

# THE COURTS

## Title 225—RULES OF EVIDENCE

Comment—2005

[225 PA. CODE ART. VI]

### Proposed Amendment to Pa.R.E. 601 and Revision of Comment

The Committee on Rules of Evidence is planning to recommend that the Supreme Court of Pennsylvania approve the Amendment to Rule of Evidence 601 as well as the revision of the Comment to Rule of Evidence 601. The changes are being proposed to conform Pa.R.E. 601 to F.R.E. 601.

This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

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

The text of the proposed Amended Rule and Comment changes precede the Report. Additions are bold, and deletions are in bold and brackets.

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

Richard L. Kearns  
Staff Counsel  
Supreme Court of Pennsylvania  
Committee on Rules of Evidence  
5035 Ritter Road, Suite 700  
Mechanicsburg, PA 17055

no later than March 25, 2005

By the Committee on Rules of Evidence

HONORABLE RICHARD A. LEWIS,  
Chair

### Annex A

#### TITLE 225. RULES OF EVIDENCE ARTICLE VI. WITNESSES

Rule 601. **General Rule of Competency.**

[ (a) **General Rule.** ] Every person is competent to be a witness except as otherwise provided by statute or in these Rules.

[ (b) **Disqualification for Specific Defects.** A person is incompetent to testify if the Court finds that because of a mental condition or immaturity the person:

- (1) is, or was, at any relevant time, incapable of perceiving accurately;
- (2) is unable to express himself or herself so as to be understood either directly or through an interpreter;
- (3) has an impaired memory; or
- (4) does not sufficiently understand the duty to tell the truth. ]

[ Pa.R.E. 601(a) differs from F.R.E. 601. F.R.E. 601 abolishes all existing grounds of incompetency except for those specifically provided in later rules dealing with witnesses and in civil actions governed by state law. Pa.R.E. 601(b) has no counterpart in the Federal Rules.

Pa.R.E. 601(a) is consistent with Pennsylvania statutory law. 42 Pa.C.S.A. §§ 5911 and 5921 provide that all witnesses are competent except as otherwise provided. Pennsylvania statutory law provides several instances in which witnesses are incompetent. See, e.g., 42 Pa.C.S.A. § 5922 (persons convicted in a Pennsylvania court of perjury incompetent in civil cases); 42 Pa.C.S.A. § 5924 (spouses incompetent to testify against each other in civil cases with certain exceptions set out in 42 Pa.C.S.A. §§ 5925, 5926, and 5927); 42 Pa.C.S.A. §§ 5930—5933 and 20 Pa.C.S.A. § 2209 (“Dead Man’s statutes”).

Pa.R.E. 601(a) does not recognize any decisional grounds for incompetency. At one time Pennsylvania law provided that neither a husband nor a wife was competent to testify to non-access or absence of sexual relations if the effect of that testimony would illegitimize a child born during the marriage. See *Commonwealth ex rel. Leider v. Leider*, 434 Pa. 293, 254 A.2d 306 (1969). This rule was abandoned in *Commonwealth ex rel. Savruk v. Derby*, 235 Pa. Super. 560, 344 A.2d 624 (1975).

Pa.R.E. 601(b) is consistent with Pennsylvania law concerning the competency of persons with a mental defect and children of tender years. See *Commonwealth v. Goldblum*, 498 Pa. 455, 447 A.2d 234 (1982) (mental capacity); *Rosche v. McCoy*, 397 Pa. 615, 156 A.2d 307 (1959) (immaturity). The application of the standards in Pa.R.E. 601(b) is a factual question to be resolved by the Court. Expert testimony has been used when competency under these standards has been an issue. E.g., *Commonwealth v. Baker*, 466 Pa. 479, 353 A.2d 454 (1976); *Commonwealth v. Gaerttner*, 355 Pa. Super. 203, 484 A.2d 92 (1984). Pa.R.E. 601(b) is intended to preserve existing law and not to expand it.

Pa.R.E. 601(b) does not address the admissibility of hypnotically refreshed recollection. In *Commonwealth v. Nazarovitch*, 496 Pa. 97, 436 A.2d 170 (1981), the Supreme Court rejected hypnotically refreshed testimony, where the witness had no prior independent recollection. Applying the test of *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923) for scientific testimony, the Court was not convinced that the process of hypnosis as a means of restoring forgotten or repressed memory had gained sufficient acceptance in its field. *Commonwealth v. Nazarovitch*, supra; see also *Commonwealth v. Romanelli*, 522 Pa. 222, 560 A.2d 1384 (1989) (when witness has been hypnotized, he or she may testify concerning matters recollected prior to hypnosis, but not about matters recalled only during or after hypnosis); *Commonwealth v. Smoyer*, 505 Pa. 83, 476 A.2d 1304 (1984) (same). Pa.R.E. 601(b) is not intended to change these results. For the constitutional implications when a defendant in a criminal

case, whose memory has been hypnotically refreshed, seeks to testify, see *Rock v. Arkansas*, 483 U. S. 44 (1987). ]

Pa.R.E. 601 is essentially the same as F.R.E. 601, except that the Pennsylvania rule recognizes statutory grounds of incompetency.

The following three Pennsylvania statutes apply only in civil cases.

42 Pa.C.S. § 5922 says that a person who has been convicted in a Pennsylvania court of perjury, subornation of perjury, or solicitation to commit perjury, "shall not be a competent witness for any purpose," unless the case is one to redress or prevent injury or violence to the witness's person or property. However, if the conviction is set aside or reversed, or the witness is pardoned by the Governor, the witness can testify. See *Diehl v. Rodgers*, 169 Pa. 316, 32 A. 424 (1895).

42 Pa.C.S. § 5924 says, with five enumerated exceptions, that "neither husband nor wife shall be competent . . . to testify against each other."

42 Pa.C.S. § 5930, a single sentence of 318 words, says, with various qualifications, that where any party to a thing or contract in action is dead, or has been adjudged a lunatic, "neither any surviving or remaining party to such thing or contract, nor any other person whose interest shall be adverse to the said right of such deceased or lunatic party, shall be a competent witness to any matter occurring before the death of said party or the adjudication of his lunacy . . ." This statute is commonly referred to as the Dead Man's Act.

With respect to criminal cases, 42 Pa.C.S. § 5911 says that "all persons shall be fully competent witnesses in any criminal proceeding before any tribunal."

Rules of evidence under which a witness may be found incompetent to testify, in whole or in part, may be found in Article IV (relevancy and its limits), Article VI (witnesses), and Article VII (opinions and expert testimony).

The qualification of a witness to testify is now determined as a preliminary matter by the trial court under Pa.R.E. 104(a). Any voir dire with respect thereto must be conducted outside the presence of the jury, at least if the witness is a child. See *Commonwealth v. Washington*, 554 Pa. 559, 722 A.2d 643 (1998).

In criminal cases, the United States Constitution occasionally requires the admission or exclusion of evidence, despite contrary state law with respect to testimonial competency. See, e.g., *Rock v. Arkansas*, 483 U. S. 44, 107 S.Ct. 2704, 97 L.Ed.2d 37 (1987) (Arkansas violated the due process clause of the Fourteenth Amendment when it precluded the defendant from presenting hypnotically refreshed testimony); *Foster v. California*, 394 U. S. 440, 89 S.Ct. 1127, 22 Led.2d 402 (1969) (California violated the due process clause of the Fourteenth Amendment when it allowed a witness for the prosecution to give identification testimony after the witness's memory had been tainted by an unduly suggestive pretrial procedure).

## REPORT

### *Proposed Amendment to Pa.R.E. 601 and Revision of Comment*

#### Changes

The Committee on Rules of Evidence is planning to recommend that the Supreme Court of Pennsylvania approve the amendment of Pa.R.E. 601 and Revision of Comment.

This amendment is proposed to conform Pa.R.E. 601 with F.R.E. 601 and to eliminate subsection (b) because it is unnecessary. No other state has a subsection (b). The Comment Revision is proposed to make it consistent with this text of the new rule and to set forth the statutes addressing competency.

[Pa.B. Doc. No. 05-314. Filed for public inspection February 18, 2005, 9:00 a.m.]

## Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CH. 1]

### Order Amending Rule 103; No. 316 Criminal Procedural Rules; Doc. No. 2

The Criminal Procedural Rules Committee has prepared a Final Report explaining the changes to Rule of Criminal Procedure 103 that amend the definitions of "bail authority" and "issuing authority" by replacing the term "district justice" with the new term "magisterial district judge." The Final Report follows the Court's Order.

#### Order

*Per Curiam:*

Now, this 4th day of February, 2005, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been submitted without publication pursuant to Pa.R.J.A. 103(a)(3) in the interests of justice and efficient administration, and a Final Report to be published with this *Order*:

*It Is Ordered* pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule of Criminal Procedure 103 is amended in the following form.

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

#### Annex A

### TITLE 234. RULES OF CRIMINAL PROCEDURE CHAPTER 1. SCOPE OF RULES, CONSTRUCTION AND DEFINITIONS, LOCAL RULES

#### PART A. Business of the Courts

#### Rule 103. Definitions.

The following words and phrases, when used in any Rule of Criminal Procedure, shall have the following meanings:

**ADVANCED COMMUNICATION TECHNOLOGY** is any communication equipment that is used as a link between parties in physically separate locations, and includes, but is not limited to: systems providing for two-way simultaneous communication of image and

sound; closed-circuit television; telephone and facsimile equipment; and electronic mail.

**ADVANCED COMMUNICATION TECHNOLOGY SITE** is any approved location within Pennsylvania designated by the president judge, or the president judge's designee, with advanced communication technology equipment that is available for parties in a criminal matter to communicate with others in physically separate locations as provided in these rules.

**AFFIANT** is any responsible person capable of taking an oath who signs, swears to, affirms, or, when permitted by these rules, verifies a complaint and appreciates the nature and quality of that person's act.

**ARRAIGNMENT** is the pretrial proceeding in the court of common pleas conducted pursuant to Rule 571.

**BAIL** is the security or other guarantee required and given for the release of a person, conditioned upon a written undertaking, in the form of a bail bond, that the person will appear when required and comply with all conditions set forth in the bail bond.

**BAIL AUTHORITY** is the [ **district justice** ] **magisterial district judge**, magistrate, Philadelphia bail commissioner, or the judge with jurisdiction over the case who is authorized by law to set, modify, revoke, or deny bail.

**CAPITAL CASE** or **CRIME** is one in or for which the death penalty may be imposed.

**CARRIER SERVICE** includes, but is not limited to, delivery by companies such as Federal Express or United Parcel Service, or a local courier service, and courthouse interoffice mail. The courthouse interoffice mail is a method of delivery used in some judicial districts for transmittal of documents between offices in the courthouse, and between the courthouse and other county facilities, including the county jail facility.

**CLERK OF COURTS** is that official, without regard to that person's title, in each judicial district who, pursuant to 42 Pa.C.S. §§ 2756 and 2757, has the responsibility and function to maintain the official criminal case file and list of docket entries, and to perform such other duties as required by rule or law.

**COLLATERAL** is cash or a cash equivalent deposited in summary cases.

**COPY** is an exact duplicate of an original document, including any required signatures, produced through mechanical or electronic means, and includes, but is not limited to: carbon copies; copies reproduced by using a photocopy machine, by transmission using facsimile equipment, or by scanning into and printing out of a computer.

**COURT** is a court of record.

[ **COURT CASE is a case in which one or more of the offenses charged is a misdemeanor, felony, or murder of the first, second, or third degree.** ]

**COURT ADMINISTRATOR** is that official in each judicial district who has the responsibility for case management and such other responsibilities as provided by the court.

**COURT CASE is a case in which one or more of the offenses charged is a misdemeanor, felony, or murder of the first, second, or third degree.**

**CRIMINAL PROCEEDINGS** include all actions for the enforcement of the Penal Laws.

**INDICTMENT** is a bill of indictment which has been approved by a grand jury and properly returned to court, or which has been endorsed with a waiver as provided in former Rule 215.

**INFORMATION** is a formal written accusation of an offense made by the attorney for the Commonwealth, upon which a defendant may be tried, which replaces the indictment in all counties since the use of the indicting grand jury has been abolished.

**ISSUING AUTHORITY** is any public official having the power and authority of a magistrate, a Philadelphia bail commissioner, or a [ **district justice** ] **magisterial district judge**.

**LAW ENFORCEMENT OFFICER [ officer ]** is any person who is by law given the power to enforce the law when acting within the scope of that person's employment.

**MOTION** includes any challenge, petition, application, or other form of request for an order or relief.

**ORDINANCE** is a legislative enactment of a political subdivision.

**PENAL LAWS** include all statutes and embodiments of the common law which establish, create, or define crimes or offenses, including any ordinances which may provide for imprisonment upon conviction or upon failure to pay a fine or penalty.

**POLICE OFFICER** is any person who is by law given the power to arrest when acting within the scope of the person's employment.

**POLITICAL SUBDIVISION** shall mean county, city, township, borough, or incorporated town or village having legislative authority.

**PRELIMINARY ARRAIGNMENT** is the proceeding following an arrest conducted before an issuing authority pursuant to Rule 540 or Rule 1003(D).

**SEALED VERDICT** is a verdict unanimously agreed upon by the jury, completed, dated, and signed by the foreman of the jury, and closed to open view.

**SECURITY** shall include cash, certified check, money order, personal check, or guaranteed arrest bond or bail bond certificate.

**SIGNATURE**, when used in reference to documents generated by the minor judiciary or court of common pleas, includes a handwritten signature, a copy of a handwritten signature, a computer generated signature, or a signature created, transmitted, received, or stored by electronic means, by the signer or by someone with the signer's authorization, unless otherwise provided in these rules.

**SUMMARY CASE** is a case in which the only offense or offenses charged are summary offenses.

**VOIR DIRE** is the examination and interrogation of prospective jurors.

#### Comment

The definitions of arraignment and preliminary arraignment were added in 2004 to clarify the distinction between the two proceedings. Although both are administrative proceedings at which the defendant is advised of the charges and the right to counsel, the preliminary arraignment occurs shortly after an arrest before a member of the minor judiciary, while an arraignment occurs in the court of common pleas after a case is held for court and an information is filed.

The definition of information was added to the rules as part of the implementation of the 1973 amendment to PA. CONST. art. I, § 10, permitting the substitution of informations for indictments. The term "information" as used here should not be confused with prior use of the term in Pennsylvania practice as an instrument which served the function now fulfilled by the complaint.

The definition of bill of indictment was deleted in 1993 as no longer necessary because all courts of common pleas have abolished the indicting grand jury and now provide for the initiation of criminal proceedings by information. See PA. CONST. art. I, § 10 and 42 Pa.C.S. § 8931. Some pending cases, however, may have been instituted prior to the abolition of the indicting grand jury. For this reason, the definition of indictment has been retained in this rule.

**The definitions of bail authority and issuing authority were amended in 2005 to reflect the provisions of Act 207 of 2004 that changed the phrase "district justice" to "magisterial district judge," effective January 29, 2005. See also the Court's January 6, 2005 Order providing that any reference to "district justice" in a court rule shall be deemed a reference to a "magisterial district judge."**

Neither the definition of law enforcement officer nor the definition of police officer gives the power of arrest to any person who is not otherwise given that power by law.

The definition of signature was added in 2004 to make it clear when a rule requires a document generated [ **be** ] **by** the minor judiciary or court of common pleas to include a signature or to be signed, that the signature may be in any of the forms provided in the definition. In addition, documents that institute proceedings or require the inclusion of an oath ordinarily are not documents generated by the minor courts or courts of common pleas and therefore any [ **signaturre** ] **signature** required on the document would not be included in this definition of signature; however, in the event such a document is generated by the minor courts or the courts of common pleas, the form of "signature" on this document is limited to handwritten, and the other forms of signature provided in the definition are not permitted.

Included in Chapter 5 Part C of the rules are additional definitions of words and phrases that apply specifically to bail in criminal cases. See, e.g., Rule 524, which defines the types of release on bail.

**Official Note:** Previous Rules 3 and 212 adopted June 30, 1964, effective January 1, 1965, suspended January 31, 1970, effective May 1, 1970; present Rule 3 adopted January 31, 1970, effective May 1, 1970; amended June 8, 1973, effective July 1, 1973; amended February 15, 1974, effective immediately; amended June 30, 1977, effective September 1, 1977; amended January 4, 1979, effective January 9, 1979; amended July 12, 1985, effective January 1, 1986; January 1, 1986 effective date extended to July 1, 1986; amended August 12, 1993, effective September 1, 1993; amended February 27, 1995, effective July 1, 1995; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; the April 1, 1996 effective date extended to July 1, 1996; renumbered Rule 103 and Comment revised March 1, 2000, effective April 1, 2001; amended May 10, 2002, effective September 1, 2002; amended March 2, 2004, effective July 1, 2004; amended April 30, 2004, effective July 1, 2004; amended August 24, 2004, effective

August 1, 2005; **amended February 4, 2005, effective immediately.**

*Committee Explanatory Reports:*

Report explaining the August 12, 1993 amendments published at 22 Pa.B. 3826 (July 25, 1992).

Final Report explaining the February 27, 1995 amendments published with the Court's Order at 25 Pa.B. 935 (March 18, 1995).

Final Report explaining the September 13, 1995 amendments published with Court's Order at 25 Pa.B. 4116 (September 30, 1995).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. [ **1477** ] **1478** (March 18, 2000).

Final Report explaining the May 10, 2002 amendments concerning advanced communication technology published with the Court's Order at 32 Pa.B. 2591 (May 25, 2002).

Final Report explaining the March 2, 2004 amendments defining carrier service, clerk of courts, court administrator, and motion published with the Court's Order at 34 Pa.B. 1561 (**March 20, 2004**).

Final Report explaining the April 30, 2004 amendments defining "signature" published with the Court's Order at 34 Pa.B. 2542 (May 15, 2004).

Final Report explaining the August 24, 2004 amendments adding definitions of arraignment and preliminary arraignment published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).

**Final Report explaining the February 4, 2005 amendments modifying the definitions of bail authority and issuing authority published with the Court's Order at 35 Pa.B. 1333 (February 19, 2005).**

**FINAL REPORT<sup>1</sup>**

***Amendments to Pa.R.Crim.P. 103 (Definitions)***

**Magisterial District Judges**

On February 4, 2005, effective immediately, upon the recommendation of the Criminal Procedural Rules Committee, the Court amended Rule of Criminal Procedure 103 (Definitions).

On November 30, 2004, Governor Rendell signed into law Act 207 of 2004 that changed the phrase "district justice" to "magisterial district judge," effective January 29, 2005. Because "district justice" is used extensively in the Rules of Criminal Procedure, the Committee agreed the references to "district justice" will have to be changed to "magisterial district judge" to avoid confusion among members of the bench, bar, and public.

The first step in this process of change is the amendments of the definitions of "bail authority" and "issuing authority" in Rule 103. In conformance with Act 207 of 2004, the phrase "district justice" has been deleted and the new phrase "magisterial district judge" added.<sup>2</sup> The need for the proposed changes is explained in the Rule 103 Comment with a cross-reference to Act 207 of 2004.

<sup>1</sup> The Committee's Final Reports should not be confused with the official Committee Comments to the rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the Committee's explanatory Final Reports.

<sup>2</sup> The Committee plans to propose the change from "district justice" to "magisterial district judge" in those rules so affected, when in the future, such a rule is being amended for some other reason.

We also have referenced the Pennsylvania Supreme Court's Order, No. 269 Judicial Administration Docket No. 1, providing, inter alia, that all references to "district justice" in the court rules will be deemed "magisterial district judge."

[Pa.B. Doc. No. 05-315. Filed for public inspection February 18, 2005, 9:00 a.m.]

## Title 249—PHILADELPHIA RULES

### PHILADELPHIA COUNTY

#### DNA Samples From Persons Who Are Not Ordered or Sentenced to a Term of Confinement Pursu- ant to Act 185; Trial Division Administrative Order No. 2005-01

##### Order

*And Now*, this 31st day of January, 2005, upon consideration of Act No. 185 of 2004 (44 Pa.C.S. § 2301 et seq.) which provides, in part, that "DNA samples from persons who were not ordered or sentenced to a term of confinement shall be drawn at a prison, jail unit, juvenile facility or other facility specified by the Court," 44 Pa.C.S. § 2317, it is hereby *Ordered, Adjudged* and *Decreed* that as to defendants tried and sentenced in the Trial Division:

(1) DNA samples pursuant to Act 185 shall be drawn at the DNA collection facility in Room B-04, Criminal Justice Center, 1301 Filbert Street, Philadelphia, PA; and, if this facility is unavailable, at the Philadelphia Prison System complex, Philadelphia, PA; and

(2) As required by Section 2317, only those individuals qualified to draw DNA samples in a medically approved manner shall draw DNA samples pursuant to Act 185.

This Administrative Order is promulgated in accordance with the April 11, 1986, Order of the Supreme Court of Pennsylvania, Eastern District, No. 55 Judicial Administration, Docket No. 1, Pa.R.Crim.P. 105 and 42 Pa.C.S. § 2317, and shall become effective on February 7, 2005. As required by Pa.R.Crim.P. 105, the original Administrative Order shall be filed with the Prothonotary in a docket maintained for Administrative Orders issued by the Administrative Judge of the Trial Division, and copies shall be submitted to the Clerk of Quarter Sessions, Administrative Office of Pennsylvania Courts, the Legislative Reference Bureau and the Supreme Court Criminal Procedural Rules Committee. Copies of the Regulation shall also be submitted to *American Lawyer Media, The Legal Intelligencer*, 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*

JAMES J. FITZGERALD, III,  
*Administrative Judge, Trial Division*

[Pa.B. Doc. No. 05-316. Filed for public inspection February 18, 2005, 9:00 a.m.]

## Title 255—LOCAL COURT RULES

### FRANKLIN AND FULTON COUNTIES

#### Promulgation of Local Civil Action Rules 39-51, 206.1, 206.4, 208, 208.2, 208.4, 210, 1028(c), 1034(a) and 1035.2(a)

##### Order of Court

January 27, 2005, Civil Action Rule Nos. 39-51, 39-206.1, 39-206.4(c), 39-208, 39-208.2(c), (d) and (e), 39-208.3(a) and (b), 39-210, 39-1028(c), 39-1034(a) and 39-1035.2(a) are hereby promulgated for use in both branches of the 39th Judicial District of Pennsylvania and shall become effective upon their being posted on the Local Rules Section of the web site of the Pennsylvania Unified Judicial System, <https://ujportal.pacourts.us/Rules/RulesSelection.aspx>.

*By the Court*

JOHN R. WALKER,  
*President Judge*

##### Rule 51. Title and Citation of Rules

These rules shall be known as the 39th Judicial District Rules of Civil Procedure, and shall be cited as "39th Jud. Dist. R.C.P. \_\_\_\_\_."

##### Rule 206.1 Petitions

##### Rule 206.1(a) Purpose and Designation.

The procedure after issuance of rules to show cause shall be as set forth in Pa.R.C.P. 206.7. If argument is ordered by the court the case shall be listed, briefed and decided as set forth in the court's order. All applications for which the procedure for the relief sought is not otherwise specifically addressed elsewhere in the rules and which require the assertion of facts not of record are hereby designated as petitions. A petition, generally speaking, is a request for relief ancillary to a given cause of action. Each petition shall be accompanied by a verification or affidavit verifying the facts stated in the petition.

##### Rule 206.4(c). Procedure for Rule to Show Cause

(i) *Title*: A petition should state in its title exactly what is being sought, by whom and against whom (e.g. rather than merely "petition," it should be designated Defendant Jones' Petition for Extension of Time to Join Smith as Additional Defendant).

(ii) *Contents*: All petitions shall be in writing and shall be accompanied by a proposed form of order; a petition shall also be accompanied by an order allowing a rule to show cause in form as set forth below, which order is hereinafter sometimes referred to as a "rule" or a "rule to show cause." Every motion and petition shall refer to the procedural rule, statute, or other authority relied upon to justify the relief requested and shall display counsel's name, address, I.D. number and telephone number. No motion, petition or preliminary objection shall be dismissed for failure to be accompanied by a form of proposed order or for failure to refer to the procedural rule, statute or other authority relied upon or for failure to display counsel's name, address, attorney identification number or telephone number.

COMMENT: For discovery motions and petitions, see certification requirements under rule 39th Jud. Dist. R.C.P. 208.2(e).

(iii.) *Proposed Order, generally:* The petitioner shall attach to any petition a proposed order substantially in the following form:

[CAPTION]  
ORDER

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, upon consideration of the foregoing petition, it is hereby ordered that

- 1. A rule is issued upon the respondent to show cause why the petitioner is not entitled to the relief requested;
- 2. The respondent shall file a verified Answer to the Petition within twenty (20) days of service upon the respondent;
- 3. The Petition shall be decided under Pa.R.C.P. No. 206.7;
- 4. Depositions shall be completed within \_\_\_\_\_ days of the service upon petitioner of the Answer to the Petition;
- 5. Hearing and/or argument shall be held on \_\_\_\_\_, 200\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_ m. in Courtroom No. \_\_\_\_\_ of the Franklin/Fulton County Courthouse, Chambersburg/McConnellsburg, PA;
- 6. If Items 4 and 5 above are left blank, depositions and or argument or hearing will be considered upon the request of any party; and
- 7. Notice of entry of this order shall be provided to all parties by the petitioner.
- 8. In the case of Preliminary Objections [Local Rule 1028(a)], Motions for Judgment on the Pleadings [Local Rule 1034(a)] and Motions for Summary Judgment [Local Rule 1035(a)], parties shall follow the procedures for disposition set forth in those rules.

By the Court,  
\_\_\_\_\_  
Judge

(iv) *Proposed Order, substantive relief or stay sought:* In instances where the order seeks a stay order or other substantive relief or seeks to have a hearing date set immediately or otherwise requests special immediate relief, the form of the order shall be modified accordingly and the order shall contain such of the following provisions as are appropriate:

A hearing on the within petition is hereby scheduled to be held on \_\_\_\_\_, the \_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_ m. in Courtroom No. \_\_\_\_\_ of the Franklin/Fulton County Courthouse, Chambersburg/McConnellsburg, PA

and/or

[If a stay is being requested]

All proceedings shall stay in the meantime. The petitioner is directed to file a bond in the amount of \$ \_\_\_\_\_ by the following date: \_\_\_\_\_. Upon cause shown by the respondent, the court may increase the amount of the bond or security.

(v.) *Service and Certification Requirements:* The following service and certification requirements apply to all rules to show cause:

(a) Not later than immediately after filing with the prothonotary, each party shall serve upon all other coun-

sel and unrepresented parties complete copies of all rules, proposed orders, petitions, motions, preliminary objections and answers to them.

(b) Each party shall, not later than five (5) days after the filing of any document, file with the prothonotary a separate document in the form specified by 39th Jud. Dist. R.C.P. 206.4(c)(v)(d), below, certifying that service of a complete copy has been made.

(c) The court, at its discretion, may strike, dismiss or deny, any petition, motion or preliminary objection for failure of the moving party to comply with the service and certification requirements of this rule.

(d) Certifications of service shall be in substantially the following form:

[CAPTION]  
CERTIFICATION OF SERVICE

This is to certify that in this case, assigned to Judge [insert the name of the judge to whom the case is assigned], complete copies of all papers contained in [insert specifically the title of the petition/motion/preliminary objections/praecepe, etc. served] have been served upon the following persons, by the following means and on the dates stated:

Name and address:    Means of Service:    Date of Service:

_____	_____	_____
_____	_____	_____
_____	_____	_____

Attorney's Signature  
Attorney's Name  
Address  
I.D. Number  
Telephone Number

(vi.) *Discretionary Issuance of Rule:* The procedure of Pa.R.C.P. 206.5 is adopted. An order containing a rule to show cause, including one which by its terms grants substantive relief or which contains a stay order or seeks to require an answer by respondent(s) in less than twenty (20) days, shall be delivered promptly after filing to the assigned judge or to the motions judge's law clerk or to the Court Administrator for prompt delivery to the motion judge's law clerk.

COMMENT: Unless otherwise designated as motions, all applications are designated as petitions. The issuance of a rule to show cause shall be discretionary with the court as provided in Pa.R.C.P. 206.5. A petitioner seeking the issuance of a rule to show cause shall attach to the petition the proposed order in the form prescribed by 39th Jud. Dist. R.C.P. 206.4(c)(iii.) or (iv.), above. Under Pa.R.C.P 206.7, the issue raised in the petition may be decided without the necessity of argument. However, if the court orders argument on the petition, the matter shall be listed for argument, briefed and decided pursuant to the court's order.

(vii.) *When No Answer is Filed:* If no answer has been timely filed, the petitioning party, not less than five (5) days after the rule return date, may move to have the rule made absolute, granting the prayer of the petition, and the Court may consider such petition as unopposed and grant such motion as of course. The motion to make the rule absolute shall be accompanied by a proposed order and a certification of service but no brief shall be required. The provisions of Rule 206.4(c)(iii.) and (iv.) shall not apply to motions to make a rule absolute filed pursuant to this section.

COMMENT: A party upon whom a petition is served has an obligation to answer the petition if the relief sought is opposed.

(viii.) *When Answer is Filed:* When an answer has been timely filed and the issue raised by the petition, motion or preliminary objection is ripe for consideration, pursuant to the provisions of Pa.R.C.P. No. 206.7, any party may file a praecipe for determination in the form described by 39th Jud. Dist.R.C.P. No. 206.4(c)(ix.) along with a supporting brief. If a petitioner files a praecipe for determination on petition and answer, all averments of fact responsive to the petition and properly pleaded in the answer shall be deemed admitted. If a respondent orders the matter for argument on petition and answer without having taken depositions or such other discovery as the court may have allowed, then all averments of fact properly pleaded in the petition shall be deemed admitted for the purposes of the rule, unless the petitioner shall have failed to take depositions or such other discovery as the court may have allowed within the time required, in which event the petition shall be decided on petition and answer and all averments of fact responsive to the petition and properly pleaded in the answer, shall be deemed admitted pursuant to Pa.R.C.P. No. 206.7(c). Responsive briefs shall be filed within fifteen (15) days of the filing of the praecipe for determination. The assigned judge may, at his or her discretion, extend the time for filing briefs.

(ix) *Praecipe for Determination:* To have any matter submitted to the Court for a decision, a party shall file with the Prothonotary a Praecipe for Determination. Immediately after filing the Praecipe with the Prothonotary, each party shall serve upon all other counsel and unrepresented parties a copy of the Praecipe for Determination as well as any other documents filed therewith. The Praecipe for Determination shall be in substantially the following form:

[CAPTION]  
PRAECIPE FOR DETERMINATION

To the Prothonotary:

Kindly submit the following matter to Judge [insert the name of the assigned Judge] for determination: [insert specifically the title of petition/motion/preliminary objections, etc. to be submitted for determination]

Date of filing/service: \_\_\_\_\_.

Attorney's signature  
Attorney's Name  
Address  
I.D. Number  
Telephone Number

COMMENT: This praecipe is to be filed with the Prothonotary, not the Court Administrator.

**Rule 208. Motions**

**Rule 208.2(c). Applicable Authority.**

All motions should include a brief statement of applicable authority.

**Rule 208.2(d). Uncontested Motions—Certification.**

A motion may be treated as uncontested when the moving party appends to it a certificate that counsel has conferred with all interested parties in respect to the matter and has been affirmatively advised that there are no objections to the relief sought in the proposed order.

COMMENT: Non-responsiveness on the part of an opponent shall not be equated by the moving party to the lack of contest or concurrence in the relief sought.

**Rule 208.2(e). Discovery Motion and Petition Certification.**

(i) *Good Faith Requirement:* All counsel have an affirmative obligation to confer and discuss discovery matters and make a good faith effort to resolve such differences as exist.

(ii) *Certificate of Efforts; Specificity:* Any motion or petition relating to discovery must be accompanied by a certificate of counsel for the moving party certifying that counsel has conferred with opposing counsel with respect to each matter set forth in the discovery motion or petition in good faith, but has been unable to resolve the issue. The certificate shall set forth the exact time, place and manner (which may be telephonic) of the conference or, in a case in which counsel for the moving party cannot furnish such certificate, counsel shall furnish an alternative certificate stating that opposing counsel has refused to so confer. The alternative certificate shall also set forth the efforts made by counsel for the moving party to obtain compliance by opposing counsel and such other facts and circumstances as exist to justify the absence of the required certificate. In all instances, counsel shall certify the details of time, place, manner and content of efforts to confer, including where necessary, the attachment of related correspondence. See, for example, Pa.R.C.P. 1019(i).

(iii) *Sanctions for Failure to Cooperate:* The court at its discretion may strike, dismiss or deny the petition or motion for failure of the moving party to comply with the certification requirements of this rule, or may grant relief based solely upon the unreasonable refusal of opposing counsel to confer despite reasonable and good faith efforts of the moving party to comply with the certification requirements of this rule or may grant relief based solely upon the unreasonable refusal of opposing counsel to confer despite reasonable and good faith efforts of moving counsel to arrange such conference.

**Rule 208.3(a). Motions—Titles and Attachments.**

(i) *General; Attachments:* Generally, motions may be used to obtain relief upon undisputed facts of record, with several exceptions, one of which shall be that averments by counsel that pleadings, documents or discovery requests have been exchanged or transferred. In the latter event copies of all such documents shall be attached, unless already in the record, in which event they can be incorporated by reference. Every motion shall be in writing and shall be signed by its moving counsel or party; and shall be accompanied by a proposed form of order.

(ii) *Title:* The motion or reply should state in its title exactly what is being sought, by whom and against whom (e.g. rather than merely "motion," it should be designated Defendants' Motion for Sanctions Against Plaintiff or Additional Defendant's Second Motion for Sanctions Against Defendant Smith, etc.).

(iii) *Discovery Motions:* To promote uniformity of civil practice the following types of discovery matters shall be treated as motions, not as petitions, even though they may contain limited assertions of fact not of record:

- a. motion for sanctions for failure to answer interrogatories;
- b. motion for sanctions for failure to produce documents or things;
- c. motion for sanctions for failure to appear for deposition;

- d. motion to compel mental or physical examination;
- e. motion to compel further answers to interrogatories; and
- f. motion to compel further production of documents.

(iv) *Briefing Requirements; Exceptions:* Generally, a supporting brief, in accordance with 39th Jud. Dist. R.C.P. 210 and praecipe for determination in the form described in 39th Jud. Dist. R.C.P. 206.4(c)(ix.) must be filed by the moving party with the motion and proposed order. No brief is necessary for the following motions:

a. motion for sanctions and/or to compel in discovery matters where the only relief sought is to compel answers to interrogatories, to compel a response to a request for production of documents or things, to compel a party to appear for his or her deposition, physical examination or mental examination, or to permit entry upon land for inspection, where the motion is based upon the failure of the other party or parties to have responded to the discovery or other request and the motion is believed to be uncontested, but if the party from whom discovery, examination or inspection, etc. is sought or any other party to the action has objected to the requested discovery, examination, inspection, etc. and/or the moving party believes the motion to be contested, then briefs, in accordance with 39th Jud. Dist. R.C.P. 210, shall be submitted as set forth above;

b. any motion supported by a stipulation of counsel.

(v) *Failure to File Brief or Praecipe for Determination:* If the moving party has failed to file a praecipe for determination, any non-moving party may file a praecipe for determination to bring the motion before the Court; if the moving party has not filed a brief, the non-moving party shall not be required to file one, and the court may consider the moving party to have abandoned his or her position.

(vi) *Service and Certification:* For service and certification requirements, see Rule 206.4(c)(v).

(vii) *Decision:* For the procedure for getting motions decided, see Rule 206.4(c)(viii.) and (ix.).

#### **Rule 208.3(b). Responses.**

All other parties shall file their responses, if any, to the motion and their briefs, in accordance with 39th Jud. Dist. R.C.P. 210, within twenty (20) days of the filing of the motion, except with respect to motions for summary judgment, to which responses and briefs must be filed within thirty (30) days after service of the motion. The assigned judge may, in his or her discretion, extend the time for filing of briefs or waive the requirement. The court may treat a motion as uncontested if no response is filed. Upon the filing of a praecipe for determination, as described in Rule 206.4(c)(ix.), the matter will be referred to the court for disposition.

#### **Rule 210. Form of Briefs.**

A. *Content Generally.* Briefs shall be typewritten and double spaced, except for quotations, on paper 8 1/2 inches by 11 inches in size, and shall be bound at the top, not at the side.

B. *Brief of the Moving Party.* The brief of the moving party shall contain:

1. A statement noting whether or not oral argument is requested.
2. A procedural history of the case.

3. A statement of facts relevant to the issue for disposition.

4. A statement of the question or questions presented.

5. Argument with citations of the authority relied upon.

6. Conclusion.

7. A copy of, or reference to, the pertinent parts of any relevant document, report, recommendation or order.

C. *Brief of the Opposing Party.* The brief of the opposing party shall contain everything required in the brief of the moving party except it need not contain a procedural history of the case.

D. *Briefs Longer than 10 Pages.* The brief of each party, if more than 10 pages in length, shall contain an index and a table of citations of cases and statutes therein, with reference to the pages at which they appear in the brief.

#### **Rule 1028(c). Preliminary Objections; Disposition.**

(i.) *Argument Court Calendar.* Unless contradicted by other provisions of the rules, Preliminary Objections shall follow the procedures set forth in Local Rule 206.4(c) and shall be disposed of as set forth in this rule. Except as otherwise provided by the Court, Arguments in the Franklin County Branch shall be held on the first Thursday of each month excluding August, except when that Thursday is a legal holiday, in which case the Argument shall be held on the next business day, and in the Fulton County Branch Arguments shall be held on days as established by the annual Court calendar.

(ii.) *Listing and Briefing Cases.* Causes for Argument shall be listed in the Prothonotary's office in a docket to be provided for that purpose. Any party may list a cause by the filing of a Praecipe directing the Prothonotary to list the cause for oral argument. The Praecipe shall be accompanied by a Cover Sheet substantially in the form set forth in Exhibit A, attached.

##### *A. Responsibility of Party Requesting Relief.*

1. Within twenty (20) days of the placing of any matter on the list for argument, the party requesting relief shall file an original and one copy of a supporting brief together with any supporting documents.

2. The party requesting relief shall serve copies of its brief on all opposing parties together with a notice to file a responsive brief within twenty (20) days of service, and shall file proof of service of the notice.

3. Upon the failure of the party requesting relief to timely file and serve its brief, the Court may, sua sponte or upon petition of the opposing party, order the matter stricken from the argument list.

4. Rebuttal briefs may be filed only with the permission of the Court.

##### *B. Responsibility of the Opposing Party.*

1. Any party in opposition to the matter shall file an original and one copy of its responsive brief within twenty (20) days of service of the brief of the party requesting relief. Concurrently, the opposing party shall serve copies of its brief on the party requesting relief and any other opposing parties.

2. If an opposing party fails to file and serve its brief within the time period required, the Court may consider such failure to be a waiver of opposition and shall sua sponte, or upon petition of the party requesting relief, either [a] grant the relief requested, so long as such



action does not result in dismissal of the case; or [b] exclude the opposing party from oral argument.

C. Scheduling Oral Argument.

1. Any party may schedule a case for argument on the next scheduled argument court date by the filing of a praecipe with the Prothonotary on or before the Thursday which is four weeks preceding the day for argument, and further provided that the praecipe scheduling the case for argument or submission certifies that all briefs have been filed or that the opposition brief has not been timely filed.

2. Any party scheduling a case for argument or submission shall give written notice thereof to all other parties within two (2) days, and shall certify such notice on the record. Failure to give such notice may be grounds for striking the case from the list.

(iii.) Listing By Agreement. The parties may agree in writing to add a cause to the Argument List at any time so long as service of briefs may be made in accordance with the time requirements of Section (ii.), supra. The Court may order a cause listed for Argument at the next scheduled Argument Court or on such other day as it may direct, and in that event, it may regulate the time for service of briefs.

(iv.) Fact Determination. When the ascertainment of facts is necessary for the proper disposition of a cause listed for Argument, such facts may be determined by deposition or as otherwise provided in the Pennsylvania Rules of Civil Procedure.

(v.) Oral Argument. The person seeking the Order applied for shall argue first, and may also argue in reply, if permitted by the Court, but such reply shall be limited to answering Arguments advanced by the respondent. In causes where there is more than one respondent, the order of Argument by the respondents shall be as directed by the Court.

(vi.) Briefs. Briefs shall conform to the requirements of 39th Jud. Dist. R.C.P. 210.

(vii.) Disposition By Briefs Alone or Upon Oral Argument. Oral argument may be dispensed with provided that there is agreement of the parties and approval of the Court. The Court reserves the right to require oral argument in any case.

(viii.) Striking Cases From the List. Cases may be continued or stricken from the argument list only pursuant to order of court. A party may request such an order of court by petition setting forth the basis for the request. Such petition must include certification regarding concurrence or non-concurrence of all other parties.

Case Name: \_\_\_\_\_
Docket No.: \_\_\_\_\_

Cover Sheet, Oral Argument on Preliminary Objections
Local Rule 1028(c)
(one copy to be filed by listing party; to be completed by Prothonotary, and transmitted along with the Briefs to the assigned Judge)

Table with 3 columns: Item Number, Description, Date Filed, and Rule Reference. Includes sections for Listing and Briefing of Cases, Scheduling Oral Argument, and Prothonotary check-off.

Exhibit A to Local Rule 1028(c)

(Revised 01-2005)

**Rule 1034(a). Motions for Judgment on the Pleadings; Disposition.**

(i.) *Argument Court Calendar.* Unless contradicted by other provisions of the rules, Motions for Judgment on the Pleadings shall follow the procedures set forth in Local Rule 206.4(c) and shall be disposed of as set forth in this rule. Except as otherwise provided by the Court, Arguments in the Franklin County Branch shall be held on the first Thursday of each month excluding August, except when that Thursday is a legal holiday, in which case the Argument shall be held on the next business day, and in the Fulton County Branch Arguments shall be held on days as established by the annual Court calendar.

(ii.) *Listing and Briefing Cases.* Causes for Argument shall be listed in the Prothonotary's office in a docket to be provided for that purpose. Any party may list a cause by the filing of a Praeceptum directing the Prothonotary to list the cause for oral argument. The Praeceptum shall be accompanied by a Cover Sheet substantially in the form set forth in Exhibit A, attached.

**A. Responsibility of Party Requesting Relief.**

1. Within twenty (20) days of the placing of any matter on the list for argument, the party requesting relief shall file an original and one copy of a supporting brief together with any supporting documents.

2. The party requesting relief shall serve copies of its brief on all opposing parties together with a notice to file a responsive brief within twenty (20) days of service, and shall file proof of service of the notice.

3. Upon the failure of the party requesting relief to timely file and serve its brief, the Court may, sua sponte or upon petition of the opposing party, order the matter stricken from the argument list.

4. Rebuttal briefs may be filed only with the permission of the Court.

**B. Responsibility of the Opposing Party.**

1. Any party in opposition to the matter shall file an original and one copy of its responsive brief within twenty (20) days of service of the party requesting relief's brief. Concurrently, the opposing party shall serve copies of its brief on the party requesting relief and any other opposing parties.

2. If an opposing party fails to file and serve its brief within the time period required, the Court may consider such failure to be a waiver of opposition and shall sua sponte, or upon petition of the party requesting relief, either [a] grant the relief requested, so long as such

action does not result in dismissal of the case; or [b] exclude the opposing party from oral argument.

**C. Scheduling Oral Argument.**

1. Any party may schedule a case for argument on the next scheduled argument court date by the filing of a praecipe with the Prothonotary on or before the Thursday which is four weeks preceding the day for argument, and further provided that the praecipe scheduling the case for argument or submission certifies that all briefs have been filed or that the opposition brief has not been timely filed.

2. Any party scheduling a case for argument or submission shall give written notice thereof to all other parties within two (2) days, and shall certify such notice on the record. Failure to give such notice may be grounds for striking the case from the list.

(iii.) *Listing By Agreement.* The parties may agree in writing to add a cause to the Argument List at any time so long as service of briefs may be made in accordance with the time requirements of Section (ii.), supra. The Court may order a cause listed for Argument at the next scheduled Argument Court or on such other day as it may direct, and in that event, it may regulate the time for service of briefs.

(iv.) *Fact Determination.* When the ascertainment of facts is necessary for the proper disposition of a cause listed for Argument, such facts may be determined by deposition or as otherwise provided in the Pennsylvania Rules of Civil Procedure.

(v.) *Oral Argument.* The person seeking the Order applied for shall argue first, and may also argue in reply, if permitted by the Court, but such reply shall be limited to answering Arguments advanced by the respondent. In causes where there is more than one respondent, the order of Argument by the respondents shall be as directed by the Court.

(vi.) *Briefs.* Briefs shall conform to the requirements of 39th Jud. Dist. R.C.P. 210.

(vii.) *Disposition By Briefs Alone or Upon Oral Argument.* Oral argument may be dispensed with provided that there is agreement of the parties and approval of the Court. The Court reserves the right to require oral argument in any case.

(viii.) *Striking Cases From the List.* Cases may be continued or stricken from the argument list only pursuant to order of court. A party may request such an order of court by petition setting forth the basis for the request. Such petition must include certification regarding concurrence or non-concurrence of all other parties.

Case Name: _____
Docket No.: _____

Cover Sheet, Oral Argument on Preliminary Objections  
Local Rule 1034(a)  
(one copy to be filed by listing party; to be completed by Prothonotary,  
and transmitted along with the Briefs to the assigned Judge)

	<i>Date Filed</i>	<i>Rule Reference</i>
<b>Listing and Briefing of Cases</b>		
1. Any party files Praeceptum to list cause for argument	_____	1034(a)(ii.)
2. Party requesting relief files two copies of brief [not later than twenty (20) days after listing matter for argument]	_____	034(a)(ii.)(A)(1)

	<i>Date Filed</i>	<i>Rule Reference</i>
3. Responding party files two copies of brief [not later than twenty (20) days after service of brief of party requesting relief] Scheduling Oral Argument	_____	034(a)(ii.)(B)(1)
4. Party requesting relief <b>or</b> Responding party may file a Praecepte to schedule the case for oral argument [not later than Thursday which is four weeks preceding the date for oral argument] Prothonotary shall check one: <input type="checkbox"/> all briefs have been filed <input type="checkbox"/> opposition brief has not been timely filed	_____	034(a)(ii.)(C)(1) 1034(a)(ii.)(C)(1)
5. Party scheduling case for oral argument certifies having given notice to other parties that matter has been scheduled for oral argument [not later than two (2) days after filing praecipe to schedule the the case for oral argument] Argument has been scheduled to be held on: _____	_____	1034(a)(ii.)(C)(2)

## Exhibit A to Local Rule 1034(a)

(Revised 01-2005)

**Rule 1035.2(a). Motions for Judgment on the Pleadings; Disposition.**

(i.) *Argument Court Calendar.* Unless contradicted by other provisions of the rules, Motions for Summary Judgment shall follow the procedures set forth in Local Rule 206.4(c) and shall be disposed of as set forth in this rule. Except as otherwise provided by the Court, Arguments in the Franklin County Branch shall be held on the first Thursday of each month excluding August, except when that Thursday is a legal holiday, in which case the Argument shall be held on the next business day, and in the Fulton County Branch Arguments shall be held on days as established by the annual Court calendar.

(ii.) *Listing and Briefing Cases.* Summary judgment motions may be set down for disposition only after expiration of the thirty (30) days authorized by Pa.R.C.P. 1035.3(a) for the filing of a response to the motion. Causes for Argument shall be listed in the Prothonotary's office in a docket to be provided for that purpose. Any party may list a cause by the filing of a Praecepte directing the Prothonotary to list the cause for oral argument. The Praecepte shall be accompanied by a Cover Sheet substantially in the form set forth in Exhibit A, attached.

A. *Responsibility of Moving Party.*

1. Within twenty (20) days of the placing of any matter on the list for argument, the party requesting relief shall file an original and one copy of a supporting brief together with any affidavits, depositions, transcripts and other support supporting documents.

2. The party requesting relief shall serve copies of its brief on all opposing parties together with a notice to file a responsive brief within twenty (20) days of service, and shall file proof of service of the notice.

3. Upon the failure of the party requesting relief to timely file and serve its brief, the Court may, sua sponte or upon petition of the opposing party, order the matter stricken from the argument list.

4. Rebuttal briefs may be filed only with the permission of the Court.

B. *Responsibility of the Opposing Party.*

1. Any party in opposition to the matter shall file an original and one copy of its responsive brief within twenty (20) days of service of the party requesting relief's brief. Concurrently, the opposing party shall serve copies of its brief on the moving party and any other opposing parties.

2. If an opposing party fails to file and serve its brief within the time period required, the Court may consider such failure to be a waiver of opposition and shall sua sponte, or upon petition of the party requesting relief, either [a] grant the relief requested, so long as such action does not result in dismissal of the case; or [b] exclude the opposing party from oral argument.

C. *Scheduling Oral Argument.*

1. Any party may schedule a case for argument on the next scheduled argument court date by the filing of a praecipe with the Prothonotary on or before the Thursday which is four weeks preceding the day for argument, and further provided that the praecipe scheduling the case for argument or submission certifies that all briefs have been filed or that the opposition brief has not been timely filed.

2. Any party scheduling a case for argument or submission shall give written notice thereof to all other parties within two (2) days, and shall certify such notice on the record. Failure to give such notice may be grounds for striking the case from the list.

(iii.) *Listing By Agreement.* The parties may agree in writing to add a cause to the Argument List at any time so long as service of briefs may be made in accordance with the time requirements of Section (ii.), supra. The Court may order a cause listed for Argument at the next scheduled Argument Court or on such other day as it may direct, and in that event, it may regulate the time for service of briefs.

(iv.) *Fact Determination.* When the ascertainment of facts is necessary for the proper disposition of a cause listed for Argument, such facts may be determined by deposition or as otherwise provided in the Pennsylvania Rules of Civil Procedure.

(v.) *Oral Argument.* The person seeking the Order applied for shall argue first, and may also argue in reply,

if permitted by the Court, but such reply shall be limited to answering Arguments advanced by the respondent. In causes where there is more than one respondent, the order of Argument by the respondents shall be as directed by the Court.

(vi.) *Briefs.* Briefs shall conform to the requirements of 39th Jud. Dist. R.C.P. 210.

(vii.) *Disposition By Briefs Alone or Upon Oral Argument.* Oral argument may be dispensed with provided

that there is agreement of the parties and approval of the Court. The Court reserves the right to require oral argument in any case.

(viii.) *Striking Cases From the List.* Cases may be continued or stricken from the argument list only pursuant to order of court. A party may request such an order of court by petition setting forth the basis for the request. Such petition must include certification regarding concurrence or non-concurrence of all other parties.

Case Name: _____
Docket No.: _____

**Cover Sheet, Oral Argument on Preliminary Objections**  
**Local Rule 1035.2(a)**  
 (one copy to be filed by listing party; to be completed by Prothonotary, and transmitted along with the Briefs to the assigned Judge)

	<i>Date Filed</i>	<i>Rule Reference</i>
<b>Listing and Briefing of Cases</b>		
1. Any party files Praecept to list cause for argument	_____	1035.2(a)(ii.)
2. Party requesting relief files two copies of brief [not later than twenty (20) days after listing matter for argument]	_____	1035.2(a)(ii.)(A)(1)
3. Responding party files two copies of brief [not later than twenty (20) days after service of brief of party requesting relief]	_____	1035.2(a)(ii.)(B)(1)
<b>Scheduling Oral Argument</b>		
4. Party requesting relief <b>or</b> Responding party may file a Praecept to schedule the case for oral argument [not later than Thursday which is four weeks preceding the date for oral argument]	_____	1035.2(a)(ii.)(C)(1)
Prothonotary shall check one:		
<input type="checkbox"/> all briefs have been filed		
<input type="checkbox"/> opposition brief has not been timely filed		
5. Party scheduling case for oral argument certifies having given notice to other parties that matter has been scheduled for oral argument [not later than two (2) days after filing praecipe to schedule the case for oral argument]	_____	1035.2(a)(ii.)(C)(2)
Argument has been scheduled to be held on: _____		

**Exhibit A to Local Rule 1035.2(a)**

(Revised 01-2005)

[Pa.B. Doc. No. 05-317. Filed for public inspection February 18, 2005, 9:00 a.m.]

## COMMONWEALTH COURT

**Regular Sessions of the Commonwealth Court for the Year 2006; 126 M.D. No. 3**

**Order**

*And Now*, this 4th day of February 2005, it is ordered that the argument sessions of the Commonwealth Court of Pennsylvania shall be held in the year 2006 as follows:

<i>Session</i>	<i>Situs</i>
Jan 30—Feb. 3	Pittsburgh
Feb. 27—March 3	Philadelphia
April 3—7	Harrisburg

<i>Session</i>	<i>Situs</i>
May 8—12	Pittsburgh
June 5—9	Philadelphia
September 11—15	Harrisburg
October 16—20	Pittsburgh
November 13—17	Philadelphia
December 11—15	Harrisburg

**JAMES GARDNER COLINS,**  
*President Judge*

[Pa.B. Doc. No. 05-318. Filed for public inspection February 18, 2005, 9:00 a.m.]