

# THE COURTS

## Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

### PART V. PROFESSIONAL ETHICS AND CONDUCT [204 PA. CODE CH. 83]

#### Amendment of Rules 203(b), 207(b) and 208(b) of the Pennsylvania Rules of Disciplinary Enforcement; No. 22 Disciplinary Rules; Doc. No. 1

##### Order

*Per Curiam:*

And Now, this 19th day of September, 2003, Rules 203(b), 207(b) and 208(b) of the Pennsylvania Rules of Disciplinary Enforcement are amended to read as follows.

This Order shall be processed in accordance with Rule 103(b) of the Pennsylvania Rules of Judicial Administration. The amendments adopted hereby shall take effect upon publication in the *Pennsylvania Bulletin* and shall govern all matters thereafter commenced and, insofar as just and practicable, matters then pending.

##### Annex A

### TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

#### PART V. PROFESSIONAL ETHICS AND CONDUCT

##### Subpart B. DISCIPLINARY ENFORCEMENT

#### CHAPTER 83. PENNSYLVANIA RULES OF DISCIPLINARY ENFORCEMENT

##### Subchapter B. MISCONDUCT

#### Rule 203. Grounds for discipline.

\* \* \* \* \*

(b) The following shall also be grounds for discipline:

\* \* \* \* \*

**(4) Failure by a respondent-attorney without good cause to comply with any order under the Enforcement Rules of the Supreme Court, the Board, a hearing committee or special master.**

\* \* \* \* \*

#### Rule 207. Disciplinary counsel.

\* \* \* \* \*

(b) Disciplinary Counsel shall have the power and duty:

\* \* \* \* \*

(2) To dispose of all matters (subject to review by a member of a hearing committee) involving alleged misconduct by dismissal, informal admonition, recommendation for private reprimand or the prosecution of formal charges before a hearing committee or special master. Except in matters requiring dismissal because the complaint is frivolous or falls outside the jurisdiction of the Board, no disposition shall be recommended or undertaken by Disciplinary Counsel until the accused attorney

[ shall have been afforded the opportunity to state a position with respect to the allegations against the attorney ] has been notified of the allegations and the time for response under Enforcement Rule 208(b) (relating to formal hearing), if applicable, has expired.

\* \* \* \* \*

#### Rule 208. Procedure.

\* \* \* \* \*

(b) *Formal hearing.* Formal disciplinary proceedings before a hearing committee or special master shall be as follows:

\* \* \* \* \*

(2) A copy of the petition **containing a notice to plead** shall be personally served upon the respondent-attorney.

(3) Within 20 days after such service, the respondent-attorney shall serve an answer upon Disciplinary Counsel and file the original thereof with the Board. **[ In the event the respondent-attorney fails to file an answer, the charges shall be deemed at issue. ] Any factual allegation that is not timely answered shall be deemed admitted.**

(4) Following the service of the answer, if there are any issues raised by the pleadings or if the respondent-attorney requests the opportunity to be heard in mitigation, the matter shall be assigned to a hearing committee or a special master. **No evidence with respect to factual allegations of the complaint that have been deemed or expressly admitted may be presented at any hearing on the matter, absent good cause shown.**

\* \* \* \* \*

[Pa.B. Doc. No. 03-1927. Filed for public inspection October 3, 2003, 9:00 a.m.]

### [204 PA. CODE CH. 83]

#### Amendment of Rule 218(c) of the Pennsylvania Rules of Disciplinary Enforcement; No. 23 Disciplinary Rules; Doc. No. 1

##### Order

*Per Curiam:*

And Now, this 19th day of September, 2003, Rule 218(c) of the Pennsylvania Rules of Disciplinary Enforcement is amended to read as follows.

This Order shall be processed in accordance with Rule 103(b) of the Pennsylvania Rules of Judicial Administration. The amendments adopted hereby shall take effect upon publication in the *Pennsylvania Bulletin* and shall govern all matters thereafter commenced and, insofar as just and practicable, matters then pending.

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

Subpart B. DISCIPLINARY ENFORCEMENT

CHAPTER 83. PENNSYLVANIA RULES OF DISCIPLINARY ENFORCEMENT

Subchapter B. MISCONDUCT

Rule 218. Reinstatement

\* \* \* \* \*

(c)(1) Petitions for reinstatement by formerly admitted attorneys shall be filed with the Board.

(2) Within 60 days after the filing of a petition for reinstatement, Disciplinary Counsel shall file a response thereto with the Board and serve a copy on the formerly admitted attorney. Upon receipt of the [petition] response, the Board shall refer the petition and response to a hearing committee in the disciplinary district in which the [respondent-attorney] formerly admitted attorney maintained an office at the time of the disbarment, suspension or transfer to inactive status. If any other formal disciplinary proceedings are then pending or have been authorized against the formerly admitted attorney, the reinstatement and disciplinary matters may be heard by the same hearing committee. In such case the combined hearing shall be held not later than 45 days after receipt by the Board of the response to the petition for reinstatement.

Official Note: If Disciplinary Counsel objects to reinstatement of the formerly admitted attorney, the response to the petition for reinstatement should explain in reasonable detail the reasons for the objection.

\* \* \* \* \*

[Pa.B. Doc. No. 03-1928. Filed for public inspection October 3, 2003, 9:00 a.m.]

Title 246—MINOR COURT CIVIL RULES

PART I. GENERAL

[246 PA. CODE CHS. 200—500]

Definitions; Representation in District Justice Proceedings; Attorneys of Record; Notices

The Minor Court Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Rules 202, 207, 304, 315, 318, 324, 421, 503, 504, 511, and 514, and adopt a new Rule 207.1 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices to clarify the rules regarding, and further provide for, definitions, representation in district justice proceedings, attorneys of record, and notices. The Committee has not submitted this proposal for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's considerations in formulating this proposal. The Committee's Report should not be confused with the Committee's Official Notes to the rules. The Supreme

Court does not adopt the Committee's Official Notes or the contents of the explanatory reports.

The text of the proposed changes precedes the Report. Additions are shown in bold; deletions are in bold and brackets.

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

Michael F. Krimmel, Counsel
Supreme Court of Pennsylvania
Minor Court Rules Committee
5035 Ritter Road, Suite 700
Mechanicsburg, PA 17055
Fax 717-795-2175

or e-mail to: minorrules@pacourts.us

no later than Monday, November 17, 2003.

By the Minor court Rules Committee

THOMAS E. MARTIN, Jr.,
Chair

Annex A

TITLE 246. MINOR COURT CIVIL RULES

PART I. GENERAL

CHAPTER 200. RULES OF CONSTRUCTION; GENERAL PROVISIONS

Rule 202. Definitions.

As used in these rules, the following words and phrases shall have the following meanings unless the context clearly indicates otherwise or the particular word or phrase is expressly defined in the chapter in which the particular rule is included:

\* \* \* \* \*

"attorney at law" means an individual admitted to practice law by the Supreme Court of Pennsylvania;

"attorney of record" means an attorney at law who has filed a written document in accordance with Rule 207.1 as appearing for and representing a party in a legal proceeding;

\* \* \* \* \*

Official Note:

\* \* \* \* \*

Amended April 25, 1979, effective in 30 days, June 30, 1982, effective 30 days after July 17, 1982; amended effective Dec. 1, 1983; amended July 16, 2001, effective August 1, 2001; amended September 3, 2003, effective January 1, 2004; amended \_\_\_\_\_, effective \_\_\_\_\_.

Rule 207. Representation in District Justice Proceedings.

[In district justice proceedings, individuals may be represented by themselves or by counsel and corporations may be represented by their officers or counsel.]

In district justice proceedings governed by these rules a party may be represented only by an attorney at law or

(1) where the party is an individual, by himself or herself,

(2) where the party is a corporation or similar entity, by an officer of the corporation or similar entity who has documentation of such status, or,

(3) where the party is a partnership or unincorporated association, by a partner or officer of the association who has documentation of such status.

**Official Note:** See Section 2524 of the Judicial Code (Penalty for unauthorized practice of law), 42 Pa.C.S. § 2524.

Subparagraph (2) of this rule is less restrictive than the rule relating to representation of corporations in courts of record. See *Walacavage v. Excell 2000, Inc.*, 331 Pa. Super. 137, 480 A.2d 281 (1984); Phila.M.C.R.Civ.P. No. 131.

See rules in [the 800 Series] Chapter 800 as to representation of minors and [incompetents] incapacitated persons by guardians.

Adopted September 23, 1985, effective October 12, 1985; amended \_\_\_\_\_, effective \_\_\_\_\_.

**Rule 207.1. Attorney of Record; Notices.**

A. An attorney at law shall be deemed the attorney of record for a party if and only if the attorney files with the district justice a written statement acknowledging that he or she represents the party in the proceeding. The written statement must include the attorney's name, mailing address, and Supreme Court of Pennsylvania attorney identification number.

B. An attorney of record for a party shall remain the attorney of record for that party until:

(1) the attorney of record gives written notice to the district justice and the party that he or she is withdrawing as the attorney of record for the party, or;

(2) another attorney becomes the attorney of record for the party in accordance with subdivision A.

C. Except as otherwise provided in these rules, when a party has an attorney of record and when a rule specifies that a notice is to be given or mailed to the party, a copy of the notice shall also be given or mailed to the attorney of record.

**Official Note:** Subdivision B provides for the withdrawal of an attorney of record. Nothing in this rule requires leave of court or that another attorney become the attorney of record before an attorney may withdraw. But compare Pa.R.C.P. No. 1012(b). Nothing in subdivision B is intended to affect an attorney's ethical duty to his or her client.

Subdivision C makes clear that copies of all notices must be given or mailed to all parties of record as well as to all attorneys of record.

Adopted \_\_\_\_\_, effective \_\_\_\_\_.

**CHAPTER 300. CIVIL ACTION**

**Rule 304. Form of Complaint.**

A. The complaint shall be made in writing on a complaint form [which shall be prescribed by the State Court Administrator].

B. The complaint shall be signed by the plaintiff [or plaintiff's agent] and verified as follows:

\* \* \* \* \*

C. The complaint shall set forth:

\* \* \* \* \*

(4) Such other information as shall be required on the complaint form.

**Official Note:** Rule 304 is designed to promote uniformity, simplification of procedure and better access by the public to the judicial services of district justices. The use of a complaint form [will help to accomplish] accomplishes this purpose and [will also provide] also provides easier statistical and other administrative control by the Supreme Court. See Rule 212.

Amended June 30, 1982, effective 30 days after July 17, 1982; amended December 16, 1983, effective December 1, 1983; amended September 18, 1990, effective immediately; amended \_\_\_\_\_, effective \_\_\_\_\_.

**Rule 315. Claim by Defendant.**

\* \* \* \* \*

B. The rules governing the form, processing, and service of a plaintiff's complaint shall apply also to the defendant's complaint. The district justice shall set a date and time for the consolidated hearing of both complaints [together] that shall not be less than 12 or more than 30 days from the filing of the defendant's complaint. The district justice shall promptly notify the parties of the date and time set for the consolidated hearing of both complaints.

\* \* \* \* \*

D. [If the defendant files a cross-complaint, the district justice shall promptly notify the plaintiff of the time and date set for the hearing of both complaints together. If the plaintiff has an attorney of record, the notice shall be given to the attorney of record instead of to the plaintiff.] Rescinded.

**Official Note:** Subdivision A of this rule permits the defendant to file a cross-complaint against the plaintiff at least five days before the date originally set for the hearing, if it is for a claim cognizable by a district justice. See Section 1515(a)(3) of the Judicial Code, 42 Pa.C.S. § 1515(a)(3), as to waiver of jurisdictional limits, a defendant filing a cross-complaint being considered a "plaintiff" as to the cross-complaint within the meaning of this statute. The requirement that a cross-complaint be filed at least five days before the hearing is intended to give the district justice time to notify the [plaintiff or the plaintiff's attorney, under subdivision D of the rule, of any new hearing time and date] parties of any new hearing date and time. Notice under subdivision [D] B is not a substitute for [the] proper service [required under subdivision B]. If the defendant does not file an action at least five days before the hearing, the defendant may still file a complaint against the plaintiff but it will not be processed as a cross-complaint.

\* \* \* \* \*

Amended Oct. 17, 1975, effective in 90 days; Jan. 29, 1976, effective in 30 days; April 25, 1979, effective in 30 days; June 30, 1982, effective 30 days after July 17, 1982; amended April 5, 2002, effective January 1, 2003; amended \_\_\_\_\_, effective \_\_\_\_\_.

**Rule 318. Informing Plaintiff of Notice of Intention to Defend.**

If the defendant gives the district justice notice of [his] intention to defend [under] in accordance

with Rule 305(4)(a), the district justice shall promptly [inform the plaintiff in writing that he has received such a notice by mailing to the plaintiff a copy of the completed Notice of Intent to Defend form] give the plaintiff written notice that the defendant intends to enter a defense. [If the plaintiff has an attorney of record named in the complaint form, this information shall be given to the attorney of record instead of to the plaintiff.]

**Official Note:** No specific form of notification from the defendant to the district justice is required by this rule, but entries on the [complaint form] docket will show that the defendant gave notice of [his] intention to defend and that the district justice [informed] gave written notice to the plaintiff [or his attorney of record thereof, when these events have occurred. A notation that a copy of the Notice of Intent to Defend form was sent to the plaintiff or his attorney of record shall be made on the complaint maintained in the district justice's files].

Amended Oct. 17, 1975, effective in 90 days; June 30, 1982, effective 30 days after July 17, 1982; March 27, 1992, effective in 90 days; amended \_\_\_\_\_, effective \_\_\_\_\_.

Rule 324. Notice of Judgment[, ] or Dismissal [or Continuance, ] and the Right to Appeal.

A. [The] Upon the entry of the judgment, the district justice shall promptly give or mail to the parties written notice of judgment[, ] or dismissal [or continuance. The written notice shall be given or mailed to all parties, but if any party has an attorney of record, the written notice shall be given or mailed to the attorney of record instead of to the party].

B. The written notice of judgment or dismissal shall contain:

(1) [advice as to] notice of the right of the parties to appeal, the time within which the appeal must be taken, and that the appeal is to the court of common pleas,

(2) [a statement advising] notice that, except as otherwise provided in the rules, if the judgment holder elects to enter the judgment in the court of common pleas, all further process must come from the court of common pleas and no further process may be issued by the district justice, and

(3) [a statement advising] notice that unless the judgment is entered in the court of common pleas anyone interested in the judgment may file a request for entry of satisfaction with the district justice if the justice debtor pays in full, settles, or otherwise complies with the judgment.

**Official Note:**

\* \* \* \* \*

Amended effective Feb. 1, 1973; amended Oct. 17, 1975, effective in 90 days; April 25, 1979, effective in 30 days; June 30, 1982, effective 30 days after July 17, 1982; amended effective Dec. 1, 1983; amended March 27, 1992, effective June 25, 1992 [The March 27, 1992, Order provided in part: "In promulgating this Order, the Court recognizes that the District Justice Automation Project will be affected by said Rule changes and that, therefore, those Rules which affect the

Project will become effective as the District Justice offices are brought on-line."]; amended and Note added April 5, 2002, effective January 1, 2003; amended \_\_\_\_\_, effective \_\_\_\_\_.

**CHAPTER 400. EXECUTION OF JUDGMENTS FOR THE PAYMENT OF MONEY**

**Rule 421. Time for Hearing and Determination; Effective Date of Orders and Determination.**

\* \* \* \* \*

B. The district justice shall promptly give or mail to the parties written notice of the determination. [If a party has an attorney of record the written notice shall be given or mailed to the attorney of record instead of to the party.] Notice of the determination shall contain advice as to the right of the parties to file a Statement of Objection, the time within which the statement must be filed, and that the statement is to be filed with the court of common pleas.

\* \* \* \* \*

**Official Note:**

\* \* \* \* \*

Amended June 1, 1971; April 25, 1979, effective in 30 days; June 30, 1982, effective 30 days after July 17, 1982; March 27, 1992, effective June 25, 1992; amended September 3, 2003, effective January 1, 2004; amended \_\_\_\_\_, effective \_\_\_\_\_.

**CHAPTER 500. ACTIONS FOR THE RECOVERY OF POSSESSION OF REAL PROPERTY**

**Rule 503. Form of Complaint.**

A. The complaint shall be made in writing on a complaint form [which shall be prescribed by the State Court Administrator].

B. The complaint shall be signed by the plaintiff [or plaintiff's agent] and verified as follows: The facts set forth in this complaint are true and correct to the best of my knowledge, information and belief. This statement is made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

\_\_\_\_\_  
Signature

\* \* \* \* \*

**Official Note:** As in the [other rules of civil procedure for district justices, the complaint will be] rules governing civil actions, the complaint is on a printed form. See Rule 212. As to notice to remove, the form will simply state that such a notice, when required, was given to the defendant in accordance with law. See § 501 of the Landlord and Tenant Act, 68 P. S. § 250.501, as amended by § 2(a) of the Judiciary Act Repealer Act, Act of April 28, 1978, P. L. 202, No. 53, 42 P. S. § 20002(a). In subdivision C(8) the landlord is permitted to claim, in addition to the specific amount of rent due and unpaid at the date of filing, whatever unspecified amount of rent will remain due and unpaid at the date of the hearing. As to claiming damages for injury to property, compare Pa.R.C.P. No. 1055.

\* \* \* \* \*

Amended June 1, 1971; April 25, 1979, effective in 30 days; June 30 1982, effective 30 days after July 17, 1982; amended December 16, 1983, effective December 1, 1983; amended \_\_\_\_\_, effective \_\_\_\_\_.

**Rule 504. Setting the Date for Hearing; Delivery for Service.**

The district justice, at the time the complaint is filed, shall:

\* \* \* \* \*

(3) Deliver a copy of the complaint form with hearing time and date thereon to the plaintiff [ or the plaintiff's agent ].

\* \* \* \* \*

**Official Note:**

\* \* \* \* \*

Amended Oct. 17, 1975, effective in 90 days; June 30, 1982, effective 30 days after July 17, 1982; March 28, 1996, effective March 29, 1996; Note revised February 12, 2002, effective immediately; amended \_\_\_\_\_, effective \_\_\_\_\_.

**Rule 511. Continuances.**

Continuances may be granted for cause or by agreement. Continuances shall be to a specific time and date and shall be noted on the original complaint form. Continuances shall not be granted to extend the date of the hearing beyond thirty (30) days from the date the plaintiff's complaint is filed or, if the defendant files a cross-complaint, beyond twenty (20) days from the date that complaint is filed, whichever is the longer period from the filing of the plaintiff's complaint. The district justice shall promptly give or mail to the parties written [ or other ] notice of a continuance [ to the parties on a Notice of Continuance form, but if a party has an attorney of record named in the complaint form, the notice, unless given at the hearing in the presence of the party, shall be given to the attorney instead of to the party. See Rule 209 ].

**Official Note:**

\* \* \* \* \*

Amended April 25, 1979, effective in 30 days; June 30, 1982, effective 30 days after July 17, 1982; March 27, 1992, effective in 90 days; March 15, 1994, effective April 2, 1994; amended \_\_\_\_\_, effective \_\_\_\_\_.

**Rule 514. Judgment; Notice of Judgment or Dismissal and the Right to Appeal.**

\* \* \* \* \*

C.(1) Judgment shall be given at the conclusion of the hearing or within three [ (3) ] days thereafter [ and shall be entered upon the form prescribed for the entry of judgment by the State Court Administrator ].

(2) Upon the entry of the judgment, [ copies of the prescribed form shall be given or mailed to all parties, but if any party has an attorney of record named in the complaint form the written notice shall be given to the attorney instead of to the party ] the district justice shall promptly give or mail to the parties written notice of judgment or dismissal. [ Notice of judgment shall inform the parties of the right to appeal, the time within which the appeal must be taken and that the appeal is to the court of common pleas. ]

D. The written notice of judgment or dismissal shall contain:

(1) notice of the right of the parties to appeal, the time within which the appeal must be taken, and that the appeal is to the court of common pleas,

(2) notice that, except as otherwise provided in the rules, if the judgment holder elects to enter the judgment in the court of common pleas, all further process must come from the court of common pleas and no further process may be issued by the district justice, and

(3) notice that unless the judgment is entered in the court of common pleas anyone interested in the judgment may file a request for entry of satisfaction with the district justice if the debtor pays in full, settles, or otherwise complies with the judgment.

**Official Note:**

\* \* \* \* \*

As to subdivision D(2), see Rule 402D and Note. As to subdivision D(3), see Rule 341.

Amended April 25, 1979, effective in 30 days; June 30 1982, effective 30 days after July 17, 1982; amended effective Dec. 1, 1983; amended March 27, 1992, effective June 25, 1992 [ **The March 27, 1992, Order provided in part: "In promulgating this Order, the Court recognizes that the District Justice Automation Project will be affected by said Rule changes and that, therefore, those Rules which affect the Project will become effective as the District Justice offices are brought on-line"** ]; March 28, 1996, effective March 29, 1996; Note revised April 5, 2002, effective January 1, 2003; Note revised November 25, 2002, effective July 1, 2003; amended \_\_\_\_\_, effective \_\_\_\_\_.

**REPORT**

*Proposed Amendments to Rules 202, 207, 304, 315, 318, 324, 421, 503, 504, 511, and 514, and Proposed New Rule 207.1, of the Rules of Conduct, Office Standards and Civil Procedure for District Justices*

**DEFINITIONS; REPRESENTATION IN DISTRICT JUSTICE PROCEEDINGS; ATTORNEYS OF RECORD; NOTICES**

**I. Background**

The Minor Court Rules Committee (hereinafter the Committee) undertook a review of the rules relating to representation in district justice proceedings, attorneys of record, and notices to parties and attorneys in response to a number of inquiries and requests for clarification in the rules. As a result of the Committee's review, the Committee is proposing a number of rule changes, as described below, to

- clarify who may represent parties in district justice proceedings;
- establish a more formal procedure for an attorney to become the attorney of record in a case, and;
- clarify that all notices sent by the district justice should go to all parties of record and all attorneys of record.

**II. Discussion**

*A. Representation in District Justice Proceedings*

A number of correspondents requested that the Committee clarify Pa.R.C.P.D.J. No. 207, regarding representation in district justice proceedings. The Committee learned that many district justices, attorneys, and parties

are confused by the seemingly permissive language in the current version of the rule; i.e. "... individuals may be represented..." and "... corporations may be represented..." Apparently, some court users are interpreting this language to mean that parties may be represented by someone other than the persons listed in the rule. Of particular note, the Committee received inquiries about property managers "representing" landlords in landlord/tenant hearings. The Committee learned that it is not uncommon for property managers to file landlord/tenant cases on behalf of their landlord clients, to appear at hearings, present testimony, and examine witnesses. The property managers argue that this is a service they should be permitted to perform for their landlord clients because the property managers are paid to handle the day-to-day operations of their clients' rental properties. The Committee disagrees. The Committee noted that in a landlord/tenant action, the landlord is the plaintiff in the action, not the property manager who handles the landlord's affairs. For the landlord to be represented by anyone other than himself or herself (where the landlord is an individual), an officer (where the landlord is a corporation or similar entity), a partner (where the landlord is a partnership), or an attorney at law, is contrary to Rule 207 and the well established law of Pennsylvania.<sup>1</sup>

The Committee heard from one property manager who put forth the argument that since his property management firm is organized as a corporation, and since he is an officer of the corporation, he should be permitted to represent his landlord clients under the provision in Rule 207 that permits corporations to "be represented by their officers." The Committee disagreed with this argument since the property management firm is not the actual party in interest (plaintiff) in the case; the party in interest (plaintiff) is the landlord. If the landlord is a corporation, the Committee agrees that an officer of that corporation could represent it in district justice court. It was also argued that Allegheny County local civil Rule 200(c)(2) permits a corporation to be represented in the Court of Common Pleas of Allegheny County by an officer of the corporation in "an appeal from a judgment entered into a District Justice Court in an action for the recovery of the possession of real property," and that such a rule should be adopted in the statewide general rules for district justices to permit officers of property management corporations to represent their landlord clients in court. The Committee rejected this argument for the same reason stated above, i.e., the Committee believes the Allegheny County rule relates to cases in which the corporation being represented by its officer is the actual party in interest,<sup>2</sup> not merely an agent of the plaintiff.

The Committee also received inquiries regarding a district manager or similar non-officer employee representing a corporation. Again, the argument was made that the use of the word "may" in the current version of Rule 207 suggests that there is flexibility in the rule for someone other than a corporate officer or attorney to represent a corporation. The Committee believes, however, that the intent of the rule is to limit representation of corporations to only corporate officers or attorneys.<sup>3</sup>

<sup>1</sup> See Section 2524 of the Judicial Code (Penalty for unauthorized practice of law), 42 Pa.C.S. § 2524; *In re Campanella*, 207 B.R. 435 (Bankr. E.D. Pa. 1997).

<sup>2</sup> See discussion *infra* note 3.

<sup>3</sup> The Committee notes that the provision in Rule 207 permitting corporations to be represented by corporate officers is less restrictive than the general rule relating to representation of corporations in courts of record. See *Walacavage v. Excell 2000, Inc.*, 331 Pa. Super. 137, 480 A.2d 281 (1984) (holding that a corporation may appear and be represented in Pennsylvania courts only by an attorney admitted to practice); *Phila.M.C.R.Civ.P. No. 131*. The court in *Walacavage* noted that exceptions to their holding, relating to small claims cases, could be created by statute or rule. *Walacavage*, 331 Pa. Super. at 143-44, 480 A.2d at 284-85, n.4.5. The Supreme Court of Pennsylvania adopted the current version of Rule 207 in 1985.

### B. Attorneys of Record and Notices

In an issue tangentially related to representation in district justice court proceedings, the committee considered the rules relating to attorneys of record and notices to parties and attorneys. The Committee noted that the term "attorney of record" is used throughout the rules. There is no definition for the term, however, and no formal procedural mechanism for an attorney to become the attorney of record in a case. In addition, the Committee noted that the rules make reference to notices being sent to the attorney of record in 11 different instances. The rules, however, are somewhat inconsistent as to when a notice is to be given to the party, to the attorney of record, or both.

With regard to the procedure for an attorney to become the attorney of record in a case, the Committee believed it advisable that a more formal procedure be established. The Committee recognized that the rules require important notices, many affecting the rights of parties,<sup>4</sup> are to be sent to the parties and their counsel. Without a procedure in place to determine that a party has an attorney of record, some important notices might not get to counsel. At the same time, however, recognizing the relative informality and expedited nature of district justice court proceedings, the Committee wanted to avoid a very formal procedure for the "entry of an appearance" as is used in the courts of record. Specifically, the Committee did not want to propose a rule that would require leave of court before an attorney could withdraw as the attorney of record in a matter.

As noted above, the Committee found 11 different instances in the rules that provide for notices being sent to a party or the party's attorney of record. For example, the Committee discovered, among others, the following instances:

- Pa.R.C.P.D.J. No. 421B provides that, "[i]f a party has an attorney of record the written notice shall be given or mailed to the attorney of record instead of to the party."

- Pa.R.C.P.D.J. No. 514C provides that, "... if a party has an attorney of record *named in the complaint form*, the written notice shall be given to the attorney instead of to the party. (Emphasis added.)

The Committee found a number of other variations of these notice provisions throughout the rules. While some of these inconsistencies might be necessitated by differences in the procedures addressed in particular rules, the Committee reviewed each instance and attempted to draft procedures that are as consistent as possible in all the rules. Because attorneys often do not become involved in district justice court proceedings until later in the court process (e.g., after judgment is entered but before execution of the judgment), the Committee believed it advisable that all notices be sent to all parties of record and all attorneys of record.

### III. Proposed Rule Changes

To address the issues discussed above, the Committee proposes the following rule changes.<sup>5</sup>

#### A. Rule 202

The Committee proposes that two new definitions, for "attorney at law" and "attorney of record" be added to

<sup>4</sup> Examples of such notices include, among others, hearing notices (Rules 305 and 504), judgment notices (Rules 324 and 514), notices regarding property rights determinations (Rule 421), etc.

<sup>5</sup> In addition to the substantive changes discussed here, the Committee proposes minor technical or "housekeeping" changes to address gender neutrality issues, add or correct cross-references, and to conform to modern drafting style.

Rule 202. The proposed definition of “attorney at law” is similar, but not identical to the definition in Pa.R.C.P. No. 76.

*B. Rule 207*

The Committee proposes that Rule 207 be amended to make clear that individuals may be represented only by themselves or by an attorney at law; that a corporation or similar entity may be represented only by a corporate officer or an attorney at law; and that a partnership or unincorporated association may be represented only by a partner or an officer of the association, or an attorney at law. In addition, an officer or partner undertaking representation in accordance with the rule would be required to have documentation of his or her status as an officer or partner. The Official Note to the rule would be revised to cross-reference Section 2524 of the Judicial Code (relating to penalty for unauthorized practice of law), 42 Pa.C.S. § 2524. The Note would also cross-reference the *Walacavage case*.<sup>6</sup>

*C. New Rule 207.1*

The Committee proposes an entirely new Rule 207.1 (Attorney of Record; Notices) to provide a procedure for an attorney to become and withdraw as the attorney of record in a case, and provide for notices. Subdivision A of the new rule would establish the procedure for becoming attorney of record, essentially requiring that the attorney file a written document with the district justice. Subdivision B would provide for the withdrawal of the attorney of record. Subdivision C would serve as a blanket provision requiring that all notices sent from the district justice court be sent to all parties of record and all attorneys of record.

The proposed Official Note would cross reference Pa.R.C.P. No. 1012(b). Also, given the relative ease with which an attorney can withdraw, the Note would make clear that nothing in the rule is intended to affect an attorney’s ethical duty to his or her client.<sup>7</sup>

*D. Rules 304, 503, and 504*

To further clarify that parties may be represented only as provided in Rule 207, the Committee proposes that Rules 304, 503, and 504 be amended to delete references to the “plaintiff’s agent.” The Committee could contemplate no situation in which the actual party in interest would not sign the complaint, or in which the hearing notice would be sent to anyone other than the plaintiff and the plaintiff’s attorney, if any.

*E. Rules 315, 318, 324, 421, 511, and 514*

The Committee proposes that rules 315, 318, 324, 421, 511, and 514 be amended to delete the duplicative and inconsistent notice provisions.<sup>8</sup> These notice provisions are no longer necessary because of the proposed blanket provision in new Rule 207.1 requiring that “when a party has an attorney of record and when a rule specifies that a notice is to be given or mailed to the party, a copy of the

notice shall also be given or mailed to the attorney of record.”

[Pa.B. Doc. No. 03-1929. Filed for public inspection October 3, 2003, 9:00 a.m.]

## Title 255—LOCAL COURT RULES

### CRAWFORD COUNTY

#### Adoption of Procedural Rules Applicable to the Orphans Court of the Court of Common Pleas; No. OC 2002-96

#### Order

*And Now*, September 17, 2003 it is ordered as follows:

1. The revisions and amendments to Rules 1 and 3 of the Crawford County Orphans Court Rules are hereby approved, adopted and promulgated as rules of the court.

2. These Rules shall become effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

3. The Clerk of Courts of Crawford County is ordered and directed to do the following:

a. File seven (7) certified copies of this Order and Rules with the Administrative Office of Pennsylvania Courts.

b. File two (2) certified copies of this Order and Rules with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin* together with a diskette reflecting the text of the hard copy version.

c. File one (1) certified copy of this Order and Rules with the Pennsylvania Orphans Court Procedural Rules Committee

d. Keep continuously available for public inspection, copies of this Order and Rules.

e. Keep continuously available for purchase by attorneys, members of the public and the like, copies of this Order and Rules.

5. The Court Administrator of Crawford County is ordered and directed to publish a copy of this Order and Rules on the internet web page maintained by Crawford County as well as the Internet web page maintained by the Administrative Office of Pennsylvania courts that lists local Common Pleas rules.

*By the Court*

GORDON R. MILLER,  
*President Judge*

#### RULE 1. JUDGES—LOCAL RULES

**Rule 1.2.1** (No change)

**Rule 1.2.2** (No Change)

**Rule 1.2.3**

This rule shall be changed by adding thereto subparagraph (e) as follows:

(e) Withdrawal of Appearance.

(1) An attorney may withdraw an appearance for any party in proceeding in the Orphans’ Court Division only in accordance with Pa.R.C.P. 1012(b) and Crawford County Civil Rule L1012B.

<sup>6</sup> See discussion *supra* note 3.

<sup>7</sup> See Rule 1.16 of the Rules of Professional Conduct.

<sup>8</sup> As noted in Section II.B., *supra*, there are additional instances in which the rules require a notice be sent to a party or attorney of record. These instances, however, relate to appeals in the courts of common pleas and must be dealt with in a slightly different context. These instances will be addressed in a separate proposal.

(2) An attorney may withdraw an appearance for personal representative(s) of a decedent's estate in proceedings before the Register of Wills in the following manner:

(i) By filing a written Notice of Withdrawal with the Register of Wills with the signed consent of all personal representative(s) attached or where another attorney has entered, or simultaneously enters, an appearance for the personal representative(s) before the Register of Wills; or

(ii) With leave of Court after having given five (5) days written notice to the personal representative(s) and thereafter filing a written motion for leave to withdraw an appearance with a certification attached thereto that the required notice has been given.

### RULE 3. PLEADING AND PRACTICE

#### Rule 3.1.1. Conformity to Equity.

The pleading and practice procedures shall conform to State Rule 3.1 and, where local rules do not conflict with state rules, shall conform to pleading and practice in the Court of Common Pleas in accordance with Crawford County Civil Rules, unless otherwise provided herein.

#### Rule 3.2.1. Pleadings.

The pleadings in matters before the Orphans' Court are limited to a petition, (including a petition for a citation or for declaratory relief), an answer (which may include new matter), a reply, preliminary objections and an answer to preliminary objections.

(a) *New Matter.* Any defense which is not a denial of the averments of fact in the petition shall be set forth under the heading "New Matter."

(b) *Preliminary Objections.*

(1) Preliminary objections are available to any party, but shall be limited to questions of:

- (i) law;
- (ii) form; or
- (iii) jurisdiction.

(2) An answer to preliminary objections is limited to the averments of fact set forth in the preliminary objections.

#### Rule 3.2.2. Disposition of Pleadings.

(a) *Failure to Answer.* If the respondent is required to file an answer but fails to do so, all averments of fact in the petition may be deemed by the court to be admitted.

(b) *Failure to Reply.* If the petitioner is required to file a reply to an answer which contains new matter and fails to do so, the averments of fact set forth in the new matter may be deemed admitted and the case will be at issue.

(c) *Failure to File an Answer to Preliminary Objections.* If a party is required to file an answer to preliminary objections and fails to do so, the averments of fact set forth in the preliminary objections may be deemed admitted by the court and the case will be at issue on the preliminary objections.

#### Rule 3.4.1. Form. Additional Requirements.

(a) *Typing. Endorsements.* Every pleading shall be endorsed with the name, address, Pennsylvania Supreme Court Identification Number and telephone number and fax number (if any) of counsel and, where practicable, typewritten and double-spaced or printed. If a party is not represented by counsel every pleading shall be en-

dorsed with the name, address and telephone number of that party.

(b) *Notice to Plead.* A notice to plead shall neither be required nor used where a return day has been fixed in a citation or order as well as in cases where State Rule 3.2 applies (See also 20 Pa.C.S.A. 764). As to any other pleading to which a response is required said pleading shall have endorsed thereon, or included therein as the first page thereof, in a conspicuous place, a notice to defend and notice to plead addressed specifically to each party from whom a response is required. The form as required by Pa.R.C.P. 1018.1 and Pa.R.C.P. 1361 (as said Rules may be in force or hereafter amended) shall be used. (See Pa.R.C.P. 1026).

(c) *Signature and Verification.* All pleadings shall be signed by the attorney (if any) and verified by at least one of the parties involved. If this is impracticable, they may be signed and verified by someone familiar with the facts, in which case the reason for the failure of the parties to verify shall be set forth.

(d) *Decree.* Every proposed decree shall bear the caption of the case and shall be attached to the petition.

(e) *Consents.* The petition shall recite that all necessary consents are attached or shall set forth the names and addresses of the persons who do not consent. The Court may direct that notice be given or that a citation be directed to persons who do not consent to show cause why the prayer of the petition shall not be granted.

(f) *Paper Size.* No paper or other document may be filed in the Register of Wills or Clerk of Orphans' Court Division other than paper 8 1/2" x 11" in size. The only exception to this Rule is the filing of a Will or Trust.

(g) *Cover Sheet.* All motions presented at motion court shall include a completed motion court cover sheet in the form required by the Court.

(h) *Notice Requirements Prior to Presentation at Motion Court.* Prior to the presentation to the Court of any motion or petition requesting an immediate Order of Court, other than a Rule to Show Cause which grants no relief, opposing counsel and unrepresented parties must be given notice, subject to the following:

(1) *Contents of Notice.* The notice must give the date and time when the motion or petition will be presented to the Court and must be accompanied by a copy of the proposed motion or petition and order.

(2) *Certification of Notice.* The motion or petition must contain a certificate signed by counsel or a party that has no counsel, verifying that proper notice was given under this Rule. The certificate shall be in the same or substantially same form as the form contained in the appendix to these rules.

(3) *Length of Notice Required.* Except where otherwise required under the Local Rules and except in cases of an emergency as determined by the court, the following notice shall be required:

(i) Two (2) full business days' notice must be given by personal delivery or facsimile transmission to each party or their counsel's office,<sup>1</sup> or

(ii) Five (5) full business days' notice must be given if notice is by mail.<sup>2</sup>

<sup>1</sup> Notice is deemed given when it is received.

<sup>2</sup> Mail notice is deemed given when delivered to the postal authorities.



(4) *Failure to Give Notice.* The Court will not enter an Order on a petition or motion with the Certificate of Notice being attached unless a special cause is shown to the Court.

[Pa.B. Doc. No. 03-1930. Filed for public inspection October 3, 2003, 9:00 a.m.]

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**MONTGOMERY COUNTY**

**Amendment to Local Rule of Civil Procedure  
1018.1\***

**Order**

*And Now*, this 8th day of September, 2003, the Court approves and adopts the following Amendment to Montgomery County Local Rule of Civil Procedure—Rule 1018.1\* Notice To Defend—Office to be Contacted. The Revision and Renumbering shall become effective thirty (30) days from the date of publication in the *Pennsylvania Bulletin*.

The Court Administrator is directed to publish this Order once in the *Montgomery County Law Reporter* and in the *Legal Intelligencer*. In conformity with Pa.R.C.P. 239, seven (7) certified copies of the within Order shall be filed by the Court Administrator with the Administrative Office of Pennsylvania Courts. Two (2) certified copies shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*. One (1) certified copy shall be filed with the Civil Procedural Rules Committee. One (1) copy shall be filed with the Prothonotary, one (1) copy with the Clerk of Courts, and (1) copy with the Court Administrator of Montgomery County, one (1) copy with the Law Library of Montgomery County and one (1) copy with each Judge of this Court.

*By the Court*

S. GERALD CORSO,  
*President Judge*

**Rule 1018.1\*. Notice To Defend—Office to be Contacted.**

As provided by Pennsylvania Rule of Civil Procedure 1018.1, the following office is designated to be named in the Notice to Defend prescribed by that rule as the office from which **[advise on where to get legal help]** information about hiring a lawyer can be obtained.

Lawyer Reference Service  
100 West Airy Street (Rear)  
Norristown, Pennsylvania 19404-0268  
(610) 279-9660, Extension 201

[Pa.B. Doc. No. 03-1931. Filed for public inspection October 3, 2003, 9:00 a.m.]

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**DISCIPLINARY BOARD OF  
THE SUPREME COURT**

**Notice of Suspension**

Notice is hereby given that Patrick J. Moore, having been suspended from the practice of law in the State of New Jersey for a period of one year, the Supreme Court of Pennsylvania issued an Order dated September 22, 2003 suspending Patrick J. Moore, from the practice of law in this Commonwealth for a period of one year, effective October 22, 2003. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

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

[Pa.B. Doc. No. 03-1932. Filed for public inspection October 3, 2003, 9:00 a.m.]