

THE COURTS

Title 210—APPELLATE PROCEDURE

PART II. INTERNAL OPERATING PROCEDURES

[210 PA. CODE CH. 65]

Amendments to the Superior Court Operating Procedures

The Superior Court of Pennsylvania has adopted amendments to its Internal Operating Procedures. These amendments are reflected in the Superior Court Internal Operating Procedures with amendments to Pa. Code 65.1 et seq.

These changes were approved on October 25, 2007, effective immediately.

Annex A

TITLE 210. APPELLATE PROCEDURE

PART II. INTERNAL OPERATING PROCEDURES

CHAPTER 65. INTERNAL OPERATING PROCEDURES OF THE SUPERIOR COURT

§ 65.22. Motions Review Subject to Motions Panel Disposition.

A. Motions to Quash or Dismiss Appeals, Petitions for Permission to Appeal pursuant to Pa.R.A.P. 312, 1301—1323 and 42 Pa.C.S. § 702(b), and Petitions for Review pursuant to Pa.R.A.P. 1501 et seq. Shall be subject to review and disposition by a panel of three [**commissioned**] judges.

§ 65.25. Assignment of Judges to Motions Duty.

* * * * *

B. The President Judge shall set the motions panel. Each motions panel shall consist of three [**commissioned**] judges and shall serve for a period of two months. During each two-month period, the motions panel shall consider all Section 65.22 motions ready for disposition during the two-month period.

[Pa.B. Doc. No. 07-2111. Filed for public inspection November 21, 2007, 9:00 a.m.]

Title 225—RULES OF EVIDENCE

ARTICLE VI. WITNESSES

[225 PA. CODE ART. VI]

Order Approving Revision of Comment to Pennsylvania Rule of Evidence 601; No. 429; Supreme Court Rules; Doc. No. 1

Order

Per Curiam:

Now, this 2nd day of November 2007, upon the recommendation of the Committee on Rules of Evidence,

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that the Comment to Pa.R.E. 601 is hereby revised in the attached form.

This *Order* shall be processed immediately in accordance with Pa.R.J.A. 103(b), and shall be effective December 14, 2007.

Annex A

TITLE 225. RULES OF EVIDENCE

PART VI. WITNESSES

Rule 601. Competency.

* * * * *

Comment—2007

Pa.R.E. 601[(a)] differs from F.R.E. 601 and is **intended to preserve existing Pennsylvania law**. 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) 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**] That rule was abandoned in *Commonwealth ex rel. Savruk v. Derby*, 235 Pa. Super. 560, 344 A.2d 624 (1975).

Pa.R.E. 601(b) **has no counterpart in the Federal Rules** and is consistent with Pennsylvania law concerning the **factors for determining competency of a person to testify, including persons with a mental defect and children of tender years.** See *Commonwealth v. Baker*, 466 Pa. 479, 353 A.2d 454 (1976) (standards for determining competency generally); *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). In *Commonwealth v. Delbridge*, 578 Pa. 641, 855 A.2d 27 (2003), the Supreme Court reiterated concern for the susceptibility of children to suggestion and fantasy and held that a child witness can be rendered incompetent to testify where unduly suggestive or coercive interview techniques corrupt or “taint” the child’s memory and ability to testify truthfully about that memory. See also *Commonwealth v. Judd*, 897 A.2d 1224 (2006).

The application of the standards in Pa.R.E. 601(b) is a factual question to be resolved by the Court[.] as a preliminary question under Rule 104. The party challenging competency bears the burden of proving grounds of incompetency by clear and convincing evidence. *Commonwealth v. Delbridge*, 578 Pa. at 664, 855 A.2d at 40. In *Commonwealth v. Washington*, 554 Pa. 559, 722 A.2d 643 (1998), a case involving child witnesses, the Supreme Court announced a per se rule requiring trial courts to conduct competency hearings outside the presence of the jury. 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. Gaertner*, 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.]

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FINAL REPORT

Rule 601: Competency

Revision of Comment

As the Committee continues to scrutinize decisions that impact on Pa.R.E. 601, two decisions of the Supreme Court led the Committee to recommend revisions to the Comment to Pa.R.E. 601. Although not changing the text of the rule, these decisions are important interpretations of the rule. In *Commonwealth v. Delbridge*, 578 Pa. 641, 855 A.2d 27 (2003), the Supreme Court addressed the effect on a child's capacity to testify as a result of techniques that "taint" the child's memory and ability to testify truthfully. The issue of competency is decided outside the presence of the jury. *Commonwealth v. Washington*, 554 Pa. 559, 722 A.2d 643 (1998).

[Pa.B. Doc. No. 07-2112. Filed for public inspection November 21, 2007, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 200]

Amendment of Rules 227.4 Governing Entry of Judgment upon Praecept of a Party and 237 Governing Notice of Praecept for Final Judgment; No. 486 Civil Procedural Rules; Doc. No. 5

Order

Per Curiam:

And Now, this 2nd day of November, 2007, Pennsylvania Rules of Civil Procedure 227.4 and 237 are amended to read as follows.

This Order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective January 1, 2008.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 200. BUSINESS OF COURTS

Rule 227.4. Entry of Judgment upon Praecept of a Party.

In addition to the provisions of any Rule of Civil Procedure or Act of Assembly authorizing the prothonotary to enter judgment upon praecipe of a party and except as otherwise provided by Rule 1042.72(e)(3), the prothonotary shall, upon praecipe of a party:

(1) enter judgment upon a nonsuit by the court, the verdict of a jury or the decision of a judge following a trial without jury, if

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Rule 237. Notice of Praecept for Final Judgment.

No praecipe for entry of judgment [on] upon a nonsuit by the court, a verdict of a jury or [for judgment on] a decision [in] of a judge following a trial without a jury shall be accepted by the prothonotary unless it includes a certificate that a copy of the praecipe has been mailed to each other party who has appeared in the action or to the attorney of record for each other party.

Explanatory Comment

Rule 227.4(1) provides for the entry of judgment upon a verdict of a jury or the decision of a judge without a jury when no motion for post-trial relief is filed or, if a motion is filed, the court does not timely dispose of it. Rule 237 provides that the prothonotary shall not accept any praecipe of judgment on a verdict or for judgment on a decision in a trial without a jury "unless it includes a certificate that a copy of the praecipe has been mailed to each other party who has appeared in the action or to the attorney of record for each other party." However, relief from a nonsuit entered by the court is also subject to a motion for post-trial relief (Rule 227.1(a)(3)), but Rule 227.4(1) and Rule 237 omit any reference to the nonsuit. The amendment remedies this omission by amending Rule 227.1(a)(1) and Rule 237 to include a nonsuit by the court together with the verdict of a jury and the decision of a judge.

*By the Civil Procedural
Rules Committee*

R. STANTON WETTICK, Jr.,
Chair

[Pa.B. Doc. No. 07-2113. Filed for public inspection November 21, 2007, 9:00 a.m.]

PART I. GENERAL

[231 PA. CODE CHS. 1300 AND 3000]

Amendment of Rule 1307 Governing Compulsory Arbitration and Rule 3023 Governing Judgments; Amendment of Notes to Rules 3021(a)(1), 3022(a) and 3026.2(a); No. 487; Civil Procedural Rules; Doc No. 5

Order

Per Curiam:

And Now, this 2nd day of November, 2007, the Pennsylvania Rules of Civil Procedure are amended as follows:

1. Rules 1307 and 3023 are amended to read as follows, and

2. Notes to Rules 3021(a)(1), 3022(a) and 3026.2(a) are amended to read as follows.

This Order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective January 1, 2008.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1300. ARBITRATION

Subchapter A. COMPULSORY ARBITRATION

Rule 1307. Award. Docketing. Notice. [**Lien.**] Judgment. Molding the Award.

- (a) The prothonotary shall
 - (1) enter the award of record

[**(A)**] upon the proper docket, [**and**

(B) when the award is for the payment of money, in the judgment index.

Official Note: Rule 3021 governs the requirements for the entry in the judgment index.]

(2) immediately send by ordinary mail a copy of the award, with notice of the date and time of its entry on the docket and the amount of arbitrators' compensation to be paid upon appeal, to each party's attorney of record, or to the party if the party has no attorney of record[;], and

- (3) note in the docket the date of mailing the notice.

(b) [**The award for the payment of money when entered in the judgment index shall be a lien on real property located within the county, title to which is recorded in the name of the person against whom the award was entered. The lien shall continue during the pendency of an appeal or until extinguished according to law.] Rescinded.**

(c) If no appeal is taken within thirty days after the entry of the award on the docket, the prothonotary on praecipe shall enter judgment on the award.

Official Note: Rule 3021(a)(3) requires the prothonotary to immediately enter in the judgment index a judgment entered on praecipe of a party.

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CHAPTER 3000. JUDGMENTS

Subchapter A. TRANSFER OF JUDGMENTS TO OTHER COUNTIES

Rule 3021. Verdict. Order. Judgment. Entry in Judgment Index.

(a) The prothonotary shall immediately enter in the judgment index

(1) a verdict or order for a specific sum of money with the notation "verdict" or "order." The entry shall state the amount of the verdict or order;

Official Notice: See also [Rule 1307(a) governing the entry by the prothonotary of an award in compulsory arbitration and] Rule 3027(a) governing the entry by the prothonotary of a writ of revival.

Rule 3022. Verdict or Order. Lien. Duration.

(a) A verdict or order for a specific sum of money when entered in the judgment index shall create a lien on real property located within the county, title to which at the time of entry is recorded in the name of the person against whom the verdict or order was rendered. The lien shall continue for five years unless the verdict is sooner reduced to judgment or the court sooner awards a new trial or enters a judgment notwithstanding the verdict.

Official Note: An order is defined by Section 102 of the Judicial Code, 42 Pa.C.S. § 102, to include, inter alia, a decision, a decree and an adjudication.

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[An award of arbitrators in compulsory arbitration is a lien as provided by Rule 1307(b).]

* * * * *

Rule 3023. Judgment. Lien. Duration

* * * * *

(b) A judgment upon a verdict[,] or an order [or an award in compulsory arbitration], when entered in the judgment index, shall

(1) continue the lien upon real property located in the county which is subject to the lien of the verdict[,] or order [or award] upon which the judgment is entered, and

Official Note: The lien of a verdict or order dates from the time the verdict or order is entered in the judgment index. See Rule 3022(a).

[The lien of an award in compulsory arbitration dates from entry of the award in the judgment index. See Rule 1307(b).]

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Rule 3026.2. Parties. Terre-Tenants.

(a) As used in Rule 3025 et seq., a terre-tenant is a person other than the original defendant in whom title to real property subject to a lien provided by the Rules of Civil Procedure has vested.

Official Note: The rules governing the action of mortgage foreclosure use the term "real owner" in a similar sense. See Rule 1144(a)(3).

See the following rules of civil procedure providing for liens upon real property: [**Rule 1307(b) (lien of an award in compulsory arbitration),] Rule 3022 (lien of a verdict or order), Rule 3023 (lien of a judgment), Rule 3027 (lien of a writ of revival or an agreement to revive), Rule 3131.1 (lien of a judgment of revival) and Rule 3104 (lien of a writ of execution).**

* * * * *

Explanatory Comment

The lien of an award of arbitrators in compulsory arbitration in Pennsylvania is statutory in origin, derived from the Act of June 16, 1836, P. L. 715, § 24. The Act of 1836 was repealed by the Judiciary Act Repealer Act in 1978 and the new provision of the Judicial Code, 42 Pa.C.S. § 7361, does not include the provision relating to the award as a lien. Rule 1307(b) promulgated in 1981 continued the prior practice. As the Civil Procedural Rules Committee stated in Paragraph 17 of its 1981 Explanatory Comment to the new rules governing compulsory arbitration, "The award when entered by the prothonotary on the docket has the effect of a verdict as a lien on real estate. The lien continues pending appeal. This continues the practice under the Act of 1836."

The rescission of Rule 1307(b) changes this practice. The award when entered on the docket no longer has the effect of a verdict on real estate and therefore there is no lien to continue pending an appeal for a trial de novo. Rather, there are two scenarios. First, if the defendant pursuant to Rule 1307(c) does not appeal the award of arbitrators within the time required, the plaintiff may enter judgment on the award and that judgment shall be entered in the judgment index as provided by Rule 3021(a)(3) and constitute a lien upon the real estate of the defendant as provided by Rule 3023(a) governing the lien of a judgment. Second, if the defendant does appeal an award for the payment of money, the lien will attach following the verdict of the jury or decision of the court

upon the trial de novo as provided by Rule 3022 governing the lien of a verdict or order.

There are three bases for the rescission. First, a lien should be the consequence of a verdict of a jury or a decision of the court. The award of arbitrators is neither of these. Second, the imposition of a lien presents difficulties to the court and to the defendant when on appeal the award is not sustained but the lien is not removed. If the defendant wishes to sell the real estate following a verdict or decision on the trial de novo in his or her favor, he or she must take action to have the lien removed if the court or the plaintiff has not done so. Finally, the statutes and rules of other states which have adopted compulsory or judicial arbitration do not provide for the award of the arbitrators to be a lien on real property. Thus, the rule conforms to the practice in other jurisdictions.

By the Civil Procedural Rules Committee

R. STANTON WETTICK, Jr.,
Chair

[Pa.B. Doc. No. 07-2114. Filed for public inspection November 21, 2007, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

PART 1. GENERAL

[234 PA. CODE CH. 5]

Order Revising the Comment to Rule 581; No. 359 Criminal Procedural Rules; Doc. No. 2

Order

Per Curiam:

Now, this 2nd day of November, 2007, upon the recommendation of the Criminal Procedural Rules Committee; this 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 the amending of the Comment to Rule of Criminal Procedure 581 is amended in the following form.

This Order shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective February 1, 2008.

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE CHAPTER 5. PRETRAIL PROCEDURES IN COURT CASES

Rule 581. Suppression of Evidence.

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Comment

The rule is designed to provide one single procedure for the suppression of evidence alleged to have been obtained in violation of the defendant's rights. The first revision of this rule extended its coverage to violation of the fourth, fifth, and sixth amendments of the Constitution of the United States; such as those proscribed by *Mapp v. Ohio*, 367 U. S. 643, 81 S.Ct. 1684 (1961); *Escobedo v. Illinois*,

378 U. S. 478, 84 S.Ct. 1758 (1964); *Jackson v. Denno*, 378 U. S. 368, 84 S.Ct. 1774 (1964); *Miranda v. Arizona*, 384 U. S. 436, 86 S.Ct. 1602 (1966); *United States v. Wade*, 388 U. S. 218, 87 S.Ct. 1926 (1967); and *Gilbert v. California*, 388 U. S. 263, 87 S.Ct. 1951 (1967). Later Pennsylvania cases such as *Commonwealth v. Futch*, 447 Pa. 389, 290 A.2d 417 ([Pa.] 1972), sanctioned the use of Rule 581 to test certain violations of Pennsylvania Rules of Criminal Procedure; however, *Commonwealth v. Murphy*, 459 Pa. 297, 328 A.2d 842 ([Pa.] 1974), questioned whether the rule in its earlier form permitted such a challenge. The rule was therefore further revised in 1977 to permit use of the suppression motion to test admissibility of evidence where the issue is the method by which the evidence was obtained. The rule merely provides a vehicle by which the court may determine the issues involved and sets the time at which the application is to be made. The rule and the 1977 revision do not purport to define or expand the basis on which suppression may be had. There is no longer a multi-county provision for suppression hearings because it is the opinion of the Committee that the prosecution county is the most interested forum for determining the admissibility of challenged evidence. In addition, the order of the judge determining admissibility is to be final and binding at trial, absent newly discovered and hitherto undiscoverable evidence.

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In all cases, the burden of production is now upon the Commonwealth. See *Commonwealth ex rel. Butler v. Rundle*, 429 Pa. 141, 239 A.2d 426 ([Pa.] 1968). The burden of persuasion is there as well. See *Miranda v. Arizona*, 384 U. S. 436, 479, 86 S.Ct. 1602, 1630 (1966). See also, *Commonwealth ex rel. Butler v. Rundle, supra.*, which establishes a preponderance of the evidence as the standard of proof.

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The law on closure of criminal proceedings is still developing. The 1985 amendments, therefore, are intended to remove the possibility that the rule will be mistaken to imply that the defendant has an absolute right to closure of a suppression hearing. It is intended that a suppression hearing will be held in open court unless the court orders all or part of the hearing closed in accordance with the existing case law. See, e.g., *United States v. Criden*, 675 F.2d 550 (3d Cir. 1982); *Commonwealth v. Hayes*, 489 Pa. 419, 414 A.2d 318 ([Pa.] 1980); *Commonwealth v. Buehl*, 316 Pa.Super. 215, 462 A.2d 1316 ([Pa. Super.] 1983), in which the courts recognized the public's general constitutional right to access to criminal proceedings, which right is to be balanced with the defendant's constitutional right to a fair trial. With regard to a court ordering part of a criminal proceeding closed, see *Commonwealth v. Contakos*, 499 Pa. 340, 453 A.2d 578 ([Pa.] 1982), in which a new trial was ordered because the public had been excluded from a portion of the trial although the press was present.

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In *Commonwealth v. Millner*, 585 Pa. 237, 888 A.2d 680 (2005), the Court reiterated the importance of a specific and contemporaneous announcement of findings of fact and conclusions of law at the conclusion of the suppression hearing.

* * * * *

Official Note: Rule 323 adopted March 15, 1965, effective September 15, 1965; amended November 25, 1968, effective February 3, 1969. The 1968 amendment, suspended, amended, and consolidated former Rules 323, 324, 2000 and 2001 of the Pennsylvania Rules of Criminal Procedure. This was done in accordance with Section 1 of the Act of July 11, 1957, P. L. 819, 17 P. S. § 2084. Paragraph (f) amended March 18, 1972, effective immediately; amended June 29, 1977 and November 22, 1977, effective as to cases in which the indictment or information is filed on or after January 1, 1978; paragraphs (f) and (g) and Comment amended September 23, 1985, effective January 1, 1986; effective date extended to July 1, 1986; renumbered Rule 581 and amended March 1, 2000, effective April 1, 2001; amended March 3, 2004, effective July 1, 2004; **Comment revised November 2, 2007, effective February 1, 2008.**

Committee Explanatory Reports:

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Final Report explaining the November 2, 2007 revisions to the Comment regarding the requirement for the judge to make findings of fact and conclusions of law at the conclusion of the suppression hearing published with the Court's Order at 37 Pa.B. 6204 (November 24, 2007).

FINAL REPORT¹

Revision of the Pa.R.Crim.P. 581 Comment

Findings of Fact and Conclusions of Law in Suppression Motions

On November 2, 2007, effective February 1, 2008, upon the recommendation of the Criminal Procedural Rules Committee, the Court approved the revision of the Comment to Rule 581 to include a cross-reference to the Supreme Court's opinion in *Commonwealth v. Millner*, 585 Pa. 237, 888 A.2d 680 (2005), reiterating the requirement for a trial judge to make findings of fact and conclusions of law at the time of issuing a decision on a suppression motions.

As part of its on-going review of caselaw as it impacts the rules, the Committee examined the Court's opinion in *Commonwealth v. Millner*, 585 Pa. 237, 888 A.2d 680 (2005). The issue in *Millner* that the Committee considered for rule change was the fact that the trial court had failed to issue findings of facts and conclusions of law when it ordered the suppression of evidence. The trial court waited until after the Commonwealth filed a timely appeal to the Superior Court to issue an opinion addressing the facts and law of the case but failing to address the

¹ 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.

Commonwealth's question of whether the defendant had a reasonable expectation of privacy in the automobile in which evidence was found.

The Court noted that the trial court had clearly failed to meet the requirement of Rule 581(I) which mandates that, at the conclusion of the hearing in which it grants a motion to suppress, "the judge shall enter on the record a statement of findings of fact and conclusions of law." The Court, while recognizing that it is not uncommon for suppression judges to fail to comply with this requirement, emphatically reiterated the requirements of the rule, stating, "We stress, however, the essential purposes served by the Rule, and we disapprove of non-compliance with its unambiguous mandate." 888 A.2d at 688.

In view of the continued disregard of the clear mandate of the rule, the Committee added a citation to the *Millner* case to the Rule 581 Comment to emphasize the mandatory requirement in paragraph (I) that the judge provide timely findings of fact and conclusions of law.

[Pa.B. Doc. No. 07-2115. Filed for public inspection November 21, 2007, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Transfer of Attorney to Inactive Status

Notice is hereby given that Patrick Joseph Donahue of Cape Coral, Florida, has been transferred to inactive status by Order of the Supreme Court of Pennsylvania dated October 5, 2007, under Pennsylvania Rules of Disciplinary Enforcement 219, which requires that every attorney admitted to practice in any court of this Commonwealth must pay an annual assessment of \$175. The Order became effective November 4, 2007.

Notice with respect to attorneys having Pennsylvania registration addresses, which have been transferred to inactive status by said Order, was published in the appropriate county legal journal.

ELAINE M. BIXLER,
Secretary
The Disciplinary Board of the
Supreme Court of Pennsylvania

[Pa.B. Doc. No. 07-2116. Filed for public inspection November 21, 2007, 9:00 a.m.]