, 2001).

ARTICLE VIII. HEARSAY

Rule 803. Hearsay Exceptions; Availability of Declarant Immaterial.

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

* * * * *

(6) *Records of Regularly Conducted Activity.* A memorandum, report, record, or data compilation, in any form, of acts, events, or conditions, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted

business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, or by certification that complies with Rule 902(11), Rule 902(12), or a statute permitting certification, unless the sources of information or other circumstances indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

Comment

Pa.R.E. 803(6) is similar to F.R.E. 803(6), but with two differences. One difference is that Pa.R.E. 803(6) does not include opinions and diagnoses. This is consistent with prior Pennsylvania case law. See *Williams v. McClain*, [513 Pa. 300,] 520 A.2d 1374 (Pa. 1987); *Commonwealth v. DiGiacomo*, [463 Pa. 449,] 345 A.2d 605 (Pa. 1975). The second difference is that Pa.R.E. 803(6) allows the court to exclude business records that would otherwise qualify for exception to the hearsay rule if the "sources of information or other circumstances indicate lack of trustworthiness." The [federal] Federal rule allows the court to do so only if "the source of information or the method or circumstances of preparation indicate lack of trustworthiness."

Rule 803(6) was amended in 2001 consistent with the December 1, 2000 amendments to F.R.E. 803(6) that permit records of regularly conducted activity to be authenticated by certification. This amendment is designed to save the expense and time consumption caused by calling needless foundation witnesses. The notice requirements provided in Pa.R.E. 902(11) and (12) will give other parties a full opportunity to test the adequacy of the foundation.

If offered against a defendant in a criminal case, an entry in a business record may be excluded if its admission would violate the defendant's constitutional right to confront the witnesses against him or her. See *Commonwealth v. McCloud*, [457 Pa. 310,] 322 A.2d 653 (Pa. 1974).

Pa.R.E. 803(6) differs only slightly from 42 Pa.C.S. [A.] § 6108, which provides:

* * * * *

Pa.R.E. 803(6) permits records of regularly conducted activity to be authenticated by certification.

* * * * *

Official Note: Adopted May 8, 1998, effective October 1, 1998; Comment revised March 23, 1999, effective immediately; Comment revised March 10, 2000, effective immediately; amended _____, 2001; effective _____, 2001.

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Committee Explanatory Reports:

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Report explaining the proposed amendments to paragraph 6 published at 31 Pa.B. 408 (January, 2001).

ARTICLE IX. AUTHENTICATION AND IDENTIFICATION

Rule 902. Self-Authentication.

Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

* * * * *

(11) Certified domestic records of regularly conducted activity. The original or a duplicate of a domestic record of regularly conducted activity that would be admissible under Rule 803(6) if accompanied by a written declaration of its custodian or other qualified person, verified as provided in Pa.R.C.P. 76, certifying that the record -

(A) was made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters;

(B) was kept in the course of the regularly conducted activity; and

(C) was made by the regularly conducted activity as a regular practice.

A party intending to offer a record into evidence under this paragraph must provide written notice of that intention to all adverse parties, and must make the record and declaration available for inspection sufficiently in advance of their offer into evidence to provide an adverse party with a fair opportunity to challenge them.

(12) Certified foreign records of regularly conducted activity. In a civil case, the original or a duplicate of a foreign record of regularly conducted activity that would be admissible under Rule 803(6) if accompanied by a written declaration by its custodian or other qualified person certifying that the record—

(A) was made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters;

(B) was kept in the course of the regularly conducted activity; and

(C) was made by the regularly conducted activity as a regular practice.

The declaration must be signed in a manner that, if falsely made, would subject the maker to criminal penalty under the laws of the country where the declaration is signed. A party intending to offer a record into evidence under this paragraph must provide written notice of that intention to all adverse parties, and must make the record and declaration available for inspection sufficiently in advance of their offer into evidence to provide an adverse party with a fair opportunity to challenge them.

Comment

* * * * *

Paragraphs (11) and (12), which were added in 2001, permit the authentication of domestic and foreign records of regularly conducted activity by certification. This is new to Pennsylvania law for records of regularly conducted activity, but is consistent with Pa.R.E. 902(2), (3), and (4) which permit authentication of various kinds of public documents and records by certification. These paragraphs are similar to F.R.E. 902(11) and (12) that were adopted effective December 1, 2000. The language of Pa.R.E. 902(11) differs from F.R.E. 902(11) in that it refers to Pa.R.C.P. 76, rather than to

federal law. The amendment is intended to implement the amendment to Pa.R.E. 803(6).

Official Note: Adopted May 8, 1998, effective October 1, 1998; amended , 2001; effective , 2001.

Committee Explanatory Reports:

Report explaining the proposed amendments published at 31 Pa.B. 408 (January 20, 2001).

Report

Proposed Amendments to Pa.Rs.E. 103, 701, 803, and 902, and Revision of the Comment to Pa.R.E. 404

CHANGES CORRESPONDING TO THE RECENT AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE

The Committee is proposing amendments to Rules of Evidence 103 (Rulings on Evidence), 701 (Opinion Testimony by Lay Witness), 803 (Hearsay Exceptions; Availability of Declarant Immaterial) and 902 (Self-Authentication), and the revision of the Comment to Rule 404 (Character Evidence Not Admissible to Prove Conduct; Exceptions; Other Crimes). These changes update the rules in view of the recent changes to the Federal Rules of Evidence, which became effective on December 1, 2000.

I. Introduction

Beginning in May 2000, aware of the proposed changes to the Federal Rules of Evidence, the Committee undertook an extensive review of the proposed Federal rule changes and Pennsylvania's Rules of Evidence. Although the Federal Rules have no direct impact on Pennsylvania's Rules of Evidence, and in many cases Pennsylvania's rules go their own way, the rules usually refer to the Federal rules in the Comments. In view of this, the Committee noted that, at a minimum, some of the Comments to Pennsylvania's rules would need to be updated. As we reviewed the rules, the Committee agreed that some of the proposed changes to the Federal rules merited consideration for inclusion in Pennsylvania's rules, while other changes were inconsistent with Pennsylvania practice. As explained more fully below, the Committee is proposing that:

(1) Rule 103(a) be amended consistent with the changes to F.R.E. 103(a), with an explanatory provision added to the Comment;

(2) F.R.E. 404 not be followed, but an explanation be added to the Rule 404 Comment,

(3) Rule 701 be amended consistent with the changes to F.R.E. 103(a), with an explanatory provision added to the Comment;¹ and

(4) Rules 803(6) and 902 be amended consistent with the changes to F.Rs.E. 803(6) and 902, with an explanatory provision added to the Comments.

II. Discussion

A. Pa.R.E. 103 (Rulings on Evidence)

Federal Rule of Evidence 103 (Rulings On Evidence) has been amended by the addition of the following to paragraph (2):²

¹ The Committee deferred consideration of the amendments to F.Rs.E. 702 and 703 pending the Supreme Court's decision in *Blum v. Merrell Dow*. The Court handed down its decision on December 22, 2000.

² The Federal rule amendments are highlighted by underlining.

(a)(2) Offer of proof. In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked.

Once the court makes a definitive ruling on the record admitting or excluding evidence, either at or before trial, a party need not renew an objection or offer of proof to preserve a claim of error for appeal.

This new language is consistent with Pennsylvania law, see *Bell v. City of Philadelphia*, 491 A.2d 1386 at 1391 (Pa. Super. 1985), and appears to clarify an issue that might not have been entirely clear to the bench and bar.³ In view of these considerations, the Committee agreed that a comparable provision should be added to Rule 103(a). This will avoid the possible confusion the bench and bar might have if the two rules were different in this regard. The Comment would be revised by the addition of a paragraph explaining the new rule provision and cross-referencing *Bell*, supra.

B. Pa.R.E. 404 (Character Evidence Not Admissible to Prove Character; Exceptions; Other Crimes)

Federal Rule 404 (Character Evidence Not Admissible To Prove Conduct; Exceptions; Other Crimes) has been amended by the addition of new language in paragraph (a)(1) and "alleged" before "victim" in paragraph (a)(2), as follows:

(a)(1) Character of accused. Evidence of a pertinent trait of character offered by an accused, or by the prosecution to rebut the same, *or if evidence of a trait of character of the alleged victim of the crime is offered by an accused and admitted under Rule 404 (a)(2), evidence of the same trait of character of the accused offered by prosecution.*

(a)(2) Character of *alleged* victim. Evidence of a pertinent trait of character of the *alleged* victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the *alleged* victim offered by the prosecution in a homicide case to rebut evidence that the *alleged* victim was the first aggressor.

This amendment to F.R.E. 404(a)(1) adds a new concept to the Federal rules that does not presently exist in Pennsylvania law. The rationale for the Federal rule amendment is that when a defendant offers evidence of a character trait of the victim, such as the trait of violence in assault cases, the prosecution should be able to respond by showing evidence of a corresponding trait of the defendant.

The Committee considered proposing the inclusion of this new concept in the Pennsylvania rules, but declined to do so. However, we agreed that the Comment should be revised to explain that because the Federal rule change is not consistent with Pennsylvania law, Rule 404 has not been amended.

Federal Rule 404(a)(2) has been amended by adding the adjective "alleged" to modify "victim." Pa.R.E. 404(a)(2) uses the term "complainant," which was adopted after lengthy consideration. After reviewing the rule history and the Federal rule change, the Committee agreed there is no reason to revert to "victim."

C. Pa.R.E. 701 (Opinion Testimony by Lay Witness)

Federal Rule 701 (Opinion Testimony By Lay Witnesses) has been amended as follows:

³ A similar but more limited idea is expressed in the second paragraph of the Pa.R.E. 103 Comment.

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness, (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

This amendment is intended to prevent parties from offering expert testimony without the need for qualifying the witness as an expert and without the need for establishing that the witness' testimony was based on reliable scientific, technical, or other specialized knowledge. See F.R.E. 702. It also is intended to prevent parties from avoiding discovery rules.

The Committee agreed that this same reasoning makes sense for Pennsylvania. By adding a comparable provision to Pa.R.E. 701, the relationship between Pa.Rs.E. 701 and 702 will be clarified, and, as with the Federal rule, the change will prevent parties from trying to avoid the requirements of Pa.R.E. 702 and the discovery rules, see, e.g., Pa.R.C.P. 4003.5 and Pa.R.Crim.P. 305(B)(1)(e), by offering expert testimony under the guise of lay testimony.

D. Pa.Rs.E. 803 (Hearsay Exceptions; Availability of Declarant Immaterial) and 902 (Self-Authentication)

Federal Rule 803 (Hearsay Exceptions; Availability of Declarant Immaterial) has been amended as follows:

(6) Records of regularly conducted activity. A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, or by certification that complies with Rule 902 (11), Rule 902 (12), or a statute permitting certification, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

In a correlative change, Federal Rule 902 (Self-Authentication) has been amended as follows:

Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

* * * * *

(11) Certified domestic records of regularly conducted activity. The original or a duplicate of a domestic record of regularly conducted activity that would be admissible under Rule 803(6) if accompanied by a written declaration of its custodian or other qualified person, in a manner complying with any Act of Congress or rule prescribed by the Supreme Court pursuant to statutory authority, certifying that the record -

(A) was made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters;

(B) was kept in the course of the regularly conducted activity; and

(C) was made by the regularly conducted activity as a regular practice.

A party intending to offer a record into evidence under this paragraph must provide written notice of that intention to all adverse parties, and must make the record and declaration available for inspection sufficiently in advance of their offer into evidence to provide an adverse party with a fair opportunity to challenge them.

(12) Certified foreign records of regularly conducted activity. In a civil case, the original or a duplicate of a foreign record of regularly conducted activity that would be admissible under Rule 803(6) if accompanied by a written declaration by its custodian or other qualified person certifying that the record -

(A) was made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters;

(B) was kept in the course of the regularly conducted activity; and

(C) was made by the regularly conducted activity as a regular practice.

The declaration must be signed in a manner that, if falsely made, would subject the maker to criminal penalty under the laws of the country where the declaration is signed. A party intending to offer a record into evidence under this paragraph must provide written notice of that intention to all adverse parties, and must make the record and declaration available for inspection sufficiently in advance of their offer into evidence to provide an adverse party with a fair opportunity to challenge them.

These amendments are aimed at eliminating the time and expense involved in presenting foundation witnesses in situations in which there is really no question about the authenticity of the records. This concept is new for records of regularly conducted activity, but it is consistent with the self-authentication provisions of F.R.E. 902(2)—(4) for governmental records and other kinds of documents.

The Committee, in reviewing these changes, noted that, in Pennsylvania law, there are similar provisions provided by statute for authenticating governmental records in 42 Pa.C.S. §§ 5328 and 6103, and medical records in 42 Pa.C.S. §§ 6151-6159. We agreed that the reasons for the Federal rule changes apply equally well in Pennsylvania, and therefore are proposing comparable changes to Pa.Rs.E. 803 and 902.

[Pa.B. Doc. No. 01-62. Filed for public inspection January 19, 2001, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL [231 PA. CODE CH. 200] Damages for Delay

Rule 238. Damages for Delay in an Action for Bodily Injury, Death or Property Damage.

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Addendum to Explanatory Comment

The prime rate as set forth in the first edition of the Wall Street Journal for a particular year is the basis for calculating damages for delay under Pa.R.C.P. 238 as revised November 7, 1988. The prime rate published in the first edition of the *Wall Street Journal* for each of the years specified is as follows:

<i>Date of Publication</i>	<i>Prime Rate Percentage</i>	<i>Date of Publication</i>	<i>Prime Rate Percentage</i>
January 2, 1980	15 to 15 1/2	January 2, 1991	9 1/2 to 10
January 2, 1981	20 1/2 to 21 1/2	January 2, 1992	6 1/2
January 4, 1982	15 3/4	January 4, 1993	6
January 3, 1983	11 to 11 1/2	January 3, 1994	6
January 3, 1984	11	January 3, 1995	8 1/2
January 2, 1985	10 3/4	January 2, 1996	8 1/2
January 2, 1986	9 1/2	January 2, 1997	8 1/4
January 2, 1987	7 1/2	January 2, 1998	8 1/2
January 4, 1988	8 3/4	January 4, 1999	7 3/4
January 3, 1989	10 1/2	January 3, 2000	8 1/2
January 2, 1990	10 1/2	January 2, 2001	9 1/2

By the Civil Procedural Rules Committee

REA BOYLAN THOMAS,
Chair

[Pa.B. Doc. No. 01-63. Filed for public inspection January 19, 2001, 9:00 a.m.]

PART I. GENERAL [231 PA. CODE CH. 200]

Proposed Amendment to Rules Governing Briefs and Preferences on the Trial List; Proposed Recommendation No. 171

The Civil Procedural Rules Committee proposes that the Rules of Civil Procedure governing briefs and preferences on the trial list be amended as set forth herein. 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 2, 2001 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

The Explanatory Comment which appears in connection with the proposed recommendation has been inserted by

the Committee for the convenience of the bench and bar. It will not constitute part of the rules of civil procedure nor will it be officially adopted or promulgated by the Court.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 200. BUSINESS OF COURTS

Rule 210. Form of Briefs (Rescinded).

[If briefs are filed they shall be typewritten, printed or otherwise duplicated and endorsed with the name of the case, the court and number and name and address of the attorney.]

Rule 214. Preferences on Trial Lists.

Preference shall be given in the preparation of trial lists to[]:

(a) Cases in which the Commonwealth is the real party in interest;

(b) Suits against defaulting officers of the Commonwealth or any political subdivision thereof or the sureties of such officers;

(c) **Actions of quo warranto or mandamus involving public officers;**

(d) **Cases in which a new trial has been granted, a judgment of nonsuit removed (excepting a nonsuit entered for failure of appearance) or a venire facias de novo awarded, by either the court of original or appellate jurisdiction;**

(e) **Suits to recover wages due for manual labor;**

(f) **Cases arising under the laws of this Commonwealth to determine the competency of any person alleged to be weak-minded, insane or an habitual drunkard;**

(g) **Such other] such cases as the court upon application and cause shown may designate.**

[Official Note: The Committee does not recommend that any relative preferences be accorded inter se to cases in the various classes entitled to priority under this Rule, other than the chronological order in which they are placed on the trial lists.]

Rule 215. Assigning and Setting Aside Preferences on Trial List (Rescinded).

[No case shall be assigned a preference on any trial list unless the right to preference is brought to the attention of the officer in charge of the list by praecipe, order or otherwise; and any party in interest may, at least ten days before the case is called for trial, make application to set aside such preference as may have been assigned.]

Explanatory Comment

Rule 210

The rescission of Rule 210 is proposed because it no longer serves a useful function. The requirements that briefs be typewritten and contain an endorsement are routine with the bench and bar and prescribed by other rules. Pennsylvania Rule of Appellate Procedure 124(a)(1) requires that papers and documents be typed or printed. Pennsylvania Rules of Civil Procedure 1025 requires an endorsement of every pleading or other legal paper.

Rules 214 and 215

Rule 214 presently lists seven categories of cases that should be accorded priority on a trial list. Six of the seven categories are to be deleted. Paragraph (g) is the catchall provision for the present rule providing for preference upon a trial list for "Such other cases as the court upon cause shown may designate." It will be retained as the basis for the revised rule.

Five of the six categories to be deleted are based upon statutes which have been repealed since the promulgation of the rule in 1938. "Actions of quo warranto or mandamus involving public officers," the sixth category, were accorded priority, in the words of the original note to the rule, "by reason of their importance."

Rule 215 requires that a request for a preference be brought to the attention of the court and specifies a procedure. This procedure is a matter of administration which need not be set forth in the rules of civil procedure.

The requirement to apply for the preference is included in revised Rule 214.

By the Civil Procedural Rules Committee

REA BOYLAN THOMAS,
Chair

[Pa.B. Doc. No. 01-64. Filed for public inspection January 19, 2001, 9:00 a.m.]

PART I. GENERAL

[231 PA. CODE CHS. 200 AND 1000]

Proposed Amendments Governing Entry of Appearance and Civil Cover Sheet; Proposed Recommendation No. 168

The Civil Procedural Rules Committee proposes that the Rules of Civil Procedure governing entry of appearance and civil cover sheet be amended as set forth herein. 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 2, 2001 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

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

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 200. BUSINESS OF COURTS

Rule 205.1. Filing Legal Papers. Mailing. Personal Presentation by Attorney No Necessary.

Any legal paper not requiring the signature of, or action by, a judge prior to filing may be delivered or mailed to the prothonotary, sheriff or other appropriate officer accompanied by the filing fee, if any. Neither the party nor the party's attorney need appear personally and present such paper to the officer. The signature of an attorney on a paper constitutes a certification of authorization to file it. The endorsement of an address **[within the Commonwealth]** where papers may be served shall constitute a sufficient registration of address. The notation on the paper of the attorney's current **[certificate] Supreme Court identification** number issued by the Court Administrator of Pennsylvania shall constitute proof of the right to practice in the **[county] Commonwealth**. A paper sent by mail shall not be deemed filed until received by the appropriate officer.

Official Note: See Rules 1012(a) and 1025 which specify the requirements for an address where papers may be served.

* * * * *

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

(a) The prothonotary shall immediately give written notice of the entry of

* * * * *

(2) any other order, decree or judgment to each party's attorney of record or, if unrepresented, to each party. The notice shall include a copy of the order, decree or judgment.

Official Note: See Rules 1012 and 1025 as to the requirement of an address [**within the Commonwealth**] on an appearance and a pleading.

* * * * *

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

(a) A party may enter a written appearance which shall state an address [**within the Commonwealth**] at which **pleadings and other legal papers** may be served and a telephone number, and may state a telephone facsimile number. The address shall be a street address where papers may be mailed or delivered. Such appearance shall not constitute a waiver of the right to raise any defense including questions of jurisdiction or venue. Written notice of entry of an appearance shall be given forthwith to all parties.

Official Note: Entry of a written appearance is not mandatory.

The inclusion of a telephone number for facsimile transmission constitutes an agreement to accept service of pleadings or other legal papers by that means. See Rule 440(d).

(b)(1) Except as provided in subdivision (b)(2), [**An**] an attorney's appearance for a party may not be withdrawn without leave of court [**unless another attorney has entered or simultaneously enters an appearance for the party and the change of attorneys does not delay any stage of the litigation**]. The attorney shall file a petition to withdraw appearance which shall include an affidavit stating the last known address of the party and the efforts made to notify the party of the petition to withdraw. Upon the court granting leave to withdraw, the attorney shall immediately so notify the party by ordinary mail and include a copy of the order of court.

(2) An attorney's appearance for a party may be withdrawn without leave of court if the change of attorneys does not delay any stage of the litigation and

(i) another attorney has previously entered an appearance for the party, or

(ii) another attorney simultaneously enters an appearance for the party.

(d)(1) The entry of appearance under subdivision (a) shall be substantially in the following form:

Caption

Praeceptum for Entry of Appearance

To the Prothonotary:

Enter my appearance on behalf of _____

(Plaintiff/Defendant/Additional Defendant)

Papers may be served at the address set forth below.

Attorney for Party Named Above and Identification Number

Firm

Address

City, State, Zip Code

Telephone Number

Fax Number for Service of Papers (Optional)

Date: _____

Signature

(d)(2) A praecipe for withdrawal of appearance without leave of court pursuant to subdivision (b)(2)(i) shall be substantially in the following form:

Praecipe for Withdrawal of Appearance (Rule 1012(b)(2)(i))

To the Prothonotary:

Withdraw my appearance on behalf of _____

(Plaintiff/Defendant/Additional Defendant)

_____ has entered his/her appearance for the aforementioned party.

I hereby certify that this change is not intended to, nor will it, delay this proceeding to the best of my knowledge, information and belief.

Date: _____

Signature

(d)(3) The substitution of counsel under subdivision (b)(2)(ii) shall be substantially in the following form:

Caption

Substitution of Counsel Without Leave of Court (Rule 1012(b)(2)(ii))

Praecipe for Entry of Appearance

To the Prothonotary:

Enter my appearance on behalf of _____

(Plaintiff/Defendant/Additional Defendant)

I hereby certify that this change is not intended to, nor will it, delay this proceeding to the best of my knowledge, information and belief.

Papers may be served at the address set forth below.

**Attorney for Party Named Above
 and Identification Number**

Firm

Address

City, State, Zip Code

Telephone Number

**Fax Number for Service of
 Papers (Optional)**

Praecept for Withdrawal of Appearance

To the Prothonotary:

Withdraw my appearance on behalf of _____

 (Plaintiff/Defendant/Additional Defendant)

Date: _____ Signature _____

Rule 1012.1. Cover Sheet.

(a) If a court by local rule prescribes a form of cover sheet to be attached to the first legal paper filed in an action, the court shall file a copy of the form with the Administrative Office of Pennsylvania Courts which shall maintain the form on its website.

Official Note: The forms of cover sheets of those courts requiring them may be found at the AOPC website at www.aopc.org/...

A local rule prescribing a form of cover sheet is not enforceable unless the form of cover sheet is maintained on the website of the AOPC.

(b) If a court by local rule requires that a party attach a cover sheet to the first legal paper filed in an action and a party files the legal paper without a cover sheet attached or with a cover sheet attached which is incomplete or incorrectly completed, the prothonotary shall accept the legal paper for filing and may request the filing party to correct any defect.

Rule 1025. Endorsement.

Every pleading or other legal paper of a party represented by an attorney shall be endorsed with the name of the attorney, and every pleading or other legal paper of a party not represented by an attorney shall be endorsed with the name of the party, together in each case with an address [within the Commonwealth] where pleadings and other legal papers may be served and a telephone number and may state a telephone facsimile number. The address shall be a street address where papers may be mailed or delivered.

* * * * *

Explanatory Comment

The proposed amendments affect three practices under the rules of civil procedure.

I. Address within the Commonwealth

The recommendation proposes to remove the requirement currently contained in several rules of providing an address "within the Commonwealth". An address within

the Commonwealth is currently required by Rule 205.1 governing the filing of legal papers by mail, Rule 1012(a) governing the entry of appearance and Rule 1025 governing the endorsement of pleadings and other legal papers. A note to Rule 236(a)(2) contains a cross-reference to this requirement in Rules 1012 and 1025.

The requirement as set forth in the rules of civil procedure dates from the promulgation of Rules 1012 and 1025 in 1946. In view of modern transportation and communication, the requirement has become obsolete.

Under the proposed amendments, the address required is "a street address where papers may be mailed or delivered". The rule is mandatory that the address contain a telephone number but optional with respect to a facsimile telephone number.

II. Entry of Appearance

The recommendation proposes to add to Rule 1012 new paragraph (b)(1) which would require an attorney seeking court approval to withdraw from the representation of a party to include in the petition for withdrawal the last known address of the party and the efforts made to inform the party of the filing of the petition. This address would also be used by the court for further communication with the party if the petition is granted. The proposed amendment also imposes an obligation on the withdrawing counsel to provide the party with a copy of the order if it is granted.

The recommendation also proposes to add to Rule 1012 forms for the entry or withdrawal of appearance. New subdivision (d)(1) contains the form of an entry of appearance under Rule 1012(a). Subdivision (d)(2) contains the form for a praecipe for withdrawal of appearance under Rule 1012(b)(2)(i) when another attorney has already entered his or her appearance and thus approval by the court is not necessary. Subdivision (d)(3) provides the form to be completed by both the entering and withdrawing attorneys for the automatic substitution of counsel without leave of court under Rule 1012(b)(2)(ii).

III. First Filing Cover Sheet

In Recommendation No. 155 issued in the summer of 1999, the Civil Procedural Rules Committee proposed a requirement of a statewide cover sheet to be attached to the first paper filed in an action. The recommendation also included a form of cover sheet to be used statewide.

Presently, however, the use of a coversheet extends only to a minority of judicial districts and those cover sheets are not uniform in the information that they require. Also, there is presently no statewide automated information system with respect to civil cases in the courts of common pleas which requires uniform information. Consequently, the Committee believes that it is not feasible or desirable to impose a cover sheet statewide at this time.

However, in the interest of promoting the statewide practice of law, the recommendation proposes the adoption of new Rule 1012.1 which is intended to guarantee accessibility to the required forms of those counties requiring a cover sheet. The new rule contains two main principles. First, subdivision (a) provides that a local court requiring a cover sheet would need to file it with the Administrative Office of the Pennsylvania Courts which would maintain the form on its website. The forms of the cover sheets of the various judicial districts requiring them would be readily accessible for computer downloading from the AOPC website.

Second, subdivision (b) requires the prothonotary to accept for filing documents which do not have a cover

sheet attached or which have a defective cover sheet attached. The prothonotary may request that the defect be remedied but, in the meantime, the paper will be filed and any time requirements will be met.

By the Civil Procedural Rules Committee

REA BOYLAN THOMAS,
Chair

[Pa.B. Doc. No. 01-65. Filed for public inspection January 19, 2001, 9:00 a.m.]

PART I. GENERAL
[231 PA. CODE CH. 200]

Proposed Amendment to Rule 238 Governing Damages for Delay; Proposed Recommendation No. 166

The Civil Procedural Rules Committee proposes that Rule of Civil Procedure 238 governing damages for delay be amended as set forth herein. 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 2, 2001 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

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

Annex A

**TITLE 231. RULES OF CIVIL PROCEDURE
PART I. GENERAL**

CHAPTER 200. BUSINESS OF COURTS

Rule 238. Damages for Delay in Actions for Bodily Injury, Death or Property Damage.

(b) The period of time for which damages for delay shall be calculated under subdivision (a)(2) shall exclude the period of time, if any,

(1) after which the defendant has made a written offer of

* * * * *

(ii) a structured settlement **including an annuity** underwritten by a financially responsible entity, **which offer includes the actual cost of the annuity and the identity of the underwriter, plus any cash payment to the plaintiff,**

and **[continued that offer in effect]** which offer shall contain an express clause continuing the offer in effect for at least ninety days or until commencement of trial, which ever first occurs, which offer was not

accepted and the plaintiff did not recover by award, verdict or decision, exclusive of damages for delay, more than 125 percent of either the specified sum or the actual cost of the **[structured settlement] annuity** plus any cash payment to the plaintiff; or

Official Note: The actual terms of a structured settlement may vary and have to be recalculated at the time of acceptance due to market fluctuation over the ninety day period during which the offer must remain open. For this reason, to permit the plaintiff to make an informed decision regarding settlement, the actual cost of the structured settlement must be included in the offer. However, the offer is sufficient as long as the offer of the cost of the annuity remains open for ninety days.

(2) during which the plaintiff caused delay of the trial.

* * * * *

Explanatory Comment

The proposed amendment to Rule 238(b)(1) governing damages for delay incorporates into the rule certain requirements imposed by case law to bring an offer of settlement within the exclusion of that rule from the calculation of delay damages. *Sonlin v. Abington Memorial Hospital*, 748 A.2d 213 (2000), imposes three requirements, one of which applies to offers of both cash settlements and structured settlements and two of which apply to offers of structured settlements only.

A written offer of settlement, whether cash or structured, must, in the words of the *Sonlin* case, contain "a clause expressly validating the offer for 90 days . . ." This requirement carries out the intention of the rule which presently requires that an offer be in writing and that it be continued "in effect for at least ninety days or until commencement of trial, whichever first occurs . . ." The recommendation proposes to amend subdivision (b) to include the requirement of "an express clause" so providing.

If the offer is one of a structured settlement including an annuity, it must also state the actual cost of the annuity and the identity of the underwriter. The offer must be sufficient to enable, again in the words of *Sonlin*, a "knowledgeable appraisal of the offer's legitimacy" and these two elements are essential to that inquiry. The recommendation proposes to amend subdivision (b)(1)(ii) to include these two elements of the offer.

A note added to subdivision (b)(1) recognizes that most entities underwriting structured settlement annuity cannot commit to the exact payout terms of a structured settlement for the entire ninety-day period required under the rule because the payout is often dependent on the financial market which may fluctuate over the period of the offer. Slight variations due to market forces should not invalidate the offer for purposes of this rule and thus repeated modifications of the offer are not required. It is imperative, therefore, that the plaintiff be aware of the actual cost to be paid for the structured settlement annuity.

By the Civil Procedural Rules Committee

REA BOYLAN THOMAS,
Chair

[Pa.B. Doc. No. 01-66. Filed for public inspection January 19, 2001, 9:00 a.m.]

PART I. GENERAL
[231 PA. CODE CH. 200]

Proposed Amendment to Rule 240 Governing Proceedings In Forma Pauperis; Proposed Recommendation No. 169

The Civil Procedural Rules Committee proposes that Rule of Civil Procedure 240 governing proceedings in forma pauperis be amended as set forth herein. 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 2, 2001 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

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

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 200. BUSINESS OF COURTS

Rule 240. In Forma Pauperis.

* * * * *

(d)(1) If the party is represented by an attorney, the prothonotary shall allow the party to proceed in forma pauperis upon the filing of a praecipe which

[(i)] contains a certification by the attorney that he or she is providing free legal service to the party and believes the party is unable to pay the costs [, and

(ii) is accompanied by the affidavit required by subdivision (c)].

(2) The praecipe shall be substantially in the form prescribed by subdivision (i).

* * * * *

(i) The praecipe required by subdivision (d) shall be substantially in the following form:

(Caption)

PRAECIPE TO PROCEED IN FORMA PAUPERIS

To the Prothonotary:

Kindly allow _____, (Plaintiff) (Defendant), to proceed in forma pauperis.

I, _____, attorney for the party proceeding in forma pauperis, certify that I believe the party is unable to pay the costs and that I am providing free legal service to the party. [**The party's affidavit show-**

ing inability to pay the costs of litigation is attached hereto.]

Attorney for

Explanatory Comment

Present Rule 240(d) provides for a party represented by an attorney to proceed in forma pauperis upon the filing of a praecipe. The rule prescribes two requirements for the praecipe. First, the praecipe must contain "a certification by the attorney that he or she is providing free legal service to the party and believes the party is unable to pay the costs". Second, the praecipe must be "accompanied by the affidavit required by subdivision (c)" which is filed in support of a petition for leave to proceed in forma pauperis and which demonstrates the party's inability to pay the costs of litigation.

Recommendation No. 169 proposes that subdivision (d) be amended by deleting the requirement that the affidavit accompany the praecipe. As amended, the rule would provide for the prothonotary to allow a party to proceed in forma pauperis solely upon a praecipe containing the certification of the party's attorney. A conforming amendment is proposed to the form of the praecipe in subdivision (i) which deletes the reference to the accompanying affidavit. These proposed amendments would bring the rule into conformity with Rule 552(d) of the Pennsylvania Rules of Appellate Procedure and Rule 206 E. (iii) of the Pennsylvania Rules of Civil Procedure Governing Actions and Proceedings before District Justices.

By the Civil Procedural Rules Committee

REA BOYLAN THOMAS,
Chair

[Pa.B. Doc. No. 01-67. Filed for public inspection January 19, 2001, 9:00 a.m.]

PART I. GENERAL

[231 PA. CODE CH. 1000]

Proposed Amendment to Rule 1035.3 Governing Motions for Summary Judgment; Proposed Recommendation No. 167

The Civil Procedural Rules Committee proposes that Rule of Civil Procedure 1035.3 governing the response to a motion for summary judgment be amended as set forth herein. 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 2, 2001 to:

Harold K. Don, Jr., Esquire
Counsel
Civil Procedural Rules Committee
5035 Ritter Road, Suite 700
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civil.rules@supreme.court.state.pa.us

The Explanatory Comment which appears in connection with the proposed recommendation has been inserted by the Committee for the convenience of the bench and bar.

It will not constitute part of the rules of civil procedure nor will it be officially adopted or promulgated by the Court.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1000. ACTIONS AT LAW

Rule 1035.3. Response. Judgment For Failure to Respond.

* * * * *

(e) Nothing in this rule is intended to prohibit a court, at any time prior to trial, from ruling upon a motion for summary judgment without written responses or briefs if no party is prejudiced. A party is prejudiced if not given a full and fair opportunity to argue the motion.

Official Note: The decision to entertain a motion for summary judgment on the eve of trial is entirely within the discretion of the court.

Explanatory Comment

The proposed amendment to Rule 1035.3 addresses the confusion regarding whether a motion for summary judgment may be granted immediately prior to trial and, if so, whether a formal written response to the motion is required.

The addition of new subdivision (e) to Rule 1035.3 makes clear that a court may decide a motion for summary judgment at any time prior to the start of trial and need not require written responses or briefs so long as the parties suffer no prejudice thereby. This amendment reflects the current practice in many courts where motions for summary judgment are often heard and decided by the court immediately prior to start of trial. Frequently in these cases, discovery is closed and the issues raised by the motion have become clear. The court may even have previously ruled upon one or more issues raised by the motion after having had the benefit of a response and briefs. In such circumstances, as long as the opposing party is given "full and fair opportunity to argue the motion," there is no need to require either an extensive time period for response or the filing of written responses or briefs.

However, as the note makes clear, the decision to entertain a motion for summary judgment which is raised on the eve of trial remains entirely within the discretion of the court.

By the Civil Procedural Rules Committee

REA BOYLAN THOMAS,
Chair

[Pa.B. Doc. No. 01-68. Filed for public inspection January 19, 2001, 9:00 a.m.]

PART I. GENERAL

[231 PA. CODE CH. 3000]

Proposed Amendment to Rules Governing Deficiency Judgments; Proposed Recommendation No. 170

The Civil Procedural Rules Committee proposes that the Rules of Civil Procedure governing deficiency judg-

ments be amended as set forth herein. 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 2, 2001 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

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

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 3000. JUDGMENTS

Subchapter E. ENFORCEMENT OF JUDGMENTS IN SPECIAL ACTIONS

DEFICIENCY JUDGMENTS

GENERAL PROVISIONS

Rule 3277. Definitions.

As used in this chapter,

["judgment" means any judgment which is subject to the provisions of Section 8103 of the Judicial Code and includes a judgment de terris, a judgment in rem and a judgment in personam.

Official Note: The inclusion of judgments de terris, in rem, and in personam is intended to implement Section 8103(a) of the Deficiency Judgment Law which provides that the "petition shall be filed as a supplementary proceeding in the matter in which the judgment was entered." This changes the practice under prior case law which did not permit the filing of the proceeding supplementary to a matter in which the judgment obtained was not in personam.

The bringing of a deficiency judgment proceeding supplementary to an action in rem or de terris such as mortgage foreclosure does not change the character of the action as in rem or de terris. See Rule 3286.

"judgment creditor" means the holder of a judgment as defined by this rule;]

(1) "prior lien amounts" means the amounts of any prior liens, costs, taxes and municipal claims not discharged by the sale, and the amounts of any such items paid at distribution on the sale[.];

(2) "special allocations" means the special allocations required by Section 8301(f) of the Judicial Code;

Official note: Section 8301(f) of the Judicial Code provides for certain special allocations when judg-

ment has been entered with respect to a partial recourse obligation or an obligation of which only a portion is guaranteed.

(3) the following words shall have the meanings set forth in Section 8103(g) of the Judicial Code: "judgment", "judgment creditor", "nonconsumer judgment creditor", and "partial recourse obligation".

Official Note: Section 8103(g) of the Judicial Code contains several definitions relating to deficiency judgments. The words set forth in paragraph (1) are common to both the rules and the Code.

"Judgment" is defined by Section 8103(g) as "[t]he judgment which was enforced by the execution proceedings referred to in subsection (a), whether that judgment is a judgment in personam such as a judgment requiring the payment of money or a judgment de terris or in rem such as a judgment entered in an action of mortgage foreclosure or a judgment entered in an action or proceeding upon a mechanic's lien, a municipal claim, a tax lien or a charge on land."

"Judgment creditor" is defined by Section 8103(g) as "[t]he holder of the judgment which was enforced by the execution proceedings."

The terms "nonconsumer judgment creditor" and "partial recourse obligation" are found both in Rule 3282(a)(9) and in subsection (f) of Section 8103 of the Code relating to "Certain special allocations."

PROCEEDINGS UNDER SECTION 8103(A) TO FIX FAIR MARKET VALUE OF REAL PROPERTY SOLD
Rule 3282. Petition. Averments. Notice to Defend.

(a) The petition shall set forth:

* * * * *

(5) the date [that] the property was [sold by the sheriff] struck down to the successful bidder and the date [that] the sheriff's deed was [executed and acknowledged,] delivered,

* * * * *

(8) a description of all prior lien amounts if the petitioner desires credit for such amounts, [and]

Official Note: For the definition of prior lien amounts, see Rule 3277.

(9) if the petition requests a special allocation, a statement that the judgment creditor is a nonconsumer judgment creditor;

(10) any special allocation required by Section 8103(f) of the Judicial Code, and

(11) a request that the court fix the fair market value of the real property at the value set forth in the petition and that the court determine any prior lien amounts and any special allocation as set forth in the petition.

* * * * *

Rule 3284. Order Upon Default or Admission.

The court shall, without further notice or hearing, enter an order determining the fair market value of the real property to be the value alleged in the petition [and], determining the prior lien amounts to be in the amounts

alleged in the petition and making any special allocation requested by the petition if

* * * * *

(2) an answer is filed which does not deny the allegations in the petition as to the fair market value [or]; the prior lien amounts or any special allocation.

Rule 3285. Trial

If an answer is filed which denies the allegations in the petition as to the fair market value [or], the prior lien amounts or the entitlement of the petitioner to any special allocation, the trial shall be limited to such of those [two] issues as are raised by the answer, which shall be heard by a judge sitting without a jury in accordance with Rule 1038.

* * * * *

Rule 3286. Order. Effect. (Rescinded).

[(a) The order of the court, whether upon default, admission or after trial, determining the fair market value of the real property and of the prior lien amounts shall release the respondents named and served to the extent of the fair market value so determined less the prior lien amounts.

Official Note: Section 8103(c)(2) of the Judicial Code provides for a decree to be entered "directing the judgment creditor to file release of the debtors, obligors, guarantors or any other persons directly or indirectly liable for the debts, to the extent of the fair value so fixed."

(b) No order entered in a proceeding pursuant to these rules shall determine or be deemed to have determined whether any respondent is personally liable to the petitioner.]

Explanatory Comment

The proposed amendments are prompted by the passage of Act No. 144 of 1998 which amended provisions of the Judicial Code relating to the Statute of Limitations, 42 Pa.C.S. § 5122(b)(2), and the Deficiency Judgment Act, 42 Pa.C.S. § 8103.

Statute of Limitations

Section 5122(b)(2) of the Judicial Code provides that a petition for the establishment of a deficiency judgment must be commenced within six-months. Act No. 144 of 1998 revised the language specifying the date from which the six month period is calculated. Prior to amendment, the section used the language that the period commenced "following sale of the collateral of the debtor under the provisions of section 8103 (relating to deficiency judgments)." Act No. 144 deleted the words "sale of the collateral of the debtor under" and revised the provision to read:

(b) *Commencement of action required.*—The following actions and proceedings must be commenced within six months

(2) A petition for the establishment of a deficiency judgment following execution and delivery of the sheriff's deed for the property sold in connection with the execution proceedings referenced in the provisions of section 8103 (relating to deficiency judgments).

Rule 3282(a)(5) presently requires the petition to fix the fair market value under the Code to set forth "the date that the property was sold by the sheriff and the date that the sheriff's deed was executed and acknowledged". In light of the revision to the Judicial Code, the rule is to be revised as follows:

(5) the date the property was struck down to the successful bidder and the date the sheriff's deed was delivered,

Deficiency Judgment Act

Definitions

Act No. 144 of 1998 amended Section 8201 of the Judicial Code by adding new subsection (g) providing definitions. New subsection (g) includes definitions of the terms "judgment" and "judgment creditor" which are substantially identical to the definitions of those terms presently found in Pa.R.C.P. 3277. It is proposed that the definitions of those terms in Rule 3277 be deleted and a cross-reference to the definitions in the Code be set forth in a note to the rule.

At the same time, Act No. 144 introduced the concept of "special allocations" into the Deficiency Judgment Act. To alert the bench and bar to this concept, a definition has been added to Rule 3277:

(2) "special allocations" means the special allocations required by Section 8301(f) of the Judicial Code.

The definition of the term "prior lien amounts" presently found in the rule remains unchanged.

Special Allocations

Act No. 144 also amended Section 8103 by adding new subsection (f) entitled "Certain special allocations" which is specific in its application. The subsection applies only if the judgment creditor is a nonconsumer judgment creditor. Further, it applies to two particular types of obligations: a partial recourse obligation and an obligation of which only a portion is guaranteed.

Rule 3282(a) will be revised to accommodate the new provisions of Section 8103(f). The text of paragraph (9) will be transferred to new paragraph (11) with the addition of a reference to "any special allocation." New text will be added to paragraph (9) and new paragraph (10) will be added to provide that, if a special allocation is requested, the petition contain averments that the judgment creditor is a nonconsumer judgment creditor and that a special allocation is required by Section 8103(f) of the Code.

Rule 3284 governing the order to be entered upon default or admission and Rule 3285 governing the trial if an answer denies the allegations of the petition are also amended to accommodate the new Code provision requiring "certain special allocations".

Order and Its Effect

The recommendation proposes the rescission of Rule 3286 governing the order of the court and its effect. Subdivision (a) relating to the effect of the order determining the fair market value of the real property was based upon language in Section 8103(c)(2) of the Deficiency Judgment Act which has been deleted by Act No. 144. Subdivision (b) relating to the order as affecting

personal liability of the respondent is no longer necessary in view of the Act as amended.

By the Civil Procedural Rules Committee

REA BOYLAN THOMAS,
Chair

[Pa.B. Doc. No. 01-69. Filed for public inspection January 19, 2001, 9:00 a.m.]

Title 25—LOCAL COURT RULES

CARBON COUNTY

Amendment of Orphans' Court Rules; No. 01-9001

Administrative Order 5-2001

And Now, this 2nd day of January, 2001, in order to better utilize judicial resources and address problematic issues which have arisen concerning the proper administration of Orphans' Court matters, it is hereby

Ordered, Adjudged, and Decreed follows:

1. The use of backers is discontinued.
2. Parties shall submit a case initiation cover sheet and a petition/pleading cover sheet together with each pleading filed in the form as follows and marked Appendix A, B, & C or in such form as may be adopted by the Orphans' Court Division from time to time.
3. Releases filed in connection with settlement of estates shall be notarized.
4. This Administrative Order shall become effective on March 1, 2001.

The Carbon County District Court Administrator is *Ordered* and *Directed* to do the following:

1. File seven (7) certified copies of this Administrative Order with the Administrative Office of Pennsylvania Courts.
2. File two (2) certified copies and one (1) diskette with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
3. File one (1) certified copy with the Orphans' Court Procedural Rules Committee.
4. Forward one (1) copy for publication in the Carbon County Law Journal.
5. Forward one (1) copy to the Carbon County Law Library.
6. Keep continuously available for public inspection copies of this Order in the Clerk of Orphans' Court Office.

By the Court

JOHN P. LAVELLE,
President Judge

Court of Common Pleas of
Carbon County
Orphans' Court Division
Case Initiation Cover Sheet

For Clerk of Orphans' Court Use Only (Orphans' Court Number)

NAME OF ESTATE			
NAME OF FILING PARTY		ADDRESS	
FILING PARTY'S RELATIONSHIP TO ESTATE			
TYPE OF ESTATE (SEE INSTRUCTIONS)			
DOCUMENT FILED (SEE INSTRUCTIONS)			
RELATED CASES			
RELIEF REQUESTED			
TOTAL NUMBER OF INTERESTED PARTIES		NUMBER OF INTERESTED PARTIES FORM(S) ATTACHED	
<p>TO THE CLERK OF ORPHANS' COURT:</p> <p>Kindly enter my appearance on behalf of the _____ estate _____ interested party _____</p> <p>Papers may be served at the addresses set forth below.</p>			
NAME OF FILING ATTORNEY OR PARTY		ADDRESS (SEE INSTRUCTIONS)	
PHONE NUMBER	FAX NUMBER		
SUPREME COURT IDENTIFICATION NO.		E-MAIL ADDRESS	
SIGNATURE OF FILING ATTORNEY OR PARTY		DATE	
INFORMATION FOR USE BY THE CLERK OF ORPHANS' COURT—NOT TO BE RELEASED			
DATE OF BIRTH	DATE OF DEATH	SOCIAL SECURITY NO.	REGISTER OF WILLS NO.

APPENDIX "A"

Instructions for Completing Case Initiation Cover Sheet

Rules of Court require that a Case Initiation Cover Sheet be attached to any document commencing an action. The information requested is necessary to allow the Court to properly monitor, control, and dispose cases filed. A copy of the Case Initiation Cover Sheet must be attached to service copies of the document commencing the action. The attorney or non-represented party filing a case shall complete the form as follows:

A. Parties.

- i. Name of Estate. Enter the full name of the Estate. The Type of Estate will be identified hereunder.
- ii. Name and Address of Filing Party. Enter the name of the filing party as well as his/her address at the time of filing of the action. List additional parties on the Interested Parties Form.
- iii. Set forth the relationship of the filing party to the Estate. (i.e. guardian, administrator, executor, debtor, etc.)

B. Type of Estate. Insert the Estate Type by consulting the list set forth hereunder:

Minor	Decedent's Estate
Alleged Incapacitated Person	Testamentary Trust
Incapacitated Person	Inter Vivos Trust
Other:	Cemetery Trust

C. Document Filed. Indicate the type of document filed to commence the action by consulting the list set forth hereunder:

Petition for Appointment of Guardian of Minor	Account
Petition for Appointment of Guardian of Alleged Incapacitated Person	Inheritance Tax Matter
Petition for Appointment of Guardian Ad Litem	Report of _____
Petition for Allowance	Marriage License
Petition for Sale of Real Estate	Schedule of Distribution
Other:	Petition for _____

D. Related Pending Cases. All previously filed related cases must be identified.

E. Relief Requested. Set forth a brief statement of the nature of the request.

F. Filing Attorney or Party

The name of the filing attorney must be inserted herein together with other required information. In the event the filing party is not represented by an attorney, the name of the filing party, address, the phone number, and signature is required.

The Filing Party shall complete the Statistical Information Block at the bottom of the form only on the ORIGINAL Case Initiation Cover Sheet filed with the Clerk, and not the service copies. The information will only be used by the Clerk.

The Clerk shall not release this information to the general public.

PLEASE NOTE

APPENDIX "A"

CARBON COUNTY COURT OF COMMON PLEAS
ORPHANS' COURT DIVISION
PETITION/PLEADING COVER SHEET

FOR COURT USE ONLY
ASSIGNED TO JUDGE: _____
DATE: _____
Do not telephone Judge for status.
Do not send Judge courtesy copies.

Estate of: _____
Type of Estate: _____
O.C. No. _____ of _____
Name of Filing Party: _____

(Check one) ___ Moving Party ___ Responding Party

Type of Petition/Pleading or Document: _____
C. Has another petition been decided in this case? ___ Yes ___ No
Is another petition pending? ___ Yes ___ No
If yes, identify the judge, and/or the status of the petition(s).
A. Is Notice Required: ___ No. ___ No. All required waivers are attached. ___ Yes. Copy of notice and certification attached.
Date of Notice: _____
Response Date: _____
B. If Citation is Requested:
1. Was Citation Against Instant Respondent previously issued? ___ Yes ___ No
2. If yes, was it served? ___ Yes. No additional citation is necessary. Notice is required. ___ No. Explain why it was not served.
D. OTHER PARTIES
(Name, address and telephone number of all counsel of record and unrepresented parties. If needed, use separate sheet.)
Attach a stamped addressed envelope for each attorney of Record and unrepresented party.

By filing this document and signing below, the moving or responding party certifies that no notice was required, or that this petition/response, along with all documents filed, were served upon all counsel and unrepresented parties, in accordance with Carbon _____. Further, the moving or responding party verifies (subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities) that the answers made herein are true and correct and understands that sanctions may also be imposed for inaccurate or incomplete answers.

(Attorney Signature/Unrepresented Party) (Print Name) (Attorney I.D. No.)

This Petition or Pleading will be forwarded to the Court after the Response Date, or immediately if no notice or response is required.

APPENDIX "B"

Court of Common Pleas of
Carbon County
Orphans' Court Division
Case Initiation Cover Sheet
Interested Parties

For Clerk of Orphans' Court Use Only (Docket Number)

Estate of:	

Name	
_____	O.C. No. _____ of _____
Type of Estate	
NAME OF INTERESTED PARTY	NAME OF INTERESTED PARTY
RELATIONSHIP TO ESTATE:	RELATIONSHIP TO ESTATE:
ADDRESS:	ADDRESS:
NAME OF INTERESTED PARTY	NAME OF INTERESTED PARTY
RELATIONSHIP TO ESTATE:	RELATIONSHIP TO ESTATE:
ADDRESS:	ADDRESS:
NAME OF INTERESTED PARTY	NAME OF INTERESTED PARTY
RELATIONSHIP TO ESTATE:	RELATIONSHIP TO ESTATE:
ADDRESS:	ADDRESS:
NAME OF INTERESTED PARTY	NAME OF INTERESTED PARTY
RELATIONSHIP TO ESTATE:	RELATIONSHIP TO ESTATE:
ADDRESS:	ADDRESS:
NAME OF INTERESTED PARTY	NAME OF INTERESTED PARTY
RELATIONSHIP TO ESTATE:	RELATIONSHIP TO ESTATE:
ADDRESS:	ADDRESS:
NAME OF INTERESTED PARTY	NAME OF INTERESTED PARTY
RELATIONSHIP TO ESTATE:	RELATIONSHIP TO ESTATE:
ADDRESS:	ADDRESS:

Prepared By: _____ Signature: _____

Address: _____ Date: _____

APPENDIX "C"

[Pa.B. Doc. No. 01-70. Filed for public inspection January 19, 2001, 9:00 a.m.]

YORK COUNTY

Fee Bill for the Office of the Clerk of the Orphans' Court; No. 67-01-0007

Administrative Order

And Now, this 26th day of December, 2000, pursuant to the provisions of 42 P. S. § 21032.1, the fee bill of the Clerk of the Orphans' Court of York County, Pennsylvania, is amended to add an automation fee as indicated on the proposed fee bill following the within Petition. The automation fee imposed by the Clerk of the Orphans' Court of York County, Pennsylvania, shall be used solely to maintain the existing computer system in the Office of the Clerk of the Orphans' Court of York County, Pennsylvania. Any improvements to the system, more particularly programming and improved equipment, shall be designed to be incorporated into the Integrated County-wide Justice Computerization Project. The fee bill shall be effective the 1st day of March, 2001, upon due advertisement as required by the Administrative Rules of Court.

It Is Further Ordered that in accordance with Pa.R.C.P. 239, the District Court Administrator shall:

(a) File 7 certified copies hereof with the Administrative Office of Pennsylvania Courts;

(b) Distribute 2 certified copies hereof to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*;

(c) Cause a copy hereof to be published in the *York Legal Record* once a week for 2 successive weeks at the expense of the County of York; and

(d) Supervise the distribution thereof to all Judges and all members of the Bar of this Court.

By the Court

JOHN C. UHLER,
President Judge

FEE BILL

ACCOUNTS

For the filing, advertising and adjudication of accounts of guardians and trustees	
Total debits not over \$2,000	\$75.00
Over \$2,000 but not over \$5,000	80.00
Over \$5,000 but not over \$10,000	85.00
Over \$10,000 but not over \$25,000	110.00
Over \$25,000 but not over \$50,000	135.00
Over \$50,000 but not over \$100,000	165.00
Each additional \$100,000 or fraction thereof, and additional	40.00
ADOPTION	
Petition, Certificate and Report of Intermediary	30.00 **
Voluntary or Involuntary Termination, Confirm Consent	10.00 **
Costs of Investigation to be determined by the Court under the circumstance in each case	
Pennsylvania Judicial Computer Project Fee	5.00
Report of intent	10.00
Act 34 Fund	75.00
Certificate of Adoption	5.00
AFFIDAVIT	2.00
ANSWER	10.00
APPEAL to Appellate Court filing fee	35.00

AUTOMATION FEE	
Clerk of Orphans' Court	5.00
SUPERIOR COURT/SUPREME COURT	55.00
BIRTH/DEATH RECORD	
Certificate from original	4.00
Delayed registration	5.00
CERTIFICATION*	5.00
CERTIFICATION* under Act of Congress	10.00
*Plus \$1.00 per page if copy is not furnished	
Certificate of Authority	2.00
CITATION	
Petition and issuing, one respondent	25.00
Each additional respondent	5.00
File a claim	10.00
CLAIM	10.00
Satisfaction or withdrawal	5.00
COPY of any instrument, per page of copy (certification extra)	1.00
DISCLAIMER	10.00
ELECTION under or against Will	10.00
EXCEPTIONS/OBJECTIONS	10.00
FAMILY EXEMPTION	
Personalty	15.00
Realty (one purpart)	20.00
Each additional purpart	3.00
Advertising	50.00
INCAPACITATED ESTATES	
Petition, citation and appointment of guardian	25.00 ***
Entry of security	10.00
Inventory	10.00
Order of Allowance	10.00
Petition for Sale	25.00
JOINER/PRAECIPE	5.00
MINOR'S ESTATE	
Petition for appointment of guardian per child	\$25.00 ***
Entry of Security	10.00
Inventory	10.00
Petition for Order of Allowance	10.00
Report of guardian ad Item	5.00
MARRIAGE	
WAIVER (Military-Free)	10.00
License & Affidavits (including tax & Automation fee)	40.00
Consent of parents	2.00
Special proceeding on Court Order	10.00
Certified copy of license and return of marriage	5.00
Certified copy of application	5.00
PA JUDICIAL COMPUTER PROJECT FEE	5.00
PETITION (MISCELLANEOUS)	25.00 ***
POWER OF ATTORNEY	15.00
PRESUMED DECEDENT	
Petition and final decree	20.00
REAL ESTATE OF DECEDENTS SALE OR MORTGAGE	
Execution of deed by Clerk	10.00
Approval of security and the entry thereof ..	10.00
Excuse from security	10.00
Leave to bid at public sale	10.00
Decree of confirmation of title	10.00
RELEASE, first page	5.00
Each additional page	1.00
SHORT CERTIFICATE	5.00
SMALL ESTATE (DECEDENTS or MINORS) ..	25.00 ***
STIPULATION	10.00
SUBPOENA	5.00

TRUSTEE	
Petition for appointment.....	25.00 **
Entry of security	10.00
Report of Trustee and litem.....	10.00
Resignation.....	10.00

NOTE: In cases not herein specifically provided for, the Clerk of Orphans' Court shall make the same charge as that imposed for services of a substantially similar nature. All orders heretofore establishing feebill for the Clerk of Orphans' Court of York County shall be revoked and superseded as of the effective date hereof.

**Pennsylvania Judicial Computer Project Fee
 ***Clerk of Orphans' Court Automation Fee

[Pa.B. Doc. No. 01-71. Filed for public inspection January 19, 2001, 9:00 a.m.]

YORK COUNTY

Fee Bill for the Office of the Register of Wills; No. 67-01-0007

Administrative Order

And Now, this 26th day of December, 2000, pursuant to the provisions of 42 P.S. § 21022.1, the fee bill of the Register of Wills of York County, Pennsylvania, is amended to add an automation fee as indicated on the proposed fee bill following the within Petition. The automation fee imposed by the Register of Wills of York County, Pennsylvania, shall be used solely to maintain the existing computer system in the Office of the Register of Wills of York County, Pennsylvania. Any improvements to the system, more particularly programming and improved equipment, shall be designed to be incorporated into the Integrated County-wide Justice Computerization Project. The fee bill shall be effective the 1st day of March, 2001, upon due advertisement as required by the Administrative Rules of Court.

It Is Further Ordered that in accordance with Pa.R.C.P. 239, the District Court Administrator shall:

- (a) File 7 certified copies hereof with the Administrative Office of Pennsylvania Courts;
- (b) Distribute 2 certified copies hereof to the Legislative Reference Bureau for Publication in the *Pennsylvania Bulletin*.
- (c) Cause a copy hereof to be published in the *York Legal Record* once a week for 2 successive weeks at the expense of the County of York; and
- (d) Supervise the distribution thereof to all Judges and all members of the Bar of this Court.

By the Court

JOHN C. UHLER,
President Judge

FEE BILL

ACCOUNTS

For the filing, advertising and adjudication of the accounts of personal representatives

Total debits not over \$2,000.....	\$75.00
Over \$2,000 but not over \$5,000	80.00
Over \$5,000 but not over \$10,000	85.00
Over \$10,000 but not over \$25,000	110.00

Over \$25,000 but not over \$50,000	135.00
Over \$50,000 but not over \$100,000	165.00
Each additional \$100,000 or fraction thereof, an additional	40.00
LETTERS OF ADMINISTRATION and LETTERS TESTAMENTARY	
Total Assets not over \$2,000	\$10.00**
Over \$2,000 but not over \$5,000	30.00**
Over \$5,000 but not over \$10,000	40.00**
Over \$10,000 but not over \$25,000	60.00**
Over \$25,000 but not over \$50,000	75.00**
Over \$50,000 but not over \$100,000	100.00**
Each additional \$100,000 or fraction thereof, an additional	40.00
Pennsylvania Judicial Computer Project Fee ...	5.00
Renunciation per page	5.00
Waiver Fiduciary Bond	5.00

NOTE: Letters d.b.n. or d.b.n.c.t.a. minimum fee will be charged.

NOTE: Where inventory, tax return or account is of greater value than original estimated value for any letters the right is reserved to make an additional charge based upon such greater value.

PROBATE OF WILLS AND CODICILS

Probate and granting letters testamentary of administration c.t.a.—see schedule for letters above.

Probate without letters same as under each classification above less \$2.00

Probate of each codicil..... 10.00

AUTOMATION FEE

Register of Wills

BOND filing and entering

CAVEAT filing including bond

NO PROBATES ACCEPTED WITHOUT DEATH CERTIFICATE

CERTIFICATION*..... 5.00

CERTIFICATION* under Act of Congress

*Plus \$1.00 per page if copy is not furnished

CERTIFYING RECORD to Orphans' Court upon appeal

CITATION

Petition and issuing, one respondent

Each Additional respondent.....

COMMISSION to taken testimony

COPY or FAX of any filed instrument per page of copy (certification extra).....

EXECUTION OF COMMISSION from other Register of Pennsylvania or foreign jurisdiction.....

FOREIGN JURISDICTION'S CERTIFIED OR EXEMPLIFIED COPIES OF LETTERS AND PROCEEDINGS filing and entering.....

Non resident affidavit re debts.....

GENEOLOGICAL RESEARCH per hour or fraction thereof (on a time available basis) . . .	10.00
INHERITANCE TAX RETURN	10.00
Supp Inheritance Tax Return	10.00
(No charge for filing with account)	
(No charge for insolvent Returns)	
Letter protesting tax appraisalment.	5.00
Certificate of payment.	10.00
INVENTORY	10.00
PENNSYLVANIA JUDICIAL COMPUTER PROJECT FEE	5.00
PRAECIPE/JOINDER	5.00
SHORT CERTIFICATE	5.00
SUBPOENA	5.00
REGISTERS HEARING	50.00
RETURNED CHECK	20.00
MISC. FILINGS	10.00

- Tonia A. Bair
Lawrenceville, NJ
- Keith D. Barrack
Sayreville, NJ
- Michael Berman
Turnersville, NJ
- Charles A. Boller
Honolulu, HI
- David A. Bolner
Chicago, IL
- Nina D. Bonner
Piscataway, NJ
- Karen A. Bower
Washington, DC
- David Jackson Brown
Rockville, MD
- Gustee Brown
Richmond, VA
- James Rupert Burdett
Washington, DC
- Paul K. Caliendo
Woodbridge, NJ
- James P.A. Cavanaugh
Marlton, NJ
- Suzanne Chenault
TANZANIA
- Debra Christine Chiesa
New York, NY
- Babita Chodha
ENGLAND
- Robert Joon-Kyu Choi
SEOUL KOREA
- Thomas Michael Clayton
Jacksonville, FL
- Robert Scott Clewell
Mt. Laurel, NJ
- Raymond William Cobb
Wilmington, DE
- Lisa Carol Cohen
Cherry Hill, NJ
- Stefanie Levine Cohen
Cherry Hill, NJ
- Lawrence E. Colbert
Northridge, CA
- Montina Monique Cole
Washington, DC
- Daniel Thomas Conrad
Dallas, TX
- Mary B. Conway
New York, NY
- Julian Abele Cook III
Strafford, VA
- Frank W. Cornett Jr.
Morgantown, WV
- Joseph Michael Dashe
New York, NY
- Henry L. Davenport Jr.
Rockford, IL

NOTE: in cases not herein specifically provided for, the Register shall make the same charge as that imposed for services of a substantially similar nature. All orders heretofore establishing fee bill for the Register of Wills of York County shall be revoked and superseded as of the effective date hereof.

**Pennsylvania Judicial Computer Project Fee
***Register of Wills Automation Fee

[Pa.B. Doc. No. 01-72. Filed for public inspection January 19, 2001, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Transfer of Attorney to Inactive Status

Notice is hereby given that the following attorneys have been transferred to inactive status by Order of the Supreme Court of Pennsylvania dated November 30, 2000, pursuant to Rule 219, Pa.R.D.E. The Order became effective December 30, 2000.

Notice with respect to attorneys having Pennsylvania registration addresses, who have been transferred to inactive status by said Order, was published in the appropriate county legal journal.

- Laura M. Andraccchio
San Diego, CA
- Charles D. Atkins
New York, NY
- David A. Avedissian
Cherry Hill, NJ
- Robert D. Aversa
Margate City, NJ
- Valerie S. Bailey
Washington, DC

Sabrina Marie Dodd
Washington, DC

Karen Eisele
Haddonfield, NJ

Angela Kay Essary
Washington, DC

Douglas Allen Evans
Bellevue, NE

Robert S. Feinberg
Washington, DC

Adib E. Ferzli
Washington, DC

Calvin Leonard Fisher Jr.
Swedesboro, NJ

Suzanne Robin Flaxman
Palm Beach Gardens, FL

Daniel Edward Fleming III
Hoffman Estates, IL

Brian T. Flynn
Burlington, NJ

Richard J. Fraher
Lakewood, NJ

David Eldon Fretz
Amherst, NY

Thomas J. Galligan Jr.
Ft. Wayne, IN

Kathleen P. Garvey
Edgewater, NJ

Gary L. Goldberg
Gaithersburg, MD

Erik C. Grandell
Cherry Hill, NJ

Reginald D. Greene
Bowie, MD

Francis M. Gregory III
Jersey City, NJ

Sean T. Hagan
Brick, NJ

Steven D. Harowitz
Los Angeles, CA

Timothy F. Hegarty
Glen Ridge, NJ

Geoffrey James Hill
Clifton, NJ

Dawson Horn III
New York, NY

Patricia Ann Hunter
Alexandria, VA

Nancie Susan Jennifer
Portland, OR

Woodie Johnson III
Washington, DC

Kevin Howard Josel
New York, NY

Andrew Kalavanos
West Orange, NJ

Richard Alan Kanoff
Boston, MA

R. Scott Kappes
Wilmington, DE

Philip David Kass
Haydenville, MA

Marc David Keffer
Washington, DC

John Breffni Kehoe
TAIWAN

Dale Wharton Keith
Cherry Hill, NJ

George Anthony Kelman
Manville, NJ

Cynthia Rump Kelsey
Wilmington, DE

Kyong Mok Kim
Seoul, KOREA

John R. Klotz
Totowa, NJ

Cynthia A. Kozakiewicz
Boston, MA

Michael Darryl Lane
Fayetteville, NC

Elizabeth Mary Lascheid
Los Angeles, CA

Sharon Ann Lepping
Chicago, IL

Thomas Louie
Glendale, AZ

Elizabeth D. Lunsford
Washington, DC

Libero Marinelli Jr.
Melbourne, FL

John W. Marsh Jr.
Arlington, VA

Nathalie D. Martin
Albuquerque, NM

Eugene J. McCaffrey Jr.
Woodbury, NJ

Brian Arthur McCormick
Wert River, MD

James Albert McGuire
Kingwood, TX

Steven Hugh McMahon
McLean, VA

Humphrey Lee McPherson
JAMAICA

Heather Love Montgomery
Riverwoods, IL

Robert Morici
Garden City, NY

Thomas Leo Murphy
Linwood, NJ

Todd Brian Nurick
Wilmington, DE

Karen R. O'Brien
Washington, DC

Ralph V. Pagano
Cranbury, NJ

Elaine M. Panzitta
Washington, DC

David R. Parker
Detroit, MI

Helene A. Pattera
West Windsor, NJ

Mark G. Paulson
Washington, DC

Kenneth Pocrass
Denver, CO

Linda Pollitt-Baer
Newark, NJ

Sylvia Louise Quinton
Lanham, MD

Thomas Eugene Redmond
Washington, DC

William A. Riback
Camden, NJ

John Edward Rogers
Kenilworth, IL

Evan S. Rosen
Middlesex, NJ

Brian H. Rubenstein
New York, NY

Manjari Sahai
Austin, TX

Agnes Bundy Scanlan
Cambridge, MA

James Ohara Schlicht
Louisville, KY

Suzanne Lange Schmelter
Wildwood, MO

Lynn Michelle Schneider
New York, NY

Wendy Barrie Schreckinger
Newark, NJ

John Calvin Scott
Columbia, MD

Daniel Adam Shabel
Mt. Laurel, NJ

David Richard Shaman
NETHERLANDS

Neal Sharma
Trenton, NJ

Michele N. Siekerka
Trenton, NJ

Laura Jean Sinnott
Newark, NJ

Nicholas George Sladic
Richmond, VA

Karen Stanislaus-Fund
New Hartford, NY

Kimberley Stuart
Haddon Heights, NJ

John Michael Tapajcik
Washington, DC

Irwin J. Tenenbaum
Los Angeles, CA

Laura M. Todaro
Trenton, NJ

Helen Elizabeth Tuttle
New York, NY

Michael Wells
Alexandria, VA

Robin Christine Welsh
Owings, MD

Annette Marie Wencil
Arlington, VA

Kevin Theodore Williams
Southfield, MI

Curt H. Wilson
Waltham, MA

Wendy Zoe Woods
Washington, DC

Sandra Ellen Yampell
Haddonfield, NJ

Samuel P. Ynzunza
Seal Beach, CA

Mark A. Zeto
Charleston, SC

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

[Pa.B. Doc. No. 01-73. Filed for public inspection January 19, 2001, 9:00 a.m.]