

THE COURTS

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 1000]

Amendment of Note to Rule 1042.3(a)(2) Governing the Certificate of Merit; No. 426 Civil Procedural Rules; Doc. No. 5

Order

Per Curiam:

And Now, this 11th day of February, 2005, the Note to Pennsylvania Rule of Civil Procedure 1042.3(a)(2) is amended to read as follows.

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

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

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1000. ACTIONS

Subchapter B. ACTION IN TRESPASS

PROFESSIONAL LIABILITY ACTIONS

Rule 1042.3. Certificate of Merit.

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

* * * * *

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

Official Note: [Certificates of merit must be filed as to the other licensed professionals whether or not they are named defendants in the action.] A certificate of merit, based on the statement of an appropriate licensed professional required by subdivision (a)(1), must be filed as to the other licensed professionals for whom the defendant is responsible. The statement is not required to identify the

specific licensed professionals who deviated from an acceptable standard of care.

* * * * *

[Pa.B. Doc. No. 05-354. Filed for public inspection February 25, 2005, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CH. 10]

Proposed Amendments to Pa.Rs.Crim.P. 1001

The Criminal Procedural Rules Committee is considering a proposal that would amend Pa.Rs.Crim.P. 1001 (Disposition of Criminal Cases—Philadelphia Municipal Court) to require that cases from the Municipal Court must be transferred from the Municipal Court to the Court of Common Pleas upon a certification by the attorney for the Commonwealth that trial in the case will be tried before a jury. 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 Reports.

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

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

Anne T. Panfil, Chief Staff Counsel Supreme Court of Pennsylvania
Criminal Procedural Rules Committee
5035 Ritter Road, Suite 800
Mechanicsburg, PA 17055
fax: (717) 795-2106
e-mail: criminal.rules@pacourts.us

no later than Wednesday, April 6, 2005.

By the Criminal Procedural Rules Committee

NICHOLAS J. NASTASI,
Chair

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE CHAPTER 10. RULES OF CRIMINAL PROCEDURE FOR THE PHILADELPHIA MUNICIPAL COURT

Rule 1001. Disposition of Criminal Cases—Philadelphia Municipal Court.

* * * * *

(D) A Municipal Court case shall be transferred from the Municipal Court to the Court of Common Pleas upon the filing in the Municipal Court of a

written certification by an attorney for the Commonwealth stating that the case will be tried before a jury.

Comment

This rule, which defines "Municipal Court Case," is intended to ensure that the Municipal Court will take dispositive action, including trial and verdict when appropriate, in any criminal case that does not involve a felony, excluding summary cases under the Vehicle Code. The latter are under the jurisdiction of the Philadelphia Traffic Court, see 42 Pa.C.S. §§ 1301—1303, 1321.

Paragraph (D) was added in 2005 in view of the 1998 amendment to article I, § 6 of the Pennsylvania Constitution that provides that "the Commonwealth shall have the same right to trial by jury as does the accused."

Official Note: Present Rule 6001 adopted March 28, 1973, effective March 28, 1973, replacing prior Rule 6001; amended June 28, 1974, effective July 1, 1974; paragraph (C) added February 10, 1975, effective immediately; title amended July 1, 1980, effective August 1, 1980; Comment revised January 28, 1983, effective July 1, 1983; amended June 19, 1996, effective July 1, 1996; amended August 28, 1998, effective immediately; renumbered Rule 1001 and Comment revised March 1, 2000, effective April 1, 2001; amended August 24, 2004, effective August 1, 2005; **amended** , 2005, effective , 2005.

Committee Explanatory Reports:

* * * * *

Report explaining the proposed addition of paragraph (D) concerning the Commonwealth's right to transfer a Municipal Court Case to the Court of Common Pleas for trial by jury published at 35 Pa.B. 1417 (February 26, 2005).

REPORT

Proposed Amendments to Pa.Rs.Crim.P. 1001 Philadelphia Municipal Court—Transfer of Cases

Introduction

The Criminal Procedural Rules Committee recently considered correspondence suggesting an amendment to Rule 1001 that would accommodate the Commonwealth's right to a jury trial as established by the 1998 amendment to Article I, § 6 of the Pennsylvania Constitution providing "the Commonwealth shall have the same right to a trial by jury as does the accused."¹

The Philadelphia Municipal Court's jurisdiction over misdemeanors and the prohibition on jury trials in Municipal Court were originally established in 1968 in Schedule Article 5, § 16 of the Pennsylvania Constitution. The statutory jurisdictional authority for the Municipal Court initially was provided in 1976 in the Judicial Code, 42 Pa.C.S. § 1123, which states that the Municipal Court has jurisdiction over "Criminal offenses by any person (other than a juvenile) for which no prison term may be imposed . . . of not more than five years. . . ." The statute specifically states that a defendant has no right to a jury trial in Municipal Court but shall have the right of appeal for trial de novo, including the right to trial by jury, to the court of common pleas. Rule 1001, originally adopted in 1973, provides a procedure for transfer to the Court of Common Pleas and by-passing of Municipal Court proceedings in two situations. The first is upon the certification of the defense counsel in order to assert the

right to jury trial. The second is upon certification by both defense and prosecution upon the grounds that the trial before the Municipal Court will be so time consuming as to unduly disrupt court business. In either case, approval for such a transfer must be granted by the President Judge of the Court of Common Pleas.

As indicated above, both 42 Pa.C.S.A. § 1123 and Rule 1001 were established well before the 1998 constitutional amendment that established the Commonwealth's right to a jury trial. As a result, the constitutional, statutory, and rule provisions are silent on how to effectuate the Commonwealth's jury trial right in misdemeanor cases in Philadelphia creating a procedural gap which needs to be rectified.

Since Rule 1001 already provides a vehicle to by-pass Municipal Court proceedings for the defendant's assertion of the right to jury trial, an amendment to that Rule is proposed that would similarly effectuate the Commonwealth's right to trial by jury in such cases.

Discussion of Proposed Amendment to Rule 1001

The Committee is proposing a new paragraph (D) be added to Rule 1001 that would require the transfer of a case from Philadelphia Municipal Court to the Court of Common Pleas upon the filing of a written certification by the attorney for the Commonwealth stating that the Commonwealth is seeking a trial by jury. Recognizing that double jeopardy issues are implicated when the Commonwealth seeks an appeal from a Municipal Court decision, the Committee agreed that the transfer of such cases must be mandatory in order to preserve the Commonwealth's right to a jury trial. Accordingly, unlike the other transfer provisions in Rule 1001(C), new paragraph (D) does not provide for the approval of the President Judge of the Court of Common Pleas.

A cross-reference to the constitutional provision establishing the Commonwealth's right to a jury trial would be added to the Rule 1001 Comment.

[Pa.B. Doc. No. 05-355. Filed for public inspection February 25, 2005, 9:00 a.m.]

Title 25—LOCAL COURT RULES

FAYETTE COUNTY

Local Rule 575; Criminal Division No. 1 AD 2005

Order

And Now, this 8th day of February, 2005, pursuant to Pennsylvania Rule of Criminal Procedure 105, it is ordered that Local Rule 575 is hereby amended to read as follows.

The Clerk of Courts is directed as follows:

- (1) Seven certified copies of the Local Rules shall be filed with the Administrative Office of Pennsylvania Courts.
- (2) Two certified copies and diskette of the Local Rules shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
- (3) One certified copy of the Local Rules shall be sent to the State Criminal Procedural Rules Committee.

¹ The 1999 amendments to Rule of Criminal Procedure 620 (Waiver of Jury Trial) similarly acknowledged the Commonwealth's right to trial by jury.

(4) One certified copy shall be sent to the Fayette County Law Library and to the Editor of the *Fayette Legal Journal*.

This amendment shall be effective 30 days after the date of publication in the *Pennsylvania Bulletin*.

By the Court

CONRAD B. CAPUZZI,
President Judge

F.C.R.Crim.P. 575 Motions Court Procedure

(a) In order to provide a uniform means of presenting to the Court all matters which require action by the Court, Motions Court will be held daily at 9:00 o'clock A.M. in the courtroom of the Motions Judge. The name of the assigned Motions Judge for each day shall be published periodically in the *Fayette County Legal Journal*.

(b) All applications for Court action, including motions, petitions, and any other applications shall be presented to the Court by following this Motions Court procedure. **The party presenting the motion to the Court is to select the day on which the motion will be listed for Motions Court.**

(c) As used herein, the term "motion" shall include every type of motion, petition, or other application for action by the Court, and shall be designated as either "Priority" or "Routine," presentation of the latter not requiring the presence of the parties or counsel for either side. By definition, a "priority" motion is one which may be subject to contest or is so unusual as to require discussion or explanation, while "routine" motions include all other applications, such as uncontested matters to which the parties have consented in writing, requests for hearing, or requests for later argument.

(d) All documents filed shall be on 8 1/2 inch x 11 inch paper and shall comply with the following requirements:

(1) The document shall be prepared on good quality white paper.

(2) The text must be double spaced. Margins must be at least one inch on all four sides.

(3) The lettering shall be clear and legible shall be on only one side of a page. Exhibits and similar supporting documents and paperbooks may be lettered on both sides of the page.

(4) Documents and papers must be firmly bound. Any metal fasteners or staples must be covered.

(5) No backers or top strips are permitted.

(e) All motions and other applications for Court action presented as uncontested require certification as such, if no joinder has been attached.

(f) Any motion relating to discovery must contain a certification that counsel has conferred or attempted to confer with the District Attorney in order to resolve the matter without court action.

(g) All motions filed and served pursuant to this rule shall include a Certificate of Service, signed by the party's attorney, or the party if unrepresented, setting forth the date and manner of service (personal delivery, mail, facsimile), and the names, addresses and phone numbers of the persons served. The Certificate of Service shall be substantially in the following form:

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the within document upon the persons and in the manner indicated below.

1. Service by certified mail, first class mail:
(Name of person served) _____, _____
Phone Number _____ Address; (and/or)
2. Service by facsimile at FAX number _____ :
(Name of person served) _____, _____
Phone number _____ Address; (and/or)
3. Service in person:
(Name of person served) _____, _____
Phone number _____ Address

Date: _____ Signature _____

(h) All motions shall be accompanied by a Certificate of Presentation as set forth in F.C.R.Crim.P 575(o).

(i) All motions and other applications for Court action must set forth a specific citation to relevant constitutional provisions, case law, statutory provisions or rules that provide the Court's authority to grant the relief requested. Said citation shall be placed on a Certificate of Presentation.

(j) The moving party shall file the original motion, Certificate of Presentation, and any attachments in the appropriate filing office before presentment in Motions Court. **An original proposed order (if any), a copy of the Certificate of Presentation, Certificate of Service, and motion, assembled in that order, shall be delivered to the Court Administrator and every other party of record.** Pursuant to Pa.R.Crim.P. 576(B)(1), all motions and other documents for which filing is required shall be served on each party so as to be received at least two (2) business days before presentation in Motions Court, unless there are emergency circumstances specified in the motion requiring presentation within a shorter time.

(k) All priority motions pertaining to matters already ruled on by a Judge shall be presented to that Judge in Motions Court, except in emergencies as set forth in paragraph (j) of this Rule immediately above.

(l) The Court Administrator shall maintain a Motions Docket and shall make daily entries of all motions filed and the disposition thereof.

(m) The Court Administrator shall assign any motion not otherwise assigned to a Judge for disposition.

(n) Failure to completely provide the information required by the Certificates of Presentation and Service may result in the matter not being listed for Motions Court.

(o) The Certificate of Presentation shall be substantially in the following form:

IN THE COURT OF COMMON PLEAS OF
FAYETTE COUNTY, PENNSYLVANIA

:
:
:
:
:
: NO. _____ OF _____

CERTIFICATE OF PRESENTATION

1. The undersigned, _____, represents _____, the moving party herein.

2. The attached motion will be presented in Motions Court on _____, _____, 20____ at 9:00 o'clock A.M.

3. The attached motion shall be classified as a Routine/Priority motion. (If the motion is Routine, parties or counsel are not required to be present in Motions Court.)

4. Judge _____ has been assigned or has previously ruled on a matter relevant to this motion. (See attached relevant ruling.)

5. The SPECIFIC citation for the Court's authority to grant the relief requested is _____.

6. Estimated time for hearing or argument to resolve the motion on its merits: _____.

Respectfully submitted,

Date: _____

[Pa.B. Doc. No. 05-356. Filed for public inspection February 25, 2005, 9:00 a.m.]

FAYETTE COUNTY

Local Rule 1915.3 Fees and Costs; No. 306 of 2005 GD

Order

And Now, this 8th day of February, 2005, it is ordered that Fayette County Civil Rule 1915.3 is hereby amended to read as follows.

The Prothonotary is directed as follows:

(1) Seven certified copies of the Local Rule shall be filed with the Administrative Office of Pennsylvania Courts.

(2) Two certified copies and diskette of the Local Rule shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

(3) One certified copy of the Local Rule shall be sent to the Domestic Relations Procedural Rules Committee.

(4) One certified copy shall be sent to the Fayette County Law Library.

(5) One certified copy shall be sent to the Editor of the *Fayette Legal Journal*.

This Local Rule shall be continuously available for public inspection and copying in the office of the Prothonotary. Upon request and payment of reasonable costs of reproduction and mailing, the Prothonotary shall furnish to any person a copy of any local rule.

This amendment to the Local Rule shall be effective April 1, 2005.

By the Court

CONRAD B. CAPUZZI,
President Judge

F.C.R. 1915.3 Fees and Costs

(a) Upon the filing of any complaint, petition, or motion relating to child custody, partial custody, visitation, or contempt, where there is at the time of the filing no agreed-upon Order disposing of the issues, the moving party shall pay to the Prothonotary (in addition to any other fees), a non-refundable conciliation fee in the

amount of One Hundred (\$100.00) Dollars, or shall file to proceed in forma pauperis in accordance with PA.R.C.P. 240.

[Pa.B. Doc. No. 05-357. Filed for public inspection February 25, 2005, 9:00 a.m.]

FAYETTE COUNTY

Local Rule 3.8; Orphans' Division No. 602 of 2004

Order

And Now, this 8th day of February, 2005, pursuant to Pennsylvania Orphans' Court Rule 1.2, it is ordered that Local Rule 3.8 is hereby amended to read as follows.

The Clerk of the Orphans' Court is directed as follows:

(1) Seven certified copies of the Local Rules shall be filed with the Administrative Office of Pennsylvania Courts.

(2) Two certified copies and diskette of the Local Rules shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

(3) One certified copy shall be sent to the Fayette County Law Library and to the Editor of the *Fayette Legal Journal*.

This Local Rule shall be effective 30 days after the date of publication in the *Pennsylvania Bulletin*.

By the Court

CONRAD B. CAPUZZI,
President Judge

O.C.R. 3.8 Motions Court Procedure

(a) In order to provide a uniform means of presenting to the Court all matters which require action by the Court, Motions Court will be held daily at 9:00 o'clock A.M. in the courtroom of the Motions Judge. The name of the assigned Motions Judge for each day shall be published periodically in the *Fayette County Legal Journal*.

(b) All applications for Court action, including motions, petitions, and any other applications shall be presented to the Court by following this Motions Court procedure. **The party presenting the motion to the Court is to select the day on which the motion will be listed for Motions Court.**

(c) As used herein, the term "motion" shall include every type of motion, petition, or other application for action by the Court, and shall be designated as either "Priority" or "Routine," presentation of the latter not requiring the presence of the parties or counsel for either side. By definition, a "priority" motion is one which may be subject to contest or is so unusual as to require discussion or explanation, while "routine" motions include all other applications, such as uncontested matters to which the parties have consented in writing, requests for hearing, or requests for later argument.

(d) **All documents filed shall be on 8 1/2 inch x 11 inch paper and shall comply with the following requirements:**

(1) The document shall be prepared on good quality white paper.

(2) The text must be double spaced. Margins must be at least one inch on all four sides.

(3) The lettering shall be clear and legible shall be on only one side of a page. Exhibits and similar supporting documents and paperbooks may be lettered on both sides of the page.

(4) Documents and papers must be firmly bound. Any metal fasteners or staples must be covered.

(5) No backers or top strips are permitted.

(e) All motions and other applications for Court action presented as uncontested require certification as such, if no joinder has been attached.

(f) All motions filed and served pursuant to this rule shall include a Certificate of Service, signed by the party's attorney, or the party if unrepresented, setting forth the date and manner of service (personal delivery, mail, facsimile), and the names, addresses and phone numbers of the persons served. The Certificate of Service shall be substantially in the following form:

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the within document upon the persons and in the manner indicated below.

- 1. Service by certified mail, first class mail: (Name of person served) _____, _____ Phone Number _____ Address; (and/or)
2. Service by facsimile at FAX number _____: (Name of person served) _____, _____ Phone number _____ Address; (and/or)
3. Service in person: (Name of person served) _____, _____ Phone number _____ Address

Date: _____ Signature _____

(g) All motions shall be accompanied by a Certificate of Presentation as set forth in O.C.R. 3.8(n).

(h) All motions and other applications for Court action must set forth a specific citation to relevant constitutional provisions, case law, statutory provisions or rules that provide the Court's authority to grant the relief requested. Said citation shall be placed on a Certificate of Presentation.

(i) The moving party shall file the original motion, Certificate of Presentation, and any attachments in the appropriate filing office before presentment in Motions Court. An original proposed order, a copy of the Certificate of Presentation, Certificate of Service, and motion assembled in that order, shall be delivered to the Court Administrator and every other party of record. Such copies and notice shall be given so as to be received at least two (2) business days before

presentation in Motions Court, unless there are emergency circumstances specified in the motion requiring presentation within a shorter time.

(j) All priority motions pertaining to matters already ruled on by a Judge shall be presented to that Judge in Motions Court, except in emergencies as set forth in paragraph (i) of this Rule immediately above.

(k) The Court Administrator shall maintain a Motions Docket and shall make daily entries of all motions filed and the disposition thereof.

(l) The Court Administrator shall assign any motion not otherwise assigned to a Judge for disposition.

(m) Failure to completely provide the information required by the Certificates of Presentation and Service may result in the matter not being listed for Motions Court.

(n) The Certificate of Presentation shall be substantially in the following form:

IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY, PENNSYLVANIA

:
:
:
:
: NO. _____ OF _____

CERTIFICATE OF PRESENTATION

- 1. The undersigned, _____, represents _____, the moving party herein.
2. The attached motion will be presented in Motions Court on _____, _____, 20____ at 9:00 o'clock A.M.
3. The attached motion shall be classified as a Routine/Priority motion. (If the motion is Routine, parties or counsel are not required to be present in Motions Court.)
4. Judge _____ has been assigned or has previously ruled on a matter relevant to this motion. (See attached relevant ruling.)
5. The SPECIFIC citation for the Court's authority to grant the relief requested is _____.
6. Estimated time for hearing or argument to resolve the motion on its merits: _____.

Respectfully submitted,

Date: _____

[Pa.B. Doc. No. 05-358. Filed for public inspection February 25, 2005, 9:00 a.m.]