

THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT [204 PA. CODE CH. 82]

Amendment of Rules 105, 106, and 108 of the Rules for Continuing Legal Education and Section 4 and 5 of the Regulations for Continuing Legal Education; No. 299 Supreme Court Rules; Doc. No. 1

Order

Per Curiam:

And Now, this 28th day of, May, 2002, Rules 105, 106, and 108 of the Pennsylvania Rules for Continuing Legal Education and Section 4 and 5 of the Pennsylvania Regulations for Continuing Legal Education are amended as follows.

To the extent that notice of proposed rule making would be required by Pa.R.J.A. No. 103, the amendment of the rule is hereby found to be required in the interest of efficient administration.

This Order shall be processed in accordance with Pa.R.J.A. No. 103 (b) and shall be effective immediately.

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

Subpart A. PROFESSIONAL RESPONSIBILITY

CHAPTER 82. CONTINUING LEGAL EDUCATION

Subchapter A. PROFESSIONAL RESPONSIBILITY

Rule 105. Continuing Legal Education Requirement.

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(c) Every newly admitted attorney shall attend the Bridge The Gap program, of at least four (4) hours, sponsored by an approved Bridge the Gap CLE provider prior to his or her first compliance deadline.

Rule 106. Providers.

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(d) *Bridge the Gap Providers.* Accredited providers may request Board approval to offer the Bridge the Gap program.

Rule 108. Credit for Continuing Legal Education Courses and Activity.

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[(e) *Bridge-the-Gap Program.* CLE credit shall be given to faculty for teaching in the Supreme Court sponsored Bridge-the-Gap program. No credit shall be given for preparation for teaching in said program. CLE credits earned through teaching in the Bridge-the-Gap program may be carried forward for up to four (4) years.]

Subchapter B. CONTINUING LEGAL EDUCATION BOARD REGULATIONS

Section 4. Reporting Periods of Active Lawyers.

* * * * *

Lawyers newly admitted to practice law in Pennsylvania, including lawyers admitted on motion from other states, shall be exempt from the requirements of these regulations for twelve (12) months but no more than twenty-four (24) months from the date of their Pennsylvania admission depending upon the compliance group to which the newly admitted lawyer is assigned and the compliance period for that group. Newly admitted lawyers shall complete their CLE requirement, **including the Bridge the Gap program**, by the end of their next succeeding compliance period.

Section 5. Credit for CLE Activities.

* * * * *

[(i) *Bridge-the-Gap Program.* Faculty for the Supreme Court sponsored Bridge-the-Gap program shall receive CLE credit for teaching in said program. No credit shall be given to such faculty for preparation for teaching in said program or for attending any required training sessions to be eligible to teach in said program. Faculty for the program shall receive six (6) hours of CLE credit for each Bridge-the-Gap day-long program in which they participate. CLE credit earned through teaching in the Bridge-the-Gap program shall be deemed to be ethics credits, and such credits may be carried forward for up to four (4) years.]

[Pa.B. Doc. No. 02-1040. Filed for public inspection June 14, 2002, 9:00 a.m.]

Title 207—JUDICIAL CONDUCT

PART IV. COURT OF JUDICIAL DISCIPLINE

[207 PA. CODE CHS. 1, 4 AND 5]

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

Order

Per Curiam:

And Now, this 31st day of May, 2002, the Court, pursuant to Article 5, Section 18(b)(4) of the Constitution of Pennsylvania, having proposed amendments to Rules of Procedure Nos. 110, 122, 123, 401, 411 and 503, as more specifically hereinafter set forth, *It Is Hereby Ordered:*

That Court Administrator Wanda W. Sweigart provide for the publication of the Amendment in the *Pennsylvania Bulletin*, and

That interested parties shall submit suggestions, comments, or objections no later than thirty days from the publication of this Order in that Bulletin.

Annex A
TITLE 207. JUDICIAL CONDUCT
PART IV. COURT OF JUDICIAL DISCIPLINE
ARTICLE I. PRELIMINARY PROVISIONS
CHAPTER 1. GENERAL PROVISIONS
IN GENERAL

Rule 110. Entry of Appearance.

* * * * *

(C) An attorney's appearance for a Judicial Officer may not be withdrawn without leave of Court unless another attorney has entered or simultaneously enters an appearance for the Judicial Officer and the change of attorneys does not delay any stage of the proceedings.

* * * * *

DOCUMENTS GENERALLY

Rule 122. Service.

* * * * *

[(B) Service may be accomplished by:

(1) personal delivery of a copy to a party or a party's attorney; or

(2) sending a copy to a party by overnight, certified, or registered mail addressed to the party's place of residence or business.]

(B) Original process shall be served by a competent adult:

- (1) by handing a copy to the Judicial Officer; or
(2) by handing a copy

(i) at the residence of the Judicial Officer to an adult member of the family with whom he resides; but if no adult member of the family is found, then to an adult person in charge of such residence;

(ii) at any office or usual place of business of the Judicial Officer to his agent or to the person for the time being in charge thereof.

(C)(i) If service of the original process cannot be made as in (B) above, then a copy of the process shall be mailed to the Judicial Officer by any form of mail requiring a receipt signed by the Judicial Officer or his authorized agent. Service is complete upon delivery of the mail.

(ii) If such service cannot be made, service shall be made by leaving a copy at or mailing a copy to the Judicial Officer's last known address. Service in this manner shall be complete upon mailing.

(D) In lieu of service of the original process under this rule, the Judicial Officer or his authorized agent may accept service of the process by filing a separate document which shall be substantially in the following form:

(CAPTION)

I accept service of the _____ (on behalf of _____ and represent that I am authorized to do so).

(Date) (Judicial Officer or Authorized Agent)

(Mailing Address)

(E) Copies of all legal papers other than the original process filed in a proceeding in this Court or served upon any party to the proceeding shall be served upon every other party to the proceeding.

(F) Service of all legal papers other than the original process shall be made:

(1) by handing or mailing a copy to or leaving a copy for each party at the address of the party's attorney of record endorsed on an appearance or prior pleading of the party, or at such other address as a party may agree, or

(2)(i) if there is no attorney of record, by handing a copy to the party or by mailing a copy to or leaving a copy for the party at the address endorsed on an appearance or prior pleading or the residence or place of business of a party;

(ii) if such service cannot be made, service shall be made by leaving a copy at or mailing a copy to the last known address of the party to be served.

(iii) Service by mail is complete upon mailing.

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Rule 123. Return of Service.

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(c) Return of service or no service by mail under Rule 122 [(B)(2)] (C)(i) shall include a return receipt.

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ARTICLE II. PROCEEDINGS BASED ON THE FILING OF FORMAL CHARGES

CHAPTER 4. PRE-TRIAL PROCEEDINGS

DISCOVERY

Rule 401. Discovery Generally.

(A) All discovery shall be completed within 60 days [from the filing] of the service of the Board Complaint, unless extended by the Conference Judge for good cause shown.

* * * * *

OMNIBUS MOTION FOR RELIEF; REPLY; ANSWER

Rule 411. Omnibus Motion.

(A) All motions, challenges, and applications or requests for an order or relief on behalf of the Judicial Officer shall be consolidated in one written motion, except as otherwise provided in these rules, or as permitted by the Conference Judge. The omnibus motion shall be filed no later than 30 days of the service of the Board Complaint [, and shall be served on the Board].

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CHAPTER 5. TRIAL PROCEDURES

Rule 503. Post-Trial Proceedings.

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(B) Objections.

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(2) Any objections shall be filed with the Court within 10 days of the entry of the findings and conclusions. [A copy of the objections shall be served upon the

opposing party.] The President Judge may for cause shown extend the time for filing objections.

* * * * *

[Pa.B. Doc. No. 02-1041. Filed for public inspection June 14, 2002, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CHS. 200, 400, 1000, 1500, 1600, 2000, 2020, 2050, 2100, 2150, 2170, 2200, 2220, 2250, 2300, 2320, 2350, 3000 AND 4000]

Proposed Consolidation of the Action in Equity with the Civil Action; Proposed Recommendation No. 180

The Civil Procedural Rules Committee proposes that the action in equity be consolidated with the civil action 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 August 15, 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 400. SERVICE OF ORIGINAL PROCESS

SERVICE GENERALLY

Rule 400. Person to Make Service.

* * * * *

(b) In addition to service by the sheriff, original process may be served also by a competent adult in the following actions: [equity,]

- (1) civil action in which equitable relief is the only relief sought or the primary relief sought,
- (2) partition,
- (3) prevent waste, and
- (4) declaratory judgment when declaratory relief is the only relief sought.

* * * * *

CHAPTER 1000. ACTIONS AT LAW

Subchapter A. CIVIL ACTION

GENERAL

Rule 1001. Definition. Scope.

(a) As used in this chapter and in Rules 1501 through 1550, "action" means a civil action brought in or appealed to any court which is subject to these rules.

[(b)(1) All claims heretofore asserted in assumpsit or trespass shall be asserted in one form of action to be known as "civil action."]

(b) There shall be a "civil action" in which shall be brought all claims for relief heretofore asserted in

- (1) the action of assumpsit,
- (2) the action of trespass, and
- (3) the action in equity.

Official Note: The procedural distinctions between the forms of action in assumpsit, [and] trespass and equity are abolished.

Rules 1501 through 1550 govern equitable relief including such matters as stockholder's derivative suits (Rule 1506) and special relief including accounting (Rule 1530), injunctions (Rule 1531), perpetuation of testimony (Rule 1532) and receivers (Rule 1533).

The action to prevent waste has been abolished. The relief formerly available in that action may be obtained in a civil action seeking equitable relief

See Rule 1041.1 for special provisions governing asbestos litigation.

[(2)] (c) Other forms of action which incorporate these rules by reference shall be known as "civil action—(type of action)."

* * * * *

VENUE AND PROCESS

Rule 1006. Venue. Change of Venue.

(a) Except as otherwise provided by [Subdivisions] subdivisions (b) and (c) of this rule, an action against an individual may be brought in and only in a county in which

(1) the individual may be served or in which the cause of action arose or where a transaction or occurrence took place out of which the cause of action arose or in any other county authorized by law[.], or

* * * * *

(2) the property or a part of the property which is the subject matter of the action is located provided that equitable relief is sought with respect to the property.

(b) Actions against the following defendants, except as otherwise provided in [Subdivision] subdivision (c), may be brought in and only in the counties designated by the following rules: political subdivisions, Rule 2103; partnerships, Rule 2130; unincorporated associations, Rule 2156; corporations and similar entities, Rule 2179.

(c) An action to enforce a joint or joint and several liability against two or more defendants, except actions in which the Commonwealth is a party defendant, may be brought against all defendants in any county in which the

venue may be laid against any one of the defendants under the general rules of [**Subdivision**] subdivisions (a) or (b).

* * * * *

Rule 1007.1. Jury Trial **as of Right**. Demand. Waiver.

(a) In any action in which the right to jury trial exists, that right shall be deemed waived unless a party files and serves a written demand for a jury trial not later than twenty days after service of the last permissible pleading. The demand shall be made by endorsement on a pleading or by a separate writing.

Official Note: Rule 1007.1(a) gives no specific guidance on the existence of a right to jury trial. It could not, in the face of Rule 128(f).

* * * * *

[(d) Rescinded.]

Official Note: [The Act of June 25, 1937, P. L. 2090, 12 P. S. § 695 relating to demand for or waiver of jury trial in Philadelphia County, formerly suspended by subdivision (d), has been repealed by Act 1978-53, the Judiciary Act Repealer Act.] See Rule 1007.2 governing trial by jury when there is a claim for equitable relief.

Rule 1007.2. Trial by Jury. Equitable Relief. Advisory Verdict.

In any case in which there is a claim for equitable relief, the court on its own motion or upon the petition of any party may submit to trial by jury any or all issues of fact arising from that claim. The verdict of the jury shall be in the form of answers to specific questions and shall not be binding upon the court.

Official Note: Rule 1007.2 does not confer a right to trial by jury. See Rule 128(f).

This rule applies to claims for equitable relief for which there is no constitutional right to trial by jury. The rule preserves the practice under former Equity Rule 1513 of allowing a court in its discretion to submit such claims to trial by jury. The verdict of the jury is not binding on the court.

PLEADINGS

Rule 1018. Caption.

* * * * *

Captioning and Docketing of Actions and Proceedings in the Courts of Common Pleas ORDER

Effective February 8, 1969

* * * * *

(b) Civil actions and proceedings not covered by Subdivision (a) above shall be captioned as follows: "Court of Common Pleas of _____ County—Civil Action[-Law]" or ["Civil Action-Equity"] or other appropriate form of action, as the case may be, and shall be filed with and docketed by the prothonotary or clerk of courts as heretofore.

* * * * *

Rule 1020. Pleading More Than One Cause of Action. Alternative Pleading. Failure to Join. Bar.

(a) The plaintiff may state in the complaint more than one cause of action **cognizable in a civil action** against

the same defendant [**heretofore asserted in assumpsit or trespass**]. Each cause of action and any special damage related thereto shall be stated in a separate count containing a demand for relief.

* * * * *

(d) [(1)] If a transaction or occurrence gives rise to more than one cause of action **heretofore asserted in assumpsit and trespass**, against the same person, including causes of action in the alternative, they shall be joined in separate counts in the action against any such person. **Failure to join a cause of action as required by this subdivision shall be deemed a waiver of that cause of action as against all parties to the action.**

Official Note: [Subdivision (d)(1) requires the joinder of related causes of action. The joinder of unrelated causes of action is permissive. See subdivision (a).] Mandatory joinder is limited to related causes of action heretofore asserted in assumpsit and trespass. There is no mandatory joinder of related causes of action in equity.

[For Rules governing joinder of parties, see] See Rules 2226 et seq. governing joinder of parties.

See Rule 213(a) and (b) governing the consolidation and severance of causes of action.

[(2) Rescinded.

(3) Rescinded.

Official Note: Former subdivision (d)(3) governed election of remedies between assumpsit and trespass, joint trial of multiple causes of action, submission of specific questions to the jury and molding the verdict.

Any reference to election of remedies has become procedurally irrelevant as the result of the creation of the single form of civil action.

See Rule 213(a) and (b) governing the consolidation and severance of causes of action.

(4) Failure to join a cause of action as required by subdivision (d)(1) of this Rule shall be deemed a waiver of that cause of action as against all parties to the action.

(5) Rescinded.]

Rule 1028. Preliminary Objections

(a) Preliminary objections may be filed by any party to any pleading and are limited to the following grounds:

* * * * *

(4) legal insufficiency of a pleading (demurrer); [and]

* * * * *

(6) pendency of a prior action or agreement for alternative dispute resolution [.],

* * * * *

(7) failure to exercise or exhaust a statutory remedy, and

(8) full, complete and adequate non-statutory remedy at law.

* * * * *

(c)(1) A party may file an amended pleading as of course within twenty days after service of a copy of preliminary objections. If a party has filed an amended

pleading as of course, the preliminary objections to the original pleading shall be deemed moot.

(2) The court shall determine promptly all preliminary objections. If an issue of fact is raised, the court shall consider evidence by depositions or otherwise.

Official Note: Preliminary objections raising an issue under subdivision (a)(1), (5) [or], (6), (7) or (8) cannot be determined from facts of record. In such a case, the preliminary objections must be endorsed with a notice to plead or no response will be required under Rule 1029(d).

* * * * *

Rule 1031. Counterclaim.

(a) The defendant may set forth in the answer under the heading "Counterclaim" any cause of action [heretofore asserted in assumpsit or trespass] cognizable in a civil action which the defendant has against the plaintiff at the time of filing the answer.

* * * * *

Rule 1032. Waiver of Defenses. Exceptions. Suggestion of Lack of Subject Matter Jurisdiction or Failure to Join Indispensable Party.

(a) A party waives all defenses and objections which are not presented either by preliminary objection, answer or reply, except a defense which is not required to be pleaded under Rule 1030(b), the defense of failure to state a claim upon which relief can be granted, the defense of failure to join an indispensable party, the objection of failure to state a legal defense to a claim, **the defenses of failure to exercise or exhaust a statutory remedy and an adequate remedy at law** and any other nonwaivable defense or objection.

* * * * *

JUDGEMENT UPON DEFAULT OR ADMISSION

Rule 1037. Judgment Upon Default or Admission. Assessment of Damages.

* * * * *

(b) The prothonotary, on praecipe of the plaintiff, shall enter judgment against the defendant for failure to file within the required time a pleading to a complaint which contains a notice to defend or, **except as provided by subdivision (d)**, for any relief admitted to be due by the defendant's pleadings.

Official Note: See Rule 237.1 which requires the praecipe for default judgment to contain a certification of written notice of intent to file the praecipe.

While the prothonotary may enter a default judgment in an action legal or equitable, only the court may grant equitable relief. See subdivision (d).

* * * * *

(d) **In all cases in which equitable relief is sought, the court shall enter an appropriate order upon the judgment of default or admission and may take testimony to assist in its decision and in framing the order.**

Rule 1038. Trial Without Jury.

* * * * *

(c) The decision may be made orally in open court at the end of the trial, and in that event shall be forthwith transcribed and filed in the office of the prothonotary, or it may be made thereafter in writing and filed forthwith. In either event the prothonotary shall notify all parties or

their attorneys of the date of filing. The trial judge shall render a decision within seven days after the conclusion of the trial except in protracted cases or cases of extraordinary complexity.

Official Note: A decision includes what were formerly known as a decree nisi and an adjudication. A decision is not a final decree, also known as a judgment.

For post-trial relief following a trial without jury, see Rule 227.1.

For entry of judgment upon praecipe of a party, see Rule 227.4.

[(d) (Rescinded).]

Official Note: For post-trial relief following a trial without jury, see Rule 227.1.

(e) (Rescinded).

Official Note: For entry of judgment upon praecipe of a party, see Rule 227.4.

(f) (Rescinded).

(g) **Rule VIII of the Special Rules, Courts of Common Pleas, First Judicial District, Philadelphia County, adopted July 31, 1963 is suspended.]**

**CHAPTER 1500. [ACTION IN EQUITY]
EQUITABLE RELIEF**

Subchapter A. RULES

Rule 1501. [Conformity to Civil Action] (Rescinded).

[Except as otherwise provided in this chapter, the procedure in an action in equity shall be in accordance with the rules relating to a civil action.]

Official Note: [In addition to the rules expressly governing the civil action, Rules 1001 to 1038.2, 1351 and 1361, the following rules apply to all actions at law and in equity:

Business of courts, Rules 201 to 250;

***Actions by real parties in interest, Rules 2001 to 2025;**

Minors as parties, Rules 2026 to 2050;

Incapacitated persons as parties, Rules 2051 to 2075;

***Defendants who are non-residents or conceal their whereabouts, Rules 2076 to 2100;**

The Commonwealth and political subdivisions as parties, Rules 2101 to 2125;

Partnerships as parties, Rules 2126 to 2150;

Unincorporated associations as parties, Rules 2151 to 2175;

Corporations and similar entities as parties, Rules 2176 to 2200;

***Joinder of parties, Rules 2226 to 2250;**

***Joinder of additional defendants, Rules 2261 to 2275;**

***Interpleader by defendants, Rules 2301 to 2325;**

***Intervention, Rules 2326 to 2350.**

By Order of the Supreme Court effective as of the date of the adoption of these rules, the chapters of

rules above marked with an asterisk which now apply only to actions at law have been extended to include actions in equity.

The extension of the interpleader rules to actions in equity is not intended to abolish the right to institute equity interpleader actions in cases where suit or litigation is imminent or threatened but has not yet been commenced.]

The action in equity has been abolished. Equitable relief may be obtained through a civil action, Rule 1001 et seq. Rules 1506, 1521, 1531, 1533, 1534 and 1535 are special rules governing equitable relief sought in a civil action.

Rule 1502. [Court Open] (Rescinded).

[The equity side of the court shall always be open.]

Official Note: The court is "always open for the transaction of judicial business." See Section 324 of the Judicial Code, 42 Pa.C.S. § 324.

Rule 1503. [Venue] (Rescinded).

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

* * * * *

Rule 1505. [Defendant Not Served] (Rescinded).

[A defendant who has not been served may be served at any time during the pendency of the action provided that writ or complaint has been reissued or reinstated as to that defendant within thirty days preceding service.]

Rule 1507. [Specific Averments. Possible Persons Interested in Property. Appointment of a Representative] (Rescinded).

[When a person interested in property which is the subject of an action should be made a party but the person's name or interest in the property cannot be ascertained and the person is not represented in the action, the plaintiff or defendant may so aver in the complaint or answer. The court shall require that appropriate notice be given such person by advertisement or in such manner as the court by local rule or special order shall direct. If appropriate notice cannot be given or if the person does not appear after notice is given, the court may appoint a trustee or guardian ad litem to represent the person and the decree entered in the action shall bind the person's interest in the property.]

Rule 1508. [Pleading More than One Cause of Action] (Rescinded).

[The plaintiff may state in the complaint two or more causes of action cognizable in equity.]

Official Note: [If more than one cause of action is asserted by or against two or more plaintiffs or defendants, the causes of action must arise from the same transaction, occurrence, or series of transactions or occurrences and a common question of law or fact affecting the rights or liabilities of all

the parties must arise in the action. Rule 2229(a), (b).] See Rule 1020 governing the pleading of more than one cause of action.

Rule 1509. [Preliminary Objections] (Rescinded).

[(a) Preliminary objections authorized by Rule 1028(a) are available to any party.

(b) The objections of laches and failure to exercise or exhaust a statutory remedy may be raised by preliminary objection, answer or reply but are not waived if not pleaded.

(c) The objection of the existence of a full, complete and adequate nonstatutory remedy at law shall be raised by preliminary objection. If the objection is sustained, the court shall certify the action to the law side of the court. If not so pleaded, the objection is waived.]

Official Note: [Adopted January 4, 1952, effective July 1, 1952.] See Rule 1028 governing preliminary objections.

Rule 1510. [Counterclaim] (Rescinded).

[(a) A defendant may plead as a counterclaim only a cause of action, whether equitable or legal, which arises from the same transaction or occurrence or series of transactions or occurrences from which the plaintiff's cause of action arose. A counterclaim shall not be subject to the objection provided in Rule 1509(c).

(b) A counterclaim shall be pleaded and tried as an action in equity.]

Official Note: [Adopted January 4, 1952, effective July 1, 1952.] See Rule 1031 governing counterclaim in a civil action.

Rule 1511. [Judgment Upon Default or Admission] (Rescinded).

[(a) The prothonotary, on praecipe of the plaintiff, shall enter a judgment by default against the defendant for failure to plead within the required time to a complaint which contains a notice to defend. In all other cases of default or of admission the judgment shall be entered by the court.

(b) In all cases, the court shall enter an appropriate final decree upon the judgment of default or admission and may take testimony to assist in its adjudication and in framing the decree.]

Official Note: [Adopted January 4, 1952, effective July 1, 1952; amended March 22, 1962; effective April 2, 1962. Amendment effective April 2, 1962 was made applicable to pending actions.] See Rule 1037 governing judgment upon default or admission.

Rule 1512. [Nonsuit] (Rescinded).

[The court may enter a nonsuit against the plaintiff under the same circumstances, subject to review in the same manner and with the same effect as in actions at law.]

Official Note: See Rules 230 and 230.1 governing voluntary nonsuit and nonsuit at trial, respectively.

Rule 1513. [Trial by Jury. Advisory Verdict] (Rescinded).

[The court on its own motion or upon the petition of any party may submit to trial by jury any or

all issues of fact. The trial by jury shall be given a preference on the trial list. The verdict of the jury shall be in the form of answers to specific questions and shall not be binding upon the court.]

Official Note: [Adopted January 4, 1952, effective July 1, 1952.] See Rule 1007.2 governing trial by jury and advisory verdict.

Rule 1514. [Examiners, Masters and Auditors] (Rescinded).

[Except as otherwise provided by Act of Assembly or rule of the Supreme Court, no examiner, master or auditor shall be appointed.

Official Note: Adopted January 4, 1952, effective July 1, 1952; amended March 25, 1953, effective July 1, 1953.]

Rule 1515. [Accountants and Experts] (Rescinded).

[In actions involving complicated accounts, or questions requiring the evidence of experts, the court may employ an accountant or other expert to aid in the proper deposition of the action. The report or evidence of such accountant or other expert shall be available to any party and the accountant or other expert shall be subject to examination or cross-examination by any party. The accountant or other expert shall be paid reasonable compensation for services rendered.]

Rule 1516. [Oral Argument. Limitation on Requests for Findings and Conclusions] (Rescinded).

[The parties shall be prepared to argue the case immediately after the close of the evidence. No requests for findings of fact and conclusions of law may be submitted except by leave of court. These requests may be treated by the court as suggestions. They shall be filed with the adjudication.]

Official Note: [Adopted January 4, 1952, effective July 1, 1952; amended June 27, 1969, effective September 1, 1969.

The court has power at any stage of any proceeding to require the parties to file trial memoranda on any issue of fact or law.

The Civil Procedural Rules Committee, by communication dated August 27, 1969, announced that amendment of this rule effective September 1, 1969 applied to pending actions.]

See Rule 1038 for the conduct of a trial without a jury.

Rule 1517. [The Adjudication. Notice] (Rescinded).

[(a) The court shall make an adjudication and may do so shall consist of (1) a statement of the issues; (2) a closely condensed chronological statement, in narrative form or in separate findings, of all the facts which are necessary to be known in order to determine the issues; (3) a discussion of the questions of law involved and the court's conclusions of law and (4) a decree nisi.

(b) The adjudication may be made orally in open court at the end of the trial, and in that event shall be forthwith transcribed and filed in the office of the prothonotary, or it may be made thereafter in writing and filed forthwith. In either event, the

prothonotary shall notify all parties or their attorneys of the date of filing.]

Official Note: [See Rule of Judicial Administration 703 which requires a report to the Court Administrator of Pennsylvania of all matters undisposed of for ninety days or more as of the last day of the reporting period.

The Civil Procedural Rules Committee, by communication dated August 27, 1969, announced that amendment of this rule effective September 1, 1969 applied to pending actions.]

See Rule 1038 for the decision in a trial without a jury.

Rule 1520. [Form of Decree] (Rescinded).

[Decrees, nisi or final, shall not recite or state at length any part of the pleadings or other proceedings in the action.]

Official Note: [Adopted January 4, 1952, effective July 1, 1952.] See Rule 1038 for the decision in a trial without a jury.

Rule 1521. Indexing of Decree. Lien and Revival of Decree for Payment of Money.

(a) [Decrees, nisi] Orders, interlocutory or final, shall be entered on the judgment index [of the law side of the court] .

(b) [Decrees] Orders for the payment of money shall be a lien on the real estate of the defendant named in the [decree] order in the manner, for the period and with the same effect as the lien of judgments [rendered by the law side of the court] for the payment of money.

(c) [Decrees] Orders for the payment of money or costs and not satisfied may be revived from time to time in the manner provided by law for the revival of judgments.

* * * * *

Rule 1522. [Rehearing] (Rescinded).

[A petition for a rehearing shall set forth the special matter or cause for which such rehearing is sought. The petition for rehearing shall be filed within a reasonable time after the discovery of the grounds for rehearing and in no event later than the time for taking an appeal.]

Official Note: [Adopted January 4, 1952, effective July 1, 1952.] See Rule of Appellate Procedure 1701(b) governing reconsideration of an order.

Rule 1523. [Costs] (Rescinded).

[Costs shall include fees of the examiner, master, auditor, accountant or expert appointed by the court and such other costs as may be prescribed by statute or allowed by the court.

Official Note: Adopted January 4, 1952, effective July 1, 1952. See Rules 1514 and 1515 relating to the appointment of examiners, masters, auditors, accountants and experts.]

Rule 1524. [Security for Costs] (Rescinded).

[The court in which the action is pending may by local rule or special order require the plaintiff or a defendant who claims affirmative relief to enter security for costs.

Official Note: Adopted January 4, 1952, effective July 1, 1952.]

Rule 1525. [Interlocutory Order for Costs] (Rescinded).

[A party directed by an interlocutory order to pay costs may not take any further steps in the action until they are paid.

Official Note: Adopted January 4, 1952, effective July 1, 1952.]

Rule 1526. [Liability for Costs] (Rescinded).

[Costs shall follow the decree unless the court directs that they shall be paid in whole or in part by some other party to the action or out of a fund for distribution.

Official Note: Adopted January 4, 1952, effective July 1, 1952.]

Rule 1527. [Taxation of Costs] (Rescinded).

[Costs shall be taxed by the prothonotary subject to an appeal to the court.

Official Note: Adopted January 4, 1952, effective July 1, 1952.]

Rule 1528. [Amendments] (Rescinded).

[The prayer for relief may be amended as of course at any time.]

Official Note: [Adopted January 4, 1952, effective July 1, 1952.] See Rule 1021 governing the claim for relief.

Rule 1529. [Enforcement of Orders. Execution Process] (Rescinded).

[(a) Execution process available in actions at law may be used in actions in equity where appropriate. A party entitled to subrogation against another party shall be entitled to execution process to enforce this right.

(b) Where appropriate, the court may order the prothonotary or sheriff to perform any act which a party fails to perform within the time specified by the order or decree. The designated officer shall act in the name of and for the delinquent party and with the same effect as though the act were performed by the defendant party. The court may order the recording or registration of any document thus executed and tax the costs against the delinquent party.

(c) A party who fails to comply with a decree may be arrested by attachment and the property of the delinquent party sequestered. If arrested, the delinquent party may, upon furnishing such bail as the court shall require, be conditionally released for the purpose of performing the decree. The attachment and sequestration shall not be dissolved until the decree has been performed and the costs of the action paid.

Official Note: See Rule 3250 imposing limitations upon the right of arrest.]

Rule 1530. [Special Relief. Accounting] (Rescinded).

[(a) Any pleading demanding relief may include a demand for an accounting.

(b) If the party is entitled to an accounting the court may proceed forthwith to hear and determine the amount due or may enter a decree that an account be filed within such time as the court by local rule or special order shall direct.

(c) Each party shall be served with a copy of the account in the same manner as a pleading. Exceptions may be filed to the account within twenty days after service.

(d) If no exceptions are filed, the court shall enter judgment for the amount, if any, shown by the account to be due. If exceptions are filed, the court shall determine the amount due or may refer the account and exceptions to an auditor.

(e) The auditor shall file a report, to which exceptions may be filed within twenty days. If no exceptions are filed to the report of the auditor, the court shall enter judgment for the amount, if any, determined by the auditor to be due. If exceptions are filed, the court shall determine the amount, if any, which may be due.]

Rule 1531. Special Relief. Injunctions.

* * * * *

(f)(1) When a preliminary or special injunction involving freedom of expression is issued, either without notice or after notice and hearing, the court shall hold a final hearing within three days after demand by the defendant. A final [decree] order shall be filed in the office of the prothonotary within twenty-four hours after the close of the hearing. If the final hearing is not held within the three-day period, or if the final [decree] order is not filed within twenty-four hours after the close of the hearing, the injunction shall be deemed dissolved.

Official Note: The three-day period is the maximum time. In particular cases a shorter period may be required. [The equity side of the Court is always open. See Rule 1502.] The court is "always open for the transaction of judicial business." See Section 324 of the Judicial Code, 42 Pa.C.S. § 324.

(2) When the defendant demands such a final hearing, no further pleadings shall be required and Rule [1517] 1038(b) and (c) relating to [adjudication decree nisi] decision in a trial without jury and Rules 227.1 to 227.3 relating to post-trial relief shall not apply.

(3) The trial judge shall file a written memorandum supporting the final [decree] order within five days after it is filed.

Rule 1532. [Special Relief. Perpetuation of Testimony] (Rescinded).

[(a) In an action to perpetuate testimony the complaint shall set forth

(1) the names and addresses of all prospective parties to the contemplated action, but if the iden-

tity of the heirs or assigns of a named former owner or party in interest is unknown they may be described generally;

(2) the nature of the contemplated action, the plaintiff's interest therein and the need for perpetuating the testimony of the person to be examined;

(3) the name and address of the person whose testimony is to be perpetuated and the substance of the testimony which plaintiff expects to elicit from each.

(b) In an action to perpetuate testimony, the testimony may be taken before the court or by depositions. The procedure for the taking of the testimony by depositions shall conform as nearly as practicable to the proceedings under the rules on depositions and discovery. The final decree shall direct whether or not the testimony or a part thereof shall be perpetuated.

(c) Testimony which has been perpetuated may be used at a trial or hearing in accordance with the provisions applicable to depositions under Rule 4020. The testimony may be used by or against a person succeeding to the interest of the party to the action for the perpetuation of testimony to the same extent as though the successor had been a party and had been present at the taking of the testimony. The testimony, if otherwise admissible, may be used in any other county of the Commonwealth.]

Official Note: [Adopted January 4, 1952, effective July 1, 1952; amended March 27, 1956, effective July 1, 1956.] Pre-complaint discovery provides adequate relief in the context of a civil action.

Rule 1533. Special Relief. Receivers.

* * * * *

(e) Except in the case of a public utility, a [decree] order authorizing a receiver to operate a business shall be limited to a fixed period, which may be extended from time to time upon cause shown after notice to all parties in interest.

* * * * *

(g) Every [decree] order appointing a permanent receiver shall fix the time within which the receiver shall file a report setting forth the property of the debtor, the interests in and claims against it, its income-producing capacity and recommendations as to the best method of realizing its value for the benefit of those entitled.

* * * * *

Rule 1536. [Effective Date. Pending Actions] (Rescinded).

[These rules shall become effective on the First day of July, 1952, and shall apply to actions pending at that time. They shall supersede all rules of equity practice heretofore promulgated.

Official Note: Adopted January 1, 1952, effective July 1, 1952.]

Subchapter B. ACTION FOR PARTITION OF REAL PROPERTY

Rule 1551. Form of Action.

Except as otherwise provided in this chapter, the procedure in an action for the partition of real estate shall be in accordance with the rules relating to the civil action [in equity].

* * * * *

Subchapter C. [ACTIONS] ACTION TO PREVENT WASTE

Rule 1576. [Remedies in Pending Actions] (Rescinded).

[(a) In any action at law or in equity, on petition of any party setting forth facts entitling the party to such relief, the court may, at any time before or after judgment, in accordance with Rule 1531(a), (c), (d) and (e), and upon such terms and conditions, including the filing of security, as it may fix, issue an injunction pendente lite to restrain waste of real property which is a subject of the action.

Official Note: The procedure relating to injunctions will be governed by Equity Rule 1531 except as to the mandatory bond requirement of 1531(b). The requirement of security will be discretionary with the court, depending upon the circumstances of each case.

(b) The court in which the action is pending may act to restrain waste notwithstanding an appeal in the action or removal of the record to the appellate court.

(c) The court may, in a proper case, appoint a receiver in accordance with Rule 1533.]

Official Note: A claim to prevent waste may be brought as a civil action for equitable relief.

Rule 1577. [Original Actions. Conformity to Equity] (Rescinded).

[Where no action is pending in which a petition to restrain waste may be filed, the procedure in an action to restrain waste shall be in accordance with the rules relating to the action in equity.]

Official Note: [adopted March 30, 1960, effective November 1, 1960.] An original action to restrain waste should be brought as a civil action seeking equitable relief.

Subchapter D. ACTS OF ASSEMBLY NOT SUSPENDED

Rule 1580. [Actions to Prevent Waste. Act of Assembly Not Suspended] (Rescinded).

[Sections 1 and 2 of the Act approved May 4, 1869, P. L. 1251, 68 P. S. §§ 115, 116 shall not be deemed suspended or affected by the rules governing the action to prevent waste.

Official Note: These sections make unlawful the cutting, removing or selling of timber by the owner of an undivided interest in land, without the written consent of all interests and authorizes proceedings for recovery of timber or damages.]

CHAPTER 1600. DECLARATORY JUDGMENT

Rule 1601. Action for Declaratory Relief Alone. Jury Trial. Waiver.

(a) A plaintiff seeking only declaratory relief shall commence an action by filing a complaint captioned "Action for Declaratory Judgment." The practice and procedure shall follow, as nearly as may be, the rules governing the [Action in Equity] civil action.

(b) If the right to trial by jury of disputed issues of fact exists in such an action, it shall be deemed waived unless demanded in the time and manner provided by Rule 1007.1.

Official Note: Rule 1601(b) gives no specific guidance on the existence of a right to jury trial. It could not, in the face of Rule 128(f). Section 7539(b) of the Judicial Code provides:

* * * * *

The existence of a right to jury trial on disputed issues of fact will be a matter of determination in each action where only declaratory relief is sought. If the right is claimed and disputed, the court must determine the question on the basis of the nature of the cause of action, the right to be enforced and the "other civil action" which would be brought to enforce it if declaratory judgment did not exist. The flexible Federal practice under Fed.R.Civ.P. 38, 39 and 57, including the procedure for the jury trial of selected issues, may be helpful. Pa.R.C.P. [1513] 1007.2 may also be applicable.

Rule 1602. Declaratory Judgment as Ancillary Relief.

In any action [at law or in equity], a party may include in the claim for relief a prayer for declaratory relief and the practice and procedure shall follow, as nearly as may be, the rules governing that action.

CONFORMING AMENDMENTS

CHAPTER 200. BUSINESS OF COURTS

Rule 205.4. Electronic Filing And Service of Legal Papers.

* * * * *

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

* * * * *

Official Note:

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See Rule 236(d) providing for the prothonotary to give notices of orders[, decrees] and judgments, and also other matters by facsimile transmission or other electronic means.

* * * * *

Rule 227.1. Post-Trial Relief.

(a) After trial and upon the written Motion for Post-Trial Relief filed by any party, the court may

* * * * *

(4) affirm, modify or change the decision [or decree nisi]; or

* * * * *

Official Note: The motion for post-trial relief replaces the following motions and exceptions: motion for new

trial, motion for judgment notwithstanding the verdict, motion upon the whole record after disagreement of a jury, motion in arrest of judgment, motion to remove a nonsuit, exceptions following the decision of the judge in a trial without jury [and exceptions following the adjudication of the judge in an action inequity. However, certain rules retain].

The following rules provide for the filing of exceptions, e.g., Equity Rule 1530 (exceptions to an auditor's report), Equity Rule 1534 (exceptions to a fiduciary's account), Partition Rule 1569 (exceptions to a master's report) and Divorce Rule 1920.55 (exceptions to a master's report), Support Rule 1910.12(e) (exceptions to a hearing officer's report) and Execution Rule 3136(d) (exceptions to sheriff's schedule of proposed distribution).

* * * * *

(c) Post-trial motions shall be filed within ten days after

* * * * *

(2) notice of nonsuit or the filing of the decision [or adjudication] in the case of a trial without jury [or equity trial].

* * * * *

Official Note: A motion for post-trial relief may be filed following a trial by jury[,] or a trial by a judge without a jury [in an action at law] pursuant to Rule 1038 [or a trial by a judge without a jury in an action in equity]. A motion for post-trial relief may not be filed to orders disposing of preliminary objections, motions for judgment on the pleadings or for summary judgment, motions relating to discovery or other proceedings which do not constitute a trial. See U.S. National Bank in Johnstown v. Johnson, 506 Pa. 622, 487 A.2d 809 (1985).

* * * * *

Rule 227.4. Entry of Judgment upon Praecipe of a Party

In addition to the provisions of any Rule of Civil Procedure or Act of Assembly authorizing the prothonotary to enter judgment upon praecipe of a party, the prothonotary shall, upon praecipe of a party:

(1) enter judgment upon the verdict of a jury or the decision of a judge following a trial without jury, [or enter the decree nisi as the final decree,] if

* * * * *

(2) enter judgment when a court grants or denies relief but does not itself enter judgment or order the prothonotary to do so.

Official Note: See Rule 236 requiring the prothonotary to give notice of the entry of an order[, decree] or judgment and Rule 237 requiring notice of filing of praecipe for judgment. For illustrative Rules of Civil Procedure specifically authorizing entry of judgment by the prothonotary on praecipe of a party, see Rules 1037, 1511(a), 1659, 3031(a), and 3146.

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.

* * * * *

Rule 237. Notice of Praecept for Final Judgment [or Decree].

No praecipe for judgment on a verdict [,] or for judgment on a decision in a trial without a jury [or for a final decree following a decree nisi in equity] shall be accepted by the prothonotary unless it includes a certificate that a copy of the praecipe has been mailed to each other party who has appeared in the action or to the attorney of record for each other party.

Rule 249. Authority of Individual Judge.

(a) Except where the court is required to act en banc, a law judge may perform any function of the court, including the entry of interlocutory or ex parte orders [, decrees] and other matters in the nature thereof.

* * * * *

Rule 250. Scope of Chapter.

The rules of this chapter shall apply to all civil actions and proceedings [at law and in equity].

CHAPTER 400. SERVICE OF ORIGINAL PROCESS AND OTHER LEGAL PAPERS

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

* * * * *

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

* * * * *

Official Note: See Rule 236(d) providing for the prothonotary to give notice of orders [, decrees] and judgments, and also other matters, by facsimile or other electronic means.

* * * * *

CHAPTER 1000. ACTIONS AT LAW

Subchapter D. ACTION TO QUIET TITLE

Rule 1066. Form of Judgment or Order.

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(b) Upon granting relief to the plaintiff, the court

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(3) shall enter a final judgment ordering the defendant, the prothonotary, or the recorder of deeds to file, record, cancel, surrender or satisfy of record, as the case may be, any plan, document, obligation or deed determined to be valid, invalid, satisfied or discharged, and to execute and deliver any document, obligation or deed necessary to make the [decree] order effective; or

* * * * *

Subchapter I. ACTION OF MORTGAGE FORECLOSURES

Rule 1141. Definition. Conformity to Civil Action.

(a) As used in this chapter,

"action" means an action [at law] to foreclose a mortgage upon any estate, leasehold or interest in land but shall not include an action to enforce a personal liability.

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CHAPTER 1500. ACTION IN EQUITY

Subchapter B. PARTITION OF REAL PROPERTY

Rule 1569. Master's Report. Exceptions.

(a) A master who is appointed by the court shall file a report with respect to the matters submitted. The report shall follow the form of [adjudication] decision in Rule 1570, insofar as the scope of the reference to the master permits.

(b) The master shall give all persons in interest written notice of the date on which he or she intends to file the report and proposed [decree] order and shall specify an address within the county where they may be examined. The master may change the report and proposed [decree] order as he or she deems proper before filing them, but if any changes are made written notice thereof shall be given to all parties.

(c) Within ten days after notice of the filing of the report exceptions may be filed by any party to rulings on evidence, to findings of fact, to conclusions of law and to the proposed [decree nisi] order. The court may, with or without taking testimony, remand the report or enter [an adjudication] a decision in accordance with Rule 1570 which may incorporate by reference the findings and conclusions of the master in whole or in part.

Rule 1570. [Adjudication and Decree] Decision and Order.

(a) The [adjudication] decision shall include findings of fact as follows:

* * * * *

(b) The [decree] order shall include:

* * * * *

(4) [an order for] a public or private sale of the property or part thereof where required.

* * * * *

Rule 1573. Return of Sale and Schedule of Distribution

(a) Where the sale has been conducted by a master, the master shall promptly file with the prothonotary a return of sale together with a proposed [decree] order which shall

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(b) The master shall give all persons in interest written notice of the date on which he or she intends to file the return of sale and proposed [decree] order and shall specify an address within the county where they may be examined. The master may change the return of sale and proposed [decree] order as he or she deems proper before filing them, but if any changes are made written notice thereof shall be given to all parties.

(c) If the court approves the return of sale in whole or in part, the court shall enter an appropriate [**decree nisi**] order. Any part of the [**decree nisi**] order as to which a motion for post-trial relief is not filed within ten days shall become final.

CHAPTER 2000. ACTIONS BY REAL PROPERTY PARTIES IN INTEREST

Rule 2001. Definitions.

As used in this chapter

“action” means any civil action or proceeding [**at law or in equity**] brought in or appealed to any court of record which is subject to these rules.

CHAPTER 2020. MINORS AS PARTIES

Rule 2026. Definitions.

As used in this chapter

“action” means any civil action or proceeding [**at law or in equity**] brought in or appealed to any court of record which is subject to these rules;

* * * * *

“judgment” means any final judgment or final [**decree**] order entered in any action.

CHAPTER 2050. INCAPACITATED PERSONS AS PARTIES

Rule 2051. Definitions.

As used in this chapter

“action” means any civil action or proceeding [**at law or in equity**] brought in or appealed to any court of record which is subject to these rules;

* * * * *

CHAPTER 2100. THE COMMONWEALTH AND POLITICAL SUBDIVISIONS AS PARTIES

Rule 2101. Definition.

As used in this chapter:

“action” means any civil action or proceeding [**at law or in equity**] brought in or appealed to any court which is subject to these rules.

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CHAPTER 2120. PARTNERSHIPS AS PARTIES

Rule 2126. Definitions.

As used in this chapter:

Action—Any civil action or proceeding [**at law or in equity**] brought in or appealed to any court which is subject to these rules.

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Rule 2129. Actions between partnerships and partners.

An action may be prosecuted [**at law**] by a partnership against one or more of the partners thereof, or against such partners together with persons not partners; or by one or more partners, or by such partners together with other persons not partners, against the partnership. [**No such action may be prosecuted in equity unless there is ground for equitable jurisdiction other than the fact that the action is between a partnership and one or more partners.**]

CHAPTER 2150. UNINCORPORATED ASSOCIATIONS AS PARTIES

Rule 2151. Definitions.

As used in this chapter

“action” means any civil action or proceeding [**at law or in equity**] brought in or appealed to any court which is subject to these rules;

* * * * *

Rule 2154. Actions between associations and members.

An action may be prosecuted [**at law**] by an association against one or more of the members thereof, or against such members together with persons not members; or by one or more members, or by such members together with other persons not members, against the association. [**No such action may be prosecuted in equity unless there is ground for equitable jurisdiction other than the fact that the action is between an association and one or more members.**]

* * * * *

CHAPTER 2170. CORPORATIONS AND SIMILAR ENTITIES AS PARTIES

Rule 2176. Definitions.

As used in this chapter

“action” means any civil action or proceeding [**at law or in equity**] brought in or appealed to any court which is subject to these rules;

* * * * *

Rule 2178. Actions between a corporation or similar entity and members thereof.

An action may be prosecuted by a corporation or similar entity against one or more of the members thereof, or against members together with persons not members; or by one or more members, or by members together with other persons not members, against the corporation or similar entity. [**No such action may be prosecuted in equity unless there is ground for equitable jurisdiction other than the fact that the action is between a corporation or similar entity and one or more members thereof.**]

Official Note: Adopted November 26, 1943, effective August 1, 1944. This rule [**is an adaptation of Pa.R.C.P. No. 2129 (Partnerships as parties), and Pa.R.C.P. No. 2154 (Unincorporated associations as parties).**]

It is] designed to apply to all actions between a corporation or similar entity and its members, including those actions in which an accounting has been asked.

CHAPTER 2200. ACTIONS FOR WRONGFUL DEATH

Rule 2201. Definitions.

As used in this chapter

“action” means any civil action or proceeding [**at law**] brought in or appealed to any court of record which is subject to these rules;

* * * * *

CHAPTER 2220. JOINDER OF PARTIES

Rule 2226. Definitions.

As used in this chapter

“action” means any civil action or proceeding [at law or in equity] brought in or appealed to any court of record which is subject to these rules.

CHAPTER 2250. JOINDER OF ADDITIONAL DEFENDANTS

Rule 2251. Definitions.

As used in this chapter

“action” means any civil action or proceeding [at law or in equity] brought in or appealed to any court of record which is subject to these rules.

* * * * *

CHAPTER 2300. INTERPLEADER BY DEFENDANTS

Rule 2301. Definitions.

As used in this chapter

“action” means any civil action or proceeding [at law or in equity] brought in or appealed to any court which is subject to these rules:

* * * * *

Rule 2318. Exclusive method at law; equity interpleader preserved.

The right of interpleader conferred by these rules shall be the exclusive method of interpleader in any action [at law] and shall be in addition to, and not in lieu of, the right to [file a bill in equity] commence a civil action for an interpleader.

CHAPTER 2320. INTERVENTION

Rule 2326. Definitions.

As used in this chapter

“action” means any civil action or proceeding [at law or in equity] brought in or appealed to any court of record which is subject to these rules.

Rule 2328. Petition to intervene.

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[Official Note: This subdivision adopts the equity practice. See Franklin Nat. Bank v. Kennerly Coal & Coke Co., 300 Pa. 479, 483, 484, 150 A. 902 (1930).]

* * * * *

CHAPTER 2350. SUBSTITUTION OF PARTIES

Rule 2351. Definitions.

As used in this chapter,

“action” means any civil action or proceeding [at law or in equity] brought in or appealed to any court of record which is subject to these rules, including [actions] an action to obtain judgment upon a mechanics’ lien claim but shall not include [actions] an action to enforce municipal liens and claims;

* * * * *

CHAPTER 3000. JUDGEMENTS

Subchapter A. TRANSFER OF JUDGMENTS TO OTHER COUNTIES

Rule 3001. Definition.

As used in this chapter

“judgment” means a judgment[,] or order [or decree] requiring the payment of money or adjudicating the right to possession in an action of replevin, including a final or interlocutory order for the payment of costs entered in any court which is subject to these rules, either originally or upon transcript or certification from another court within the same county.

Subchapter D. ENFORCEMENT OF MONEY JUDGEMENTS FOR THE PAYMENT OF MONEY

Rule 3101. Definitions; garnishee.

(a) As used in this chapter

“judgment” means a judgment[,] or order[, or decree] requiring the payment of money entered in any court which is subject to these rules, including a final or interlocutory order for payment of costs, except a judgment against the Commonwealth, a political subdivision or a public authority;

* * * * *

Rule 3131. Sale of real property located in more than one county.

* * * * *

(c) The court may enter judgment upon the pleadings or take evidence by deposition or otherwise, shall [decree] order the extent of the real property which shall be subjected to execution, describing it by metes and bounds, shall designate the place of sale, and shall control the distribution of the proceeds of sale. The court may apportion the proceeds so as to satisfy prior lienors, including those having a lien upon a portion of a single tract which lay in a different county and which was not sold on execution.

* * * * *

CHAPTER 4000. DEPOSITIONS AND DISCOVERY

Rule 4001. Scope. Definitions.

(a) The rules of this chapter apply to any civil action or proceeding [at law or in equity] brought in or appealed to any court which is subject to these rules including any action pursuant to the Eminent Domain Code of 1964 or the Municipal Claims Act of 1923.

* * * * *

Explanatory Comment

Introduction

- I. Amendments to the Rules Governing the Civil Action
II. Effect of the Recommendation Upon the Rules Governing the Action in Equity
III. Conforming Amendments

Tables

Introduction

Recommendation No. 180 proposes to abolish the separate action in equity by amending the rules governing the civil action to include equitable relief. The “merger of law and equity” with respect to procedure is warranted in light of developments over the sixty-five year life of the

rules of civil procedure. During that time, the procedural aspects of law and equity have been merged in most, if not all, American jurisdictions. It is a merger which has been successful and which has become familiar to lawyers and judges alike. The merger has occurred in a climate in which many cases are not solely actions at law or actions in equity but actions in which relief both equitable and legal in nature is sought.

A civil action in which both legal and equitable relief may be sought avoids the necessity of multiple actions when a party claims more than one kind of relief. It avoids the necessity to bring a second action "just in case" the action in equity is determined to be actually an action at law, or the reverse. It allows the court in a "unified judicial system" to grant the relief to which the parties are entitled without sacrificing substance to form.

The consolidation of the action in equity into the civil action does not stretch the imagination. Equity Rule 1501 now provides that "the procedure in an action in equity shall be in accordance with the rules relating to a civil action." This recommendation proposes, first, to eliminate most of the remaining differences between the current civil action and action in equity and, second, to revise some of the civil action rules to accommodate cases in which equitable relief is sought.

While the recommendation affects a substantial number of civil action and equity rules, many rules will remain unchanged. Table I appended to this comment lists the civil action and equity rules which are proposed to be amended by the recommendation. Table II lists those equity rules which are proposed to be rescinded. Table III sets forth those rules which are not affected by the recommendation. Finally, Table IV lists the conforming amendments, i.e., additional rules of civil procedure which are affected by the proposal.

The remainder of this comment is directed to rules which will require rescission or revision.

I. Amendments to the Rules Governing the Civil Action

a. Scope of the Civil Action

Rule 1001(b) is amended to define the civil action as one "in which shall be brought all claims for relief heretofore asserted in" the actions of assumpsit, trespass and equity. Rule 1501 conforming the procedure in the action in equity to the procedure of the civil action will be rescinded.

Certain rules in Chapter 1500 are incorporated into the civil action. These rules, presently part of the action in equity, are concerned with equitable relief. They will continue to provide the procedure when equitable relief is sought but in the context of the civil action. Rule 1506 governing stockholder's derivative suits and Rule 1531 governing injunctive relief are examples of rules that will continue as part of the civil action.

It is proposed that the action to prevent waste be abolished. The relief sought in that action is injunctive relief which may be obtained in the consolidated civil action.

The action for declaratory judgment will remain a separate form of action. Rule 1601 will be amended to provide that the procedure governing the action when declaratory relief alone is sought will conform to the civil action rather than to the action in equity. Rule 1602 governing the procedure when declaratory relief is sought as ancillary relief is amended to delete the phrase "at law or in equity" but is otherwise unchanged.

The action for partition of real property also remains a separate form of action. Rule 1551 is amended to conform the procedure to the civil action rather than the action in equity.

b. Venue

Recommendation No. 180 does not propose to change the law governing venue but simply to consolidate the two rules into one.

Present Equity Rule 1503 incorporates the venue of the civil action and, if the subject matter of the action is property, further provides for venue in the county in which the property is located. Under the proposed recommendation, Rule 1503 will be rescinded.

It is proposed that the present civil action venue provision in Rule 1006(a) continue as subdivision (a)(1). New subdivision (a)(2) will be added to provide venue when equitable relief is sought with respect to property. Similar to its counterpart in present Rule 1503, subdivision (a)(2) will authorize venue in the county in which

(2) the property or a part of the property which is the subject matter of the action is located provided that equitable relief is sought with respect to the property.

c. Service of Original Process

Rule 400 is entitled "Person to Make Service". The recommendation proposes to amend the rule to accommodate the merging of the forms of action. Thus, subdivision (b) is revised to refer to a "civil action in which equitable relief is the only relief sought or the primary relief sought" rather than an action in equity. No change in practice is intended by this revision. The sheriff will continue to serve original process as heretofore.

It is further proposed that Rule 1505, "Defendant Not Served," be rescinded as unnecessary. It is not believed that the rule states a principle different from that applicable the present civil action.

d. Trial by Jury

The right to trial by jury is either constitutionally mandated or provided by Act of Assembly. The merger of the action in equity into the civil action does not affect the right so provided.

Consequently, it is proposed that the body of Rule 1007.1 remain unchanged. The title is revised to indicate that the rule applies where there is a jury trial "as of Right". A note is added to cross-refer to Rule 128(f) providing that "no rule shall be construed to confer a right to trial by jury where such right does not otherwise exist."

Present Rule 1513 provides for trial by jury and an advisory verdict in the action in equity. It is proposed that this provision be retained in the civil action as new rule 1007.2. Language is added to ensure that the rule will be limited to civil actions in which there is a claim for equitable relief.

A case may involve claims, one or more of which are triable by jury and others which are triable by the court without a jury. Such a case will necessarily require that the court exercise its discretion in the manner in which the case will proceed. For instance, the court may need to decide whether all claims should be tried at the same time or certain claims should be bifurcated, whether claims triable by jury should be tried before or after claims tried to the court, and whether to invoke new Rule 1007.2 providing for an advisory verdict. Rules cannot dictate the procedure for a particular instance. The course

of the proceedings will depend upon the "good judgment" of the court in viewing the totality of the case.

e. Joinder of Causes of Action

Rule 1020 is to be revised to accommodate the merger of the action in equity into the civil action. Thus, subdivision (a) governing the permissive joinder of causes of action is revised to refer to a "cause of action cognizable in a civil action" rather than a "cause of action heretofore asserted in assumpsit and trespass." Causes of action cognizable in a civil action are set forth in Rule 1001(b) and include the former actions of assumpsit, trespass and equity.

Subdivision (d)(1) of Rule 1020 governs mandatory joinder of related causes of action. It is revised to include related causes of action "heretofore asserted in assumpsit and trespass" but makes no mention of causes of action in equity. Thus, the present mandatory provision is continued only as to related claims previously asserted in assumpsit and trespass. The present practice of permissive joinder of related claims in equity is also continued.

It is not feasible to make mandatory the joinder of related causes of action in equity. It frequently occurs that equitable relief is needed quickly before a suit with all of its aspects may be prepared and filed. In addition, the full ramifications of a transaction or occurrence may not be fully known at the time an action is commenced, making it impossible to initially request all of the relief which eventually may be determined to be appropriate.

The recommendation also proposes a technical amendment to subdivision (d). That subdivision is presently divided into five paragraphs, three of which have been rescinded. It is proposed that present paragraph (4) be transposed to paragraph (1) as the second sentence. Paragraphs (2) through (5) may then be deleted and subdivision (d)(1) will be redesignated as subdivision (d).

In light of the foregoing it is proposed that Rule 1508 governing the pleading of more than one cause of action in equity be rescinded.

With respect to a counterclaim, it is proposed that Equity Rule 1510 be rescinded and that Civil Action Rule 1031 be amended to allow the pleading as a counterclaim of "any cause of action cognizable in a civil action."

f. Preliminary Objections and Defenses

Civil Action Rule 1028(a) sets forth six preliminary objections. Present Equity Rule 1509(a) incorporates these six objections into the action in equity. Under the proposed recommendation, these six objections will continue to be applicable to the new consolidated civil action.

Subdivisions (b) and (c) of present Rule 1509 provide for three additional preliminary objections applicable to the action in equity.

Rule 1509(b) provides for the objections of laches and failure to exercise or exhaust a statutory remedy to be raised by preliminary objection, answer or reply. However, the objections are not waived if not pleaded. The recommendation disposes of these two objections separately. It is proposed that the objection of laches be raised in new matter only. To this end, laches has not been included in amended Rule 1028(a) as a preliminary objection but continues as part of the list of defenses set forth in Rule 1030 governing new matter. It is further proposed that the objection of failure to exercise or exhaust a statutory remedy be limited to preliminary objections. To this end, this objection has been included in Rule 1028(a) as new paragraph (7). Under Rule 1032(a) governing waiver of

defenses, as amended, the objection of laches will be waived for failure to plead it but the objection of failure to exercise or exhaust a statutory remedy will not be waived.

Present Rule 1509(c) provides for the objection of the existence of a full, complete and adequate non-statutory remedy at law to be raised by preliminary objection. The rule makes two points with respect to the objection. First, the objection is waived for failure to plead it. Second, if the objection is sustained, the court is required to certify the action to the law side of the court.

The recommendation proposes to transpose this objection of the existence of a full, complete and adequate non-statutory remedy at law to Rule 1028(a) as new paragraph (8). However, the recommendation also proposes that Rule 1032(a) be amended to provide that there will be no waiver if the defense is not pleaded.

The provision of the present equity rule for transfer to the law side of the court in the event the objection is sustained, is not continued. Under the consolidated civil action, there is no law side and no equity side. There is simply "the court" which is empowered to grant appropriate relief whether legal or equitable.

Although the procedural aspect of the objection of the existence of a full, complete and adequate non-statutory remedy at law is not continued, the objection retains vitality as a principle of substantive law barring the court from granting equitable relief.

g. Default Judgment

The recommendation proposes the amendment of Civil Action Rule 1037 governing judgment upon default or admission to accommodate the consolidation of the action in equity and the civil action.

Subdivision (b) is revised to prohibit the prothonotary from granting equitable relief admitted to be due by the defendant's pleadings. This is left to new subdivision (d) which incorporates the substance of Equity Rule 1511(b) providing that "In all cases, the court shall enter an appropriate final decree..." In view of the amendment to Rule 1037, the recommendation proposes that Rule 1511 be rescinded.

h. Decision and Adjudication

It is proposed that Civil Action Rule 1038, "Trial Without Jury," will govern trials of the consolidated civil action by a judge without a jury. The only revision to the rule is a conforming amendment to subdivision (a)(1) to substitute the word "obtain" in place of "suffer" with respect to a nonsuit.

A note is added to the rule explaining that a decision includes what were formerly known as an adjudication and a decree nisi. Thus, a trial judge sitting without a jury will at the conclusion of the trial render a decision which will grant or deny relief, whether legal or equitable, as may be appropriate. Unless there is an Act of Assembly or general rule to the contrary, the decision will not constitute a final order or judgment.

Consequently, the recommendation proposes to abolish the present practice of an action in equity set forth in the following rules:

1. Rule 1516 governing oral argument and providing a limitation on requests for findings and conclusions,
2. Rule 1517 governing the adjudication, and
3. Rule 1520 governing the form of decree.

II. Effect of the Recommendation Upon the Rules Governing the Action in Equity

a. *Equity Rules Rescinded*

The following rules were discussed In Part I as proposed to be rescinded in light of amendments to the civil actions rules.

Rule 1501. Conformity to Civil Action

Rule 1503. Venue

Rule 1505. Defendant Not Served

Rule 1508. Pleading More than One Cause of Action

Rule 1509. Preliminary Objections

Rule 1510. Counterclaim

Rule 1511. Judgment upon Default or Admission

Rule 1513. Trial by Jury. Advisory Verdict

Rule 1516. Oral Argument. Limitation on Requests for Findings and Conclusions

Rule 1517. The Adjudication. Notice

Rule 1520. Form of Decree

The recommendation proposes the rescission of the following rules as well:

1. *Rule 1502. Court Open*

Rule 1502 providing that the equity side of the court shall always be open is to be rescinded as unnecessary in light of section 324 of the Judicial Code, 42 Pa.C.S. § 324, which contains a similar provision.

2. *Rule 1507. Possible Persons Interested in Property*

It is proposed that rule 1507 be rescinded. The rule is concerned with "a person interested in property" who should be made a party "but the person's name or interest in the property cannot be ascertained and the person is not represented in the action". It is suggested that the subject of the rule is covered by the law relating to indispensable parties, rendering the rule unnecessary.

3. *Rule 1514. Examiners, Masters and Auditors*

4. *Rule 1515. Accountants and Experts*

The court has inherent power to appoint such persons as are necessary to enable or facilitate the court in deciding cases. Rules providing for the appointment of such persons or denying that power are not required in the consolidated civil action.

5. *Rule 1522. Rehearing*

Rule 1522 governing rehearing is to be rescinded as unnecessary in light of Rule of Appellate Procedure 1701(b) providing for reconsideration of an order.

6. *Rules 1523 through 1527. Costs*

Presently, costs may be sought in a civil action though no rules prescribe a procedure to do so. It is suggested that special rules are not required simply because the civil action will include equitable as well as legal relief.

7. *Rule 1528. Amendments*

Rule 1528 governs amendment of the prayer for relief in an action in equity. Civil Action Rule 1033 provides a procedure for the amendment of a pleading. Consequently, the recommendation proposes that Rule 1528 be rescinded as unnecessary.

8. *Rule 1529. Enforcement of Orders. Execution Process*

Rule 1529 is concerned with several aspects of execution process. It is proposed that the rule be rescinded.

Subdivision (a) makes execution process available in actions at law available also to actions in equity. With the consolidation of the forms of action, this provision is no longer necessary.

Subdivision (b) authorizes the court to order the prothonotary or sheriff to perform an act which the party fails to perform. It is suggested that the power of contempt is available, rendering this provision unnecessary.

Subdivision (c) refers to arrest by attachment. Arrest, though limited by the Judicial Code, is an inherent power for which a rule is not necessary.

9. *Rule 1530. Special Relief. Accounting*

Civil Action Rule 1021 presently permits a party to demand relief in the alternative or of several different types, "including an accounting". There are no special civil action rules governing an accounting yet the remedy is available in the civil action. It is proposed that no special rule is required to govern an accounting and that Rule 1530 be rescinded.

10. *Rule 1532. Special Relief. Perpetuation of Testimony*

The proposed rescission of Rule 1532 is not intended to abolish the right to preserve testimony. In the context of a civil action, the rule has become obsolete in view of pre-complaint discovery which provides an adequate remedy. A party may file a writ of summons and immediately seek discovery as permitted under the applicable rules. Where necessary, a party can seek the assistance of the court to devise a procedure tailored to the particular case.

11. *Rule 1536. Effective Date. Pending Actions*

It is proposed that Rule 1536 be rescinded as obsolete. It had application only upon promulgation of the original equity rules in 1952.

b. *Equity Rules Amended*

1. *Rule 1521. Indexing of Decree. Lien and Revival of Decree for Payment of Money*

Rule 1521 is revised to eliminate references to the law side of the court. Otherwise, the rule remains unchanged.

2. *Rule 1531. Special Relief. Injunctions*

Rule 1531(f) is revised by substituting the term "order" in place of "decree". In addition, the cross-reference must be revised as it refers to Rule 1517 which is rescinded. The reference will be changed to Rule 1038(b) and (c) which will govern trials without a jury whether the relief sought is legal or equitable.

3. *Rule 1533. Special Relief. Receivers*

Subdivisions (e) and (g) of Rule 1533 are revised by substituting the term "order" in place of "decree."

c. *Equity Rules Unchanged*

It is proposed that the following rules remain unchanged. However, instead of being viewed as rules governing the action in equity, they will be viewed as rules governing equitable relief in the context of a civil action. These rules are:

1. Rule 1506. Stockholder's Derivative Action
2. Rule 1534. Accounting by Fiduciaries
3. Rule 1535. Objections to Security

III. Conforming Amendments

The conforming amendments revise various rules to accommodate the proposed amendments set forth in the recommendation. These amendments do not themselves affect practice or procedure. Generally, these amendments

delete references to actions at law and actions in equity, replacing them with the "civil action". Similarly, the terms "decree" and "adjudication" found in a number of rules are deleted and replaced with the terms "order" and "decision".

By the Civil Procedural Rules Committee

R. STANTON WETTICK, Jr.,
Chair

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[Pa.B. Doc. No. 02-1042. Filed for public inspection June 14, 2002, 9:00 a.m.]

Title 25—LOCAL COURT RULES

CARBON COUNTY

Amendment of Local Rule of Civil Procedure L210—Form of Briefs; No. 93-0916

Administrative Order 12-2002

And Now, this 30th day of May, 2002, in order to provide the Court with relevant information to aid in the disposition of cases, it is hereby

Ordered and Deceed that effective thirty (30) days after publication in the *Pennsylvania Bulletin*, the Carbon County Court of Common Pleas hereby *Amends* Local Rule of Civil Procedure L210 governing the Form of Briefs.

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 Pennsylvania 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 a copy of the Order in the Prothonotary's Office.

RICHARD W. WEBB,
President Judge

Rule L210. Form of Briefs.

- (1) Each brief shall contain:
 - (A) A history of the case;
 - (B) A statement of the pertinent facts;
 - (C) A statement of the questions involved; and
 - (D) The argument.
- (2) The statement of questions involved shall be so drawn that the Court may quickly determine all the legal questions requiring determination.
- (3) The argument shall be divided into as many parts as there are questions involved. Opinions of an Appellate Court, of this or any other jurisdiction shall be cited from the National Reporter's System and/or to the official reports of Pennsylvania Appellate Courts, if published therein.
- (4) Briefs shall refer specifically, by page number or other appropriate means, to any portion of the record relied upon in support of the argument.
- (5) Copies of all Non-Pennsylvania State cases and Non-3rd Circuit Federal cases shall be attached as Exhibit to said Brief.

[Pa.B. Doc. No. 02-1043. Filed for public inspection June 14, 2002, 9:00 a.m.]

6. Keep continuously available for public inspection copies of the Order and Rule in the Clerk of Court's Office.

RICHARD W. WEBB,
President Judge

Rule 320. Expungement Upon Successful Completion of Accelerated Rehabilitative Program.

A. At the end of each month, the Adult Probation Office shall prepare a list of all cases/defendants who have successfully completed the ARD Program during the month. A copy of the list shall be provided to the District Attorney and District Court Administrator.

B. 1. If the District Attorney objects to the automatic expungement, the District Attorney shall follow the procedure set forth in Pa. R.Cr.P. 320(b).

2. The District Attorney shall review the list, make notation on the list of any case(s) in which objections will be filed, approve the list by initialing it, and forward it to the District Court Administrator.

3. In all cases where no objections are noted, the District Court Administrator shall prepare the Expungement Orders and Letters and shall expunge the cases from the public access screens of the Court Computer Database System after the thirty (30) day objection period expires.

4. The Court and other offices as prescribed by law shall maintain a confidential list of completed expungement cases.

[Pa.B. Doc. No. 02-1044. Filed for public inspection June 14, 2002, 9:00 a.m.]

CARBON COUNTY

Amendment of Local Criminal Rule 320; No. 103 MI 00

Administrative Order No. 9-2002

And Now, this 29th day of May, 2002, it is hereby

Ordered and Deceed that, effective thirty (30) days after publication in the *Pennsylvania Bulletin*, the Carbon County Court of Common Pleas hereby *Amends* Local Rule of Criminal Procedure Carb.C.R.Crim.P. 320 governing the Expungement upon Successful Completion of Accelerated Rehabilitative Disposition Program for criminal 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 Pennsylvania Criminal 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.

CARBON COUNTY

Transfer of Juvenile Cases Filing Functions and Duties of the Clerk of Courts; No. 103-85

Amended Order of Court

And Now, this 29th day of May, 2002, after consideration of the within Petition, it is hereby

Ordered and Deceed that the Clerk Of Courts of Carbon County be and is hereby relieved from the responsibility of maintaining dockets and original files relating to Juvenile Court matters in Carbon County.

It Is Further Ordered and Deceed that effective January 1, 1985, such duties, mainly maintaining dockets and original files are hereby *Transferred* to the Carbon County Juvenile Probation Office and The Carbon County Children And Youth Office.

It Is Further Ordered that personnel, from time to time designated by the Chief Juvenile Court Officer of the Carbon County Juvenile Probation Office and The Children And Youth Administrator II of the Carbon County Children and Youth Office, by deputized by the Clerk Of Courts for the performance of the duties enumerated above, including the taking of affidavits and the affixing of the seal of the Court of Common Pleas of Carbon County where the same may be required.

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 Pennsylvania Juvenile 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 a copy of the Order in the Juvenile Probation Office and the Children and Youth Office.

RICHARD W. WEBB,
President Judge

[Pa.B. Doc. No. 02-1045. Filed for public inspection June 14, 2002, 9:00 a.m.]

CARBON COUNTY

Rescission of Alternative Procedure for Record Hearing and Report and Exceptions for Contempt Proceedings for Actions in Support; No. 4 M 98

Administrative Order No. 10-2002

And Now, this 31st day of May, 2002, it is hereby

Ordered and Decreed that the Carbon County Court of Common Pleas hereby *Rescinds* this Court's Administrative Order 11-1998 governing the Alternative Procedure for Record Hearing and Report and Exceptions for Contempt Proceedings in Actions for Support.

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 Pennsylvania Domestic Relations 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 and Rule in the Domestic Relations Office.

RICHARD W. WEBB,
President Judge

[Pa.B. Doc. No. 02-1046. Filed for public inspection June 14, 2002, 9:00 a.m.]

FRANKLIN AND FULTON COUNTIES

Amendment of Local Civil Action Rules 39-210 and 39-211; Misc. Doc. 2002-1424

Order of Court

May 28, 2002, Civil Action Rule No. 39-210 and 39-211 for the Court of Common Pleas of the 39th Judicial District of Pennsylvania is hereby amended as follows, to be effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

JOHN R. WALKER,
President Judge

Rule 39-210. Form of Briefs.

39-210.1. Content Generally. Briefs shall be typewritten and double spaced, except for quotations, on paper 8 1/2 inches by 11 inches in size, and shall be bound at the top, not at the side.

39-210.2. Brief of Moving Party. The brief of the moving party shall contain:

(a) A statement noting whether or not oral argument is requested.

(b) A procedural history of the case.

(c) A statement of facts relevant to the issue for disposition.

(d) A statement of the question or questions involved.

(e) Argument with citations of the authority relied upon.

(f) Conclusion.

(g) A copy of, or reference to, the pertinent parts of any relevant document, report, recommendation or order.

39-210.3. Brief of Opposing Party. The brief of the opposing party shall contain everything required in the brief of the moving party except it need not contain a procedural history of the case.

39-210.4. Briefs Longer Than 15 Pages. The brief of each party, if more than 15 pages in length, shall contain an index and a table of citations of cases and statutes therein, with reference to the pages at which they appear in the brief.

Rule 39-211. Oral Arguments.

39-211.1. Argument Court Calendar. Except as otherwise provided by the Court, Arguments in the Franklin County Branch shall be held on the first Thursday of each month excluding August, except when that Thursday is a legal holiday, in which case the Argument shall be held on the next business day, and in the Fulton County Branch Arguments shall be held on days as established by the annual Court calendar.

39-211.2. Listing and Briefing Cases. Causes for Argument shall be listed in the Prothonotary's office in a docket to be provided for that purpose. Any party may list a cause by the filing of a Praecipe directing the Prothonotary to list the cause for oral argument. The Praecipe shall be accompanied by a Cover Sheet substantially in the form set forth in Exhibit A, attached.

A. Responsibility of Moving Party.

1. Within twenty (20) days of the placing of any matter on the list for argument, the moving party shall file an original and one copy of a supporting brief together with any affidavits, depositions, transcripts and other support documents.

2. The moving party shall serve copies of its brief on all opposing parties together with a notice to file a responsive brief within twenty (20) days of service, and shall file proof of service of the notice.

3. Upon the failure of the moving party to timely file and serve its brief, the Court may, sua sponte or upon petition of the opposing party, order the matter stricken from the argument list.

4. Rebuttal briefs may be filed only with the permission of the Court.

B. Responsibility of the Opposing Party.

1. Any party in opposition to the matter shall file an original and one copy of its responsive brief within twenty (20) days of service of the moving party's brief. Concurrently, the opposing party shall serve copies of its brief on the moving party and any other opposing parties.

2. If an opposing party fails to file and serve its brief within the time period required, the Court may consider such failure to be a waiver of opposition and shall sua sponte, or upon petition of the moving party, either [a] grant the relief requested, so long as such action does not result in dismissal of the case; or [b] exclude the opposing party from oral argument.

C. Scheduling Oral Argument.

1. Any party may schedule a case for argument on the next scheduled argument court date by the filing of a praecipe with the Prothonotary on or before the Thursday which is four weeks preceding the day for argument, and further provided that the praecipe scheduling the case for argument or submission certifies that all briefs have been filed or that the opposition brief has not been timely filed.

2. Any party scheduling a case for argument or submission shall give written notice thereof to all other parties within two (2) days, and shall certify such notice on the record. Failure to give such notice may be grounds for striking the case from the list.

39-211.3. Listing By Agreement. The parties may

agree in writing to add a cause to the Argument List at any time so long as service of briefs may be made in accordance with the time requirements of Rule 39-211.2, supra. The Court may order a cause listed for Argument at the next scheduled Argument Court or on such other day as it may direct, and in that event, it may regulate the time for service of briefs.

39-211.4. Fact Determination. When the ascertainment of facts is necessary for the proper disposition of a cause listed for Argument, such facts may be determined by deposition or as otherwise provided in the Pennsylvania Rules of Civil Procedure.

39-211.5. Oral Argument. The person seeking the Order applied for shall argue first, and may also argue in reply, if permitted by the Court, but such reply shall be limited to answering Arguments advanced by the respondent. In causes where there is more than one respondent, the order of Argument by the respondents shall be as directed by the Court.

39-211.6. Briefs. The form of briefs is governed by 39th Jud. Dist. C.R. No. 39-210 and briefs shall be filed with the Prothonotary and served as set forth in Rule 39-211.2, supra.

[39-211.7. Omitted]

[39-211.8. Omitted]

39-211.9. Disposition By Briefs Alone or Upon Oral Argument. Oral argument may be dispensed with provided that there is agreement of the parties and approval of the Court. The Court reserves the right to require oral argument in any case.

39-211.10. Striking Cases From the List. Cases may be continued or stricken from the argument list only pursuant to order of court. A party may request such an order of court by petition setting forth the basis for the request. Such petition must include certification regarding concurrence or nonconcurrence of all other parties as required by 39th Jud. Dist. C.R. No. 29-206.1.

<p>Case Name: _____</p> <p>Docket No.: _____</p>
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Cover Sheet, Oral Arguments
39th Jud. Dist. C. R. No. 39-211
(one copy to be filed by listing party; to be completed by Prothonotary,
and transmitted along with the Briefs to the assigned Judge)

	Date Filed	Rule Reference
Listing and Briefing of Cases		
1. <i>Moving party</i> files Praecipe to list cause for argument	_____	39-211.2
2. <i>Moving party</i> files two copies of brief [not later than twenty (20) days after listing matter for oral argument]	_____	39.211.2 A.1.
3. <i>Responding party</i> files two copies of brief [not later than twenty (20) days after service of moving party's brief]	_____	39-211.2 B.1.
Scheduling Oral Argument (only if all briefs have been filed)		

4. *Moving or Responding party* may file a Praecipe to schedule the case for oral argument [not later than Thursday which is four weeks preceding the date for oral argument] _____ 39-211.2 C.1.
- Prothonotary shall check one: _____ 39-211.2 C.1.
- all briefs have been filed
- opposition brief has not been timely filed
5. Party scheduling case for oral argument certifies having given notice to other parties that matter has been scheduled for oral argument [not later than two (2) days after filing praecipe to schedule the case for oral argument] _____ 39-211.2 C. 2.

Argument has been scheduled to be held on: _____

Exhibit A

[Pa.B. Doc. No. 02-1047. Filed for public inspection June 14, 2002, 9:00 a.m.]

FRANKLIN AND FULTON COUNTIES

Amendment of Local Civil Action Rule 39-1920.53(h); Misc. Doc. 2002-1425

Order of Court

May 28, 2002, Civil Action Rule No. 39-1920.53(h) for the Court of Common Please of the 39th Judicial District of Pennsylvania is hereby amended as follows, to be effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

JOHN R. WALKER,
President Judge

Rule 39-1920.53(h). Hearing by Master.

(h) "The Standing Master shall be vested with the authority to issue directives for compliance in connection with discovery pertaining to the matters commissioned to the Master. **Any directive issued by the Master shall be considered an interim Order of Court for the purposes of contempt proceedings.** Upon a party's failure to comply with the directives of the Standing Master, the matter may be listed, at the discretion of the Master, for a hearing with the Court on the day and time regularly scheduled for support contempt hearings for a finding of contempt.

[Pa.B. Doc. No. 02-1048. Filed for public inspection June 14, 2002, 9:00 a.m.]