

THE COURTS

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 1000]

Rescission of Rule 1023 and Promulgation of New Rules 1023.1—1023.4; No. 364 Civil Procedural Rules; Doc. No. 5

Order

Per Curiam:

And Now, this 22 day of April 2002, the Pennsylvania Rules of Civil Procedure are amended as follows:

1. Rule 1023 is rescinded.
2. Rule 1023.1 et seq. is promulgated to read as follows.

This Order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective July 1, 2002.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1000. ACTIONS AT LAW

Subchapter A. CIVIL ACTION

PLEADINGS

Rule 1023.1. Scope. Signing of Documents. Representations to the Court. Violation.

(a) Rules 1023.1 through 1023.4 do not apply to disclosures and discovery requests, responses, objections and discovery motions that are subject to the provisions of general rules.

(b) Every pleading, written motion, and other paper directed to the court shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. This rule shall not be construed to suspend or modify the provisions of Rule 1024 or Rule 1029(e).

(c) The signature of an attorney or pro se party constitutes a certificate that the signatory has read the pleading, motion, or other paper. By signing, filing, submitting, or later advocating such a document, the attorney or pro se party certifies that, to the best of that person's knowledge, information and belief, formed after an inquiry reasonable under the circumstances,

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation,

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification or reversal of existing law or the establishment of new law,

(3) the factual allegations have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual allegations are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(d) If, after notice and a reasonable opportunity to respond, the court determines that subdivision (c) has been violated, the court may, subject to the conditions stated in Rules 1023.2 through 1023.4, impose an appropriate sanction upon any attorneys, law firms and parties that have violated subdivision (c) or are responsible for the violation.

Official Note: The court in its discretion at any stage of the proceedings may deny a motion for sanctions without hearing or argument.

The grant or denial of relief (e.g., grant or denial of preliminary objections, motion for summary judgment or discovery application) does not, of itself, ordinarily warrant the imposition of sanctions against the party opposing or seeking the relief.

In most circumstances, a motion for sanctions with respect to factual allegations should be addressing whether there is evidentiary support for claims or defenses rather than whether there is evidentiary support for each specific factual allegation in a pleading or motion.

The inclusion in the rule of a provision for "an appropriate sanction" is designed to prevent the abuse of litigation. The rule is not a fee-shifting rule per se although the award of reasonable attorney's fees may be an appropriate sanction in a particular case.

The provision requiring that a motion under this rule be filed before the entry of final judgment in the trial court is intended to carry out the objective of expeditious disposition and to eliminate piecemeal appeals. Where appropriate, such motions should be filed as soon as practicable after discovery of the violation.

The following provisions of the Judicial Code, 42 Pa.C.S., provide additional relief from dilatory or frivolous proceedings: (1) Section 2503 relating to the right of participants to receive counsel fees and (2) Section 8351 et seq. relating to wrongful use of civil proceedings.

(e) Section 8355 of the Judicial Code, 42 Pa.C.S. § 8355, is suspended absolutely, in accordance with the provisions of the Constitution of 1968, Article V, Section 10(c).

Official Note: Section 8355 of the Judicial Code provides for the certification of pleadings, motions and other papers.

See also Order of January 17, 1997, Civil Procedural Rules Docket No. 5, No. 269, suspending the following sections of the Health Care Services Malpractice Act, added by Act No. 1996-135; Section 813-A, 40 P.S. § 1301.813-A, providing for the signing and certification of pleadings, motions and other papers and Section 821-A, 40 P.S. § 1301.821-A, providing for the signing and certification of a complaint.

Rule 1023.2. Motion for Sanctions.

(a) An application for sanctions under this rule shall be made by motion, shall be made separately from other applications and shall describe the specific conduct alleged to violate Rule 1023.1(c).

(b) No such motion shall be filed unless it includes a certification that the applicant served written notice and

demand to the attorney or pro se party who signed or filed the challenged pleading, motion or other paper. The certification shall have annexed a copy of that notice and demand, which shall identify with specificity each portion of the document which is believed to violate the provisions of this rule, set forth the basis for that belief with specificity, include a demand that the document or portion of the document, be withdrawn or appropriately corrected. An application for sanctions may be filed if the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected within twenty-eight days after service of the written demand. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion.

(c) A motion requesting sanctions under this rule shall be filed in the trial court before the entry of final judgment.

Rule 1023.3. Sanctions upon Rule to Show Cause.

On its own initiative, the court may enter an order describing the specific conduct that appears to violate Rule 1023.1(c) and directing an attorney, law firm or party to show cause why it has not violated Rule 1023.1(c) with respect thereto.

Rule 1023.4. Sanctions.

(a)(1) A sanction imposed for violation of Rule 1023.1 shall be limited to that which is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated.

(2) Subject to the limitations in subdivision (b), the sanction may consist of, or include,

(i) directives of a nonmonetary nature, including the striking of the offensive litigation document or portion of the litigation document,

(ii) an order to pay a penalty into court, or,

(iii) if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.

(3) Except in exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates and employees.

(b)(1) Monetary sanctions may not be awarded against a represented party for violation of Rule 1023.1(c)(2).

(2) Monetary sanctions may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.

(c) When imposing sanctions, the court shall describe the conduct determined to be a violation of Rule 1023.1 and explain the basis for the sanction imposed.

Explanatory Comment

I. Obligations under the rule

New Rule 1023.1 requires that a pleading, written motion or other paper directed to the court be signed. The signing, or the filing, submitting or later advocating, a document is a certification as described in the rule. A court may impose sanctions for violation of the certification. Thus the rule imposes the duty on the attorney or, if unrepresented, the party signing the document to satisfy himself or herself that there is a basis in fact and in law for the claim or defense set forth in the document.

Rule 1023.1, therefore, requires some prefiling inquiry into both the facts and the law to satisfy the affirmative duty imposed by the rule. However, this rule is not intended to chill an attorney's enthusiasm or creativity in pursuing factual or legal theories. The standard is one of reasonableness under the circumstances.

A court should avoid using the wisdom of hindsight and should test the signer's conduct by inquiring what was reasonable to believe at the time the pleading, motion, or other paper was submitted. What constitutes a reasonable inquiry depends on factors which may include

- how much time for investigation was available to the signer;

- whether the signer had to rely on a client for information as to the facts underlying the pleading, motion, or other paper;

- whether the pleading, motion, or other paper was based on a plausible view of the law; or

- whether the signer depended on forwarding counsel or another member of the bar.

This rule recognizes that sometimes a litigant may have good reason to believe that a claim or defense is valid but may need discovery, formal or informal, to gather and confirm the evidentiary basis for the claim or defense. If evidentiary support is not obtained after a reasonable opportunity for further investigation or discovery, the party has a duty under the rule not to persist with that contention. Rule 1023.1(c) does not require a formal amendment to pleadings for which evidentiary support is not obtained, but rather calls upon a litigant not thereafter to advocate such claims or defenses.

II. Practice under the rule

The rule leaves for resolution on a case-by-case basis, considering the particular circumstances involved, the question as to when a motion for violation of Rule 1023.1 should be served and when, if filed, it should be decided. Ordinarily the motion should be served promptly after the inappropriate paper is filed, and, if delayed too long, may be viewed as untimely. In other circumstances, it should not be served until the other party has had a reasonable opportunity for discovery. Given the "safe harbor" provisions discussed below, a party cannot delay serving its Rule 1023.1 motion until conclusion of the case (or judicial rejection of the offending contention).

Rule 1023.1 motions should not be made or threatened for minor, inconsequential violations of the standards prescribed by subdivision (c). They should not be employed as a discovery device or to test the legal sufficiency or efficacy of allegations in the pleadings; other motions are available for those purposes. Nor should Rule 1023.1 motions be prepared to emphasize the merits of a party's position, to exact an unjust settlement, to intimidate an adversary into withdrawing contentions that are fairly debatable, to increase the costs of litigation, to create a conflict of interest between attorney and client, or to seek disclosure of matters otherwise protected by the attorney-client privilege or the work-product doctrine. The court may defer its ruling (or its decision as to the identity of the persons to be sanctioned) until final resolution of the case in order to avoid immediate conflicts of interest and to reduce the disruption created if a disclosure of attorney-client communications is needed to determine whether a violation occurred or to identify the person responsible for the violation.

The rule provides that requests for sanctions must be made as a separate motion, i.e., not simply included as an additional prayer for relief contained in another motion. The motion for sanctions cannot be filed until at least 28 days (or such other period as the court may set) after being served. If, during this period, the alleged violation is corrected, as by withdrawing (whether formally or informally) some allegation or contention, the motion may not be filed with the court. These provisions are intended to provide a type of "safe harbor" against motions under Rule 1023.1 in that a party will not be subject to sanctions under Rule 1023.1 on the basis of another party's motion unless, after receiving the motion, it refuses to withdraw that allegation or contention or to acknowledge that it does not currently have evidence to support it. The timely withdrawal of an allegation or contention will protect a party against a motion for sanctions.

To stress the seriousness of a motion for sanctions and to define precisely the conduct claimed to violate the rule, the "safe harbor" period begins to run only upon service of the motion. In most cases, however, counsel should give informal notice to the other party, whether in person or by a telephone call or letter, of a potential violation before proceeding to prepare and serve a Rule 1023.1 motion.

III. Sanctions

The rule does not attempt to enumerate the factors a court should consider in deciding whether to impose a sanction or what sanctions would be appropriate in the circumstances. The factors that a court may consider include the following:

- whether the improper conduct was willful or negligent;
- whether it was part of a pattern of activity or an isolated event;
- whether it infected the entire pleading or only one particular count or defense;
- whether the person has engaged in similar conduct in related litigation;
- whether it was intended to injure;
- what effect it had on the litigation process in time or expense;
- whether the responsible person is trained in the law;
- what amount is needed to deter that person from repetition in the same case; and
- what amount is needed to deter similar activity by other litigants.

The court has significant discretion in determining what sanctions, if any, should be imposed for a violation, subject to the principle that the sanctions should not be more severe than reasonably necessary to deter repetition of the conduct by the offending person or comparable conduct by similarly situated persons.

There are two provisions for the award of attorney's fees and expenses. The first provision, Rule 1023.2(b), authorizes the court, if requested in a motion and if so warranted, to award to the prevailing party "the reasonable expenses and attorney's fees incurred in presenting or opposing the motion."

The second provision, Rule 1023.4(a)(2)(iii), however, authorizes the court, "if imposed on motion and warranted for effective deterrence," to order payment to the movant of "some or all of the reasonable attorney's fees and other expenses incurred as a direct result of the violation." Any such award to the movant, however, should not exceed the expenses and attorney's fees for the services directly and unavoidably caused by the violation of the certification requirement. If, for example, a wholly unsupported count is included in a multi-count complaint or counterclaim for the purpose of needlessly increasing the cost of litigation, any award of expenses should be limited to those directly caused by inclusion of the improper count, and not those resulting from the filing of the complaint or answer itself. The award should not provide compensation for services that could have been avoided by an earlier disclosure of evidence or an earlier challenge to the groundless claims or defenses. Moreover, partial reimbursement of fees may constitute a sufficient deterrent.

The sanction should be imposed on the persons—whether attorneys, law firms, or parties—who have violated the rule or who may be determined to be responsible for violation. The person signing, filing, submitting, or advocating a document has a nondelegable responsibility to the court and, in most situations, is the person to be sanctioned for a violation. Absent exceptional circumstances, a law firm is to be held also responsible when one of its partners, associates, or employees is determined to have violated the rule. Since such a motion may be filed only if the offending paper is not withdrawn or corrected within 28 days after service of the motion, it is appropriate that the law firm ordinarily be viewed as jointly responsible under established principles of agency.

Explicit provision is made for litigants to be provided notice of the alleged violation and an opportunity to respond before sanctions are imposed. Whether the matter should be decided solely on the basis of written submissions or should be scheduled for oral argument (or for evidentiary presentation) will depend on the circumstances. If the court imposes a sanction, it must, unless waived, indicate its reasons in a written order or on the record; a court is not required to explain its denial of a motion for sanctions.

By the Civil Procedural Rules Committee

R. STANTON WETTICK, Jr.,
Chair

[Pa.B. Doc. No. 02-837. Filed for public inspection May 10, 2002, 9:00 a.m.]

PART I. GENERAL

[231 PA. CODE CH. 2350]

Rule 2355—Notice of Death of a Party; Substitution of Personal Representative; Proposed Recommendation No. 179

The Civil Procedural Rules Committee proposes that new Rule of Civil Procedure 2355 governing the procedure upon the death of a party be promulgated 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 of Pennsylvania.

All communications in reference to the proposed recommendation should be sent not later than June 7, 2002 to Harold K. Don, Jr., Counsel, Civil Procedural Rules Committee, 5035 Ritter Road, Suite 700, Mechanicsburg, Pennsylvania 17055, or e-mail to civil.rules@supreme.court.state.pa.us.

The Explanatory Comment which appears in connection with the proposed recommendation has been inserted by the Committee for the convenience of the bench and bar. It will not constitute part of the rules of civil procedure or be officially adopted or promulgated by the Court.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 2350. SUBSTITUTION OF PARTIES

Rule 2355. Notice of Death of a Party. Substitution of Personal Representative.

(a) If a named party dies after the commencement of an action, the attorney of record for the deceased party shall file a notice of death with the prothonotary. The procedure to substitute the personal representative of the deceased party shall be in accordance with Rule 2352.

Official Note: Counsel for the deceased party should file the notice of death promptly upon learning of the death of the party and serve a copy upon every other party to the action.

See Section 3375 of the Decedents, Estates and Fiduciaries Code, 20 Pa.C.S. § 3375 which provides that if a plaintiff dies and a personal representative is not appointed within one year after a suggestion of the death, the court, upon petition, shall abate the action if the delay in taking out letters is not reasonably explained.

This rule does not address the case law discussing whether the commencement of an action by or against a deceased person is a nullity and therefore does not toll the running of the statute of limitations.

(b) The notice of death required by subdivision (a) shall be substantially in the following form:

(CAPTION)

NOTICE OF DEATH

The death of _____, a party to the above action, on _____ during the pendency of this action is noted upon
Date
the record.

Attorney for the Deceased Party

Address

Explanatory Comment

The rules of civil procedure presently make no mention of the procedure upon the death of a party to an action. New Rule 2355 is proposed to alert the parties to the necessity of notifying other parties to the action of the death, of noting the death upon the record and of substituting as a party to the action the personal representative of the deceased party. The rule provides a form of notice which is to be filed with the prothonotary. The rule does not propose a new procedure to substitute the personal representative but rather incorporates the familiar existing procedure of Rule 2352 governing substitution of a successor.

The proposed rule applies to an action as to which a party dies after its commencement. As suggested by the note, the rule has no application when an action is commenced against a person who is deceased at the time it is commenced.

By the Civil Procedural Rules Committee

R. STANTON WETTICK, Jr.,
Chair

[Pa.B. Doc. No. 02-838. Filed for public inspection May 10, 2002, 9:00 a.m.]

Title 246—MINOR COURT CIVIL RULES

Part I. GENERAL

[246 PA. CODE CHS. 300 AND 1000]

Venue

The Minor Court Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Pa. R.C.P.D.J. Nos. 302 and 1009 and revise the Note to Rule 314 to clarify that improper venue must be raised by objection or else it is waived; to provide for the transfer of cases to and from other courts when venue is found to be improper in the originating court; to abolish improper venue as grounds for issuance of a writ of certiorari; and to make other technical or "housekeeping" amendments to these rules. The Committee has not submitted this proposal for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's considerations in formulating this proposal. The Committee's Report should not be confused with the official Committee Notes to the rules. The Supreme Court does not adopt the Committee's Notes or the contents of the explanatory Reports.

The text of the proposed changes precedes the Report. Unless otherwise specified, additions are shown in bold; deletions are in bold and brackets.

We request that interested persons submit suggestions, comments, or objections concerning this proposal to the Committee through counsel,

Michael F. Krimmel, Counsel
Supreme Court of Pennsylvania
Minor Court Rules Committee
5035 Ritter Road, Suite 700
Mechanicsburg, PA 17055

or e-mail to: minorcourt.rules@supreme.court.state.pa.us no later than Monday, June 3, 2002.

By the Minor Court Rules Committee:

THOMAS E. MARTIN, Jr.,
Chair

Annex A

TITLE 246. MINOR COURT CIVIL RULES

PART I. GENERAL

CHAPTER 300. CIVIL ACTION

Rule 302. Venue.

A. An action against an individual may be brought in and only in a magisterial district where:

(1) [he] the individual may be served, or

* * * * *

H. [If the district justice in the magisterial district in which the complaint was filed finds that venue in that magisterial district is improper, he shall transfer the complaint to a magisterial district having proper venue.] Improper venue shall be raised by objection prior to the conclusion of the hearing and if not so raised shall be waived. If an objection to venue is sustained and there is a court of proper venue within Pennsylvania, the complaint shall not be dismissed but shall be transferred to the court having proper venue.

Official Note: This rule replaces the temporary venue provisions of § 14 of the Schedule to Article V, Pennsylvania Constitution, 1968. It combines, with some minor changes, the Pennsylvania Rules of Civil Procedure relating to venue. See:

(1) Individuals: Pa. R.C.P. [Nos.] No. 1006(a) [, 2078(a)(2)].

* * * * *

For a definition of "transaction or occurrence" see *Craig v. W. J. Thiele & Sons, Inc.*, 395 Pa. 129, 149 A.2d 35 (1959).

Subdivision G is intended to take care of indistinct, "center line" or other confusing boundaries in the respects mentioned. When a complaint is transferred under subdivision H, it is treated as if originally filed in the transferee [magisterial district] court on the date first filed in a [magisterial district] court. If service of the complaint has already been made, no new service [is] may be necessary, but the [district justice in the] transferee [magisterial district] court must set a new date, time and place for the new hearing and notify the parties thereof. It is the intent of this rule that cases may be transferred to any Pennsylvania court with appropriate jurisdiction and venue, including the Philadelphia Municipal Court. Likewise, nothing in this rule prohibits a court other than a district justice court from transferring a case to a district justice court with proper jurisdiction and venue, in accordance with the procedural rules of the transferring court. The jurisdictional limits of the district justice courts and the Philadelphia Municipal Court are governed by Sections 1515 and 1123 of the Judicial Code, respectively. 42 Pa.C.S. §§ 1515 and 1123.

There [is] are no [fee] costs for transfer of the complaint and no additional filing [fee] costs when a case is transferred from one district justice court to another district justice court. There are no additional filing costs when a case is transferred from the Philadelphia Municipal Court to a district justice court. There may be additional service costs when a case is transferred.

Amended June 1, 1971; amended April 25, 1979, effective in 30 days; June 30, 1982, effective 30 days after July 17, 1982; amended _____, effective _____.

Rule 314. Return, Waiver and Failure of Service; Reinstatement.

* * * * *

Official Note: The provision concerning appearance not being a waiver of venue was inserted in subdivision C of this rule to prevent the concentration of business in the office of a favorable district justice. Also, the public cannot generally be expected to be aware of venue provisions. See Rule 302H regarding objections to venue.

* * * * *

Amended October 17, 1975, effective in 90 days; amended effective March 24, 1977; amended April 25, 1979, effective in 30 days; June 30, 1982 effective 30 days after July 17, 1982; March 27, 1992, effective June 25, 1992; amended February 12, 2002, effective immediately; Note revised _____, effective _____.

**CHAPTER 1000. APPEALS
CERTIORARI**

Rule 1009. Praeceptum for Writ of Certiorari.

A. (1) [Unless he was the plaintiff in the action before the district justice] Except as provided in subparagraph (2), a party aggrieved by a judgment may file with the prothonotary of the court of common pleas a praecipe for a writ of certiorari claiming that the judgment should be set aside because of

(a) lack of jurisdiction over the parties or subject matter, [improper venue] or

(b) such gross irregularity of procedure as to make the judgment void.

(2) [If the] A party aggrieved by the judgment who was the plaintiff in the action before the district justice [, he] may file a praecipe for a writ of certiorari only on the [last mentioned ground] grounds set forth in subparagraph (1)(b).

B. [If lack of jurisdiction over the parties or the subject matter is claimed, the praecipe may be filed at any time after judgment. Otherwise, it shall be filed within thirty (30) days from the date of the judgment.] (1) A praecipe for a writ of certiorari based on the grounds set forth in subparagraph A(1)(a) may be filed at any time after the date of entry of the judgment.

(2) A praecipe for a writ of certiorari based on the grounds set forth in subparagraph A(1)(b) must be filed within 30 days after the date of entry of the judgment.

C. [The praecipe shall identify the judgment complained of and the district justice in whose office the record of the proceedings containing the judgment is filed.] Rescinded.

D. [The praecipe and the writ shall be on a form which shall be prescribed by the State Court Administrator.] The praecipe and the writ shall be substantially in the following form:

(Common Pleas Caption and Docket Number)
WRIT OF CERTIORARI TO DISTRICT JUSTICE
PRAECIPE FOR WRIT OF CERTIORARI

Magisterial District No. _____ District Justice Docket No. _____

Name of Party Filing This Praecept and Obtaining This Writ _____

Date of Entry of Judgment _____

In the Case of _____ (Plaintiff) vs. _____ (Defendant)

The party named above claims that with respect to the above proceeding there was:

(Check applicable box or boxes)

- lack of jurisdiction over the subject matter
lack of jurisdiction over (name of party)
such gross irregularity as to make the judgment void

PRAECIPE: To the Prothonotary

Issue a Writ of Certiorari directing _____, District Justice, to transmit to you a certified true copy of the record of the proceedings named above.

Signature of Party Filing Praecept or Attorney

WRIT OF CERTIORARI

TO: _____, District Justice

(1) You are hereby directed by this writ to transmit to the Prothonotary of this Court of Common Pleas, within ten days after you receive this writ, a certified true copy of the record of the proceedings named above.

(2) This writ, when received by you, will operate as a SUPERSEDEAS to the judgment for possession in this case.

This block will be checked ONLY when this notation is required pursuant to Pa. R.C.P.D.J. No. 1013B.

Date delivered for service _____, 20__

Signature of Prothonotary or Deputy

PROOF OF SERVICE OF WRIT OF CERTIORARI

This proof of service must be filed within five days after delivery of the writ for service. Check applicable boxes.

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF _____: ss

AFFIDAVIT: I hereby verify that I served the Writ of Certiorari, Common Pleas Docket No. _____, upon the District Justice to whom it was directed on (date of service) _____, 20__, by personal service or by (certified) (registered) mail, sender's receipt attached hereto, and that I served a copy of the writ upon the opposite party(ies) (name(s)) _____, on (date of service) _____, by personal service or by (certified) (registered) mail, sender's receipt attached hereto.

I verify that the statements made in this affidavit are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Date: _____, 20__

Signature of Affiant

Official Note: Subdivision A sets forth the grounds for certiorari. See the comments concerning the limited nature of certiorari in the note to Rule 1001. The plaintiff in the action before the district justice [, and] (the word "plaintiff" as used in this rule does not include a defendant who has sued on a cross-complaint [,]) may file a praecipe for a writ of certiorari only on the ground of gross irregularity. Having instituted the proceedings before the district justice, the plaintiff should not be permitted to challenge jurisdiction [or venue].

Under subdivision B, the praecipe for the writ of certiorari must be filed within [thirty] 30 days after

the date of entry of the judgment, except when a question of jurisdiction is raised. There is no time limit on raising a question of jurisdiction by certiorari. Flaherty v. Atkins, 189 Pa. Super. 550, 152 A.2d 280 (1959). A party who files [his] a praecipe after the [thirty] 30 day period has run can be heard only on the question of jurisdiction (if permitted to raise that question under subdivision A) even though [he] the party claims [improper venue or] gross irregularity along with [his] the claim of lack of jurisdiction.

Subdivision D prescribes the content of the praecipe and writ, which is pre-printed on a

“manual” form. Former Subdivision C was rescinded as unnecessary because the content of the form is prescribed by Subdivision D.

Adopted June 1, 1971. Amended Jan. 29, 1976, effective in 30 days; April 25, 1979, effective in 30 days; June 30, 1982, effective 30 days after July 17, 1982; **amended _____, effective _____.**

REPORT

Proposed Amendments to Pa. R.C.P.D.J. Nos. 302 and 1009; and Revision to the Note to Pa. R.C.P.D.J. No. 314

OBJECTION TO VENUE; WAIVER; TRANSFER OF CASES TO AND FROM OTHER COURTS WHEN VENUE IS FOUND TO BE IMPROPER IN THE ORIGINATING COURT; ABOLITION OF IMPROPER VENUE AS GROUNDS FOR ISSUANCE OF A WRIT OF CERTIORARI

I. Background

The Committee undertook a review of Pa. R.C.P.D.J. No. 302 in response to a request from the Administrative Office of Pennsylvania Courts (AOPC). The AOPC reported that it had received an inquiry from the court administrator's office of a suburban Philadelphia county about apparent conflicts between the Rules of Civil Procedure Governing Actions and Proceedings Before District Justices (Pa. R.C.P.D.J.) and the Philadelphia Municipal Court Rules of Civil Practice (Phila.M.C.R. Civ.P.) with regard to the transfer of cases when venue is found to be improper in the originating court. Also, the Committee had received a suggestion from a district justice that raised the question of how and by whom improper venue is to be raised under Rule 302, and whether improper venue can be waived under that Rule.

After consideration of the issues raised, the Committee concluded that an amendment to Rule 302 was needed, as described below, to clarify that improper venue must be raised by objection or else it is waived, and to provide for the transfer of cases to and from other courts when venue is found to be improper in the originating court. Also, in light of the proposed amendments to Rule 302 to require that improper venue be raised by objection, the Committee concluded that Rule 1009 should be amended to abolish improper venue as grounds for the issuance of a writ of certiorari. Finally, the Committee identified a need to make other minor correlative, technical, or “housekeeping” amendments to these rules and the Note to Rule 314.

II. Objection to Venue; Waiver

As a result of the suggestion that it had received, the Committee discussed whether or not improper venue could be waived under Rule 302 if the issue is not raised as an objection.

Venue in civil matters at the common pleas level is generally governed by Pa.R.C.P. No. 1006(e), which states, inter alia, “[i]mproper venue shall be raised by preliminary objection and if not so raised shall be waived.” In construing this rule, the Superior Court has held that, “the question of which county in the state may entertain the action is a ‘question . . . of venue and not jurisdiction and venue may always be waived. It is a matter of procedure and not substance.’” *Hohlstein v. Hohlstein*, 296 A.2d 886, 888 (Pa. Super. Ct. 1972) (emphasis added) (quoting *Blair v. Blair*, 171 A.2d 854, 855 (Pa. Super. Ct. 1961)). Further, the court in *Hohlstein* stated, “it has been held by our Court that the right to raise the objection to venue is a mere Personal [sic] privilege belonging to the defendant which may be waived by him. Unlike the question of subject matter jurisdiction, it has

generally been held that the Court on its own motion may not order a change of venue, nor may it dismiss for improper venue.” *Hohlstein*, 296 A.2d at 889 (citations omitted) (emphasis added).

The Committee noted, however, that the district justice venue rule (Rule 302) differs from the common pleas rule in that Rule 302 does not appear to place the burden on the defendant to raise an objection to venue and does not appear to provide for a waiver of venue. Rule 302H (as currently written) states, “[i]f the district justice in the magisterial district in which the complaint was filed finds that venue in that magisterial district is improper, he shall transfer the complaint to a magisterial district having proper venue.” Pa. R.C.P.D.J. No. 302H (emphasis added). It became apparent to the Committee that some district justices are construing this rule to mean if, during the hearing, the district justice makes a sua sponte determination that venue is improper the issue cannot be waived, the hearing must cease, and the case must be transferred to another district justice court with proper venue.

In light of these findings, the Committee proposes to amend Rule 302 to clarify that an objection to venue must be raised by the defendant prior to the conclusion of the hearing or else be waived. The Committee determined that the defendant should be given until the end of the hearing to raise the objection because the face of the complaint may not give the defendant enough information about the claim to raise to the objection earlier, given the simplified notice pleadings used in district justice civil cases.

The Committee believes that such an amendment to Rule 302 would make practice in the district justice courts more consistent with practice in the courts of common pleas and would be more in keeping with the current state of the law, thus benefiting the parties and attorneys.

A correlative amendment to Rule 1009 is discussed below.

III. Transfer of Cases When Venue is Found to Be Improper

In its request, the AOPC asked that the Committee consider the following issues:

a. Whether a district justice court has the authority to accept a civil case transferred from the Philadelphia Municipal Court?

b. Whether a district justice court has the authority to transfer a civil case to the Philadelphia Municipal Court when the district justice finds that venue properly lies with the Municipal Court?

c. If transfers between the district courts and the Municipal Court are permissible, whether either party is required to pay additional filing costs?

With regard to the first issue, the Committee noted that Phila.M.C.R.Civ.P. No. 108(c) states, “[i]f objection to venue is sustained and there is a court of proper venue within Pennsylvania, the action shall not be dismissed but shall be transferred to the appropriate District Justice Court or Court of Common Pleas.” The Committee agreed that, under this rule, the Municipal Court may transfer, and a district justice may accept, a civil case where venue is found to be improper in the Municipal

Court (assuming, of course, that the amount in controversy is within the jurisdictional limit of the district justice court).¹

As to the second issue, however, the Committee noted that Pa. R.C.P.D.J. No. 302H states, “[i]f the district justice in the magisterial district in which the complaint is filed finds that venue in that magisterial district is improper, he shall transfer the complaint to a *magisterial district* having proper venue.” (Emphasis added.) It was the Committee’s opinion that this rule, as currently written, restricts district justices to transferring cases only to other magisterial district courts, and does not give authority to transfer cases to courts outside the district justice system, including the Philadelphia Municipal Court. The Committee further concluded that if a district justice finds that venue lies with a court outside the district justice system, such as the Philadelphia Municipal Court, the district justice’s only alternative may be to dismiss the case without prejudice and require the plaintiff to refile the case in the appropriate court. In so concluding, the Committee was not unmindful that the plaintiff could be barred from refile if the case is dismissed after the statute of limitations has run.

Consideration of the third issue, with regard to the payment of additional filing costs, resulted in the most discussion within the Committee. The Committee noted that when a case is transferred between district justice courts, the transferring court sends the filing costs along with the case to the receiving court. Further, the Note to Rule 302, with regard to transfers between district justice courts, states, “[t]here is no fee for transfer of the complaint and no additional filing fee.” Pa. R.C.P.D.J. No. 302, Note. The Committee was aware, however, that the disposition of filing costs has created confusion and problems when cases have been transferred to a district justice court from Municipal Court, especially since the statutorily set district justice court filing costs are different than Municipal Court costs. After discussion, the Committee agreed that the current procedure of transferring costs between district justice courts should remain the same. As for transfers to and from Municipal Court, the Committee concluded that no additional filing costs are to be collected when a case is transferred from Municipal Court to a district justice court. Further, any procedure regarding costs collected by the Municipal Court when a case is transferred from a district justice court to the Municipal Court is governed by the Municipal Court rules.

IV. Discussion of Rule Changes

A. Rule 302

1. *Objection to Venue; Waiver*

As stated above, the Committee concluded that an amendment to Rule 302 is needed to clarify that improper venue must be raised by objection or else it is waived. Accordingly, the Committee proposes that the language in Rule 302 be amended to more closely resemble that of Pa.R.C.P. No. 1006(e) and Phila.M.C.R.Civ.P. No. 108(c) with regard to objections to venue and waiver.

2. *Transfer of Cases When Objection to Venue is Sustained; Costs*

The Committee further proposes that the Note to Rule 302 be revised to make clear that it is the intent of the

rule that cases may be transferred to any Pennsylvania court with appropriate jurisdiction and venue, including the Philadelphia Municipal Court. Likewise, nothing in the Rule prohibits a court outside of the district justice system from transferring a case to a district justice court with proper jurisdiction and venue, in accordance with the procedural rules of the transferring court. The Rule and Note would be amended to delete the references to “magisterial district” and replace them with more generic references to “court.” Finally, the Committee proposes that the Note be revised to make clear that there are no costs for transfer of a complaint and no additional filing costs when a case is transferred from one district justice court to another district justice court. Also, there are no additional filing costs when a case is transferred from the Philadelphia Municipal Court to a district justice court.

B. Correlative Amendments to Rule 1009—Writ of Certiorari

1. *Abolition of Improper Venue as Grounds for Issuance of Writ*

In light of the proposed amendment to Rule 302 to clarify that improper venue can be waived if not raised as an objection, the Committee concluded that Rule 1009 needed to be amended to restrict the ability of a defendant to seek a writ of certiorari on the grounds of improper venue. The Committee noted that without such an amendment to Rule 1009, a defendant could waive improper venue at the hearing before the district justice (by not raising an objection) but then seek a writ of certiorari on those same grounds, thereby defeating the purpose of the Rule 302 requirements.

The Committee noted that writs of certiorari to the district justice courts are governed by Pa. Const. Sched. art. V, § 26 (Writs of Certiorari) which states:

Unless and until changed by rule of the Supreme Court, in addition to the right of appeal under section nine of this article, the judges of the courts of common pleas, within their respective judicial districts, shall have power to issue writs of certiorari to the municipal court in the City of Philadelphia, justices of the peace and inferior courts not of record and to cause their proceedings to be brought before them, and right and justice to be done.

Pa. Const. Sched. art. V, § 26 (West 1994). The substance of this Schedule section has also been included in the Judicial Code, 42 Pa.C.S. § 934. The Committee concluded that the Schedule section and the statute empower the Supreme Court to change or abolish, by rule, the power to issue writs of certiorari. The Committee also concluded that since an aggrieved party is entitled to a broad form of appeal de novo, further restrictions on the use of certiorari will not adversely affect litigants.

Accordingly, the Committee proposes that improper venue be abolished as a grounds for the issuance of a writ of certiorari in Rule 1009.

2. *Specifying Content of Writ of Certiorari Form in Rule 1009*

In a matter unrelated to the venue issues discussed above, but related to Rule 1009, the Committee proposes that the content of the Praeceptum and Writ of Certiorari form be specified in Rule 1009. The Committee is in the process of making a number of revisions to the rules relating to forms used in district justice proceedings. For example, the Committee plans to recommend that the Supreme Court adopt a new general rule governing the

¹ The jurisdictional limit in civil cases in the Municipal Court (\$10,000) is different from that of the district justice courts (\$8,000). See 42 Pa.C.S. § 1123(a)(4) and 42 Pa.C.S. § 1515(a)(3). This does not create a problem with regard to the transfer of cases from the Municipal Court, as that court’s Rule 108(c) provides for transfer to the “appropriate District Justice Court or *Court of Common Pleas*.” Phila.M.C.R.Civ.P. No. 108(c) (emphasis added).

design of forms. In doing so, the Committee plans to delete references to forms in individual rules except where the content of a form needs to be expressly dictated by rule. It would be necessary to dictate the content of a form by rule where the form is a "manual" form; that is, a form not produced by the automated District Justice (computer) System. One such manual form is the Praeceptum and Writ of Certiorari.

The AOPC has recently informed the Committee that this form is outdated and in need of revision. In order to promote uniformity and widespread dissemination of form updates, the AOPC has suggested, and the Committee agrees, that the content of this form should be specified by rule. Accordingly, the Committee proposes that Rule 1009D be amended to include the contents of an updated Praeceptum and Writ of Certiorari form. The proposed abolition of improper venue as grounds for the issuance of a writ is reflected in the updated form.

C. Correlative Revision to the Note to Rule 314

In light of the proposed amendment to Rule 302 to clarify that improper venue can be waived if not raised as an objection, the Committee deemed it advisable to add a cross-reference to Rule 302 in the Note to Rule 314. Rule 314C provides that "[t]he appearance of a defendant . . . shall be deemed a waiver of any defect in service but not a waiver of a defect in venue." Pa. R.C.P.D.J. No. 314C (emphasis added).

D. Technical and "Housekeeping" Amendments

In conjunction with the proposed amendments to Rules 302 and 1009 discussed above, the Committee also recognized the need for minor changes to the rules to address gender neutrality issues, to correct or add appropriate citations and cross references, and to conform with modern drafting style.

[Pa.B. Doc. No. 02-839. Filed for public inspection May 10, 2002, 9:00 a.m.]

Title 252—ALLEGHENY COUNTY RULES

ALLEGHENY COUNTY

Rule 1910.6—Entry Appearance; Family Division; Rules Doc. No. 6 of 2002

Order of Court

And Now, to-wit, this 22nd day of April, 2002, pursuant to action of the Board of Judges, the following new local Rule 1910.6 affecting the Family Division of the Court of Common Pleas is adopted, effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

ROBERT A. KELLY,
President Judge

Local Rule 1910.6 Entry of Appearance

(a) Any attorney who files and/or serves a legal paper or appears on behalf of a client in any cause of action in Family Division—Adult Section must complete, file and serve a praecipe for appearance, substantially in the form set forth in (b), identifying the cause or causes of action in which he/she will be acting as counsel and identifying by name the party whom the attorney is representing.

(b) Caption

PRAECIPE FOR APPEARANCE

Kindly enter my appearance as counsel for _____
Name of Party*

in the above-captioned cases in the following:

- _____ All matters
- _____ Divorce (& all claims raised pursuant thereto) Only
- _____ Support Only
- _____ Custody Only
- _____ Protection From Abuse Only
- _____ Other: _____

Once my appearance is entered, I understand that I must appear at all proceedings and accept service for my client unless I obtain Court permission to withdraw my appearance.

Supreme Court #: _____

Name: _____

Address: _____

Phone #: _____

Date: _____ Signature: _____

*Your client must be identified by name, not solely as Plaintiff or Defendant.

(c) Praeceptum of appearance forms shall be available from Domestic Relations Officers, Hearing Officers, Judges' staff, Room 4020, and the Office of the Prothonotary on the 1st floor of the City-County Building.

(d) The attorney must appear at all Family Division proceedings and receive service on behalf of his/her client with respect to all causes of action in which the attorney has indicated on the praecipe for appearance he/she is representing his/her client. If the attorney fails to appear, the court may impose sanctions including but not limited to fines and counsel fees.

(e) Entering an appearance or filing any legal paper in a divorce action obligates the attorney to represent the client in any and all claims or counterclaims which are raised pursuant to the divorce action.

(f) No pro se motions will be accepted involving a cause of action in which a litigant is represented by counsel.

(g) Each attorney shall file and serve a praecipe for appearance with respect to each of his/her cases which are pending as of January 1, 2002.

[Pa.B. Doc. No. 02-840. Filed for public inspection May 10, 2002, 9:00 a.m.]

Title 255—LOCAL COURT RULES

CARBON COUNTY

Revision of Local Rule of Civil Procedure L1915.3—Prosecution of Action; No. 01-1115

Administrative Order 7-2002

And Now, this 25th day of April, 2002, it is hereby Ordered and Decreed that, effective thirty (30) days after publication in the *Pennsylvania Bulletin*, the Court of

Common Pleas of Carbon County *Revises* Local Rule of Civil Procedure L1915.3 governing Prosecution of Action in custody cases.

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 Civil 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 the Order in the Prothonotary's Office.

By the Court:

RICHARD W. WEBB,
President Judge

Rule L1915.3. Prosecution of Action.

When a claim for custody, partial custody or visitation is made in a complaint, petition, or counterclaim, such pleading shall comply with Pa.R.C.P. 1915.15(a) or (b) and shall have attached an Order of the Court referring the claim to the Hearing Officer for a conference and a Pre-trial Conciliation Information Form which will be substantially in the same form as "Form A" and "Form B" following this rule. A second order shall be attached to the front of the complaint/petition as required by Local Rule L1915.4 Form - "B" and L1915.4-1 - Form "A." The moving party shall follow the Motion practice as set forth in L206.1(2) in the filing and service of the custody pleading.

"FORM A"

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

vs.

:
:
:
NO.
:
CUSTODY
:

ORDER OF COURT

You, _____, Defendant, have been sued in Court to obtain custody, partial custody or visitation of the child(ren), _____.

Pursuant to Carbon County Rule L1915.4 and L1915.4-1, you are ordered to appear in person at the First Floor Conference Room, Carbon County Courthouse, Jim Thorpe, Pennsylvania, 18229, on _____, 20____, at _____, ____m., prevailing time, for a CONCILIATION or MEDIATION CONFERENCE before Carbon County Custody Conference Officer _____.

If you fail to appear as provided by this Order, the Court or Custody Conference Officer may grant leave to the party who appears to present testimony and the Court may proceed to enter an Order for Custody, Partial Custody or Visitation based solely upon such testimony or

the Court may issue a warrant for your arrest. No stenographic record shall be made of this conference.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Legal Services of Northeastern Pennsylvania, Inc.
122 Iron Street
Lehighton, PA 18235
(610) 377-5400

BY THE COURT:

DATED: _____ J.

"FORM B"

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

:
:
:
vs. :
:
NO.
:
CUSTODY
:

PRE-TRIAL CONCILIATION INFORMATION
(To be submitted at conciliation conference)

GENERAL INFORMATION:

1. Names, addresses, ages and employment of parents:

FATHER	MOTHER
_____	_____
_____	_____
_____	_____
_____	_____

2. Names and ages of all children involved; state with whom living:

_____	_____
_____	_____
_____	_____
_____	_____

3. Names and addresses of other parties involved (if any—children's services, grandparents, foster parents, etc.)

4. Status of current custody orders or custody arrangements:

5. Addresses of children for past 5 years; state who had custody at each location:

Position of Party Submitting Memorandum:

1. State what living arrangements you consider to be in child(ren)'s best interests (i.e. where children should spend weekdays, weekends, holidays, vacation, attend school, matters of that sort):

2. State kind of environment you can provide under above arrangement (home, school, other children in neighborhood, your availability at various times):

3. Other factors you consider relevant to resolution of dispute:

4. Efforts at mediation, conciliation, counseling:

TRIAL INFORMATION:

1. List of witnesses you would intend to call:

Fact Witnesses:

Experts: (attach copies of any reports currently available to the memorandum):

2. Issues for resolution: (e.g., suitability of physical environment, suitability of parent, unusual opportunities for enrichment, particular skills of availability of one parent as opposed to another):

3. Remarks:

Counsel for _____

COPIES TO BE SENT TO: Court
Opposing Counsel

[Pa.B. Doc. No. 02-841. Filed for public inspection May 10, 2002, 9:00 a.m.]

**DISCIPLINARY BOARD OF
THE SUPREME COURT**

Notice of Suspension

Notice is hereby given that James Samuel DeBosh, having been suspended from the practice of law in the State of New Jersey for a period of three months, the Supreme Court of Pennsylvania issued an Order dated April 29, 2002 suspending James Samuel DeBosh from the practice of law in this Commonwealth consistent with the Order of the Supreme Court of New Jersey. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

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

[Pa.B. Doc. No. 02-842. Filed for public inspection May 10, 2002, 9:00 a.m.]