THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT
[204 PA. CODE CH. 83]
Amendments to the Pennsylvania Rules of Disciplinary Enforcement Relating to Cooperation by Respondent-Attorneys in Disciplinary Proceedings

Notice is hereby given that The Disciplinary Board of the Supreme Court of Pennsylvania is considering recommending to the Pennsylvania Supreme Court that it amend the Pennsylvania Rules of Disciplinary Enforcement as set forth in Annex A to specify the obligation of respondent-attorneys to respond to allegations of professional misconduct in disciplinary proceedings.

Most jurisdictions, including Pennsylvania, have adopted a form of the Model Rules of Professional Conduct. In every one of those jurisdictions except Pennsylvania there is either a Rule of Professional Conduct that requires cooperation with the disciplinary authorities or a procedural rule that requires responses to inquiries from the disciplinary authorities. The Board is considering recommending that the Supreme Court amend the Enforcement Rules to add those requirements.

Interested persons are invited to submit written comments regarding the proposed amendments to the Office of the Secretary, The Disciplinary Board of the Supreme Court of Pennsylvania, First Floor, Two Lemoyne Drive, Lemoyne, PA 17043, on or before March 18, 2003.

By The Disciplinary Board of the Supreme Court of Pennsylvania

ELAINE M. BIXLER,
Executive Director and Secretary

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 or disciplinary charge 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. **At any hearing in which the allegations of the complaint have been deemed admitted, absent good cause shown, the parties shall be limited to presenting evidence of aggravating and mitigating factors and arguments regarding the discipline to be imposed.**

* * * * *

[Pa.B. Doc. No. 03-211. Filed for public inspection February 7, 2003, 9:00 a.m.]

PART V. PROFESSIONAL ETHICS AND CONDUCT
[204 PA. CODE CH. 83]
Amendments to the Pennsylvania Rules of Disciplinary Enforcement Relating to Reinstatement Procedures

Notice is hereby given that The Disciplinary Board of the Supreme Court of Pennsylvania is considering recom-

mending to the Pennsylvania Supreme Court that it amend the Pennsylvania Rules of Disciplinary Enforcement as set forth in Annex A to clarify the procedure to be followed when a formerly admitted attorney files a petition for reinstatement.

Pa.R.D.E. 218(c)(2) currently provides that when a reinstatement petition is filed with the Board it is to be immediately assigned to a hearing committee. Pa.R.D.E. 218(c)(3) then requires the hearing committee to promptly schedule a hearing on the petition. Since the Office of Disciplinary Counsel typically does not have time to investigate the matter before the hearing, the routine practice is to continue the hearing until the necessary investigation has been completed. The board is considering recommending an amendment to Pa.R.D.E. 218(c)(2) that would give Disciplinary Counsel a period of 60 days to conduct an investigation and prepare a response before the petition is referred to a hearing committee.

Interested persons are invited to submit written comments regarding the proposed amendments to the Office of the Secretary, The Disciplinary Board of the Supreme Court of Pennsylvania, First Floor, Two Lemoyne Drive, Lemoyne, PA 17043, on or before March 18, 2003.

By The Disciplinary Board of the Supreme Court of Pennsylvania

ELAINE M. BIXLER,
Executive Director and Secretary

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.

* * * * *

[Pa.B. Doc. No. 03-212. Filed for public inspection February 7, 2003, 9:00 a.m.]

Title 207—JUDICIAL CONDUCT

PART II. CONDUCT STANDARDS

[207 PA. CODE CH. 51]

Proposed Amendments to the Rules of Conduct, Office Standards and Civil Procedure for District Justices

The Minor Court Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Rules 13, 14, and 15 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices to clarify the restrictions on district justices serving as arbitrators. The Committee has not submitted this proposal for review by the Supreme Court of Pennsylvania.

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

The text of the proposed changes precedes the Report. 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: minorcourt.rules@supreme.court.state.pa.us

no later than Monday, March 10, 2003.

By the Minor Court Rules Committee

THOMAS E. MARTIN, Jr.,
Chair

Annex A

TITLE 207. JUDICIAL CONDUCT

PART II. CONDUCT STANDARDS

CHAPTER 51. STANDARDS OF CONDUCT OF DISTRICT JUSTICES

PENNSYLVANIA RULES FOR DISTRICT JUSTICES

Rule 13. Incompatible Practices.

[District justices, constables and all employes assigned to or appointed by district justices shall not engage, directly or indirectly, in any activity or act incompatible with the expeditions, proper and impartial discharge of their duties, including, but not limited to, (1) in any activity prohibited by law; (2) in the collection business; or (3) in the acceptance of any premium or fee for any judicial bond.

A district justice shall not exploit his judicial position for financial gain or for any business or professional advantage. A district justice shall not receive any fee or emolument for performing the duties of an arbitrator.

Official Note: **The next to the last sentence of this rule is derived in part from Canon 5C(1) of the American Bar Association and Pennsylvania Supreme Court Code of Judicial Conduct.]**

A. A district justice may not exploit his or her judicial position for financial gain or for business or professional advantage.

B. A district justice may not act as an arbitrator or mediator.

C. A district justice or an employee assigned to or appointed by a district justice may not engage in, directly or indirectly, an activity or act incompatible with the expeditious, proper, and impartial discharge of his or her duties, including but not limited to (1) an activity prohibited by law, (2) the collection business, or (3) the acceptance of a premium or fee for a judicial bond.

Official Note: **See Canon 5E of the Code of Judicial Conduct and Section 3304 of the Judicial Code, 42 Pa.C.S. § 3304.**

Adopted, effective Feb. 1, 1973. Amended April 25, 1979, effective in 30 days; June 30, 1982, effective 30 days after July 17, 1982; **amended _____, effective _____.**

Rule 14. Prohibited Practice of Attorney District Justice.

[A. An attorney who is a district justice shall not practice before any district justice in the Commonwealth, nor shall he act as a lawyer in a proceeding in which he has served as a district justice or in any other proceeding related thereto. Nor shall he practice criminal law in the county within which his magisterial district is located. An employer, employe, partner of office associate of such district justice shall not appear or practice before him.

B. An attorney who is a district justice shall not practice before, or act as an attorney or solicitor for, any county or local municipal, governmental or quasi governmental agency, board, authority or commission operating within the Commonwealth.

Official Note: **Subdivision A of this rule is derived from former Rule 3A and Compliance Exception A(2), American Bar Association Code of Judicial Conduct. Subdivision B is derived from former Rule 3B. This rule contains all the prohibitions upon the practice of law by attorney district justices that were thought necessary.]**

A. In addition to the general prohibitions in Rule 13, the following prohibitions apply to a district justice who is an attorney. A district justice who is an attorney may not:

(1) practice law before a district justice in the Commonwealth;

(2) act as a attorney in a proceeding in which he or she has served as a district justice or in any other proceeding related thereto;

(3) practice criminal law in the county within which his or her magisterial district is located; or

(4) practice law before, or act as an attorney or solicitor for a county or local municipal, governmental or quasi-governmental agency, board, authority, or commission operating within the Commonwealth.

B. An employer, employee, partner, or office associate of a district justice who is an attorney may not appear or practice law before the district justice.

Adopted, effective Feb. 1, 1973. Amended June 30, 1982, effective 30 days after July 17, 1982; **amended and Note deleted _____, effective _____.**

Rule 15. Public Office and Political Activity.

A. A district justice **[shall] may** not hold another office or position of profit in the government of the United States, the Commonwealth or any political subdivision thereof, except in the armed services of the United States or the Commonwealth.

B. **[A] Except as otherwise provided in this rule, a** district justice or a candidate for **[such] the** office **[shall] of district justice may** not:

(1) hold office in a political party or political organization or publicly endorse candidates for political office**[.];**

(2) engage in partisan political activity, deliver political speeches, make or solicit political contributions (including purchasing tickets for political party dinners or other functions)**,** or attend political or party conventions or gatherings**[, except as authorized in subdivision C of this rule]. [Nothing herein shall prevent a] A** district justice or a candidate for **[such] the** office **[from making] of district justice may make** political contributions to a campaign of a member of his **or her** immediate family.

C. A district justice or a candidate for **[such] the** office **of district justice** may in the year he **or she** runs for office, attend political or party conventions or gatherings, speak **[to such] at the** gatherings or conventions on his **or her** own behalf, identify himself **or herself** as a member of a political party, and contribute to his **or her** own campaign, a political party**,** or political organization (including purchasing tickets for political party dinners or other functions).

D. With respect to **[his]** campaign conduct, a district justice or a candidate for **[such] the** office **[shall] of district justice**:

(1) **shall** maintain the dignity appropriate to judicial office, and shall encourage **family** members **[of his family]** to adhere to the same standards of political conduct that apply to **[him.] the district justice or candidate;**

(2) **shall** prohibit public officials or **[employes] employees** subject to his **or her** direction or control from doing for him **or her** what he **or she** is prohibited from doing under this rule; and except to the extent authorized under subdivision D(4) of this rule **[shall] may** not allow any other person to do for him **or her** what he **or she** is prohibited from doing under this rule**[.];**

(3) **may** not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office; make statements that commit or appear to commit the candidate with respect to cases,

controversies or issues that are likely to come before the court; or misrepresent his **or her** identity, qualifications, present position, or other fact**[.];**

* * * * *

(4) **may** not **[himself] personally** solicit or accept campaign funds, or solicit publicly stated support, but **[he]** may establish committees of responsible persons to secure and manage the expenditure of funds for his **or her** campaign and to obtain public statements of support for his **or her** candidacy. **[Such] The** committees are not prohibited from soliciting campaign contributions and public support from lawyers. **[A candidate's] The** committees may solicit **[funds for his]** campaign **funds** no earlier than **[thirty (30)] 30** days prior to the first day for filing nominating petitions, and all fundraising activities in connection with **[such] the** campaign **[shall] must** terminate no later than the last calendar day of the year in which the election is held. A **district justice or a** candidate **[should] for the office of district justice may** not use or permit the use of a campaign contribution for the private benefit of himself **or herself** or members of his **or her** family.

E. A district justice shall resign his **or her** office when he **or she** becomes a candidate either in a party primary or in a general election for a non-judicial office.

Official Note: **[This rule is derived from former Rule 15 and from Canon 7 of the American Bar Association and Pennsylvania Supreme Court Code of Judicial Conduct. this] This** rule prohibits only political activity that is partisan in nature**,** and consequently there is no objection to a district justice becoming engaged in political activity of a public service nature, such as, for example, political activity **[in] on** behalf of measures to improve the law, the legal system**,** or the administration of justice. **Compare Canon 7 of the Code of Judicial Conduct.**

Adopted, effective Feb. 1, 1973. Amended Oct. 17, 1975, effective in 90 days; June 30, 1982, effective 30 days after July 17, 1982; Nov. 9, 1998, effective Jan. 1, 1999; amended November 21, 2002, effective immediately**; amended _____, effective _____** .

REPORT

Proposed Amendments to Rules 13, 14, and 15 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices

CLARIFICATION REGARDING RESTRICTIONS ON DISTRICT JUSTICES SERVING AS ARBITRATORS

I. Background

The Minor Court Rules Committee (hereinafter the Committee) undertook a review of Rules 13 (relating to incompatible practices), 14 (relating to prohibited practice of attorney district justice), and 15 (relating to public office and political activity) of the Standards of Conduct of District Justices[1] in response to an inquiry from the Ethics and Professionalism Committee of the Special Court Judges Association of Pennsylvania (hereinafter SCJAP Ethics Committee). The SCJAP Ethics Committee reported that it had received a number of inquiries from attorney district justices asking whether or not an attorney district justice may serve as an arbitrator, particularly in contractual arbitration cases where the arbitrators' fees are paid by the parties. The SCJAP Ethics Committee referred the question to the Minor Court Rules Committee, suggesting that the interaction among Rules 13, 14, and 15 was causing confusion regarding the ethical restrictions placed on district justices in general, and attorney district justices in particular. After consideration of the inquiry, and review of the relevant rules, statutes, and other authorities, the Committee agreed that amendments to the rules were necessary to provide that no district justice, including an attorney district justice, may act as an arbitrator or mediator.

II. Discussion

As stated above, the SCJAP Ethics Committee suggested that Rules 13, 14, and 15, when read together, create confusion about what, if any, ethical restrictions are placed on an attorney district justice's ability to serve as an arbitrator. Specifically, Rule 13 states, inter alia, that "[a] district justice shall not receive any fee or emolument for performing the duties of an arbitrator." Rule 14, which applies specifically to restrictions on the practice of attorney district justices, does not expressly prohibit attorney district justices from serving as arbitrators. Further, the Note to Rule 14 states that "[t]his rule contains all the prohibitions upon the practice of law by attorney district justices that were thought necessary."[2] Finally, Rule 15 provides, inter alia, that "[a] district justice shall not hold another office or position of profit in the government of the United States, the Commonwealth, or any political subdivision thereof . . . ." The Committee learned that some district justices, when reading these provisions together, have interpreted them to mean that:

1. because Rule 13 prohibits a district justice from receiving "any fee or emolument for performing the duties of an arbitrator," but no similar proscription is expressed in Rule 14, the Rule 13 provision does not apply to an attorney district justice acting in his or her capacity as an attorney;

2. because of the limiting language in the Note to Rule 14, the arbitration prohibition in Rule 13 does not apply to an attorney district justice acting in his or her capacity as an attorney; and

3. because Rule 15 prohibits a district justices from holding "another . . . position of profit in the government . . . ," an attorney district justice may not serve as a arbitrator in a compulsory arbitration program in which fees are paid by a county or other government entity, but may serve as an arbitrator, in his or her capacity as an attorney, in a private contractual arbitration case in which fees are paid by the parties.

The Committee also learned that some attorney district justices, relying on the above reading of Rules 13, 14, and 15, have been serving as arbitrators in contractual arbitration cases, particularly uninsured/underinsured motorist arbitrations.

The Committee disagrees with the above interpretation of the rules. The Committee reviewed Rules 13, 14, and 15, as well as Section 3304(b) of the Judicial Code, which states that, "[n]o judge or district justice shall receive any fee or emolument for performing the duties of an arbitrator." 42 Pa.C.S. § 3304(b) (West 1981). In addition, the Committee compared the district justice rules with Canon 5E of the (Pennsylvania) Code of Judicial Conduct, which states that, "[a] judge should not act as an arbitrator or mediator."

In its analysis of the authorities, Committee noted that Rule 13 applies to all district justices, and prohibits all

[1] 207 Pa. Code Ch. 51, Rules 13, 14, and 15.

[2] The Supreme Court does not adopt the Committee's Notes to the rules.

district justices from receiving a fee or emolument for acting as an arbitrator. Rule 14, the Committee noted, applies specifically to attorney district justices, and lists only certain prohibited practices not specified in the other rules relating to all district justices. Further, the Committee noted that Section 3304 does not distinguish between attorney and non-attorney district justices in its prohibition of district justices receiving "any fee or emolument for performing the duties of an arbitrator."

The Committee concluded, therefore, that the rules and statute prohibit a district justice, attorney or non-attorney, from receiving a fee or emolument for performing the duties of an arbitrator. The Committee disagreed with the analysis described above that would construe Rule 13 as not applying to an attorney district justice in his or her capacity as an attorney, and would create an artificial distinction between compulsory (court) and contractual (private) arbitration cases.

Having concluded that no district justice may receive a fee or emolument for performing the duties of an arbitrator regardless of the nature of the arbitration and the payer of the arbitrators' fees, the Committee next considered if the rules should retain the existing restriction and be amended to merely clarify the nature of the restriction, or if the rules should be amended to more closely mirror Canon 5E and fully prohibit district justices from acting as arbitrators. After considerable discussion, the Committee concluded that the prohibition on receiving a fee or emolument is so restrictive, and the risk of an appearance of impropriety so great when a district justice acts as an arbitrator or mediator, that the rules should reflect a comprehensive prohibition on a district justice acting as an arbitrator or mediator.

Accordingly, the Committee proposes that Rules 13, 14, and 15 be amended to more closely mirror Canon 5E and to provide that no district justice may act as an arbitrator or mediator.

III. Proposed Rule Changes

A. *Rule 13*

The Committee proposes that Rule 13 be divided into three subdivisions to enhance readability. The three subdivisions would contain the existing provisions of the rule with only minor editorial changes to address gender neutrality and conform with modern drafting style. Subdivision B would contain the new provision prohibiting a district justice from acting as an arbitrator or mediator. In addition, the reference to constables in the rule would be deleted in light of the Pennsylvania Supreme Court's holding in *Rosenwald v. Barbieri*, 501 Pa. 563, 462 A.2d 644 (1983). Finally, the existing Note to the rule would be deleted and replaced with a revised Note that cross-references Canon 5E of the Code of Judicial Conduct and Section 3304 of the Judicial Code.

B. *Rule 14*

The Committee proposes that Rule 14 also be restructured to enhance readability. Under the Committee proposal, the two existing subdivisions would remain, but the specific provisions restricting the practice of law by an attorney district justice would be consolidated and tabulated in subdivision A. Very significantly, the introductory sentence in subdivision A would be amended to read, "[i]n addition to the general prohibitions in Rule 13, the following prohibitions apply to a district justice who is an attorney." This is intended to clarify that the provisions of Rule 13, including the arbitration provision, apply to all district justices, including attorney district justices. In addition, the restrictions on lawyers who are associated with the attorney district justice from appearing before him or her would be moved to subdivision B. Finally, the Committee proposes minor editorial changes to address gender neutrality and conform with modern drafting style. The Committee proposes that the existing Note to the rule be deleted entirely.

C. *Rule 15*

The Committee does not propose any substantive changes to Rule 15 in connection with the arbitration issue. In its review of the rule, however, the Committee identified the need for, and thus proposes, extensive editorial changes to enhance readability, address gender neutrality, and conform with modern drafting style.

[Pa.B. Doc. No. 03-213. Filed for public inspection February 7, 2003, 9:00 a.m.]

PART IV. COURT OF JUDICIAL DISCIPLINE
Court Sessions; Doc. No. 1 JD 94

Order

Per Curiam:

And Now, this 24th day of January, 2003, it is hereby *Ordered* that the sessions of the Court of Judicial Discipline shall be held in the year 2003 commencing as follows:

April 8—10

July 15—17

October 21—23

December 16—18

[Pa.B. Doc. No. 03-214. Filed for public inspection February 7, 2003, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CHS. 200, 1000 AND 4000]

Promulgation of Rules of Civil Procedure 1042.1 et seq. Governing Professional Liability Actions; No. 382 Civil Procedural Rules; Doc. No. 5

Order

Per Curiam:

And Now this 27th day of January, 2003, the Pennsylvania Rules of Civil Procedure are amended as follows:

(1) New Rules 1042.1 through 1042.8 are promulgated to read as follows, and

(2) Rules 229, 1026 and 4007.2 are amended to read as follows.

Whereas prior distribution and publication of these rules would otherwise be required, it has been determined that immediate promulgation of the rules is required in the interest of justice and efficient administration.

This Order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective immediately. The new and amended rules shall be applicable to actions commenced on or after the effective date of this Order.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART 1. GENERAL

CHAPTER 200. BUSINESS OF COURTS

Rule 229. Discontinuance.

* * * * *

(b)**(1) [A] Except as otherwise provided in subdivision (b)(2), a** discontinuance may not be entered as to less than all defendants except upon the written consent of all parties or leave of court after notice to all parties.

(2) In an action governed by Rule 1042.3, a plaintiff may enter a discontinuance as to a defendant if a certificate of merit as to that defendant has not been filed.

Official Note: **Rule 1042.3 requires the filing of a certificate of merit as to a defendant against whom a professional liability claim is asserted.**

* * * * *

CHAPTER 1000. ACTIONS AT LAW

Subchapter A. CIVIL ACTION

PLEADINGS

Rule 1026. Time for Filing. Notice to Plead.

(a) Except as provided **by Rule 1042.5 or** by subdivision (b) **of this rule**, every pleading subsequent to the complaint shall be filed within **[20] twenty** days after service of the preceding pleading, but no pleading need be filed unless the preceding pleading contains a notice to defend or is endorsed with a notice to plead.

Official Note:

* * * * *

Additional time within which to plead may be sought under Rule 248.

Rule 1042.5 governs actions in which a professional liability claim is asserted.

* * * * *

PROFESSIONAL LIABILITY ACTIONS

Rule 1042.1. Professional Liability Actions. Scope. Definition.

(a) The rules of this chapter govern a civil action in which a professional liability claim is asserted against a licensed professional.

(b) As used in this chapter, "licensed professional" means

(1) any person who is licensed pursuant to an Act of Assembly as

(i) a health care provider as defined by Section 503 of the Medical Care Availability and Reduction of Error (Mcare) Act, 40 P. S. § 1303.503;

(ii) an accountant;

Official Note: See the CPA Law, Act of May 26, 1947, No. 318, as reenacted and amended, 63 P. S. § 9.1 et seq.

(iii) an architect;

Official Note: See the Architects Licensure Law, Act of December 14, 1982, P. L. 1227, No. 281, 63 P. S. § 34.1 et seq.

(iv) a chiropractor;

Official Note: See the Chiropractic Practice Act of Dec. 16, 1986, P. L. 1646, No. 188, 63 P. S. § 625.101 et seq.

(v) a dentist;

Official Note: See the Dental Law, Act of May 1, 1933, P. L. 216, 63 P. S. § 120 et seq.

(vi) an engineer or land surveyor;

Official Note: See The Engineer, Land Surveyor and Geologist Registration Law, Act of May 23, 1945, P. L. 913, as amended, 63 P. S. § 148 et seq.

(vii) a nurse;

Official Note: See the Professional Nursing Law, Act of May 22, 1951, P. L. 317, as amended, 63 P. S. § 211 et seq.

(viii) an optometrist;

Official Note: See the Optometric Practice and Licensure Act of June 6, 1980, P. L. 197, No. 57, 63 P. S. § 244.1 et seq.

(ix) a pharmacist;

Official Note: See the Wholesale Prescription Drug Distributors License Act of December 14, 1992, P. L. 1116, No. 145, 63 P. S. § 391.1 et seq.

(x) a physical therapist;

Official Note: See the Physical Therapy Practice Act of October 10, 1975, P. L. 383, No. 110, 63 P. S. § 1301 et seq.

(xi) a psychologist; and

Official Note: See the Professional Psychologists Practice Act of March 23, 1972, P. L. 136, No. 52, 63 P. S. § 1201 et seq.

(xii) a veterinarian.

Official Note: See the Veterinary Medicine Practice Act of December 27, 1974, P. L. 995, No. 326, 63 P. S. § 485.1 et seq.

(2) an attorney at law; and

Official Note: See Rule 76 for the definition of attorney at law.

(3) any professional described in paragraphs (1) and (2) who is licensed by another state.

Rule 1042.2. Complaint.

(a) A complaint shall identify each defendant against whom the plaintiff is asserting a professional liability claim.

Official Note: It is recommended that the complaint read as follows:

"Defendant _____ (name) is a licensed professional with offices in _____ County, Pennsylvania. Plaintiff is asserting a professional liability claim against this defendant."

(b) A defendant may raise by preliminary objections the failure of the complaint to comply with subdivision (a) of this rule.

Official Note: The filing of preliminary objections raising failure of a pleading to conform to rule of court is

the procedure for bringing before the court the issue whether the complaint is asserting a professional liability claim.

Rule 1042.3. Certificate of Merit.

(a) In any action based upon an allegation that a licensed professional deviated from an acceptable professional standard, the attorney for the plaintiff, or the plaintiff if not represented, shall file with the complaint or within sixty days after the filing of the complaint, a certificate of merit signed by the attorney or party that either

(1) an appropriate licensed professional has supplied a written statement that there exists a reasonable probability that the care, skill or knowledge exercised or exhibited in the treatment, practice or work that is the subject of the complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about the harm, or

Official Note: It is not required that the "appropriate licensed professional" who supplies the necessary statement in support of a certificate of merit required by subdivision (a)(1) be the same person who will actually testify at trial. It is required, however, that the "appropriate licensed professional" who supplies such a statement be an expert with sufficient education, training, knowledge and experience to provide credible, competent testimony, or stated another way, the expert who supplies the statement must have qualifications such that the trial court would find them sufficient to allow that expert to testify at trial. For example, in a medical professional liability action against a physician, the expert who provides the statement in support of a certificate of merit should meet the qualifications set forth in Section 512 of the Medical Care Availability and Reduction of Error (Mcare) Act, 40 P. S. § 1303.512.

(2) the claim that the defendant deviated from an acceptable professional standard is based solely on allegations that other licensed professionals for whom this defendant is responsible deviated from an acceptable professional standard, or

Official Note: Certificates of merit must be filed as to the other licensed professionals whether or not they are named defendants in the action.

(3) expert testimony of an appropriate licensed professional is unnecessary for prosecution of the claim.

Official Note: In the event that the attorney certifies under subdivision (a)(3) that an expert is unnecessary for prosecution of the claim, in the absence of exceptional circumstances the attorney is bound by the certification and, subsequently, the trial court shall preclude the plaintiff from presenting testimony by an expert on the questions of standard of care and causation.

(b) A separate certificate of merit shall be filed as to each licensed professional against whom a claim is asserted.

(c)(1) A defendant who files a counterclaim asserting a claim for professional liability shall file a certificate of merit as required by this rule.

(2) A defendant or an additional defendant who has joined a licensed professional as an additional defendant need not file a certificate of merit unless the joinder is based on acts of negligence that are unrelated to the acts of negligence that are the basis for the claim against the joining party.

(d) The court, upon good cause shown, shall extend the time for filing a certificate of merit for a period not to exceed sixty days. The motion to extend the time for filing a certificate of merit must be filed on or before the filing date that the plaintiff seeks to extend. The filing of a motion to extend tolls the time period within which a certificate of merit must be filed until the court rules upon the motion.

Official Note: There are no restrictions on the number of orders that a court may enter extending the time for filing a certificate of merit provided that each order is entered pursuant to a new motion, timely filed and based on cause shown as of the date of filing the new motion.

The moving party must act with reasonable diligence to see that the motion is promptly presented to the court if required by local practice.

In ruling upon a motion to extend time, the court shall give appropriate consideration to the practicalities of securing expert review. There is a basis for granting an extension of time within which to file the certificate of merit if counsel for the plaintiff was first contacted shortly before the statute of limitations was about to expire, or if, despite diligent efforts by counsel, records necessary to review the validity of the claim are not available.

Rule 1042.4. Responsive Pleading.

A defendant against whom a professional liability claim is asserted shall file a responsive pleading within the time required by Rule 1026 or within twenty days after service of the certificate of merit on that defendant, whichever is later.

Rule 1042.5. Discovery.

Except for the production of documents and things or the entry upon property for inspection and other purposes, a plaintiff who has asserted a professional liability claim may not, without leave of court, seek any discovery with respect to that claim prior to the filing of a certificate of merit.

Official Note: Upon motion seeking leave of court, the court shall allow any discovery which is required for a licensed professional to make a determination as to whether a defendant deviated from accepted professional standards.

This rule does not preclude a defendant from seeking a protective order under Rule 4012 in response to a request for the production of documents and things or the entry upon property for inspection and other purposes.

Rule 1042.6. Entry of Judgment of Non Pros for Failure to File Certification.

(a) The prothonotary, on praecipe of the defendant, shall enter a judgment of non pros against the plaintiff for failure to file a certificate of merit within the required time provided that there is no pending timely filed motion seeking to extend the time to file the certificate.

Official Note: The prothonotary may not enter judgment if the certificate of merit has been filed prior to the filing of the praecipe.

Rule 237.1 does not apply to a judgment of non pros entered under this rule.

(b) The praecipe for the entry of a judgment of non pros shall be substantially in the following form:

(Caption)
Praecipe for Entry of Judgment of Non Pros
Pursuant to Rule 1042.6

To the Prothonotary:

Enter judgment of non pros against _____ in
Plaintiff
the professional liability claim against _____ in
Defendant
the above captioned matter.

I, the undersigned, certify that the plaintiff named above has asserted a professional liability claim against the defendant named above who is a licensed professional, that no certificate of merit has been filed within the time required by Pa.R.C.P. 1042.3 and that there is no motion to extend the time for filing the certificate pending before the court.

Date: _____ _____
Defendant or Attorney for Defendant

Rule 1042.7. Sanctions.

(a) If a plaintiff has filed a certificate of merit as to a particular defendant and that defendant is dismissed from the case through voluntary dismissal, verdict or order of court, the plaintiff, within thirty days of the written request of that defendant, shall provide him or her with the written statement obtained from the licensed professional upon which the certificate of merit as to that defendant was based. If a plaintiff's claims against other licensed professionals are still pending, the written statement shall be produced within thirty days of resolution of all claims against the other licensed professionals.

Official Note: Rule 4003.5 governs the discovery of expert testimony, including the written statements of licensed professionals furnished prior to the filing of a certificate of merit, until a defendant has been dismissed from the case.

(b) A court may impose appropriate sanctions, including sanctions provided for in Rule 1023.4, if the court determines that an attorney violated Rule 1042.3(a)(1) and (2) by improperly certifying that an appropriate licensed professional has supplied a written statement that there exists a reasonable probability that the care, skill or knowledge experienced or exhibited in the treatment, practice or work that is the subject of the complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about the harm.

Rule 1042.8. Certificate of Merit. Form.

The certificate required by Rule 1042.3(a) shall be substantially in the following form:

(Caption)

Certificate of Merit as to _____
(Name of Defendant)

I, _____, certify that:
(Attorney or Party)

☐ an appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by this defendant in the treatment, practice or work that is the subject of the complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about the harm;

OR

☐ the claim that this defendant deviated from an acceptable professional standard is based solely on allegations that other licensed professionals for whom this defendant is responsible deviated from an acceptable professional standard and an appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by the other licensed professionals in the treatment, practice or work that is the subject of the complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about the harm;

OR

☐ expert testimony of an appropriate licensed professional is unnecessary for prosecution of the claim against this defendant.

Date: _____ _____
(Attorney or Party)

CHAPTER 4000. DEPOSITIONS AND DISCOVERY

Rule 4007.2. When Leave of Court Required.

(a) Except as provided by **[Rule] Rules 1042.5 and** 4003.5(a)(2) and by subdivisions (b) and (d) of this rule, a deposition may be taken without leave of court.

Official Note: **Rule 1042.5 governs discovery in a professional liability action prior to the filing of a certificate of merit.**

See Rule 1930.5(a) providing that there shall be no discovery in specified domestic relations matters unless authorized by the court. See also Rules 1910.9 and 1915.5(c) governing discovery in actions for support and custody, respectively.

* * * * *

[Pa.B. Doc. No. 03-215. Filed for public inspection February 7, 2003, 9:00 a.m.]

PART I. GENERAL

[231 PA. CODE CHS. 1000, 2120, 2150 AND 2170]

Amendment of Rules of Civil Procedure Governing Venue; No. 381 Civil Procedural Rules; Doc. No. 5

Order

Per Curiam:

And Now this 27th day of January, 2003, Pennsylvania Rules of Civil Procedure 1006, 2130, 2156 and 2179 are amended to read as follows.

Whereas prior distribution and publication of these amendments would otherwise be required, it has been determined that immediate promulgation of the amendments is required in the interest of justice and efficient administration.

This Order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective immediately.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1000. ACTIONS AT LAW

Subchapter A. CIVIL ACTION

VENUE AND PROCESS

Rule 1006. Venue. Change of Venue.

(a) Except as otherwise provided by **[Subdivisions] subdivisions (a.1),** (b) and (c) of this rule, an action against an individual may be brought in and only in a county in which 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.

* * * * *

(a.1) Except as otherwise provided by subdivision (c), a medical professional liability action may be brought against a health care provider for a medical professional liability claim only in a county in which the cause of action arose.

Official Note: **See Section 5101.1(c) of the Judicial Code, 42 Pa.C.S. § 5101.1(c) for the definitions of "health care provider," "medical professional liability action" and "medical professional liability claim."**

(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.

Official Note: **Partnerships, unincorporated associations, and corporations and similar entities are subject to subdivision (a.1) governing venue in medical professional liability actions. See Rules 2130, 2156 and 2179.**

(c)**(1) [An] Except as otherwise provided by paragraph (2), 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).

(2) If the action to enforce a joint or joint and several liability against two or more defendants includes one or more medical professional liability claims, the action shall be brought in any county in which the venue may be laid against any defendant under subdivision (a.1).

* * * * *

(f)**(1) [If] Except as provided by paragraph (2), if** the plaintiff states more than one cause of action against the same defendant in the complaint pursuant to Rule 1020(a), the action may be brought in any county in which any one of the individual causes of action might have been brought.

(2) Except as otherwise provided by subdivision (c), if one or more of the causes of action stated against the same defendant is a medical professional liability claim, the action shall be brought in a county required by subdivision (a.1).

CHAPTER 2120. PARTNERSHIPS AS PARTIES

Rule 2130. Venue.

(a) Except as otherwise provided **by Rule 1006(a.1) and** by subdivision (c) of this rule, an action against a partnership may be brought in and only in a county where the partnership regularly conducts business, or in the county where the cause of action arose or in a county where a transaction or occurrence took place out of which the cause of action arose.

Official Note: **Rule 1006(a.1) governs venue in actions for medical professional liability.**

* * * * *

CHAPTER 2150. UNINCORPORATED ASSOCIATIONS AS PARTIES

Rule 2156. Venue.

(a) Except as otherwise provided **by Rule 1006(a.1) and** by subdivision (b) of this rule, an action against an association may be brought in and only in a county where the association regularly conducts business or any association activity, or in the county where the cause of action arose or in a county where a transaction or occurrence took place out of which the cause of action arose.

Official Note: **Rule 1006(a.1) governs venue in actions for medical professional liability.**

* * * * *

CHAPTER 2170. CORPORATIONS AND SIMILAR ENTITIES AS PARTIES

Rule 2179. Venue.

(a) Except as otherwise provided by an Act of Assembly**, by Rule 1006(a.1)** or by subdivision (b) of this rule, a personal action against a corporation or similar entity may be brought in and only in

* * * * *

(4) a county where a transaction or occurrence took place out of which the cause of action arose.

Official Note: **Rule 1006(a.1) governs venue in actions for medical professional liability.**

* * * * *

Explanatory Comment

Act No. 127 of 2002 amended the Judicial Code by adding new Section 5101.1 providing for venue in medical professional liability actions. Section 5101.1(b) provides

> (b) *General rule.*—Notwithstanding any other provision to the contrary, a medical professional liability action may be brought against a health care provider for a medical professional liability claim only in the county in which the cause of action arose.

This provision has been incorporated into Rule of Civil Procedure 1006 governing venue as new subdivision (a.1). The new subdivision uses the terminology of the legislation. "Medical professional liability action," "health care provider" and "medical professional liability claim" are terms defined by Section 5101.1(c) of the Code.

Joint and Several Liability

Under new subdivision (c)(2) of Rule 1006, an action to enforce a joint and several liability against two or more health care providers may be brought in any county in which venue may be laid against at least one of the health care providers under subdivision (a.1). Therefore, an action to enforce a joint and several liability against Health Care Provider A that provided treatment in

County 1 and against Health Care Provider B that provided treatment in County 2 may be brought in either County 1 or County 2.

However, subdivision (c)(2) does not allow an action to enforce a joint and several liability to be brought against a health care provider in a county in which venue may be laid against a defendant that is not a health care provider. Therefore, an action to enforce a joint and several liability against Health Care Provider A that provided treatment in County 1 and against a product manufacturer that does business in County 2 may be brought only in County 1.

Multiple Causes of Action

Subdivision (f) of Rule 1006 provides that where more than one cause of action is asserted against the same defendant pursuant to Rule 1020(a), venue as to one cause of action constitutes venue as to all causes of action. In an action in which there are asserted multiple causes of action but only one is a claim for medical professional liability, the application of this provision could frustrate Section 5101.1 and result in an action being brought in a county other than the county in which the cause of action for medical professional liability arose. New subdivision (f)(2) limits venue in such cases to the county required by new subdivision (a.1), e.g., the county in which the cause of action for medical professional liability arose.

The new venue provision for a medical professional liability claim is to be made applicable not only to individual defendants (Rule 1006(a.1)) but also to partnerships (Rule 2130(a)), unincorporated associations (Rule 2156(a)) and corporations and similar entities (Rule 2179(a)).

By the Civil Procedural Rules Committee

R. STANTON WETTICK, Jr.,
Chair

[Pa.B. Doc. No. 03-216. Filed for public inspection February 7, 2003, 9:00 a.m.]

Title 246—MINOR COURT CIVIL RULES

[246 PA. CODE CHS. 600 AND 1000]

Review of Non-Commonwealth Agency Action on Requests under the Right-to-Know Law

The Minor Court Rules Committee is planning to recommend that the Supreme Court of Pennsylvania adopt new Rules 601—608 and amend existing Rules 1001 and 1007 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices to provide for review of non-commonwealth agency action on requests under the Right-to-Know Law. The Committee has not submitted this proposal for review by the Supreme Court of Pennsylvania.

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

The text of the proposed changes precedes the Report. Except for entirely new rules which are printed in regular type, 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: minorcourt.rules@supreme.court.state.pa.us

no later than Monday, March 10, 2003.

By the Minor Court Rules Committee

THOMAS E. MARTIN, Jr.,
Chair

Annex A

TITLE 246. MINOR COURT CIVIL RULES

PART I. GENERAL

CHAPTER 600. REVIEW OF NON-COMMONWEALTH AGENCY ACTION ON REQUESTS UNDER THE RIGHT-TO-KNOW LAW

Rule 601. Definitions.

As used in this chapter, the phrase "Non-Commonwealth Agency" or "Agency" shall mean any office, department, board, or commission of the executive branch of any political subdivision of the Commonwealth, or any municipal authority or similar organization created by or pursuant to a statute which declares in substance that such organization performs or has for its purpose the performance of an essential governmental function.

Adopted _____ , effective _____ .

Rule 602. Action for Review of Non-Commonwealth Agency Action; Parties.

A. A resident of the Commonwealth who alleges a denial of a request for access to a public record pursuant to the Act of June 21, 1957 (P. L. 390, No. 212), as amended, hereafter referred to as the "Right-To-Know Law," may bring an action in a district justice court of proper venue by filing a civil complaint.

B. Except as otherwise provided herein, upon the filing of a complaint as provided in subdivision A, the action shall proceed as a civil action in accordance with the rules of the 300 Series.

C. No claim under Rule 315 will be permitted in an action filed pursuant to this Rule.

D. The plaintiff in an action filed pursuant to this chapter shall be the person alleging denial of the request, and the defendant shall be the Non-Commonwealth Agency. No other person may be a party to the action.

Official Note: See 65 P. S. §§ 66.1—66.9.

Adopted _____ , effective _____ .

Rule 603. Form of Complaint.

A. In addition to the information required by Rule 304, the complaint must contain

(1) a description of the record that the plaintiff requested pursuant to the Right-To-Know Law, and;

(2) the date of denial or deemed denial of access to the record, and if the denial was in writing, a copy of the written denial must be attached to the complaint.

B. A copy of the original written request to the Agency for the record must be attached to the complaint.

C. If exceptions to the denial or deemed denial were filed with the head of the Agency, a copy of the exceptions must be attached to the complaint.

Adopted _____ , effective _____ .

Rule 604. Redaction.

A. If the plaintiff objects to some redaction made by the Non-Commonwealth Agency of the record supplied, the plaintiff must specify in the complaint that part of the objection is to the redaction.

B. If the plaintiff specifies in the complaint that part of the objection is to some redaction made by the Non-Commonwealth Agency of the record supplied, the Agency must provide the district justice at the time of the hearing with a copy of the record without redaction as well as a copy of the record with redaction. The district justice may not copy the record without redaction, may never disclose its contents, and shall return it to the Agency (or counsel for the Agency) before the conclusion of the hearing.

Adopted _____ , effective _____ .

Rule 605. Judgment.

A. The judgment entered by the district justice must include findings of fact and conclusions of law including but not limited to the following:

FINDINGS OF FACT

(1) A description of the record requested;

(2) A determination whether or not the plaintiff is a Pennsylvania resident;

(3) A determination of the date when the written request was made to the Agency;

(4) A determination whether or not the agency is a Non-Commonwealth Agency;

(5) A determination whether or not the request was sufficiently specific to enable the Agency to ascertain what record was being requested;

(6) A determination whether or not a response to the request was made, and to whom and when it was made;

(7) A determination whether or not the Agency denied the request, and if so, a copy of any written denial must be attached to the judgment entered by the district justice;

(8) A determination whether or not the plaintiff filed exceptions to the denial or deemed denial with the head of the Agency, and if so, a copy of any written exceptions must be attached to the judgment entered by the district justice;

(9) If redaction of the record was made by the Agency before delivery of the record to the plaintiff, a determination whether or not the redaction was appropriate;

(10) A determination of what, if any, copying fees the Agency charged the plaintiff, and whether the copying fees were paid in part or in full;

(11) If access to the record was denied, a determination of the date when access to the record was denied or deemed denied;

(12) A determination whether the Agency had its own written policies or regulations governing access to public records, and if so, whether the policies or regulations were complied with;

CONCLUSIONS OF LAW

(13) A determination whether or not the complaint was filed within 30 days of the denial or deemed denial;

(14) A determination whether or not the district justice has jurisdiction;

(15) A determination whether or not the record is a public record;

(16) A determination whether or not access to the record was timely denied;

(17) A determination what attorney fees, if any, are awarded;

(18) A determination whether or not the costs will be assessed, and against whom the costs will be assessed, and;

(19) A determination whether or not the copying fees charged were reasonable and, if they were not reasonable, what copying fees may be charged.

B. The district justice shall provide a summary of his or her reasoning in support of the judgment.

C. The district justice shall decide if the Agency must provide access to the record, in whole or in part, and any specific conditions or rules with respect to such access, and shall enter an appropriate order as part of the judgment.

Official Note: Section 4.1 of the Right-To-Know Law makes special provision for the limited award of court costs and attorney fees. 65 P. S. § 66.4-1.

Adopted _____ , effective _____ .

Rule 606. Failure of Non-Commonwealth Agency to Promptly Comply with Order; Supplementary Action.

A. If the Non-Commonwealth Agency does not promptly comply with an order entered pursuant to Rule 605, the plaintiff may commence a supplementary action for civil penalties by filing a civil complaint in the office of the district justice in which the order was entered.

B.(1) Except as provided in subparagraph B(2), upon the filing of a complaint as provided in subdivision A, the action shall proceed as a civil action in accordance with the rules of the 300 Series.

(2) No claim under Rule 315 will be permitted in a supplementary action filed pursuant to this Rule.

Official Note: Section 5(b) of the Right-To-Know Law provides for a civil penalty for failure to promptly comply with a court order entered pursuant to the Right-To-Know Law. 65 P. S. § 66.5(b).

The action commenced under subdivision A of this Rule is a supplementary proceeding in the matter in which the order was entered. As such, it must be filed in the office of the district justice in which the order was entered. Also, it must be indexed to the same docket number as, and made a part of the record of, the underlying action. Because the supplementary action is merely a continuation of the underlying action, there are no filing costs for it, however there may be costs for service of the action.

Subdivision B provides that, once a supplementary action is filed under subdivision A, the proceedings in the action, including the form of the complaint, setting the

hearing date, service, and hearing, should proceed as if a regular civil action, except that no cross-complaint under Rule 315 will be permitted. While it is not the intent of this rule to limit defenses that may be raised in a supplementary action, only those issues arising from the Rule 606 supplementary action are to be considered at the hearing. Therefore, subparagraph B(2) makes clear that no cross-complaint is permitted to be filed.

When rendering judgment in an action filed pursuant to this rule, the district justice may determine whether or not, and in what amount, if any, a civil penalty will be awarded, and to whom it will be payable.

A party may appeal from a judgment in an action filed pursuant to this rule, but issues on appeal are limited to those raised in the action filed under this rule. See Rule 1007.

Adopted _____ , effective _____ .

Rule 607. Appeal.

An appeal from a judgment entered pursuant to Rule 605 may be filed by any party in accordance with these rules.

Adopted _____ , effective _____ .

Rule 608. Enforcement.

A. The judgment entered by the district justice pursuant to Rule 605 may be enforced by entry of a certified copy of the judgment in the court of common pleas. Thereafter, an action may be brought in that court to enforce the judgment.

B. Unless a timely appeal from the judgment entered by the district justice is filed with the court of common pleas, only those issues arising from the action to enforce the judgment are to be considered in the court of common pleas.

Official Note: Subdivision B makes clear that an action brought in the court of common pleas to enforce the judgment entered by the district justice is not intended to reopen other issues from the underlying action that were not properly preserved for appeal.

Adopted _____ , effective _____ .

CHAPTER 1000. APPEALS

APPELLATE PROCEEDINGS WITH RESPECT TO JUDGMENTS AND OTHER DECISIONS OF DISTRICT JUSTICES IN CIVIL MATTERS

Rule 1001. Definitions.

As used in this chapter:

(1) "Judgment" means a judgment rendered by a district justice under Rule 319, 322**, [or]** 514**, or 605**.

* * * * *

Adopted June 1, 1971. Amended April 25, 1979, effective in 30 days; June 30 1982, effective 30 days after July 17, 1982; amended effective Dec. 1, 1983; amended April 5, 2002, effective January 1, 2003**; amended _____ , effective** _____ .

APPEAL

Rule 1007. Procedure On Appeal.

* * * * *

C. When an appeal is taken from a supplementary action filed pursuant to Rule 342 **or 606**, only those issues arising from the **[Rule 342] supplementary** action are to be considered.

Official Note: As under earlier law, the proceeding on appeal is conducted de novo, but the former rule that the proceeding would be limited both as to jurisdiction and subject matter to the action before the district justice (see *Crowell Office Equipment v. Krug*, 213 Pa. Super. 261, 247 A.2d 657 (1968)) has not been retained. Under subdivision B, the court of common pleas on appeal can exercise its full jurisdiction and all parties will be free to treat the case as though it had never been before the district justice, subject of course to the Rules of Civil Procedure. The only limitation on this is contained in subdivision C, which makes clear that an appeal from a supplementary action filed pursuant to Rule 342 **or 606** is not intended to reopen other issues from the underlying action that were not properly preserved for appeal.

Adopted June 1, 1971. Amended June 30, 1982, effective 30 days after July 17, 1982; amended April 5, 2002, effective January 1, 2003; **amended _____ , effective** _____ .

REPORT

Proposed New Pa. R.C.P.D.J. Nos. 601-608, and Proposed Amendments to Pa. R.C.P.D.J. Nos. 1001 and 1007

REVIEW OF NON-COMMONWEALTH AGENCY ACTION ON REQUESTS UNDER THE RIGHT-TO-KNOW LAW

I. Background

The Committee undertook a review of the Act of June 29, 2002 (P. L. 663, No. 100),[1] which amends the Right-to-Know Law, because Section 5 of the new act provides for bringing "an action in the local magisterial district"[2] for judicial review of a denial by a non-commonwealth agency of a request to provide public records.[3] The Committee noted that this provision essentially creates a new form of action in the district justice courts. The Act, however, provides no guidance as to how these actions are to be filed or how they are to proceed in the district justice courts. Therefore, the Committee believes that new procedural rules and the design of new forms will be necessary to implement this provision and to give district justices sufficient procedural guidance in handling these actions. In addition, Section 5 of the Act further provides that "[a] requester is entitled to a reasoned decision containing findings of fact and conclusions of law based upon the evidence as a whole which clearly and concisely states and explains the rationale for the decisions so that all can determine why and how a particular result was reached."[4] Because district justices do not routinely issue written decisions or opinions, the Committee believes that implementation of this provision also will require new procedural rules and the design of new forms.

After careful consideration of the Act, the Committee proposes the adoption of a new 600 Series of rules entitled "Review of Non-Commonwealth Agency Action on Requests Under the Right-to-Know Law." In addition, the

[1] This act amends the Act of June 21, 1957 (P. L. 390, No. 212), referred to as the Right-to-Know Law.

[2] Act of June 29, 2002 (P. L. 663, No. 100) § 5, amending Section 4 of the Right-to-Know Law.

[3] This provision of the Act became effective 180 days from June 29, 2002. Act of June 29, 2002 (P. L. 663, No. 100) § 8. On December 12, 2002, the Supreme Court of Pennsylvania issued an Order directing that proceedings under the Act that would otherwise be filed before district justices "are hereby ASSIGNED TO AND SHALL BE COMMENCED IN the courts of common pleas, pending promulgation of necessary rules of practice and procedure to govern actions in local magisterial districts as provided for in said statute." Supreme Court of Pennsylvania Order No. 141, Magisterial Docket No. 1, Book No. 2 (December 12, 2002). This temporary reassignment of these proceedings gave the Committee and the Court sufficient time to formulate and consider this proposal while making the same relief which would otherwise have been available in the district justice courts available in the courts of common pleas.

[4] Act of June 29, 2002 (P. L. 663, No. 100) § 5, amending Section 4 of the Right-to-Know Law.

Committee proposes correlative amendments to Rules 1001 and 1007 to provide necessary appellate procedures. These proposed rule changes are described in detail below.

II. Discussion of Rule Changes

A. Review of Non-Commonwealth Agency Action on Requests Under the Right-to-Know Law—New Rules

Among the Committee's first considerations was the form in which actions under the Right-to-Know Law would take. The Committee noted that to commence an action, the Act provides that "a requester may file a petition for review or other document as might be required by rule of court with the court of common pleas . . . or bring an action in the local magisterial district."[5] Since no petition practice or similar procedure exists at the district justice level, and "action" as used in the Act is not further defined, the Committee concluded that actions under the Right-to-Know Law should be commenced in the district justice courts by the filing of a civil complaint. With that as the basis for the procedural scheme, the Committee proposes the following new rules to implement the provisions of the Act.

1. *New Rule 601*

Proposed new Rule 601 (Definitions) would provide a definition for the term "Non-Commonwealth Agency." This definition would be unique to the new 600 Series rules.

2. *New Rule 602*

Proposed new Rule 602 (Action for Review of Non-Commonwealth Agency Action; Parties) would identify the Act under which actions may be brought pursuant to this chapter, and would further provide that the actions are to be brought on a civil complaint in accordance with the rules of the 300 Series. The rule would also prohibit cross-complaints under Rule 315 in these actions. Finally, the rule would identify and limit the parties to an action filed pursuant to this chapter as being the person alleging denial of the request for public records (plaintiff), and the Non-Commonwealth Agency (defendant).

3. *New Rule 603*

Proposed new Rule 603 (Form of Complaint) would list requirements for contents of the complaint that are in addition to the normal contents of a civil complaint under Rule 304. These additional requirements include a description of the record requested, and the date of denial or deemed denial of access to the record. In addition, the rule would require that a copy of the original written request and a copy of any exceptions to the agency's denial be attached to the complaint.

4. *New Rule 604*

Proposed new Rule 604 (Redaction) would contain special provisions relating to records that are redacted by the agency. The rule would provide that if the plaintiff objects to all or part of the redaction, that objection must be specified in the complaint. In addition, subdivision B of the proposed rule would require that the agency provide the district justice with a copy of the record without redaction to enable the district justice to make a determination of whether or not the redaction was appropriate. The rule would place restrictions on the copying and disclosure of the contents of the unredacted record, and would require that the district justice return the unredacted record before the conclusion of the hearing.

5. *New Rule 605*

Proposed new Rule 605 (Judgment) would contain a non-exclusive list of determinations that could be incorporated into the district justice's "reasoned decision containing findings of fact and conclusions of law based upon the evidence as a whole which clearly and concisely states and explains the rationale for the decisions so that all can determine why and how a particular result was reached"[6] as required by the Act. The rule would also provide for an order to be entered by the district justice regarding access to the record and any appropriate conditions regarding the access. It is the Committee's intent in proposing this rule that the list of determinations in the rule would be the basis for a simplified determination, opinion, and order form to be completed by the district justice to comply with the "reasoned decision" requirement of the Act.

6. *New Rule 606*

Proposed new Rule 606 (Failure of Non-Commonwealth Agency to Promptly Comply with Order; Supplementary Action) would implement Section 5(b) of the amended Right-to-Know Law which provides that "[a]n agency or public official who does not promptly comply with a court order under this act is subject to a civil penalty of not more than $300 per day until the public records are provided."[7] Because a claim for such civil penalties must necessarily follow a court order issued pursuant to proposed Rule 605, the proposed rule provides for a supplementary civil action that may be filed in the office of the district justice in which the order was entered. This proposed rule, modeled after existing Rule 342, makes clear that the supplementary action is to proceed as a civil action under the 300 Series, and that no Rule 315 cross-complaint may be filed in conjunction with the supplementary action.

7. *New Rule 607*

Proposed new Rule 607 (Appeal) would provide that "[a]n appeal from a judgment entered pursuant to [proposed] Rule 605 may be filed by any party in accordance with these rules."

8. *New Rule 608*

Proposed new Rule 608 (Enforcement) would provide that a judgment entered pursuant to proposed Rule 605 may be enforced by filing a certified copy of the judgment in the court of common pleas, and then commencing an action in that court to enforce the judgment. The Committee determined this was the most practical approach to enforcement since district justices have very limited contempt powers and generally do not have equitable powers. Subdivision B of the proposed rule would make clear, however, that an action brought in the court of common pleas solely to enforce the judgment entered by the district justice is not intended to reopen issues from the underlying action that were not properly appealed.

B. *Correlative Rule Changes*

The Committee recognized the need for minor amendments to appellate Rules 1001 and 1007 to fully provide for appeals from judgments rendered in "Right-to-Know Law actions." First, the Committee proposes an amendment to Rule 1001(1) to include a judgment rendered by a district justice pursuant to proposed Rule 605 in the definition of "Judgment."

The Committee further proposes that Rule 1007C be amended to further restrict appeals from supplementary

[5] *Id.*

[6] *Id.*

[7] Act of June 29, 2002 (P. L. 663, No. 100) § 6.

actions to issues that arise from the supplementary actions. This is intended to make clear that an appeal from a supplementary action filed pursuant to proposed Rule 606 is not intended to reopen other issues from the underlying action that were not properly preserved for appeal.

[Pa.B. Doc. No. 03-217. Filed for public inspection February 7, 2003, 9:00 a.m.]

Title 252—ALLEGHENY COUNTY RULES

ALLEGHENY COUNTY

Rules of the Court of Common Pleas; No. 1 of 2003 Rules Doc.

Order

And Now, to-wit this 17th day of January, 2003, pursuant to action of the Board of Judges, the within new local Rules A505: Change of Name affecting the Civil, Orphans', and Family Divisions of the Court of Common Pleas is adopted, effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

By the Court

ROBERT A. KELLY,
President Judge

Local Rule A505 Change of Name of a Natural Person

(a) All proceedings for a change of name pursuant to 54 Pa.C.S. §§ 701—705 shall be brought in the Civil Division, except where an adoption proceeding is commenced in the Orphans' Court Division, in which case any change of name ancillary thereto shall be adjudicated by the Orphans' Court Division. In those cases in which an adoption has been concluded in any other court and the only judicial relief sought in Allegheny County is a change of name, the Petition shall be filed in the Civil Division.

ACBA Court Rules Committee Note: See 23 Pa.C.S. § 2904. See also Supreme Court Orphans' Court Rule 15.5(e) where the adopted person has attained majority.

(b) All such proceedings shall be commenced by a Petition which shall be presented to the Motions Judge.

(c) The Petition shall include the following:

(1) the Petitioner's name and complete residential address (Where the person whose name is sought to be changed is a minor, the Petition shall be brought in the name of the minor by the parent(s) or legal guardian(s) of the minor. Where the Petitioner is a married person, the Petitioner's spouse may join as a party Petitioner. Adult children of the Petitioner(s) may likewise join.); and

ACBA Court Rules Committee Note: The averments and proofs required of the Petitioner are also required of the Petitioner's spouse and any adult children who join as Petitioners. Each and every Petitioner must be a resident of Allegheny County. See 54 Pa.C.S. § 702(a).

(2) the Petitioner's complete residential address(es) for and during a period of five years prior to the date of the filing of the Petition; and

(3) the Petitioner's proposed new name; and

(4) the reasons for the desired name change; and

(5) that the Petitioner has never been convicted of a felony or, if the Petitioner has been so convicted, that:

(i) at least two calendar years have elapsed from the date of completion of Petitioner's sentence and that the Petitioner is not subject to the probation or parole jurisdiction of any court, county probation agency or the Pennsylvania Board of Probation and Parole, or

(ii) the Petitioner has been pardoned.

(6) that the Petitioner has never been so convicted of any of the crimes itemized in 54 Pa.C.S. § 702(c)(2).

(d) The Petition shall contain two proposed Orders designated as follows:

(1) Order Setting Hearing Date pursuant to Local Rule A505 (hereinafter referred to as "Hearing Order"); and

(2) Order Granting Change of Name.

(e) The Hearing Order shall include the following:

(1) that notice be given of the filing of the Petition and the date set for the hearing thereon which date shall be not less than ninety days nor more than one hundred twenty days therefrom; and

(2) that a copy of the Petition and Hearing Order be served by United States first class mail, postage prepaid, on any non-petitioning parent of a minor at said parent's last known address; and

(3) that Petitioner, through counsel, shall comply with the requirements of 54 Pa.C.S. § 702(b) relating to a determination by the Pennsylvania State Police that the Petitioner is not subject to the Criminal History Record Information Act, 18 Pa.C.S. §§ 9101 *et seq.*, except where the Petitioner is seeking to:

(i) change the name of a minor in an adoption proceeding pursuant to 23 Pa.C.S. § 2904, or

(ii) resume a prior surname pursuant to 54 Pa.C.S. § 704 following the entry of a divorce decree, or

(iii) change the name of a minor child, pursuant to 54 Pa.C.S.A. § 703 (relating to effect on children); provided, however, that any Petitioner who is twelve (12) years of age or younger shall not be required to submit a set of fingerprints for the purpose of a name change hereunder. See 23 Pa.C.S.A. § 5105 (relating to fingerprinting of children).

(f) In those cases where the Petitioner is seeking to change the name of a minor and a parent files an objection to the Petition or appears to oppose the Petition, the case shall immediately be transferred to the Family Division for all further proceedings with respect to the minor's Petition. The transfer shall be accomplished by the Civil Division Motions Clerk sending the case to the Scheduling Clerk of the Family Division for scheduling as the Family Division's calendar permits.

(g) At the hearing, at which any objector to the granting of the Petition may appear and be heard, the Petitioner shall offer into evidence, *inter alia*, the following:

(1) the response by the Pennsylvania State Police, pursuant to 54 Pa.C.S. § 702(b); and

(2) the official searches of the proper offices of Allegheny County and the United States District Court for the Western District of Pennsylvania and of any other county and federal judicial district in which the Petitioner may have resided during a period of five years prior to

the date of the filing of the Petition or, in lieu thereof, a certificate issued by an entity authorized by the Insurance Commissioner of the Commonwealth of Pennsylvania to issue policies of real estate title insurance, showing that there are no judgments or decrees of record or any other matter of like nature against the Petitioner; provided, however, that when the Petitioner has not attained his or her seventh birthday as of the date of filing the Petition, compliance with subsection (g)(2) shall not be required.

(h) Where the Petitioner has a prior conviction of a felony but is not barred by 54 Pa.C.S. § 702(c) from obtaining a judicial change of name, to enable the Court to comply with 54 Pa.C.S. § 702(b) and (c) and as a prerequisite to the entry of the Order Granting Change of Name, the Petitioner, at the hearing, shall provide the Court with envelopes affixed with sufficient postage and pre-addressed to the following:

Office of the Attorney General
Commonwealth of Pennsylvania
1600 Strawberry Square
Harrisburg, PA 17120

Central Repository
The Pennsylvania State Police
1800 Elmerton Avenue
Harrisburg, PA 17110
ATTN.: Criminal History

The District Attorney of Allegheny County
Allegheny County Courthouse
Grant Street
Pittsburgh, PA 15291

[Pa.B. Doc. No. 03-218. Filed for public inspection February 7, 2003, 9:00 a.m.]

Title 255—LOCAL COURT RULES

MONTGOMERY COUNTY

Adoption of Local Rule of Civil Procedure 223*; No. 03-00001

Order

And Now, this 13th day of January, 2003, the Court hereby adopts Montgomery County Local Rule of Civil Procedure Rule 223*. Custody and Storage of Trial Exhibits. This Rule shall become effective thirty (30) days after 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, one (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 223*. Custody and Storage of Trial Exhibits.

(a) The moving party shall keep custody of and be responsible for all non-documentary material submitted into evidence at trial. That material shall not be left in the courtroom after the conclusion of the trial of the case.

(b) All trial exhibits which are larger than 8.5 x 11 inches shall remain in the custody of and be the responsibility of the moving party. The moving party shall submit an original or copy of the trial exhibit no larger than 8.5 x 11 inches to the Court, which copy shall be marked and filed of record.

(c) Notwithstanding the above provisions, any party may petition the Court to retain custody of an Exhibit.

(d) Trial exhibits entered into evidence prior to the effective date of this Rule, and those filed of record pursuant to section (b) above, shall be retained by the Prothonotary until it is determined whether an appeal has been taken from a final judgment. If an appeal has been taken, the exhibits shall be retained until disposition of the appeal. Within sixty (60) days of the final disposition of all appeals or the date when no further appeal may be taken under the Pennsylvania Rules of Appellate Procedure, the party who offered the exhibits may reclaim them from the Prothonotary. In cases where final disposition of all appeals predates the effective date of this Rule by more than sixty (60) days, the sixty (60) day time period within which to reclaim trial exhibits shall run from the effective date of this Rule. Any exhibits not so reclaimed may be destroyed or otherwise disposed of by the Prothonotary.

[Pa.B. Doc. No. 03-219. Filed for public inspection February 7, 2003, 9:00 a.m.]

YORK COUNTY

Fee Schedule for Domestic Relations Office; No. 2003-MI-0011

Administrative Order

And Now, To Wit, this 14th day of January, 2003, the Court Orders that the York County Domestic Relations Office charge those fees listed in the following fee schedule.

The fee schedule is effective immediately.

By the Court

JOHN H. CHRONISTER,
President Judge

Domestic Relations Section 2003 Fee Schedule

Appeals:	
To Supreme, Superior or Commonwealth Courts	$55.00
Certification:	
Each Document	$ 5.00
Case Administration Fee:	
Assessed to Defendant in Case—Annual	$26.00
Case Copies (per page)	$ .25

Modification	$20.00
Personal Service (Bench Warrant/Transport):	
Assessed to appropriate Party at Rate Billed to DRS for Service	$27—45.00
Returned Check	$25.00
Unified Judicial System (Filing Fee):	
Assessed to Plaintiff at commencement of support action	$10.00

[Pa.B. Doc. No. 03-220. Filed for public inspection February 7, 2003, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Suspension

Notice is hereby given that by Order of the Supreme Court of Pennsylvania dated January 24, 2003, following the filing of a Joint Petition to Temporarily Suspend an Attorney, Leon Lewis Vinokur was placed on temporary suspension by the Supreme Court until further Order of the Court. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside of 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. 03-221. Filed for public inspection February 7, 2003, 9:00 a.m.]