

THE COURTS

Title 210—APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

[210 PA. CODE CHS. 1 AND 21]

Order Adopting Amendments to Pa.R.A.P. 124, 2135 and 2171, and Notes; No. 146 Appellate Court Rules; Doc. No. 1

Order

Per Curiam:

And Now, this 16th day of May, 2003, upon the recommendation of the Appellate Court Procedural Rules Committee, the proposal having been published before adoption at 32 Pa.B. 2751 (June 8, 2002);

It Is Ordered, pursuant to Article V, Section 10 of the Constitution of Pennsylvania that the amendments to the Pennsylvania Rules of Appellate Procedure 124, 2135, and 2171, and Notes thereto, are adopted in the following form.

This Order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective 60 days after adoption.

Annex A

TITLE 210. APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

ARTICLE I. PRELIMINARY PROVISIONS

CHAPTER 1. GENERAL PROVISIONS

DOCUMENTS GENERALLY

Rule 124. Form of Papers; Number of Copies.

(a) *Size and other physical characteristics.* [No paper or other document may be filed in an appellate court on any paper other than paper approximating 8 1/2 inches by 11 inches in size. Any paper or other document filed in an appellate court shall be sufficient as to format and other physical characteristics if it substantially complies] All documents filed in an appellate court shall be on 8 1/2 inch by 11 inch paper and shall comply with the following requirements:

(1) [Prepared] The document shall be prepared on white paper (except for covers, dividers and similar sheets) of good quality [with typed or printed matter 6 1/2 inches by 9 1/2 inches].

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(3) [The lettering shall be clearly legible and, except as otherwise prescribed in Rule 2171 (method of reproduction) for printed paperbooks, shall be not smaller than typewriting pica with line spacing (except for quotations) not closer than typewriting double spacing.] The text must be double spaced, but quotations more than two lines long may be indented and single spaced. Except as provided in subdivision (2), margins must be at least one inch on all four sides.

(4) The lettering shall be clear and legible and no smaller than point 11. The lettering shall be on only one side of a page, except that exhibits and similar supporting documents and paperbooks may be lettered on both sides of a page.

(5) [Firmly bound.] Any metal fasteners or staples must be covered. Documents and papers must be firmly bound.

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(c) *Copies.* Except as otherwise prescribed by these rules:

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(2) An original and [seven] eight copies of any other application in the Supreme Court and an original and three copies of any other application in the Superior Court or the Commonwealth Court shall be filed, but the court may require that additional copies be furnished.

[Official Note: Subdivision (a) is intended to provide a "safe harbor" upon which the bar may rely in preparing appellate papers. The effect of the 8 1/2 inch by 11 inch requirement will be to effectively mandate the future use of letter-size paper throughout the unified judicial system, since the requirement extends to original records filed pursuant to Chapter 19 (preparation and transmission of record and related matters). The requirement is prospective only, however. It will not be necessary or appropriate to transcribe any existing legal-size or printed brief-size (6 inch by 9 inch) documents onto letter-size paper. Moreover, it is anticipated that a reasonable time (approximately six months after the requirement takes effect) will be required to permit the exhaustion of existing supplies of legal-size forms and other documents. After March 1, 1980 the clerk of a court should accept a document (whether an order, opinion, transcript, pleading, brief, reproduced record or otherwise) on other than letter-size paper only upon a showing of exceptional circumstances.

Paragraph (a)(5) is based on Third Circuit Rule 21(2)A(b).

Under these rules a reference to "two copies" or the like does not imply that a third document is required; the terminology is used so as to permit the filing party to retain the executed original and file only photocopies. Thus under Rule 905 (filing of notice of appeal) an original and two copies of the notice of appeal are not required; only two photocopies.

Explanatory Note: Supreme Court "short paper" (i.e. 11 inch rather than 13 or 14 inch legal size) rule is extended to the entire Pennsylvania judicial system. This result follows from a new requirement that all papers filed in an appellate court, including the original record made before the trial court, be submitted on short paper. The change also applies to printed paperbooks (briefs and reproduced records). The note to the rule makes clear that the change is prospective only, but that by early 1980 it is anticipated that the bar and all elements of the Pennsylvania judicial system will have converted over to the use of modern letter-size paper.]

ARTICLE II. APPELLATE PROCEDURE
CHAPTER 21. BRIEFS AND REPRODUCED
RECORD
CONTENT OF BRIEFS

Rule 2135. Length of Briefs.

[Except by permission of the court, briefs (exclusive of pages containing the table of contents, tables of citations and any addendum containing opinions, etc., or any other similar supplementary matter provided for by these rules) shall not exceed:

(1) 50 pages of conventional typographical printing or 70 pages of reproduction by any other process of duplicating or copying, in the case of principal briefs.

(2) 15 pages of conventional typographical printing or 25 pages of reproduction by any other process of duplicating or copying, in the case of reply briefs.]

(a) *General Rule.* Unless otherwise provided by an appellate court:

(1) a principal brief shall not exceed 70 pages of production when produced on a word processor/computer or typewriter.

(2) a reply brief shall not exceed 25 pages of production when produced on a word processor/computer or typewriter.

(b) *Supplementary Matter.* Pages containing the table of contents, tables of citations and any addendum containing opinions, etc., or any other similar supplementary matter provided for by these rules shall not count against the page limitations set forth in subdivision (a) of this rule.

Official Note—2003: The 2003 amendment eliminates a confusing distinction between typewritten, word processor/computer and conventional offset printing methods of production which are no longer meaningful. In light of the 1979 amendments eliminating paperbooks and the advances in word processor/computer technology, offset printing of briefs has become obsolete as a method for production of briefs. The 2003 amendment permits typewritten briefs despite the fact that the vast majority of briefs are produced on word processor/computers.

A principal brief is any party's initial brief and, in the case of a cross appeal, the appellant's second brief, which responds to the initial brief in the cross appeal. See the notes to Pa.R.A.P. 2136. Reply briefs permitted by Rule 2113 and any subsequent brief permitted by leave of court are subject to the page limit set by this rule.

It is important to note that each appellate court has the option of reducing the number of pages allowed for a brief, either by general rule, see Chapter 33 (Business of the Supreme Court), Chapter 35 (Business of the Superior Court), and Chapter 37 (Business of the Commonwealth Court), or by order in a particular case.

FORM OF BRIEFS AND REPRODUCED RECORD

Rule 2171. Method of Reproduction. Separate Brief and Record.

(a) *General Rule.* Briefs and reproduced records may be [produced] reproduced by [conventional typographical printing or by] any duplicating or copying process which produces a clear black image on white paper. [Briefs and records reproduced by conventional typographical printing shall be printed throughout from type at least as large as point 11 with 2 point lead. Briefs and records not reproduced by conventional typographical printing shall be firmly bound at the left margin so that they may be conveniently bound together as a volume.] Briefs and records shall comply with the requirements of Rule 124 and shall be firmly bound at the left margin.

(b) *Separate brief and record.* In all cases the reproduced record may be [reproduced] bound separately, and must be if it and the brief together contain more than 100 pages.

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[Explanatory Note: Conforming changes are made to this rule.]

[Pa.B. Doc. No. 03-1025. Filed for public inspection May 30, 2003, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 1000]

Amendment of Rule 1035.3 Governing Summary Judgment; No. 390 Civil Procedural Rules; Doc. No. 5

Order

Per Curiam:

And Now, this 16th day of May, 2003, Pennsylvania Rule of Civil Procedure 1035.3 is amended to read as follows.

This Order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective September 1, 2003.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1000. ACTIONS AT LAW

Subchapter A. CIVIL ACTION

PLEADINGS

Rule 1035.3. Response. Judgment for Failure to Respond.

(a) [The] Except as provided in subdivision (e), the adverse party may not rest upon the mere allegations or denials of the pleadings but must file a response within thirty days after service of the motion identifying

* * * * *

(e)(1) Nothing in this rule is intended to prohibit a court, at any time prior to trial, from ruling upon a motion for summary judgment without written responses or briefs if no party is prejudiced. A party is prejudiced if he or she is not given a full and fair opportunity to supplement the record and to oppose the motion.

(2) A court granting a motion under subdivision (e)(1) shall state the reasons for its decision in a written opinion or on the record.

Official Note: Subdivision (e) does not abrogate the requirement that a motion for summary judgment be timely filed pursuant to Rule 1035.2 or case management order.

If a motion is not timely filed, subdivision (e) provides the court with the discretion as to the manner of proceeding, including whether to consider the motion at all. The court should not consider the motion except in the interests of justice.

Explanatory Comment

As a result of a ruling on a motion in limine or another development in a case, shortly prior to trial a defendant may seek dismissal of the case on the ground that the plaintiff is without evidence to make out a prima facie case. While this ground may be raised through a motion for summary judgment, the rules governing summary judgment provide for the filing of a response within thirty days after the filing of a motion for summary judgment. The only other remedy for inability to make out a prima facie case is a compulsory nonsuit which may be entered pursuant to Rule 230.1(a)(1) only "at the close of the plaintiff's case on liability." These rules leave a gap between the motion for summary judgment with the thirty-day response period and the nonsuit at the end of the plaintiff's case in chief.

New subdivision (e) added to Rule 1035.3 eliminates the gap by providing that a court has the discretion to rule on a motion for summary judgment "at any time prior to trial." However, the rule places two conditions upon the exercise of this discretion. First, each party must be given a full and fair opportunity to supplement the record and to oppose the motion so that "no party is prejudiced." Second, if the motion is granted, the court must state the reasons for its decision in a written opinion or on the record.

By the Civil Procedural Rules Committee

R. STANTON WETTICK, Jr.,
Chair

[Pa.B. Doc. No. 03-1026. Filed for public inspection May 30, 2003, 9:00 a.m.]

**Title 255—LOCAL
COURT RULES**

BEAVER COUNTY

**Local Rules of Civil Procedure; Local Divorce
Rules; No. 10130 of 2001**

Order

The Local Divorce Rules of the Beaver County Local Rules of Civil Procedure are hereby amended by the promulgation of the following rule:

**Rule L1920.42. Affidavit under Section 3301(d) of
the Divorce Code.**

The affidavit required under Section 3301(d) of the Divorce Code (the "Affidavit") shall be filed with the Prothonotary before it is served. The opposing party must be served with a certified copy of the Affidavit. The moving party must wait a minimum of twenty (20) days after service of the Affidavit before serving the Notice of Intention to File Praecepte to Transmit the Record and Counter Affidavit or filing the Waiver of Notice authorized by Pa.R.C.P. 1920.42(e).

This new Rule L1920.42 shall become effective thirty (30) days after its publication in the *Pennsylvania Bulletin*. The Court Administrator of Beaver County shall submit seven (7) certified copies of this order to the Administrative Office of Pennsylvania Courts; two (2) certified copies of this order to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*; one (1) certified copy of this order to the Civil Procedural Rules Committee of the Pennsylvania Supreme Court; and one (1) certified copy of this order to the Prothonotary of Beaver County, to be kept for public inspection and copying.

By the Court

ROBERT E. KUNSELMAN,
President Judge

[Pa.B. Doc. No. 03-1027. Filed for public inspection May 30, 2003, 9:00 a.m.]

COMMONWEALTH COURT

**Regular Sessions of the Commonwealth Court for
the Year 2004; No. 126 M.D. No. 3**

Order

And Now, this 10th day of May, 2003, pursuant to Pa.R.A.P. 3703, the following calendar is fixed for the year 2004:

<i>Session</i>	<i>Situs</i>
February 2-6	Pittsburgh
March 1-5	Philadelphia
March 29-April 2	Harrisburg
May 3-7	Pittsburgh
June 7-11	Philadelphia
September 7-10	Harrisburg
October 4-8	Pittsburgh
November 1-5	Philadelphia
December 6-10	Harrisburg

JAMES GARDNER COLINS,
President Judge

[Pa.B. Doc. No. 03-1028. Filed for public inspection May 30, 2003, 9:00 a.m.]