

THE COURTS

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 100]

Amendment of Rule 51 Governing the Title and Citation of the Rules of Civil Procedure; No. 435 Civil Procedural Rules; Doc. No. 5

Order

Per Curiam:

And Now, this 8th day of July, 2005, Pennsylvania Rule of Civil Procedure 51 is amended to read as follows.

This Order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective September 1, 2005.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 100. RULES OF CONSTRUCTION

Rule 51. Title and Citation of Rules.

[All] These rules [adopted by the Supreme Court under the authority of Article V, Section 10(c) of the Constitution of 1968, or of any Act of Assembly,] shall be known as the Pennsylvania Rules of Civil Procedure and may be cited as "Pa.R.C.P. No. ____."

Official Note:

* * * * *

[By order dated December 31, 1968 all statutes and rules governing practice and procedure in actions and proceedings in courts of record and courts not of record were continued in force until suspended, revoked or modified pursuant to Article V of the Constitution.]

The rules of civil procedure are not applicable in the magisterial district courts. Civil actions and proceedings in magisterial district courts are governed by the Rules of Civil Procedure for Magisterial District Judges, Pa.R.C.P.M.D.J. 201 et seq.

Explanatory Comment

Rule 51 governing the title and citation of the rules of civil procedure has been amended in two respects. First, the opening language of the rule, "All rules adopted by the Supreme Court under the authority of Article V, Section 10(c) of the Constitution of 1968, or of any Act of Assembly" has been replaced by two words, "These rules." The prior opening language was appropriate when the rule was promulgated initially in 1939 as the only rules promulgated by the Supreme Court were rules of civil procedure. Sixty-six years later, the rules of civil procedure are only one of numerous types of rules promulgated by the Supreme Court. The rule as revised addresses the rules of civil procedure only.

Second, the former note to the rule concerned the continuation of the rules of civil procedure upon the adoption of the Constitution of 1968 and with the passage of time became irrelevant. The prior text of the note has been replaced by new text which contains an express statement that the rules of civil procedure do not apply to actions and proceedings in magisterial district courts. The new note is intended to refute the occasional argument that the rules of civil procedure are applicable in those courts.

By the Civil Procedural Rules Committee

R. STANTON WETTICK, Jr.,
Chair

[Pa.B. Doc. No. 05-1377. Filed for public inspection July 22, 2005, 9:00 a.m.]

PART I. GENERAL

[231 PA. CODE CH. 200]

Rescission of Rule 223.2(e) Governing Juror Note Taking; No. 436 Civil Procedural Rules; Doc. No. 5

Order

Per Curiam:

And Now, this 8th day of July, 2005, Pennsylvania Rule of Civil Procedure 223.2 is amended by rescinding subdivision (e) as follows.

This order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective on September 1, 2005.

Mr. Justice Nigro dissents.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 200. BUSINESS OF COURTS

Rule 223.2. Conduct of the Jury Trial. Juror Note Taking.

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[(e) This rule is rescinded as of December 31, 2005.]

Explanatory Comment

Rule 223.2 providing for note taking by jurors in civil cases was promulgated as a temporary rule for the purpose of assessing whether juror note taking in civil cases is beneficial to the system of justice in Pennsylvania. As the rule has found overwhelming favor with the bench and bar, the sunset provision of subdivision (e) has been rescinded and the rule has been made permanent.

By the Civil Procedural Rules Committee

R. STANTON WETTICK, Jr.,
Chair

[Pa.B. Doc. No. 05-1378. Filed for public inspection July 22, 2005, 9:00 a.m.]

Title 249—PHILADELPHIA RULES

PHILADELPHIA COUNTY

Adoption of Philadelphia Civil Rule 229.1; President Judge General Court Regulation No. 2005-04

Order

And Now, this 22nd day of June, 2005, the Board of Judges of Philadelphia County having voted at the Board of Judges' meeting held on May 19, 2005 to adopt Philadelphia Civil Rule 229.1, *It Is Hereby Ordered* that Philadelphia Civil Rule 229.1 is adopted as follows.

This General Court Regulation is issued in accordance with Pa.R.Civil.P. No. 239 and shall become effective [thirty (30) days after publication in the *Pennsylvania Bulletin*]. As required by Rule 239, the original General Court Regulation shall be filed with the Prothonotary in a Docket maintained for General Court Regulations issued by the President Judge of the Court of Common Pleas of Philadelphia County, and copies shall be submitted to the Civil Procedural Rules Committee, the Administrative Office of Pennsylvania Courts, and shall be posted on the website of the Unified Judicial System at: <http://ujportal.pacourts.us>. Copies of the Order shall also be submitted to American Lawyer Media, *The Legal Inteligencer*, Jenkins Memorial Law Library, and the Law Library for the First Judicial District of Pennsylvania, and posted on the website of the First Judicial District: <http://courts.phila.gov>.

By the Court

FREDERICA A. MASSIAH-JACKSON,
President Judge

Philadelphia Rule of Civil Procedure

Proposed Changes Presented to the Board of Judges on May 19, 2005

Rule 229.1 Sanctions for Failure to Deliver Settlement Funds.

(F) Upon receipt of the attorney affidavit and supporting documentation required by paragraph (E)(2) above, the Released Party shall have twenty (20) days to file a response. If the Court finds that the Released Party has violated this rule and that there is no material dispute as to the terms of the settlement or the terms of the release, the Court shall impose sanctions in the form of [**simple**] interest calculated **as set forth below together with reasonable attorneys' fees incurred in the preparation of the affidavit. Interest shall be calculated at [a]** the rate equal to the prime rate as listed in the first edition of the *Wall Street Journal* published for the calendar [**last**] year preceding the date on which the [**attorney affidavit was filed, running**] settlement funds were payable, **plus one percent, not compounded, calculated from the twenty-first day after the date of the settlement to the date of delivery of the settlement funds[, together with reasonable attorneys' fees incurred in the preparation of the affidavit]**.

[Pa.B. Doc. No. 05-1379. Filed for public inspection July 22, 2005, 9:00 a.m.]

Title 255—LOCAL COURT RULES

BEAVER COUNTY

Local Rules of Civil Procedure; No. 10130 of 2001

Order

Beaver County Local Rules of Civil Procedure are amended by adding L 1147, promulgated as follows. The rule is effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

In accordance with Pa.R.C.P. No. 239, the Court Administrator of Beaver County shall transmit the following:

A. Seven (7) certified copies of this order and the Rule to the Administrative Office of Pennsylvania Courts;

B. Two (2) certified copies of this order and the Rule and a computer diskette containing the text of the Rule to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*;

C. One (1) certified copy of this order and the Rule to the Civil Procedural Rules Committee of the Pennsylvania Supreme Court;

D. One (1) certified copy in the office of the Prothonotary of Beaver County to be kept continuously available for public inspection and copying;

E. One (1) copy with the Law Library of Beaver County.

By the Court

ROBERT E. KUNSELMAN,
President Judge

L 1147

(a) In order to comply with Pa.R.C.P. No. 1147(2), every complaint in mortgage foreclosure shall contain a full and complete description of the land subject to the mortgage.

Note. A metes and bounds description of the land is preferable. The attachment as an Exhibit to the complaint of a copy of the deed which conveyed the land to the mortgagor(s) will usually constitute compliance with this rule. A reference in the complaint to a recorded deed or mortgage for a fuller description will not constitute compliance with this rule.

(b) The Prothonotary of Beaver County shall not accept for filing a complaint in mortgage foreclosure which does not contain a full and complete description of the land subject to the mortgage.

[Pa.B. Doc. No. 05-1380. Filed for public inspection July 22, 2005, 9:00 a.m.]

JUNIATA AND PERRY COUNTIES

Repeal and Adoption of Rules of Orphans' Court Procedures; No. 240 of 2005; No. 2005-18

Order

And Now, June 27, 2005, it is hereby ordered and decreed that all Juniata/Perry County Rules of Orphans' Court Procedure filed prior to this date are repealed effective the date that the rules herein become effective.

The Court hereby adopts the following Perry/Juniata County Rules of Orphans' Court Procedure to be effective as follows:

(1) All of the following local rules shall be effective 30 days after publication in the *Pennsylvania Bulletin*. It is further ordered that the District Court Administrator shall file:

(a) seven (7) certified copies of the Local Rules with the Administrative Office of Pennsylvania Courts,

(b) two (2) certified copies to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*,

(c) one (1) certified copy to the Civil Procedural Rules Committee, and

(d) the Local Rules shall be kept continuously available for public inspection and copying in the Office of the Prothonotary and upon request and payment of reasonable costs of reproduction and/or mailing the Prothonotary shall furnish to any person a copy of the requested Local Rules.

By the Court

C. JOSEPH REHKAMP,
President Judge

Local Rules of Orphans' Court Procedure

Rule 1.2.1 Certificates of Appointment of Fiduciary

The clerk of the Orphans' Court Division shall not issue a certificate of the appointment of any fiduciary until the security, if required by the court, has been entered.

Rule 1.2.2 Corporate Sureties. Approval

Surety companies duly authorized to do business in this Commonwealth may become surety on any bond or obligation required to be filed in the court; provided that a current certificate of the right to do business, issued by the Insurance Department of this Commonwealth, shall be on file with the Prothonotary; and provided, further, that no bond shall be executed by any surety company after May 1 of any year, until such certificate, issued after March 31 of that year, shall have been filed with the court.

Rule 6.1.1 Procedure under § 3102. Probate, Estates and Fiduciaries Code of 1972.

(a) *Contents of petition.* A petition under section 3102 of the Probate, Estates and Fiduciaries Code of 1972 (20 P. S. Sec. 3102), for the settlement of a small estate shall set forth

(1) the name, date of death, and residence of decedent;

(2) the name and address of the petitioner, his relationship to the decedent and whether or not he formed a part of decedent's household at the date of his death;

(3) if petitioner be the surviving spouse, the date and place of the ceremonial marriage, and the name and official capacity of the person who performed the ceremony; or, in case of a common law marriage, all averments necessary to establish the validity of such a marriage;

(4) whether the decedent died testate or intestate; where, when and to whom letters were granted, and the amount of bond given by the personal representative;

(5) the names, relationships and a brief description of the interest of all persons entitled to share in the decedent's estate under the will or intestate laws, stating which are minors, incompetents or deceased, with the names of their fiduciaries, and whether any of them has

received or retained any property of the decedent by payment of wages under section 3101 of the Probate, Estates and Fiduciaries Code (20 P. S. Section 3101), or otherwise;

(6) the person entitled to the family exemption, and the facts on which the claim is based;

(7) an itemized statement of the property of the decedent and an appraisal thereof;

(8) the disbursements made prior to the filing of the petition; the date and name of the person to whom paid; and the nature and amount of each payment;

(9) the names of all unpaid claimants of whom the petitioner has notice or knowledge, the nature and amount of each claim, and whether such claims are admitted;

(10) that a schedule of assets and deductions for inheritance tax purposes has been filed with the register; the amount of any inheritance tax assessed; and the date of payment thereof;

(11) that ten days' written notice of intention to present the petition has been given to every unpaid beneficiary, heir or claimant who has not joined in the petition, or to the Attorney General, if the decedent's heirs are unknown; and

(12) a prayer for distribution of the property, setting forth the persons entitled and their distributive shares and requesting the discharge of the personal representative and the release of his surety, if letters have been granted and advertised.

(b) *Exhibits.* The following exhibits shall be attached to the petition:

(1) a copy of the decedent's will;

(2) consents of the surety, and of unpaid beneficiaries, heirs and claimants who consent thereto;

(3) a copy of the notice given; and

(4) the inheritance tax voucher, or in lieu thereof a statement from the inheritance tax department that no tax is due.

(c) *Appraisal.* No formal appraisal is required, unless ordered by the court.

Rule 6.1.2 Procedures under § 3546. Probate, Estate and Fiduciaries Code of 1972.

(a) *Contents of petition.* A petition under section 3546 of the Probate, Estates and Fiduciaries Code of 1972 (20 PS Section 3546) for the determination of title shall set forth

(1) the name of the petitioner and his relationship to the decedent;

(2) the facts on which the claim of the petitioner is based;

(3) whether the decedent died testate or intestate, and where, when, and to whom letters were granted;

(4) a description of real property located within the Commonwealth, and the place, book, and page of recording the last deed thereto;

(5) the names and addresses of all known creditors and parties in interest; and

(6) the facts material to a determination of the title.

(b) *Exhibits.* The following exhibits shall be attached to the petition:

(1) the notice which has been given to creditors, and parties in interest; if the heirs of the decedent are unknown, a copy of the notice given to the Attorney General; and

(2) a copy of decedent's will.

Rule 8.1.1 Pre-Hearing conference

The Auditor shall schedule a pre-hearing conference at which time the accountant or his attorney shall present to the auditor all written notices of claims of creditors, legatees, devisees, next of kin and others interested in the estate given the accountant and also a list of all other creditors of which he has any information and mention the claims of creditors he recommends for allowance.

Rule 8.1.2 Notice of Hearings

Notice of the initial hearing shall be given by mailing by regular mail to the counsel of record for the Estate, counsel of record for the exceptant(s), each heir at the last known address, to each unpaid creditor and to the Department of Revenue, the Department of Welfare, Bureau of Public Assistance, or other agency of the Commonwealth of Pennsylvania, if such Department or agency has, according to the information of the Clerk, a claim against the estate to be audited. If a party is unrepresented, notice shall be mailed to the last known address of record.

To the extent possible, the auditor shall expedite the hearings, and any party in interest may apply to the Court for an order on the auditor to proceed and file a report or else give the reasons for the alleged delay, if there be unreasonable delay.

Rule 8.2 Filing of Report—Reserved.

Rule 8.3.1 Form of Auditor's Report

A. It shall be the duty of an auditor to keep, and file with his report, minutes setting forth the notices given, the appearances before him at the several hearings he may hold, and other proceedings had before him, including the testimony taken. At each meeting he shall note the appearance of all parties in interest and their attorneys.

B. If objection is made to a witness or to a question put to him or his answer to any question or to any documentary evidence, the offer and purpose of the evidence, the objection and reasons therefor, and the ruling of the auditor shall all be reduced to writing. If the auditor sustains the objection, he shall, nevertheless, take the testimony and reduce it to writing or receive the documentary evidence, unless the witness is clearly incompetent or the evidence is clearly inadmissible or the question or answer is impertinent, frivolous or scandalous. It must always appear who offered a witness or documentary evidence, who made the objection, and whether the examination of the witness is in chief, on cross-examination, in rebuttal, or in sur-rebuttal.

C. If any party desires to present suggestions for findings of fact and/or conclusions of law, he shall indicate such desire at the close of the testimony and present them to the auditor within ten days; otherwise any such suggestions shall not be considered.

D. When a claim of a creditor, legatee, devisee, next of kin or other person is disallowed by the auditor, no costs shall be allowed such claimant, and the auditor may direct such claimant to pay the witness costs of the adverse party incurred in defense against such claim and/or part or all of the costs of audit. Such order of the auditor may be enforced, on application to the Court, by a citation to show cause.

Rule 8.4.1 Form of Master's Report—Reserved

Rule 8.5.1 Transcript of Testimony

All hearings shall be transcribed. The transcript of the hearing(s) shall be filed by the stenographer with the Office of the Register of Wills and shall be made a part of the record. A transcript of the pre-hearing conference is not required.

Rule 8.6.1 Notice of Filing Report

When auditor has his report completed, he shall present it to the Court along with a proposed Decree Nisi for consideration by the Court. A copy of said report and the signed Decree Nisi shall be mailed via regular mail to all attorneys who appeared before him and all exceptants who appeared without attorneys.

Rule 8.7.1 Confirmation of Report

When an auditor's report is presented to the Court, it will be confirmed nisi and filed. Exceptions to the Report must be filed with fifteen (15) days of the date of the Decree Nisi. When no exceptions to an auditor's report are filed within the said period, the Clerk of the Court shall endorse the absolute confirmation on the report.

Rule 8.8.1 Security for Expenses and Fees

The Estate and exceptant(s) shall each provide to the Auditor an estimate of the amount of time needed to present their case. Thereafter, the Auditor shall recommend to the Court an amount to be held in escrow by the Register of Wills. Said deposit shall be applied to the Auditor's bill of cost as submitted by the Auditor and approved by the Court.

If exceptions are filed to the Report prior to confirmation absolute or if an appeal is filed after the confirmation, the party filing the same must pay in full all outstanding auditor's fees and costs as set forth on the Auditor's Bill of costs, regardless of the recommendation of the Auditor as to allocation of the payment. The Court may address the issue of auditor's fees and costs at the time of the disposition of the exceptions or appeal.

Rule 10.1.1 Certification of Record

(a) *Contents of petition.* A petition to fix a date for a hearing from a certification of record to the court from the register shall be promptly presented to the court and shall set forth:

- (1) the nature of the proceedings before the register;
- (2) the basis for the certification of record; and
- (3) the names and addresses of all parties in interest including those who have not been made parties to the record.

(b) *Certification by register.* When the record has been certified by the register, the petition required by subparagraph (a) shall be presented by the party who instituted the contest, or, in special circumstances, as the court may direct.

(c) *Citation.* Upon allowance of the petition, a citation will be issued, directed to all parties in interest, including those not represented on the record, to show cause why the matter upon which the certification is requested or based, as the case may be, should not be determined by the court on a day certain therein indicated. (See Supreme Court Orphans' Court Section 10, Rule 1.)

Rule 10.2.1 Appeals

(a) *Contents of petition.* When an appeal is taken from a judicial act of, or proceeding before, the register, the appellants shall promptly present a petition to the court, which shall set forth:

- (1) the nature of the proceeding before the register;
- (2) the basis for the appeal; and
- (3) the names and addresses of all parties in interest, including those who have not been made parties to the record.

(b) *Citation.* If the petition sets forth a prima facie case, a citation will be issued, directed to all parties in interest, including those not represented on the record, to show cause why the appeal should not be sustained and the judicial act or proceeding complained of be set aside.

Rule 11.2.1 Grant of Jury Trial

(a) On appeal from the register, or in a proceeding removed from or certified by the register, the court in its discretion may impanel a jury at any stage of the proceedings and forthwith proceed with a jury trial.

(b) On appeal from the register, or in a proceeding removed from or certified by the register, the court in its discretion may, either at the conclusion of all the evidence presented by proponents and contestants or before all such evidence has been produced, when it is satisfied that sufficient evidence has been presented so as to warrant, grant a jury trial at a future date.

(c) If a jury trial is granted, as provided in subparagraph (a) or (b) hereof, the court shall enter a decree specifying the issues to be tried, which may be in the form agreed upon by the parties, or as the court shall determine.

[Pa.B. Doc. No. 05-1381. Filed for public inspection July 22, 2005, 9:00 a.m.]