

THE COURTS

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 1300]

New Rule 1326 et seq. Governing a Proceeding to Compel Arbitration and Confirm Arbitration Award in Consumer Credit Transactions; Proposed Recommendation No. 201

The Civil Procedural Rules Committee is proposing that the Rules of Civil Procedure be amended by adding new Rule 1326 et seq. as set forth herein. The proposed recommendation is being submitted to the bench and bar for comments and suggestions prior to its submission to the Supreme Court of Pennsylvania.

All communications in reference to the proposed recommendation should be sent not later than March 11, 2005 to:

Harold K. Don, Jr.,
Counsel
Civil Procedural Rules Committee
5035 Ritter Road, Suite 700
Mechanicsburg, Pennsylvania 17055

or E-Mail to
civil.rules@pacourts.us

The Explanatory Comment which appears in connection with the proposed recommendation has been inserted by the Committee for the convenience of the bench and bar. It will not constitute part of the rules of civil procedure or be officially adopted or promulgated by the Court.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1300. COMPULSORY ARBITRATION

Subchapter A. RULES

PROCEEDING TO COMPEL ARBITRATION AND CONFIRM ARBITRATION AWARD IN CONSUMER CREDIT TRANSACTIONS

Rule 1326. Definitions. Scope.

(a) As used in this chapter,

“arbitration” means statutory arbitration pursuant to Section 7301 et seq. of the Judicial Code, 42 Pa.C.S. § 7301 et seq., known as the Uniform Arbitration Act, or common law arbitration pursuant to Section 7341 et seq. of the Judicial Code, 42 Pa.C.S. § 7341 et seq;

“arbitrator” includes a board of arbitrators;

“consumer credit transaction” means a credit transaction in which the party to whom credit is offered or extended is a natural person and the money, property or services which are the subject of the transaction are primarily for personal, family or household purposes.

(b) The rules of this chapter shall govern proceedings to compel arbitration and confirm an arbitration award entered in a claim arising from a consumer credit transaction.

Rule 1327. Confirming Arbitration Award.

Any party may file a motion to confirm an arbitration award which was entered by an arbitrator only if

(1) the party against whom an arbitration award is sought to be confirmed either

(i) attended a hearing before the arbitrator, or

(ii) signed a writing after the claim that is the basis for the arbitration award was filed with the arbitrator, agreeing to submit the claim to the arbitrator, or

Official Note: The writing under subparagraph (1)(ii) may provide for the arbitrator to decide the claim in a proceeding that does not involve a personal appearance before the arbitrator, such as a proceeding in which the hearing before the arbitrator involves only a review of documents submitted by the parties.

See Rule 1328 for the procedure to confirm an arbitration award entered as provided by either subparagraph (1)(i) or (ii).

(2) the arbitration award was entered following a court order or docket entry staying proceedings pending arbitration as provided by Rule 1329.

Official Note: See Rule 1329 for the procedure to compel arbitration and to confirm the arbitration award.

Rule 1328. Motion to Confirm Arbitration Award as an Original Proceeding.

(a) Any party may file as an original proceeding a motion to confirm an arbitration award if the arbitration award was entered pursuant to Rule 1327(1). The motion to confirm such an award shall be filed in the county in which the defendant resides or has a place of business or, if there is no such county, then in the county in which the arbitration hearing was held.

(b) The motion shall begin with a notice substantially in the form prescribed by Rule 1331 and shall be served in the manner provided for service of original process in a civil action.

Official Note: Section 7317 of the Judicial Code, 42 Pa.C.S. § 7317, provides that, unless the parties otherwise agree, notice of an initial application for an order of court shall be served in the manner provided by law for the service of a writ of summons in a civil action.

(c) The motion shall contain factual allegations establishing that the arbitration award was entered pursuant to Rule 1327(1).

(d) A responding party who opposes the motion shall file an answer to the motion within thirty days after service of the motion.

(e) If the responding party does not file an answer, the prothonotary, upon praecipe of the moving party filed after the answer was due, shall enter judgment upon the arbitration award.

(f) If the responding party files an answer, the motion shall be decided pursuant to the court's procedures for deciding motions.

Rule 1329. Civil Action to Compel Arbitration. Motion to Confirm Arbitration Award as Ancillary to a Civil Action.

(a)(1) A plaintiff seeking to compel arbitration of a claim shall commence a civil action against the defen-

dant. Except as otherwise provided by this rule, the procedure in the action shall be in accordance with the rules governing a civil action, including service of original process and venue.

Official Note: A defendant who seeks to compel arbitration of a claim for which a plaintiff is not seeking arbitration shall proceed by preliminary objection or a motion to compel arbitration.

(2) The complaint shall include an allegation that the claims raised in the complaint are subject to an agreement to submit these claims to arbitration.

(b) If the defendant fails to file a responsive pleading, the plaintiff may obtain a default judgment pursuant to Rules 237.1 and 1037.

(c)(1) If the defendant files an answer admitting that the claims are subject to arbitration, either party, within twenty days, may file a praecipe directing the prothonotary to enter on the docket a stay of proceedings pending arbitration.

(2) If the defendant files either preliminary objections or an answer denying that the claims are subject to arbitration, the plaintiff may within twenty days file a motion for a rule to show cause why arbitration should not be compelled. Except as otherwise provided by subdivision (d), the motion shall be governed by Rule 208.1 et seq.

Official Note: Rule 208.1 et seq. governs motion practice.

(d)(1) The motion for a rule to show cause why arbitration should not be compelled shall begin with a notice substantially in the form prescribed by Rule 1330 and shall be served pursuant to Rule 440. In the absence of a court order otherwise, the timely filing of the motion stays proceedings pending resolution of the motion.

(2) A defendant shall file an answer to the motion within twenty days after service of the motion. The answer shall set forth all of the defendant's objections to the arbitration including absence of a valid agreement to arbitrate the claims, lack of jurisdiction over the person of the defendant, improper venue or improper service of original process.

(3) If the defendant does not file an answer to the motion, the plaintiff, after the answer was due, may file a praecipe directing the prothonotary to enter on the docket a stay of proceedings pending arbitration.

(4) If the defendant files an answer, the motion shall be decided pursuant to the court's procedures for deciding motions. If the court grants the motion to compel arbitration, the court shall enter an order compelling the parties to proceed with arbitration and staying proceedings pending arbitration.

(e)(1) Any party may file a motion to confirm an arbitration award entered following a court order or docket entry staying proceedings pending arbitration. The motion to confirm shall be filed as an ancillary proceeding to the pending civil action.

Official Note: The motion to confirm will be filed with the court at the number of the action required by Rule 1329.

(2) The motion shall begin with a notice substantially in the form prescribed by Rule 1331 and shall be served pursuant to Rule 440.

(3) A responding party who opposes the motion shall file an answer to the motion within thirty days after service of the motion.

(4) If the responding party does not file an answer, the prothonotary, upon praecipe of the moving party filed after the answer was due, shall enter judgment upon the arbitration award.

(5) If the responding party files an answer, the motion shall be decided pursuant to the court's procedures for deciding motions.

Rule 1330. Notice Required by Rule 1329(d)(1). Form.

The notice required by Rule 1329(d)(1) shall be substantially in the following form:

**(Caption)
Notice to File Answer**

The motion attached to this notice asks the court to enforce an agreement to submit claims to arbitration. If you oppose submission of this claim to arbitration, you must file an answer to the motion with the Prothonotary within thirty (30) days of mailing or other service of this notice. If you fail to respond, this case will proceed to arbitration and may result in the entry of a money judgment against you.

Official Note: A court may by local rule require the notice to be repeated in one or more designated languages other than English.

Rule 1331. Notice Required by Rules 1328(b) and 1329(e)(2). Form.

The notice required by Rules 1328(b) and 1329(e)(2) shall be substantially in the following form:

**(Caption)
Notice to File Answer**

A party to these proceedings has filed a motion to confirm an arbitration award.

If you oppose the motion, you are required to file an answer to the motion within thirty (30) days from the date below setting forth your objections to the motion. If you fail to file an answer, a money judgment based on the arbitration award may be entered against you without further notice.

Date of mailing or other service:

Party Filing Motion

Official Note: A court may by local rule require the notice to be repeated in one or more designated languages other than English.

Explanatory Comment

The Civil Procedural Rules Committee is proposing that new Rule of Civil Procedure 1326 et seq. be promulgated to govern proceedings to compel arbitration and to confirm arbitration awards in consumer credit transactions.

Current practice is based solely on the provisions of the Judicial Code governing statutory arbitration and common law arbitration which provide for the filing of an initial application to the court to compel arbitration (42 Pa.C.S. § 7304(a)) and a second application to the court to confirm an arbitration award (42 Pa.C.S. § 7313). These new rules create procedures that minimize court involvement and provide quicker and cheaper relief to the litigants. These new rules are promulgated in response to the inclusion of an arbitration clause governing collection claims in consumer credit transactions.

There is no reason for a claim to be heard by an arbitrator pursuant to a motion to compel arbitration and to be returned to the court through a motion to confirm arbitration if the defendant will not be contesting the claim of the plaintiff. Thus, (1) new Rule 1329(a) provides for the plaintiff seeking to compel arbitration of a claim to commence a civil action against the defendant and to include in the complaint an allegation that the claims raised in the complaint are subject to an agreement to submit these claims to arbitration and (2) new Rule 1329(b) permits the plaintiff to obtain a default judgment pursuant to Rules 237.1 and 1037 if defendant fails to file a responsive pleading to the complaint.

If the defendant files an answer to the complaint admitting that the claims are subject to arbitration, new Rule 1329(c)(1) permits either party to file a praecipe directing the prothonotary to enter on the docket a stay of proceedings pending arbitration.

If the defendant files preliminary objections or an answer which does not admit that the claims are subject to arbitration, new Rule 1329(c)(2) provides for the plaintiff to file a motion for a rule to show cause why arbitration should not be compelled. New Rule 1329(d)(2) requires the defendant to file within twenty days an answer to the plaintiff's motion, and new Rule 1329(d)(3) provides that if the defendant does not file an answer to the motion, the plaintiff may file a praecipe directing the prothonotary to enter on the docket a stay of proceedings pending arbitration.

New Rules 1328(d) and (e) and 1329(e)(3) and (4) adopt similar procedures for the entry of a judgment based on an arbitration award by providing for the filing of a motion to confirm an award. A responding party who opposes the motion must file an answer within thirty days. If the responding party does not file an answer, the prothonotary, upon praecipe of the moving party filed after the answer was due, shall enter judgment upon the arbitration award.

New Rule 1326 et seq. applies only to consumer credit transactions because it is not anticipated that there will be an increasing number of other cases raising arbitration issues in which the courts will be involved. In addition, procedures that work for consumer credit transactions may not work for all types of matters involving statutory and common law arbitration.

By the Civil Procedural Rules Committee

R. STANTON WETTICK, Jr.,
Chair

[Pa.B. Doc. No. 05-232. Filed for public inspection February 4, 2005, 9:00 a.m.]

Title 25—LOCAL COURT RULES

DAUPHIN COUNTY

Promulgation of Local Rules; No. 1793 CV 1989

Order

And Now, this 6th day of January 2005, Dauphin County Local Rules of Civil Procedure are promulgated and amended as follows:

Rule 1915. Actions for Custody, Partial Custody, and Visitation of Minor Children

Rule 1915.1. Scope [Definitions]

(a) These rules shall govern all actions for custody, partial custody, and visitation, including original actions, **modification petitions [to modify decrees], [contempt] contempt petitions**, and registration of foreign decrees. The rules shall be interpreted as supplementing the Rules of Civil Procedure governing custody actions, Pa.R.C.P. 1915.1 et seq.

(b) **If a claim for custody, partial custody or visitation is raised during the course of an action for support, a party shall file a separate action for custody, partial custody or visitation with the Prothonotary.**

Rule 1915.3. Custody Actions [Commencement of Action. Complaint, Order]

(a) Commencement of Custody Actions

1. **A custody action shall be commenced by the filing of an original and one copy of either a custody [The] complaint or a divorce complaint that contains a custody count [shall be filed]** with the Prothonotary.

2. **[(a)]** In addition to the filing fees assessed for the filing of **[Complaints] complaint**, an additional administrative fee in the amount of \$110.00 shall be paid to the Prothonotary simultaneously with the filing of the **custody [Complaint] complaint or the divorce complaint which contains a custody count.**

[b An administrative fee of \$110.00 shall be paid to the Prothonotary simultaneously with the filing of any subsequent petition for relief (such as, but not limited to, a petition for modification or contempt)]

3. **[If a custody claim is asserted in a divorce complaint, a duplicate copy of the complaint shall be filed with the Prothonotary. Thereafter, when either party desires a hearing on the custody issue, he/she may request a time and date for hearing by the filing of a simple Motion. At such time as a hearing is requested under this section, the administrative fee must accompany the Motion.]** The Prothonotary shall forward the original custody complaint or divorce complaint which contains a custody count to the Court Administrator's Office for assignment to a Custody Conference Officer.

4. **The Custody Conference Officer shall set the date, time and place of the conference and file a scheduling order with the Prothonotary.**

5. **Plaintiff(s) shall serve the complaint and the scheduling order upon Defendant(s) promptly in accordance with the applicable Rules of Civil Procedure and shall thereafter file an appropriate certificate of service with the Prothonotary before the date of the scheduled conference.**

(b) **Subsequent actions (petitions for modification or contempt)**

1. **An original and one copy of the petition for modification of a custody order or a petition for contempt of a custody order shall be filed with the Prothonotary.**

2. An administrative fee of \$110.00 shall be paid to the Prothonotary simultaneously with the filing of either the petition for modification of a custody order or a petition for contempt of a custody order.

3. The Prothonotary shall forward the original petition for modification of a custody order or petition for contempt of a custody order to the Court Administrator's Office for assignment to a Custody Conference Officer.

4. The Custody Conference Officer shall set the date, time and place of the conference and file a scheduling order with the Prothonotary.

5. The Petitioner shall serve the petition for modification or contempt and the scheduling order upon the Respondent promptly in accordance with the applicable Rules of Civil Procedure and shall thereafter file an appropriate Certificate of Service with the Prothonotary before the date of the scheduled conference.

6. A copy of the most recent custody order shall be attached to the petition for modification or contempt.

Rule 1915.4-2 [1915.3A] Custody Conference Officers [Mediation Alternative Hearing Procedures]

(a) [1. The Court shall appoint as a Conference Officer(s) a member(s) of our Bar or other appropriate person, as an official of the Court,] Custody Conference Officers shall be appointed by the Court to:

1. [a. Mediate custody cases filed with the Court] meet with the parties and counsel in a custody action to try to work out an agreed custody arrangement;

2. [b. Recommend] recommend the appointment of counsel for the [child] children in appropriate situations;

3. [c. Recommend] recommend the utilization of home studies and/or expert witnesses in appropriate situations;

4. [d. Prepare] prepare agreed interim or final orders for [presentation to] review by the Court.

(b) [(2)] The compensation of Custody Conference Officers shall be set by order of court. [All custody matters not specifically reserved to the Court shall be promptly scheduled for a conference before the Conference Officer. All parties and any child age five (5) or older for whom custody or visitation is sought shall be present at the location of such conference. Failure of a party to appear at the conference may provide grounds for the entry of temporary or permanent orders.]

(c) [(3)] If the parties are able to reach an agreement during the custody conference, the Custody Conference Officer shall prepare a proposed order memorializing the agreement. The proposed order shall be submitted to the judge assigned to handle custody matters for review. The proposed order shall not contain any reference to child support. If approved, the order shall be filed with the Prothonotary and copies shall be distributed to all parties. [At the conference, or as soon thereafter as possible, each party shall provide the Confer-

ence Officer and each other with the following information, insofar as it is then available:

(a) A list of all fact witnesses;

(b) A list of all expert witnesses;

(c) Issues for resolution;

(d) Estimated length of trial;

(e) All reports from appropriate agencies; and

(f) Report of experts intended to be called as witnesses.

Such information shall be updated, as appropriate, any time up to commencement of trial. Failure to produce the information requested hereunder prior to trial, for the Conference Officer or the Court, may be grounds for excluding the evidence or witnesses at trial.]

(d) [4.] To facilitate the [mediation] conference process and encourage frank, open and meaningful exchanges between the parties and their respective counsel, statements made by the parties, or their witnesses, shall not be admissible as evidence in a custody hearing before the court. The [custody] Custody Conference Officer shall not be a witness for or against any party in a custody hearing before the court or in any other proceeding whatsoever.

(e) [5. At the conclusion of the conference where the case remains contested the Conference Officer shall prepare a Conference Summary Report.] If the parties are unable to reach an agreement during the custody conference, the Custody Conference Officer shall prepare a Conference Summary Report. The Conference Summary Report [This report] shall contain facts gathered by the Custody Conference Officer during the conference and outline the issues for resolution by the Court. The Conference Summary Report shall be filed with the Prothonotary and copies shall be distributed to all parties. The Prothonotary shall forward the Conference Summary Report to the Court Administrator's Office and the case will be assigned to a judge. [This report shall become a part of the Court record and upon being submitted to the Court shall also be copied to the parties.]

1915.3B Custody Mediation—Procedure

Rescinded

1915.3C Custody Mediation—Post Conference Procedure

Rescinded

1915.5 Question of Jurisdiction or Venue. No Responsive Pleading Required. Counterclaim

(a) [If a question of jurisdiction or venue is raised prior to the Mediation Conference, such objections shall be referred by the Conference Officer to the Court for disposition. No other pleading need be filed to a claim for custody or visitation.] An original and one copy of Preliminary Objections raising a question of jurisdiction or venue shall be filed with the Prothonotary. Preliminary Objections to the existence or exercise of jurisdiction or venue in any custody action shall be assigned to the judge

who is assigned to oversee custody matters or to the judge who has handled the case on a previous assignment.

(b) Counterclaims or cross-claims shall, where possible, be filed prior to the [Mediation Conference] conference.

(c) Rescinded

1915.7 Agreements and Consent Orders

(a) Agreements and consent orders filed contemporaneously with the custody complaint:

1. When a custody agreement has been reached prior to the filing of the custody complaint, either party shall file with the Prothonotary the original signed custody agreement simultaneously with the original and one copy of the custody complaint.

2. The custody agreement shall be signed by all parties and the signatures shall be witnessed.

3. The custody agreement shall contain a proposed order of court.

4. An administrative fee of \$110.00 shall be paid to the Prothonotary in accordance with Rule 1915.3 (a) or (b).

5. The Prothonotary shall forward the original custody complaint and the signed and witnessed custody agreement to the Court Administrator's Office for review and assignment to the judge assigned to oversee custody matters.

6. Agreements shall not contain any provision relating to child support.

(b) Agreements and consent orders to modify existing custody orders:

1. When the parties agree to modify an existing custody order, the original agreement and consent order shall be filed with the Prothonotary. A petition for modification of a custody order should not be filed. There shall be no administrative fee paid to the Prothonotary for the modification of an existing custody order when no petition for modification of a custody order has been filed.

2. The custody agreement shall be signed by all parties and the signatures shall be witnessed.

3. The custody agreement shall contain a proposed order of court.

4. The Prothonotary shall forward the original signed and witnessed custody agreement to the Court Administrator's Office for review and assignment to the judge assigned to oversee custody matters.

5. Agreements shall not contain any provision relating to child support.

(c) Agreements reached after the complaint or petition for modification of a custody order is assigned to a Custody Conference Officer:

1. If at any time prior to the Custody Conference the parties are able to agree upon custody or visitation, the parties shall [may] submit a proposed agreement and consent order to the Custody Conference Officer for disposition in conjunction with these rules [with written consents attached thereto signed by the parties and their counsel, if any]. The custody agreement shall be signed by all parties and the signatures shall be witnessed.

2. The Custody Conference Officer shall submit the proposed agreement and consent order to the judge assigned to oversee custody matters.

(d) Agreements reached after a custody matter has been assigned to a judge:

1. If at any time prior to a conference or hearing before the assigned judge an agreement is reached regarding custody or visitation, the parties shall submit a proposed agreement and consent order to the assigned judge. The agreement shall be signed by all parties and the signatures shall be witnessed. Upon presentation of [a] the agreement and consent order, the Court may, in its discretion, enter an order without taking testimony [thereon].

[3] 2. The parties or children need not be present at a scheduled conference or hearing before a judge when an agreement has been reached prior to the conference or hearing unless the Court so directs.

1915.12 Contempt

Rescinded

Rule 1915.13 Applications for Special Relief (Emergency Petitions for Custody)

a. An original and one copy of the application for special relief shall be filed with the Prothonotary simultaneously with the custody complaint or petition for modification or contempt of a custody order.

b. The attorney or pro se party shall promptly notify the Deputy Civil Court Administrator's Office by telephone as soon as it is determined that an application for special relief will be filed and shall give the Deputy Civil Court Administrator's Office a realistic estimate of the date and time of the intended filing.

c. The application for special relief shall state, in detail, the facts alleged to warrant the special relief.

d. The application for special relief shall be served on all parties.

e. An administrative fee of \$110.00 shall be paid to the Prothonotary in accordance with Rule 1915.3 (a) or 1915.3 (b). The filing party need only pay the administrative fee associated with the custody complaint or petition for modification or contempt. There shall be no additional administrative fee associated with the filing of the application for special relief.

f. The Prothonotary shall forward both the original custody complaint or petition for modification or contempt of the custody order and the application for special relief to the Court Administrator's Office. The custody complaint or the petition for modification or contempt of the custody order shall be assigned to a Custody Conference Officer. The application for special relief shall be assigned to the judge who is assigned to handle emergency custody matters or to the judge who has handled the case on a previous assignment.

Rule 1915.15(c) Cover Sheet to Custody Complaint, Petition for Modification or Petition for Contempt [Form of Complaint]

FOR THE COURT:

In addition to the information required by Pa.R.C.P. 1915.15(a) or 1915.15(b), each **Ccomplaint, Petition for Modification or Petition for Contempt [or Motion for Hearing]** relating to child custody or visitation shall contain a **[second]** cover sheet **[substantially]** in the following format:

Plaintiff : IN THE COURT OF COMMON PLEAS
 : DAUPHIN COUNTY, PENNSYLVANIA
 :
 : CIVIL ACTION
 : CUSTODY/VISITATION
 :
 Defendant : NO.

ORDER OF COURT

AND NOW, upon consideration of the attached Complaint, **Petition for Modification or Petition for Contempt of a Custody Order**, it is hereby directed that the parties and their respective counsel appear before the Custody Conference Officer, on the _____ day of _____, _____, **Dauphin County Courthouse, Front and Market Streets, Harrisburg, Pennsylvania for a [at a Pre-Hearing]** Custody Conference. At such Conference, an effort will be made to resolve the issues in dispute; or if this cannot be accomplished, to define and narrow the issues to be heard by the Court, and to enter into a Temporary Order. **Children should not attend the conference unless requested by the Custody Conference Officer. [All children age five or older shall also be present at the Conference. Failure to appear at the Conference may provide grounds for entry of a temporary or permanent Order.]**

If the Defendant or Respondent should fail to appear at the custody conference, the conference may proceed in accordance with Pa.R.C.P. 1915.4-2 (b).

Date _____ By _____
 Custody Conference Officer

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER [OR CANNOT AFFORD ONE,] GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW [TO FIND OUT WHERE YOU CAN GET LEGAL HELP]. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

DAUPHIN COUNTY LAWYER REFERRAL SERVICE
 213 North Front Street
 Harrisburg, PA 17101
 (717) 232-7536

AMERICANS WITH DISABILITIES ACT OF 1990

The Court of Common Pleas of Dauphin County is required by law to comply with the Americans with Disabilities Act of 1990. For information about accessible facilities and reasonable accommodations available to disabled individuals having business before the court, please contact the Court Administrator's Office at (717) 780-6624. All arrangements must be made at least 72 hours prior to any hearing or business before the court. You must attend the scheduled conference.

These amendments shall be effective 30 days after publication in the *Pennsylvania Bulletin*.

By the Court

JOSEPH H. KLEINFELTER,
President Judge

[Pa.B. Doc. No. 05-233. Filed for public inspection February 4, 2005, 9:00 a.m.]