THE COURTS

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CHS. 1000 AND 2220]

Proposed Amendment of Rule 1033 Governing Amendments and Rule 2232 Governing Defective Joinder; Proposed Recommendation No. 256

The Civil Procedural Rules Committee proposes that Rules of Civil Procedure 1033 governing amendments and 2232 governing defective joinder be amended as set forth herein. The proposed recommendation is being submitted to the bench and bar for comments and suggestions prior to its submission to the Supreme Court of Pennsylvania. All communications in reference to the proposed recommendation should be sent no later than November 6, 2012 to:

Karla M. Shultz
Counsel
Civil Procedural Rules Committee
601 Commonwealth Avenue, Suite 6200
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Harrisburg PA 17106-2635
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Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1000. ACTIONS

Subchapter A. CIVIL ACTION

PLEADINGS

Rule 1033. Amendment.

(a) A party, either by filed consent of the adverse party or by leave of court, may at any time change the form of action, **change a party against whom a claim is asserted, add a person as a party,** correct the name of a party**,** or **otherwise** amend **[his] the** pleading. The amended pleading may aver transactions or occurrences which have happened before or after the filing of the original pleading, even though they give rise to a new cause of action or defense. An amendment may be made to conform the pleading to the evidence offered or admitted.

(b) An amendment changing the party against whom a claim is asserted relates back to the date of the commencement of the action if, within ninety days after the period provided by law for commencing the action, the party to be brought in by the amendment has received notice of the institution of the action such that it will not be prejudiced in maintaining a defense on the merits and the party knew or should have known that the action would have been brought against the party but for a mistake concerning the identity of the proper party.

***Official Note*: Notice shall include informal knowledge of the action and is not limited to the service of original process.**

CHAPTER 2220. JOINDER OF PARTIES

Rule 2232. Defective joinder; change of parties.

* * * * *

(b) **[Joinder of unnecessary parties is not ground for dismissal of an action. After notice to all other parties, a party may be dropped by order of the court whenever the party has been misjoined or no claim for relief is asserted against the party in the action by any other party.] Rescinded.**

* * * * *

Explanatory Comment

The Civil Procedural Rules Committee is proposing the amendment of the Rule 1033 and the rescission of subdivision (b) of Rule 2232.

I.

Currently, the Rules of Civil Procedure and case law do not permit an amendment changing the party against whom a claim is asserted to relate back without a showing of concealment when the statute of limitations has expired. Rule 1033 is being amended to expressly permit amendments changing the party against whom a claim is asserted to provide for such amendments to relate back to the date of the commencement of the action if within ninety days after the period provided by law for commencing the action, the party to be brought in by the amendment has received notice of the commencement of the action such that it will not be prejudiced in obtaining a defense on the merits, and the party knew or should have known that the action would have been brought against the party but for a mistake concerning the identity of the proper party.

Consider the following example: An accident occurs on March 30, 2010. A complaint is filed on March 26, 2012 and service is made on April 16, 2012. The complaint mistakenly identifies the driver who allegedly caused the accident as Robert Young of 2012 Fifth Avenue. However, the actual driver is Richard Young, who is Robert Young's eighteen-year-old son and resides with him at 2012 Fifth Avenue. As a result of the service of the complaint, Richard Young is aware of the action, that he should have been named as the defendant, and that the complaint mistakenly identifies his father as the driver.

Under the current Pennsylvania Rules of Civil Procedure and case law, the statute of limitations would bar a court from permitting the plaintiff to file an amended complaint changing the party against whom the plaintiff asserted his personal injury claim. The proposed amendments to Rule 1033 would permit the plaintiff to amend the complaint to change the party to Richard Young because within ninety days after the expiration of the statute of limitations, he received notice of the commencement of the action such that he will not be prejudiced in maintaining a defense on the merits and he knew that but for a mistake on the part of the defendant, the action would have been brought against Richard.

The Federal Rules of Civil Procedure and a majority of states have rules of procedure governing the relation back of amendments, which are similar to those in this proposed recommendation. The Committee unanimously

favors the promulgation of this proposed amendment because the interests of justice are served by a rule of civil procedure permitting a party to correct a complaint that mistakenly names the wrong party when there is no prejudice to the party brought in by the amendment.

II.

Rule 1033 is being amended to specifically state that an amendment may add a person as a party. It is the practice of litigants and trial courts to refer to Rule 1033 when a party seeks to amend a pleading to add another party. The purpose of this amendment is to eliminate any uncertainty as to whether a motion to amend a pleading to add an additional party is governed by Rule 1033. There is no conflict between this proposed amendment and Rule 2232(c) because the latter addresses the question of when a court may order the joinder of any additional person.

III.

The Committee is proposing the rescission of subdivision (b) of Rule 2232 addressing the joinder of an additional party. The provision is unnecessary because if a party has been misjoined or no claim for relief is asserted, a dismissal should be sought through the rules governing preliminary objections, judgment on the pleadings, and summary judgment. If a plaintiff wants to drop a defendant, it should use the rules governing the discontinuance of an action.

By the Civil Procedural Rules Committee

DIANE W. PERER,
Chair

[Pa.B. Doc. No. 12-1933. Filed for public inspection October 5, 2012, 9:00 a.m.]

PART I. GENERAL

[231 PA. CODE CH. 1900]

Amendments to the Rules of Civil Procedure Relating to Domestic Relations Matters; Recommendation 120 Republication

The Domestic Relations Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend the Rules of Civil Procedure relating to domestic relations matters as set forth herein. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

Notes and explanatory comments which appear with proposed amendments have been inserted by the committee for the convenience of those using the rules. Reports, notes and comments will not constitute part of the rules and will not be officially adopted or promulgated by the Supreme Court.

The committee solicits and welcomes comments and suggestions from all interested persons prior to submission of this proposal to the Supreme Court of Pennsylvania. Please submit written comments no later than Friday, February 1, 2013 directed to:

Patricia A. Miles, Esquire
Counsel, Domestic Relations Procedural Rules Committee
Pennsylvania Judicial Center
601 Commonwealth Avenue, Suite 6200
P. O. Box 62635
Harrisburg, PA 17106-2635
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Deleted material is bold and [bracketed]. New material is bold.

By the Domestic Relations Procedural Rules Committee

CAROL S. MILLS McCARTHY,
Chair

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1900. ACTIONS PURSUANT TO THE PROTECTION FROM ABUSE ACT

Rule 1901.8. Modification or Discontinuance.

(a) In cases in which a temporary protection order has not yet been granted or has been denied, a plaintiff in a protection from abuse action who wishes to discontinue the action may file a praecipe to discontinue, pursuant to Pa.R.C.P. 229, prior to the final order hearing. The party may also request the discontinuance by oral motion at a hearing.

(b) In cases in which a temporary protection order has been granted, a plaintiff in a protection from abuse action who wishes to vacate the temporary order and discontinue the action shall either file a petition with the court prior to the final order hearing or make the request by oral motion at the final order hearing.

(c) If either party seeks a modification after a final judgment has been entered in a protection from abuse action, the party shall petition the court to modify the final order. The court shall enter an order granting or denying the petition following an appearance by the petitioner before the court.

Explanatory Comment—2013

Jurisdictions across the commonwealth have adopted varying procedures and processes for the withdrawal, discontinuance and modification of protection from abuse actions. This rule provides a uniform process that comports with the requirements of 23 Pa.C.S. §§ 6107(b)(2) (related to hearings), 6117 (related to procedure and other remedies) and *Commonwealth v. Charnik*, 921 A.2d 1214 (Pa. Super. 2007). These requirements, when read together, require a different procedure for withdrawal, discontinuance and modification at various stages in a protection from abuse proceeding.

After a final protection order is entered, the court no longer retains jurisdiction to vacate that order. *Charnik*, 921 A.2d at 1217. The court does, however, have jurisdiction to modify a protection from abuse order at any time after the filing of a petition for modification, service of the petition and a hearing on the petition. 23 Pa.C.S. § 6117. Thus, a party may request that the court modify the order to expire at an earlier date if the party does not want the order to remain in effect.

[Pa.B. Doc. No. 12-1934. Filed for public inspection October 5, 2012, 9:00 a.m.]

PART I. GENERAL

[231 PA. CODE CH. 1915]

Amendments to the Rules of Civil Procedure Relating to Domestic Relations Matters; Recommendation 115 Republication

The Domestic Relations Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend the Rules of Civil Procedure relating to domestic relations matters as set forth herein. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

Notes and explanatory comments which appear with proposed amendments have been inserted by the committee for the convenience of those using the rules. Reports, notes and comments will not constitute part of the rules and will not be officially adopted or promulgated by the Supreme Court.

The committee solicits and welcomes comments and suggestions from all interested persons prior to submission of this proposal to the Supreme Court of Pennsylvania. Please submit written comments no later than Friday, February 1, 2013 directed to:

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By the Domestic Relations Procedural Rules Committee

CAROL S. MILLS McCARTHY,
Chair

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1915. ACTIONS FOR CUSTODY, PARTIAL CUSTODY AND VISITATION OF MINOR CHILDREN

Rule 1915.4-4. Pre-Trial Procedures.

A pre-trial conference in an initial custody or modification proceeding may be scheduled at the request of a party or sua sponte by the court. The pre-trial conference shall be scheduled and the procedure shall be as set forth in this rule. If a party wishes to request a pre-trial conference, the praecipe set forth in subdivision (g) below shall be filed. The scheduling of a pre-trial conference shall not stay any previously scheduled proceeding unless otherwise ordered by the court.

(a) The praecipe may be filed at any time after a custody conciliation or conference with a conference officer unless a pre-trial conference has already been scheduled or held. The pre-trial conference may be scheduled at any time, but in no event less than 60 days prior to trial.

(b) Not later than five days prior to the pre-trial conference, each party shall serve a pre-trial statement upon the court and the other party or counsel of record. The pre-trial statement shall include the following matters, together with any additional information required by special order of the court:

(1) the name and address of each expert whom the party intends to call at trial as a witness;

(2) the name and address of each witness the party intends to call at trial, the relationship of that witness to the party and a statement by the party or the party's counsel that he or she has communicated with each listed witness; and

(3) a proposed order setting forth the custody schedule requested by the party.

(c) If a party fails to file a pre-trial statement or otherwise comply with the requirements of subdivision (b), the court may make an appropriate order under Rule 4019(c)(2) and (4) governing sanctions.

(d) Unless otherwise ordered by the court, the parties may amend their pre-trial statements at any time, but not later than seven days before trial.

(e) At the pre-trial conference, the following shall be considered:

(1) issues for resolution by the court;

(2) unresolved discovery matters;

(3) any agreements of the parties;

(4) issues relating to expert witnesses;

(5) settlement and/or mediation of the case;

(6) such other matters as may aid in the disposition of the case.

(f) The court shall enter an order following the conference detailing the agreements made by the parties as to any of the matters considered, limiting the issues for trial to those not disposed of by agreement and setting forth the schedule for further action in the case. Such order shall control the subsequent course of the action unless modified at trial to prevent manifest injustice.

(g) The praecipe for pre-trial conference shall be substantially in the following form:

(Caption)

PRAECIPE FOR PRE-TRIAL CONFERENCE

To the Prothonotary:

Please schedule a pre-trial conference in the above-captioned custody matter pursuant to Pa.R.C.P. 1915-4.4.

The parties' initial in-person contact with the court (conference with a conference officer or judge, conciliation or mediation) occurred on _____.

_____
Plaintiff/Defendant/Attorney for Plaintiff/Defendant

Explanatory Comment—2013

The Domestic Relations Procedural Rules Committee has become aware that there is a wide disparity in pre-trial procedures in custody cases among the various jurisdictions. As the committee strives to recommend best practices, this new rule establishes uniform pre-trial procedures in custody cases when requested by either party. The goal is to reduce custody litigation by encouraging early preparation and court intervention for purposes of expedited resolutions. The rule is based upon the pre-trial procedures in divorce cases as set forth in Rule 1920.33. Nothing in this rule shall affect the First

Judicial District's practice of conducting a pre-trial conference upon the filing of a motion for a protracted or semi-protracted trial.

[Pa.B. Doc. No. 12-1935. Filed for public inspection October 5, 2012, 9:00 a.m.]

PART I. GENERAL

[231 PA. CODE CH. 1930]

Amendments to the Rules of Civil Procedure Relating to Domestic Relations Matters; Recommendation 122

The Domestic Relations Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend the Rules of Civil Procedure relating to domestic relations matters as set forth herein. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

Notes and explanatory comments which appear with proposed amendments have been inserted by the committee for the convenience of those using the rules. Reports, notes and comments will not constitute part of the rules and will not be officially adopted or promulgated by the Supreme Court.

The committee solicits and welcomes comments and suggestions from all interested persons prior to submission of this proposal to the Supreme Court of Pennsylvania. Please submit written comments no later than Friday, February 1, 2013 directed to:

Patricia A. Miles, Esquire
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By the Domestic Relations Procedural Rules Committee

CAROL S. MILLS McCARTHY,
Chair

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1930. RULES RELATING TO DOMESTIC RELATIONS MATTERS GENERALLY

Rule 1930.8. Self-Represented Party.

(a) A party representing himself or herself shall enter a written appearance which shall state an address where pleadings and other legal papers may be served, and a telephone number where the party may be contacted. The entry of appearance may include a facsimile number as provided by Pa.R.C.P. 1012.

(b) A self-represented party is under a continuing obligation to provide current contact information to the court, to other self-represented parties, and to attorneys of record.

(c) When a party has an attorney of record, the party may assert his or her self-representation by:

(1) Filing a written entry of appearance and directing the prothonotary/court clerk to remove the name of his or her counsel of record with contemporaneous notice to said counsel, or

(2) Filing an entry of appearance with the withdrawal of appearance signed by his or her attorney of record.

(d) The self-represented party shall provide a copy of the entry of appearance to all self-represented parties and attorneys of record.

(e) The assertion of self-representation shall not delay any stage of the proceeding.

Explanatory Comment—2013

Withdrawal of appearance by counsel of record is governed by Pa.R.C.P. 1012.

[Pa.B. Doc. No. 12-1936. Filed for public inspection October 5, 2012, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CHS. 2—6 AND 9]

Order Amending Rules 230, 528 and 584 and Revising the Comments to Rules 316, 456, 502, 515, 569, 576, 602, 634, 649 and 905 of the Rules of Criminal Procedure; No. 417 Criminal Procedural Rules Doc.

Order

Per Curiam

And Now, this 21st day of September, 2012, 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

(1) Pennsylvania Rules of Criminal Procedure 230, 528, and 584 are amended; and

(2) the revisions of the Comments to Pennsylvania Rules of Criminal Procedure 316, 456, 502, 515, 569, 576, 602, 634, 649, and 905 are approved, all in the following form. This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective November 1, 2012.

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

CHAPTER 2. INVESTIGATIONS

PART B(1). Investigating Grand Juries

Rule 230. Disclosure of Testimony Before Investigating Grand Jury.

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(B) Defendant in a Criminal Case:

(1) When a defendant **[is] in** a criminal case has testified before an investigating grand jury concerning the

subject matter of the charges against him **or her**, upon application of such defendant the court shall order that the defendant be furnished with a copy of the transcript of such testimony.

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***Official Note*:** Rule 263 adopted June 26, 1978, effective January 9, 1979; renumbered Rule 230 and amended March 1, 2000, effective April 1, 2001**; amended September 21, 2012, effective November 1, 2012**.

Committee Explanatory Reports:

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 September 21, 2012 correction of a typographical error in paragraph (B)(1) published with the Court's Order at 42 Pa.B. 6251 (October 6, 2012).

CHAPTER 3. ACCELERATED REHABILITATIVE DISPOSITION (ARD)

PART B. Court Cases

Rule 316. Conditions of the Program.

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Comment

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A defendant may be required to accept conditions of the program as provided by statute. *See, e.g.*, 75 Pa.C.S. § **[3731(e)(6)] 3807 (Accelerated Rehabilitation Disposition)**.

***Official Note*:** Rule 182 approved May 24, 1972, effective immediately; amended January 28, 1983, effective February 1, 1983; Comment revised April 10, 1989, effective July 1, 1989; Comment revised September 26, 1996, effective immediately; renumbered Rule 316 and amended March 1, 2000, effective April 1, 2001**; Comment revised September 21, 2012, effective November 1, 2012**.

Committee Explanatory Reports:

Report explaining the September 26, 1996 Comment revision published with the Court's Order at 26 Pa.B. 4894 (October 12, 1996).

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 September 21, 2012 correction of the reference to the Vehicle Code in the last paragraph of the Comment published with the Court's Order at 42 Pa.B. 6251 (October 6, 2012).

CHAPTER 4. PROCEDURES IN SUMMARY CASES

PART E. General Procedures in Summary Cases

Rule 456. Default Procedures: Restitution, Fines, and Costs.

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Comment

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When a defendant defaults on a payment of restitution, fines, or costs, paragraph (B) requires the issuing authority to notify the defendant of the default, and to provide the defendant with an opportunity to pay the amount due or appear within 10 days to explain why the defendant should not be imprisoned for nonpayment. Notice by first class mail is considered complete upon mailing to the defendant's last known address. *See* Rule **[430(D)] 430(B)(4)**.

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***Official Note*:** Adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986; January 1, 1986 effective dates extended to July 1, 1986; Comment revised February 1, 1989, effective July 1, 1989; rescinded October 1, 1997, effective October 1, 1998. New Rule 85 adopted October 1, 1997, effective October 1, 1998; amended July 2, 1999, effective August 1, 1999; renumbered Rule 456 and amended March 1, 2000, effective April 1, 2001; Comment revised August 7, 2003, effective July 1, 2004; amended March 3, 2004, effective July 1, 2004; Comment revised April 1, 2005, effective October 1, 2005**; Comment revised September 21, 2012, effective November 1, 2012**.

Committee Explanatory Reports:

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Final Report explaining the September 21, 2012 Comment revision correcting the typographical error in the fourth paragraph published with the Court's Order at 42 Pa.B. 6251 (October 6, 2012).

CHAPTER 5. PRETRIAL PROCEDURES IN COURT CASES

PART B. Instituting Proceedings

Rule 502. Instituting Proceedings in Court Cases.

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Comment

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If the defendant is held for court, the attorney for the Commonwealth submits an information to the court (see Rule **[225] 560**). *See* Section 8931(d) of the Judicial Code, 42 Pa.C.S. § 8931(d).

* * * * *

***Official Note*:** Original Rule 102(1), (2), and (3), adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 102 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 101, and made applicable to court cases only, September 18, 1973, effective January 1, 1974; Comment revised February 15, 1974, effective immediately; amended June 30, 1975, effective September 1, 1975; Comment amended January 4, 1979, effective January 9, 1979; paragraph (1) amended October 22, 1981, effective January 1, 1982; Comment revised July 12, 1985, effective January 1, 1986; January 1, 1986 effective date extended to July 1, 1986; Comment revised January 31, 1991, effective July 1, 1991; Comment revised August 12, 1993, effective September 1, 1993; amended August 9, 1994, effective January 1, 1995; Comment revised January 16, 1996, effective immediately; renumbered Rule 502 and amended March 1, 2000, effective April 1, 2001; amended March 9, 2006, effective September 1, 2006**; Comment revised September 21, 2012, effective November 1, 2012**.

Committee Explanatory Reports:

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Final Report explaining the September 21, 2012 revising the second paragraph of the Comment to

correct a typographical error published with the Court's Order at 42 Pa.B. 6251 (October 6, 2012).

PART B(3). Arrest Procedures in Court Cases

(a) Arrest Warrants

Rule 515. Execution of Arrest Warrant.

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Comment

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Paragraph (C) abolishes the traditional practice known as "*NEI*" or "**[** ***no*** **]** ***non*** *est inventus*" as being no longer necessary.

Official Note**:** Formerly Rule 124, adopted January 28, 1983, effective July 1, 1983; amended July 12, 1985, effective January 1, 1986; January 1, 1986 effective date extended to July 1, 1986; renumbered Rule 122 and Comment revised August 9, 1994, effective January 1, 1995; renumbered Rule 515 and amended March 1, 2000, effective April 1, 2001; Comment revised May 10, 2002, effective September 1, 2002; amended February 12, 2010, effective April 1, 2010; Comment revised July 31, 2012, effective November 1, 2012**; Comment revised September 21, 2012, effective immediately**.

Committee Explanatory Reports:

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Final Report explaining the September 21, 2012 revising the last paragraph of the Comment by correcting a typographical error published with the Court's Order at 42 Pa.B. 6251 (October 6, 2012).

PART C(1). Release Procedures

Rule 528. Monetary Condition of Release **[of] on** Bail.

(A) If the bail authority determines that it is necessary to impose a monetary condition of bail, to determine the amount of the monetary condition, the bail authority shall consider:

(1) the release criteria set forth in Rule **[4002] 523**; and

* * * * *

Official Note**:** Former Rule 4007 adopted July 23, 1973, effective 60 days hence, replacing prior Rule 4013; amended January 28, 1983, effective July 1, 1983; rescinded September 13, 1995, effective January 1, 1996, and replaced by Rule **[531] 4011**. Present Rule 4007 adopted September 13, 1995, effective January 1, 1996. The January 1, 1996 effective dates extended to April 1, 1996; the April 1, 1996 effective dates extended to July 1, 1996; renumbered Rule 528 and amended March 1, 2000, effective April 1, 2001**; amended September 21, 2012, effective November 1, 2012**.

Committee Explanatory Reports:

Final Report explaining the provisions of the new rule 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 September 21, 2012 amendment correcting a typographical error in paragraph (A)(1) published with the Court's Order at 42 Pa.B. 6251 (October 6, 2012).

PART G. Procedures Following Filing of Information

Rule 569. Examination of Defendant by Mental Health Expert.

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Comment

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Examination of Defendant

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The court is required in paragraph (A)(2)(b) to inform the defendant, in person on the record, about the request for a compelled examination. *See* Rule **[118] 119** (Use of Two-Way Simultaneous Audio-Video Communication in Criminal Proceedings). The court is to explain that the examination is being conducted at the request of the attorney for the Commonwealth and that the purpose of the examination is to obtain information about defendant's mental condition. In addition, the court should explain the procedures for the examination that are included in the court's order as set forth in paragraph (A)(2)(b), and explain the potential consequences of the defendant's failure to cooperate with the examination.

* * * * *

Official Note**:** Adopted January 27, 2006, effective August 1, 2006**; Comment revised September 21, 2012, effective November 1, 2012**.

Committee Explanatory Reports:

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Final Report explaining the September 21, 2012 revision of the Comment correcting a typographical error in the eighth paragraph published with the Court's Order at 42 Pa.B. 6251 (October 6, 2012).

PART G(1). Motion Procedures

Rule 576. Filing and Service by Parties.

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Comment

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Although paragraph **[(C)(1)(d)] (B)(2)(d)** permits the use of assigned mailboxes for service under this rule, the Attorney General's office never may be served by this method.

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Official Note**:** Former Rule 9022 adopted October 21, 1983, effective January 1, 1984; amended March 22, 1993, effective January 1, 1994; amended July 9, 1996, effective September 1, 1996; renumbered Rule 576 and amended March 1, 2000, effective April 1, 2001. Former Rule 9023 adopted October 21, 1983, effective January 1, 1984; amended June 2, 1994, effective September 1, 1994; renumbered Rule 577 and amended March 1, 2000, effective April 1, 2001; rescinded March 2, 2004, effective July 1, 2004. Rules 576 and 577 combined and amended March 3, 2004, effective July 1, 2004, Comment revised June 4, 2004, effective November 1, 2004; Comment revised September 18, 2008, effective February 1, 2009**; Comment revised September 21, 2012, effective November 1, 2012**.

Committee Explanatory Reports:

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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 March 3, 2004 changes amending and combining Rule 576 with former Rule 577 published with the Court's Order at 34 Pa.B. 1561 (March 20, 2004).

Final Report explaining the September 18, 2008 revision of the Comment concerning the United States Postal Service's return receipt electronic option published with the Court's Order at 38 Pa.B. 5428 (October 4, 2008).

Final Report explaining the September 21, 2012 revision of the Comment correcting a typographical error in the thirteenth paragraph published with the Court's Order at 42 Pa.B. 6251 (October 6, 2012).

Rule 584. Motion for Change of Venue or Change of Venire.

(A) All motions for change of venue or for change of venire shall be made to the court in which the case is currently pending. Venue or venire may be changed by that court when it is determined after hearing that a fair and impartial trial cannot **[be]** otherwise be had in the county where the case is currently pending.

* * * * *

***Official Note*: Rule 313 adopted June 30, 1964, effective January 1, 1965; Comment added June 28, 1976, effective July 1, 1976; renumbered Rule 312, and 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; amended December 11, 1981, effective July 1, 1982; renumbered Rule 584 and amended March 1, 2000, effective April 1, 2001; amended September 21, 2012, effective November 1, 2012**.

Committee Explanatory Reports:

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Final Report explaining the September 21, 2012 amendment correcting a typographical error in paragraph (A) published with the Court's Order at 42 Pa.B. 6251 (October 6, 2012).

CHAPTER 6. TRIAL PROCEDURES IN COURT CASES

PART A. General Provisions

Rule 602. Presence of the Defendant.

* * * * *

Comment

Nothing in this rule is intended to preclude a defendant from affirmatively waiving the right to be present at any stage of the trial, *see e.g., Commonwealth v. Vega*, **553 Pa. 255,** 719 A.2d 227 (**[Pa.]** 1998) (plurality) (requirements for a knowing and intelligent waiver of a defendant's presence at trial includes a full, on-the-record colloquy concerning consequences of forfeiture of the defendant's right to be present) or from waiving the right to be present by his or her actions, *see e.g., Commonwealth v. Wilson*, **551 Pa. 593,** 712 A.2d 735 (**[Pa.]** 1998) (defendant, who fled courthouse after jury was impaneled and after subsequent plea negotiations failed, was deemed to have knowingly and voluntarily waived the right to be present).

Former Rule 1117(c) was moved to Rule 462 (Trial *de novo*) in 2000 as part of the reorganization of the rules.

***Official Note*: Rule 1117 adopted January 24, 1968, effective August 1, 1968; amended October 28, 1994, effective as to cases instituted on or after January 1, 1995; renumbered Rule 602 and amended March 1, 2000, effective April 1, 2001; amended December 8, 2000, effective January 1, 2001; Comment revised September 21, 2012, effective November 1, 2012**.

Committee Explanatory Reports:

[FORMER RULE 1117:]

Final Report explaining the October 28, 1994 amendments published with the Court's Order at 24 Pa.B. 5841 (November 26, 1994).

[FORMER RULE 602:]

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 December 8, 2000 amendments published with the Court's Order at 30 Pa.B. 6546 (December 23, 2000).

Final Report explaining the September 21, 2012 revision to the second paragraph of the Comment correcting a typographical error published with the Court's Order at 42 Pa.B. 6251 (October 6, 2012).

PART C(1). Impaneling Jury

Rule 634. Number of Peremptory Challenges.

* * * * *

Comment

This rule governs the number of peremptory challenges for the selection of principal trial jurors. The number of peremptory challenges for the selection of alternate trial jurors is set forth in Rule **[645] 633**.

Previous Rule 1126 was adopted after the abolition of the Courts of Oyer and Terminer and General Jail Delivery, and served to preserve the number of peremptory challenges established with reference to such courts by the Act of March 6, 1901, P. L. 16, § 1, as amended by Act of July 9, 1901, P. L. 629, § 1. That rule was rescinded in 1977 in view of the Act of October 7, 1976, P. L. 1089, No. 217, §§ 1—2, which repealed the 1901 peremptory challenge statute and established the number of peremptory challenges without reference to the abolished courts.

Present Rule **[1126] 634 (then-Rule 1126)** was adopted in 1980 after the Act of October 7, 1976, P. L. 1089, No. 217, § 1, and other statutory provisions relating to peremptory challenges (see Act of March 31, 1860, P. L. 427, § 40, as amended by Act of October 7, 1976, P. L. 1055, No. 213, § 1) were repealed by the Judiciary Act Repealer Act, 42 P. S. § 20002(a) (377), (1479) (1979). Although this rule is intended to replace the repealed statutes as to peremptory challenges, the rule retains the number of peremptories that was established by such statutes.

When offenses of different grades are charged in a case, the number of peremptory challenges is intended to be determined by the highest grade of offense charged; cumulation is not intended.

***Official Note*: Previous Rule 1126 adopted December 24, 1968, effective January 1, 1969; rescinded May 26, 1977, effective July 1, 1977; present Rule 1126 adopted**

July 1, 1980, effective August 1, 1980; renumbered Rule 634 and amended March 1, 2000, effective April 1, 2001**; Comment revised September 21, 2012, effective November 1, 2012**.

Committee Explanatory Reports:

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 September 21, 2012 revision to the first and third paragraphs of the Comment correcting typographical errors published with the Court's Order at 42 Pa.B. 6251 (October 6, 2012).

PART C(2). Conduct of Jury Trial

Rule 649. Sealed Verdict.

* * * * *

Comment

The 1972 amendment deleted the exception of those cases in which a capital crime is charged in view of *Furman v. Georgia*, 408 U.S. 238 (1972) and its companion cases, and in view of *Commonwealth v. Bradley*, **449 Pa. 19,** 295 A.2d 842 (**[Pa.]** 1972).

This rule codifies the existing law with respect to sealed verdicts. *See* Rule **[600(A)] 103**, Rule 601 and Rule 648(F).

Paragraph (C) follows the Pennsylvania cases, *Commonwealth v. Watson*, **211 Pa. Superior Ct. 394,** 236 A.2d 567 (**[Pa. Super.]** 1967); *Commonwealth v. Lemley*, **158 Pa. Superior Ct. 125,** 44 A.2d 317 (**[Pa. Super.]** 1945).

***Official Note*:** Rule 1121 adopted January 24, 1968, effective August 1, 1968; amended November 29, 1972, effective 10 days hence; renumbered Rule 649 and amended March 1, 2000, effective April 1, 2001**; Comment revised September 21, 2012, effective November 1, 2012**.

Committee Explanatory Reports:

* * * * *

Final Report explaining the September 21, 2012 revision of the Comment correcting a rule reference in the second paragraph and the case citations published with the Court's Order at 42 Pa.B. 6251 (October 6, 2012).

CHAPTER 9. POST-CONVICTION COLLATERAL PROCEEDINGS

Rule 905. Amendment and Withdrawal of Petition for Post-Conviction Collateral Relief.

* * * * *

Comment

"Defective," as used in paragraph (B), is intended to include petitions that are inadequate, insufficient, or irregular for any reason; for example, petitions that lack particularity; petitions that do not comply substantially with Rule **[1502] 902**; petitions that appear to be patently frivolous; petitions that do not allege facts that would support relief; petitions that raise issues the defendant did not preserve properly or were finally determined at prior proceedings.

When an amended petition is filed pursuant to paragraph (D), it is intended that the clerk of courts transmit a copy of the amended petition to the attorney for the Commonwealth. This transmittal does not require a response unless one is ordered by the judge as provided in these rules. *See* Rules 903 and 906.

***Official Note*:** Previous Rule 1505 adopted January 24, 1968, effective August 1, 1968; rescinded December 11, 1981, effective June 27, 1982; rescission vacated June 4, 1982; rescinded February 1, 1989, effective July 1, 1989, and replaced by Rules **[906(B), 908(A)] 1506(b), 1508(a)**, and present Rule **[905(C)] 1505(c)**. Present Rule 1505 adopted February 1, 1989, effective July 1, 1989; amended August 11, 1997, effective immediately; renumbered Rule 905 and amended March 1, 2000, effective April 1, 2001**; Comment revised September 21, 2012, effective November 1, 2012**.

Committee Explanatory Reports:

Final Report explaining the August 11, 1997 amendments published with the Court's Order at 27 Pa.B. 4305 (August 23, 1997).

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 September 21, 2012 revision of the Comment correcting a typographical error in the first paragraph published with the Court's Order at 42 Pa.B. 6251 (October 6, 2012).

FINAL REPORT[1]

Amendments of Rules of Criminal Procedure 230, 528, and 584, and revision of the Comments to Rules of Criminal Procedure 316, 456, 502, 515, 569, 576, 602, 634, 649 and 905

Technical Corrections

On September 21, 2012, effective November 1, 2012, upon the recommendation of the Criminal Procedural Rules Committee, the Court amended Rules of Criminal Procedure 230, 528, and 584, and approved the revision of the Comments to Rules of Criminal Procedure 316, 456, 502, 515, 569, 576, 602, 634, 649 and 905.

From time to time, the Committee has received communications identifying, and the members have noted, typographical errors in the Criminal Rules. The changes made in this Recommendation correct typographical errors that have come to the Committee's attention since the reorganization and renumbering of the Criminal Rules in 2000, and are not substantive in nature,

(A) The following rules have been amended to correct typographical errors in the text of the rules.

(1) The first sentence of Rule 230(B)(1) is amended by changing "is" to "in;" and

(2) Rule 584(A) is amended by deleting "be" in the third line between "cannot" and "otherwise."

(B) The Comments to the following rules have been revised to correct typographical errors.

(1) The last paragraph of the Comment to Rule 316 is revised by changing the reference to 75 Pa.C.S. § 3731(e)(6) to 75 Pa.C.S. § 3807 to reflect the change in the relevant statutory provisions when the Vehicle Code was amended in 2003.

[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.

(2) The fourth paragraph of the Comment to Rule 456 is revised by changing the reference to "Rule 430(D)" to "Rule 430(B)(4)."

(3) The last paragraph of the Comment to Rule 515 is revised by changing "no" to "non" in "*non est inventus*."

(4) The eighth paragraph of the Comment to Rule 569 is revised by changing the reference to "Rule 118" to "Rule 119" to reflect the change in numbering that occurred after Rule 569 was adopted.

(5) The thirteenth paragraph of the Comment to Rule 576 is revised by changing the reference to paragraph "(C)(1)(d)" to "(B)(2)(d)."

(6) The second paragraph of the Rule 602 Comment is revised by changing the reference to "Rule 642" to "Rule 462."

(C) The following rules have been amended or the Comments revised to correct the references to rule numbers that were changed as part of the reorganization and renumbering of the rules in 2000.

(1) The second paragraph of the Rule 502 Comment is revised to correct the rule reference by replacing "225" with "560."

(2) Rule 528(A)(1) is amended to correct the rule reference by replacing "4002" with "523."

(3) The first paragraph of the Rule 634 Comment is revised to correct the rule reference by replacing "645" with "633." The third paragraph of the Comment is revised to correct the rule reference by replacing "1126" with "634."

(4) The second paragraph of the Rule 649 Comment is revised to correct the rule reference by replacing "600(A)" with "103."

(5) The first paragraph of the Rule 905 Comment is revised to correct the rule reference by replacing "1502" with "902."

[Pa.B. Doc. No. 12-1937. Filed for public inspection October 5, 2012, 9:00 a.m.]

[234 PA. CODE CH. 5]
Proposed Amendments to Pa.R.Crim.P. 535

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Rule 535 (Receipt for Deposit; Return of Deposit) to permit the clerk of courts to apply any bail monies that would be returnable to the defendant after full and final disposition of the case to any of the defendant's outstanding court fees, fine, costs, restitution, and bail judgments. 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 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 explanatory Reports.

The text of the proposed amendments to the rule 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,

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Criminal Procedural Rules Committee
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no later than Friday, November 23, 2012.

By the Criminal Procedural Rules Committee

PHILIP D. LAUER,
Chair

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

CHAPTER 5. PRETRIAL PROCEDURES IN COURT CASES

PART C(2). General Procedures in all Bail Cases

Rule 535. Receipt for Deposit; Return of Deposit.

(A) Any deposit of cash in satisfaction of a monetary condition of bail shall be given to the issuing authority, the clerk of courts, or another official designated by the president judge by local rule pursuant to Rule 117(C). The issuing authority, clerk, or other official who accepts the deposit shall give the depositor an itemized receipt, and shall note on the bail bond the amount deposited and the name of the person who made the deposit. The defendant shall sign the bail bond, and be given a copy of the signed bail bond.

* * * * *

[(4) At the time bail is being deposited, no inquiry shall be made of the depositor whether he or she consents to have the deposit retained to be applied toward the defendant's fines, costs, or restitution, if any.]

(B) When the deposit is the percentage cash bail authorized by Rule 528, the depositor shall be notified that by signing the bail bond, the depositor becomes a surety for the defendant and is liable for the full amount of the monetary condition in the event the defendant fails to appear or comply as required by these rules.

(C) The clerk of courts shall place all cash bail deposits in a bank or other depository approved by the court and shall keep records of all deposits.

(D) Within 20 days of the full and final disposition of the case, the deposit shall be returned to the depositor, less any bail-related fees or commissions authorized by law, and the reasonable costs, if any, of administering the percentage cash bail program. **Unless otherwise ordered by the court, if the bail was deposited by or on behalf of the defendant and the defendant is the named depositor, the amount otherwise returnable to the defendant shall be used to pay and satisfy any outstanding fees, fines, costs, and restitution owed by the defendant in connection with any criminal or delinquency case in which the defendant owes fees, fines, costs, and restitution, as well as any bail judgment that may have been entered against a defendant pursuant to Rule 536.**

(E) When a case is transferred pursuant to Rule 130(B) or Rule 555, the full deposit shall be promptly forwarded

to the transfer judicial district, together with any bail-related fees, commissions, or costs paid by the depositor.

Comment

When the president judge has designated another official to accept the bail deposit as provided in Rule 117, the other official's authority under Rule 117 and this rule is limited to accepting the deposit, having the defendant sign the bail bond, releasing the defendant, and delivering the bail deposit and bail bond to the issuing authority or the clerk of courts.

[Paragraph (A) was amended in 2006 to make it clear that the clerk of courts or other official accepting a deposit of cash bail is not permitted to request that the depositor agree to have the cash bail deposit retained after the full and final disposition of the case to be applied toward the payment of the defendant's fines, costs, or restitution, if any. See, e.g., *Commonwealth v. McDonald*, 476 Pa. 217, 382 A.2d 124 (1978), which held that a deposit of cash to satisfy a defendant's monetary bail condition that is made by a person acting as a surety for the defendant may not be retained to pay for the defendant's court costs and/or fines.]

Paragraph (D) was amended in 2012 to permit the court, after the full and final disposition of the case, to apply money deposited as bail to be applied to any owed fees, fines, costs, and restitution. This amendment, adopted pursuant to the authority granted in 42 Pa.C.S. § 5702, is a procedural mechanism by which the court may retain money the defendant previously deposited with the court to satisfy the defendant's obligations but only in criminal or delinquency cases.

Given the complexities of posting real estate to satisfy a monetary condition of release, posting of real estate may not be feasible outside the normal business hours.

* * * * *

***Official Note*:** Former Rule 4015, previously Rule 4009, adopted November 22, 1965, effective June 1, 1966; renumbered Rule 4015, former paragraph (b) integrated into paragraph (a) and new paragraph (b) adopted July 23, 1973, effective 60 days hence; rescinded September 13, 1995, effective January 1, 1996, and replaced by present Rule 4015. Present Rule 4015 adopted September 13, 1995, effective January 1, 1996. The January 1, 1996 effective dates extended to April 1, 1996; the April 1, 1996 effective dates extended to July 1, 1996; renumbered Rule 535 and amended March 1, 2000, effective April 1, 2001; amended April 20, 2000, effective July 1, 2000; amended March 3, 2004, effective July 1, 2004; amended June 30, 2005, effective August 1, 2006; amended March 9, 2006, effective August 1, 2006**; amended , 2012, effective , 2012**.

Committee Explanatory Reports:

* * * * *

Report explaining the proposed changes to paragraph (D) concerning defendant's deposits of bail to be applied to fees, fines, costs, and restitution published for comment at 42 Pa.B. 6253 (October 6, 2012).

REPORT

Proposed Amendments to Pa.R.Crim.P. 535

Rule 535: Use of Bail Money for Payment of Fees, Fines, Costs, and Restitution

Background

The Committee has been examining a proposal to amend Rule 535 to permit the clerk of courts to apply any bail monies that would be returnable to the defendant after full and final disposition of the case to any of the defendant's outstanding court fees, fine, costs, restitution, and bail judgments.

The Rules of Criminal Procedure traditionally have precluded directly applying bail money in this manner. This position was based on the concept that the purpose of bail is to ensure the presence of the defendant during the pendency of the case and not to obtain a "deposit" on future fine, costs, *etc.* One of the underlying concerns is that the ability of ensuring future payment of potential fine, costs, *etc.* will influence the bail determination inappropriately so that bail would be set higher than otherwise would be the case. Nevertheless, the Committee recognized that such a change might be a useful tool in collecting outstanding restitution and other costs.

The first question that the Committee considered was whether distribution of bail money in this manner fell within the purview of the Rules of Criminal Procedures. As part of this review, the Committee examined the current law in Pennsylvania on the return of bail, as well as the practice in other jurisdictions with regard to this question.

Under the common law, the purpose of bail was to ensure the appearance of the defendant and courts did not have the inherent power to apply bail money to another purpose.

In terms of constitutional concerns, the Eight Amendment of U.S. Constitution prohibits excessive bail. A U.S. Supreme Court case, *Cohen v. United States*, 7 L.Ed. 518, 82 S.Ct. 526 (1962), held that conditioning bail on the payment of a fine is excessive and in violation of the Eighth Amendment.

Several decades after the *Cohen* decision, a federal statute, 28 U.S.C. § 2044, was adopted that permits the use of deposited bail money to be applied to a defendant's costs, fines, restitution and other assessments. Constitutional challenges to this provision have been rejected because, unlike as in the *Cohen* case, Section 2044 does not precondition bail on the payment of any fine but rather is a procedural mechanism by which the court, after the defendant has appeared and the purpose of bail has been served, may disburse deposited money to those with claims on the funds. *See United States v Higgins*, 987 F2d 543 (1993).

Numerous states also have adopted statutes authorizing this practice. *See, e.g.*, California Penal Code § 1297, Florida Statutes Annotated § 903.286, Illinois Complied Statutes § 5/110-7(f), Minnesota Statutes Annotated § 629.53, Nevada Revised Statutes § 178.522, New York Criminal Procedure Law § 420.10(1)(e), Tennessee Code § 40-11-121, Wisconsin Statutes § 969.03(4).

In instances where specific statutory authority existed, courts have been very likely to allow the application of the bail to fines or costs. For example, in *State v Iglesias*, 185 Wis. 2d 118, 517 N.W.2d 175 (1990), *cert. den.* (US) 130 L Ed 2d 547, 115 S Ct 641, the Wisconsin Supreme Court found that bail is not excessive if it is used for a

purpose which the legislature has deemed to be a compelling state interest and the amount is not excessive relative to the interest sought to be furthered.

Rather uniquely, Pennsylvania's Bail Statute delegates all authority over bail to the Supreme Court through its rule-making authority. Section 5702 of the Judicial Code, 42 Pa.C.S. § 5702, provides:

> Except as otherwise provided by this title and the laws relating to the regulation of surety companies, all matters relating to the fixing, posting, forfeiting, exoneration and distribution of bail and recognizances shall be governed by general rules. (Emphasis added.)

While there are no Pennsylvania cases addressing the propriety of retaining returnable bail money for payment of fines, costs, or restitution, there have been a few cases that dealt with certain aspects of this issue, usually involving cases in which third parties were seeking the return of money they had posted on behalf of a defendant. For example, in *Commonwealth v McDonald*, 476 Pa 217, 382 A2d 124 (1978), the Pennsylvania Supreme Court held that the trial court erred in refusing to return the bail deposit after the defendant was taken into custody after allegedly committing a new offense, concluding that the bail was revoked when the defendant was placed in custody, and the trial court no longer had the authority to retain it. The Court specifically reserved judgment on the question of "whether and to what extent the Rules of Criminal Procedure allow bail deposits to be applied to the collection of fines imposed upon the defendant."

Based upon the foregoing, the Committee concluded that a change that would permit the retention of returnable bail money to satisfy a defendant's existing obligations to the court was a valid exercise of the rule-making authority. Furthermore, the Committee agreed that the change has the potential to be a useful tool for the more efficient collection of owed moneys, including restitution, reducing collection costs for the court and even for the defendant who would otherwise face additional costs where the court forced to seek collections processes.

Proposed Rule Changes

The proposed amendment to Rule 535 would give the clerk of courts the authority to retain the returnable bail to pay any outstanding fines, costs, fees, and restitution ordered in any criminal or delinquency cases of the defendant statewide. The Committee rejected a suggestion to permit application of the bail money to other outstanding obligations such as for support and judgments for arrearages, concluding that expanding the provision beyond cases that are essentially criminal in nature would be beyond the Criminal Rules' authority.

Additionally, the Committee also believed that this provision should provide some form of relief where its application would work a hardship on the defendant. The prefatory language in the proposed amendment, "unless otherwise ordered by the court," is intended to provide the authority to the court to order the return of bail money where such a hardship would occur by retention of the bail money.

The applicability of this provision is limited to only money that has been deposited by the defendant and the language "deposited by or on behalf of the defendant and the defendant is the named depositor" has been added to reflect this limitation.

An additional change would be the removal of paragraph (A)(4), that prohibits inquiring whether the defendant consents to applying deposited bail money towards fines, costs, *etc.*, because the defendant's consent to having the bail money retained would no longer be needed.

Finally, the language of the Comment would be revised to further explain the change.

[Pa.B. Doc. No. 12-1938. Filed for public inspection October 5, 2012, 9:00 a.m.]

[234 PA. CODE CHS. 5 AND 8]

Proposed New Pa.Rs.Crim.P. 870—875; Proposed Amendments to Pa.Rs.Crim.P. 568, 807 and 809; Proposed Revision of the Comment to Pa.R.Crim.P. 808

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania adopt new Rules 870—875,[1] amend Rules 568, 807, and 809, and revise the Comment to Rule 808 to provide procedures for the determination of a defendant's mental retardation that would preclude the imposition of a sentence of death. 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 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 explanatory Reports.

The text of the proposed changes to the rule 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,

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Criminal Procedural Rules Committee
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e-mail: criminalrules@pacourts.us

no later than Friday, November 23, 2012.

By the Criminal Procedural Rules Committee

PHILIP D. LAUER,
Chair

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

CHAPTER 5. PRETRIAL PROCEDURES IN COURT CASES

PART G. Procedures Following Filing of Information

Rule 568. Notice of Defense of Insanity or Mental Infirmity; Notice of Expert Evidence of A Mental Condition.

(A) NOTICE BY DEFENDANT

* * * * *

(2) Notice of Expert Evidence of Mental Condition

[1] The proposed new rules are in a new Part C to Chapter 8 because there is pending a proposal for a new Part B addressing competency to be executed. *See* Report, 40 Pa.B. 2397 (May 8, 2010).

[A] Except as provided in Rule 871, a defendant who intends to introduce expert evidence relating to a mental disease or defect or any other mental condition of the defendant bearing (1) on the issue of guilt, or (2) in a capital case, on the issue of punishment, shall file with the clerk of courts not later than the time required for filing an omnibus pretrial motion provided in Rule 579 a notice of the intention to offer this expert evidence, and shall serve a copy of the notice and a certificate of service on the attorney for the Commonwealth.

* * * * *

Comment

This rule, which is derived from paragraphs (C)(1)(b), (c)—(f), and (D) of Rule 573 (Pretrial Discovery and Inspection) and was made a separate rule in 2006, sets forth the notice procedures when a defendant intends to raise a defense of insanity or mental infirmity, or introduce evidence relating to a mental disease or defect or any other mental condition at trial.

For the procedures related to the determination of mental retardation precluding imposition of a sentence of death, see Chapter 8 Part (C).

* * * * *

***Official Note*: Adopted January 27, 2006, effective August 1, 2006; renumbered Rule 802 June 4, 2004, effective November 1, 2004; amended , 2012, effective , 2012.**

Committee Explanatory Reports:

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Report explaining the proposed amendment to paragraph (A)(2) and Comment revisions regarding notice of mental retardation published for comment at 42 Pa.B. 6260 (October 6, 2012).

CHAPTER 8. SPECIAL RULES FOR CASES IN WHICH DEATH SENTENCE IS AUTHORIZED

Rule 807. Sentencing Verdict Slip.

(A) JURY

(1) **[In] Except as provided in paragraph (2), in** all cases in which the sentencing proceeding is conducted before a jury, the judge shall furnish the jury with a jury sentencing verdict slip in the form provided by Rule 808.

(2) **In cases in which the jury is to determine if imposition of a sentence of death is precluded due to the defendant's mental retardation, the judge shall furnish the jury with the sentencing verdict slip in the form required by Rule 875. If the jury subsequently does not find unanimously that the defendant is mentally retarded, the judge then shall furnish the jury with a jury sentencing verdict slip in the form provided by Rule 808.**

(3) Before the jury retires to deliberate, the judge shall meet with counsel and determine those aggravating and mitigating circumstances of which there is some evidence. The judge shall then set forth those circumstances on the sentencing verdict slip using the language provided by law.

[(3)] (4) The trial judge shall make the completed sentencing verdict slip part of the record.

(B) TRIAL JUDGE

(1) In all cases**, including those in which the defendant seeks to have the imposition of a sentence of death precluded by reason of mental retardation,** in which the defendant has waived a sentencing proceeding before a jury and the trial judge determines the penalty, the trial judge shall complete a sentencing verdict slip in the form provided by Rule 809.

* * * * *

***Official Note*: Rule 357 adopted February 1, 1989, effective July 1, 1989; renumbered Rule 806 and amended March 1, 2000, effective April 1, 2001; renumbered Rule 807 June 4, 2004, effective November 1, 2004; amended , 2012, effective , 2012.**

Committee Explanatory Reports:

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Report explaining the proposed amendments regarding cases in which the defendant has introduced evidence of mental retardation published for comment at 42 Pa.B. 6260 (October 6, 2012).

Rule 808. Form for Jury Sentencing Verdict Slip.

* * * * *

Comment

* * * * *

The list of aggravating and mitigating circumstances completed by the judge in Part I, and by the jury foreperson in Part II, should use the language provided by law for each circumstance. *See* Sentencing Code, 42 Pa.C.S. § 9711(d) and (e). The judge's instructions on the weighing of aggravating and mitigating circumstances must comply with *Mills v. Maryland*, 108 S.Ct. 1860 (1988).

***See* Rule 875 for the jury verdict slip form to be used when the jury is to determine if imposition of the death penalty is precluded due to the defendant's mental retardation.**

***Official Note*: Rule 358A adopted February 1, 1989, effective July 1, 1989; renumbered Rule 807 and amended March 1, 2000, effective April 1, 2001; renumbered Rule 808 June 4, 2004, effective November 1, 2004; Comment revised , 2012, effective , 2012.**

Committee Explanatory Reports:

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Report explaining the proposed Comment revision cross-referencing Rule 875 published for comment at 42 Pa.B. 6260 (October 6, 2012).

Rule 809. Form for Trial Judge Sentencing Verdict Slip.

IN THE COURT OF COMMON PLEAS OF
_____ COUNTY, PENNSYLVANIA

CRIMINAL

COMMONWEALTH OF PENNSYLVANIA :
vs. : NO. _____
:

FIRST DEGREE MURDER
SENTENCING VERDICT SLIP

A. I, _____ J., sentence the defendant to:

_____ Death

_____ Life Imprisonment

B. The findings on which the sentence of death is based are:

_____ 1. At least one aggravating circumstance and no mitigating circumstance.

The aggravating circumstance(s) (is) (are):

_____

_____.

_____ 2. One or more aggravating circumstances which outweigh(s) any mitigating circumstance(s).

The aggravating circumstance(s) (is) (are):

_____

_____.

The mitigating circumstance(s) (is) (are):

_____

_____.

C. The findings on which the sentence of life imprisonment is based are:

_____ **A sentence of death is precluded because the defendant is mentally retarded.**

OR

_____ 1. No aggravating circumstance exists.

_____ 2. The mitigating circumstance(s) (is) (are) not outweighed by the aggravating circumstance(s).

The mitigating circumstance(s) (is) (are):

_____

_____.

The aggravating circumstance(s) (is) (are):

_____

_____.

_____ DATE _____ , J.

Comment

In listing aggravating and/or mitigating circumstances in Sections B or C, the trial judge should use the language provided by law for each circumstance. *See* Sentencing Code, 42 Pa.C.S. § 9711(d) and (e).

***Official Note*: Rule 358B adopted February 1, 1989, effective July 1, 1989; renumbered Rule 808 and Comment revised March 1, 2000, effective April 1, 2001; renumbered Rule 809 June 4, 2004, effective November 1, 2004; amended , 2012, effective , 2012.**

Committee Explanatory Reports:

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Report explaining the proposed amendment regarding findings of mental retardation published for comment at 42 Pa.B. 6260 (October 6, 2012).

PART C. PROCEDURES FOR SEEKING TO PRECLUDE IMPOSITION OF A SENTENCE OF DEATH BY REASON OF THE DEFENDANT'S MENTAL RETARDATION

(*Editor's Note*: Rules 870—875 are new and printed in regular type to enhance readability.)

Rule 870. Scope.

The rules in Part C provide the procedure for determining if imposition of the death penalty is precluded due to the defendant's mental retardation.

Comment

These rules are intended to apply only to cases arising within the context of the United States Supreme Court decision in *Atkins v. Virginia*, 536 U.S. 304 (2002), that held "executions of mentally retarded criminals are 'cruel and unusual punishments' prohibited by the Eighth Amendment" as applied in Pennsylvania by *Commonwealth v. Sanchez*, 36 A.3d 24 (Pa. 2011).

***Official Note*: New Rule 870 adopted , 2012, effective , 2012.**

Committee Explanatory Reports:

Report explaining the proposed adoption of the new rule published for comment at 42 Pa.B. 6260 (October 6, 2012).

Rule 871. Notice of Mental Retardation Precluding Imposition of Sentence of Death.

(A) Notice of Mental Retardation Precluding Imposition of a Sentence of Death

A defendant who intends to offer evidence of mental retardation that would preclude the imposition of a sentence of death shall file with the clerk of courts not later than 90 days after arraignment, or within such other time as allowed by the court upon cause shown, a notice and certification of service on the attorney for the Commonwealth.

(1) The notice and certification shall be signed by the attorney for the defendant or the defendant if unrepresented.

(2) The notice shall contain specific available information as to the nature and extent of the alleged mental retardation and the names and addresses of witnesses, experts or otherwise, whom the defendant intends to call to establish mental retardation.

(B) Notice of Expert Evidence of Mental Retardation

A defendant who intends to introduce expert evidence relating to mental retardation that would preclude imposition of a sentence of death shall file with the clerk of courts not later than 90 days after arraignment, or within such other time as allowed by the court upon cause shown, a notice of the intention to offer this expert evidence and a certificate of service on the attorney for the Commonwealth.

(1) The notice and certificate shall be signed by the attorney for the defendant or the defendant if unrepresented.

(2) The notice shall contain specific available information as to the nature and extent of the alleged mental retardation or any other mental condition, and the names and addresses of the expert witness(es) whose evidence the defendant intends to introduce.

(C) Reciprocal Notice of Witnesses

Within 30 days after receipt of the defendant's notice of mental retardation that would preclude the imposition of a sentence of death, or notice of expert evidence of mental retardation or within such other time as allowed by the court upon cause shown, the attorney for the Commonwealth shall file and serve upon defendant's attorney, or the defendant if unrepresented, written notice of the names and addresses of all witnesses the attorney for the Commonwealth intends to call to disprove or discredit the defendant's claim of mental retardation.

(D) If prior to or during trial a party learns of an additional witness or additional information which, if known, should have been included in the notice furnished under paragraphs (A), (B), or (C), the party shall promptly notify the other party's attorney, or if unrepresented, the other party, of the existence and identity of such additional witness.

(E) After docketing the notice, the clerk of courts immediately shall transmit the notice to the trial judge.

Comment

This rule sets forth the notice procedures when a defendant intends to assert his or her mental retardation to preclude imposition of the death penalty pursuant to *Commonwealth v. Sanchez*, 36 A.3d 24 (Pa. 2011).

Notices filed in accordance with this rule fall within the definition of "motion" in Rule 575 and must comply with the provisions of Rules 575 and 576.

The requirement in Paragraph (B) for a separate notice of intention to introduce expert evidence is intended to alert all the parties that there will be expert evidence and that the parties are prepared for this evidence. *See* Rule 872 regarding the requirement that any expert who has examined the defendant must prepare a written report stating the subject matter, the substance of the facts relied upon, and a summary of the expert's opinions and the grounds for each opinion.

Paragraph (E) emphasizes the requirement that the trial judge be informed of the filing of the notice at the earliest occasion to ensure the prompt collection of all materials relevant to the issue of the defendant's mental retardation.

Nothing in this rule precludes the trial judge from raising the issue of the defendant's mental retardation *sua sponte*.

***Official Note*:** New Rule 871 adopted , 2012, effective , 2012.

Committee Explanatory Reports:

Report explaining the proposed adoption of the new rule published for comment at 42 Pa.B. 6260 (October 6, 2012).

Rule 872. Examination of Defendant by Mental Health Expert.

(A) EXAMINATION OF DEFENDANT

(1) BY AGREEMENT

(a) The defendant, defendant's counsel, and the attorney for the Commonwealth may agree to an examination of the defendant by the mental health expert(s) designated in the agreement for the purpose of determining mental retardation that would preclude imposition of A sentence of death.

(b) The agreement shall be in writing and signed by the defendant, defendant's counsel, and the attorney for the Commonwealth, or made orally on the record.

(c) Unless otherwise agreed, the mental health expert(s) promptly shall prepare a written report stating the subject matter, the substance of the facts relied upon, and a summary of the expert's opinions and the grounds for each opinion.

(2) BY COURT ORDER

(a) Upon motion of the attorney for the Commonwealth, if the court determines the defendant has provided notice of mental retardation that would preclude the imposition of a sentence of death or notice of intention to introduce expert evidence relating to mental retardation that would preclude imposition of a sentence of death, the court shall order that the defendant submit to an examination by one or more mental health experts specified in the motion by the Commonwealth for the purpose of determining the condition of mental retardation put in issue by the defendant.

(b) When the court orders an examination pursuant to this paragraph, the court on the record shall advise the defendant in person and in the presence of defendant's counsel:

(i) of the purpose of the examination and the contents of the court's order;

(ii) that the information obtained from the examination may be used at trial; and

(iii) the potential consequences of the defendant's refusal to cooperate with the Commonwealth's mental health expert(s).

(c) The court's order shall:

(i) specify who may be present at the examination; and

(ii) specify the time within which the mental health expert(s) must submit the written report of the examination.

(d) Upon completion of the examination of the defendant, the mental health expert(s), within the time specified by the court as provided in paragraph (A)(2)(c)(ii), shall prepare a written report stating the subject matter, the substance of the facts relied upon, and a summary of the expert's opinions and the grounds for each opinion.

(B) DISCLOSURE OF REPORTS BETWEEN PARTIES

(1) The mental health experts' reports shall be confidential, and not of public record.

(2) Any mental health expert whom either party intends to call to testify concerning the defendant's condition of mental retardation must prepare a written report. No mental health expert may be called to testify concerning the defendant's condition of mental retardation until the expert's report has been disclosed as provided herein.

(3) The court shall set a reasonable time after the Commonwealth's expert's examination for the disclosure of the reports of the parties' mental health experts.

(C) PROTECTIVE ORDERS

Upon a sufficient showing, the court may at any time order that the disclosure of a report or reports be restricted or deferred for a specified time, or make such other order as is appropriate. Upon motion of any party, the court may permit the showing to be made *in camera*.

(D) SANCTIONS FOR NON-COMPLIANCE

At any time during the course of the proceedings, upon motion or *sua sponte*, if the court determines there has been a failure to comply with this rule, the court may order compliance, may grant a continuance, or may grant other appropriate relief. Upon motion, any hearing to determine if there has been a failure to comply may be held *in camera* and the record sealed until after disposition of the case.

Comment

This rule establishes the procedures for the examination of the defendant by a mental health expert(s) retained by the prosecution pursuant to an agreement by the parties, see paragraph (A)(1), or a court order, see paragraph (A)(2) in cases in which the defendant's mental retardation has been raised to preclude the imposition of a sentence of death.

"Mental Health Expert," as used in this rule, includes a psychiatrist, a licensed psychologist, a physician, or any other expert in the field of mental health who will be of

substantial value in the determination of the issues raised by the defendant concerning his or her mental retardation.

Examination of Defendant

Paragraph (A)(1) is intended to encourage the defendant, defendant's counsel, and the attorney for the Commonwealth to agree to an examination of the defendant by the Commonwealth's mental health expert(s).

When the defendant, defendant's attorney, and the attorney for the Commonwealth agree that the defendant will be examined under this rule, at a minimum, the agreement should specify the time, place, and conditions of the examination, who may be present during the examination, and the time within which the parties will disclose the reports of their experts.

It is intended that the examining mental health expert(s), whether appointed pursuant to the agreement of the parties or a Commonwealth's motion, have substantial discretion in how to conduct an examination. The conduct of the examination, however, must conform to generally recognized and accepted practices in that profession. Therefore, the examination of the defendant may consist of such interviewing, clinical evaluation, and psychological testing as the examining mental health expert(s) considers appropriate, within the limits of nonexperimental, generally accepted medical, psychiatric, or psychological practices.

Nothing in this rule is intended to limit the number of examining experts the defense may use, nor is it to be construed as a limitation on any party with regard to the number of other expert or lay witnesses they may call to testify concerning the defendant's mental retardation.

The court is required in paragraph (A)(2)(b) to inform the defendant, in person on the record, about the request for a compelled examination. *See* Rule 118 (Use of Two-Way Simultaneous Audio-Video Communication in Criminal Proceedings). The court is to explain that the examination is being conducted at the request of the attorney for the Commonwealth and that the purpose of the examination is to obtain information about defendant's mental condition specifically with regard to mental retardation. In addition, the court should explain the procedures for the examination that are included in the court's order as set forth in paragraph (A)(2)(b), and explain the potential consequences of the defendant's failure to cooperate with the examination.

Paragraph (A)(2)(d) requires that the examining mental health expert(s) promptly prepare a written report and sets forth the minimum contents of that report. It is intended that the scope of the mental health expert's report be limited in the court's order to matters related to the defendant's mental condition at the time put into issue by the defendant.

Disclosure of Reports

After the examination of the defendant by the Commonwealth's mental health expert(s) is completed and the mental health expert's report has been prepared, the defendant and the Commonwealth are required in paragraph (B) to disclose the reports that are made by any experts either party intends to call to testify concerning the defendant's mental retardation. The reports must be in writing, and should comply with the content requirements in paragraph (A)(2)(d). An expert witness, whether or not the expert witness has examined the defendant, cannot testify until the report is disclosed as provided in paragraph (B)(2) and (3). There may be situations in which the court would have to call a short recess to permit the expert to complete a written report and to give the parties an opportunity to review the report, such as when a mental health expert(s) is observing the defendant during the trial and will be called to testify on these observations.

When the parties agree to the examination, the time for the disclosure of the reports should be set by the agreement of the parties. The agreement should permit adequate time to review the reports and prepare for the proceeding. If the parties cannot agree, in cases proceeding pursuant to court order under paragraph (A)(2), the court should set the time for the disclosure of reports, which should afford the parties adequate time to review the reports and prepare for the proceeding.

Establishing a reasonable time frame and providing for the reciprocal disclosure are intended to further promote the fair handling of these cases. In no case should the disclosure occur until after the defendant has been examined by the Commonwealth's mental health expert(s) and the mental health expert(s) has prepared and submitted a written report.

There may be cases in which, although proceeding pursuant to a court order, the parties, with the court's approval, agree to an earlier time for disclosure consistent with the purposes of this rule. This rule would not preclude such an agreement.

The procedures in paragraph (C) are similar to the existing procedures for protective orders in Rule 573(F).

Because the question of whether the imposition of a sentence of death is precluded due to the defendant's mental retardation ordinarily is a question reserved for sentencing, use of information obtained from the examination of a defendant by a Commonwealth's expert is not to be disclosed or used until after the defendant has been found guilty. This may require that the Commonwealth's examination should be sealed until the penalty phase of defendant's trial takes place. *See Commonwealth v. Sartin*, 561 Pa. 522, 751 A.2d 1140 (2000). However, where the parties have agreed to a pretrial determination of the issue pursuant to Rule 873, earlier disclosure may be required.

See the Pennsylvania Rules of Evidence concerning the admissibility of the experts' reports and information from any examinations of the defendant by an expert.

Sanctions

The sanctions authorized by paragraph (D) may be imposed on any person who has failed to comply with any of the provisions of this rule, including the attorney for the Commonwealth, the defendant, defendant's counsel, or an expert.

When the defendant has refused to cooperate in the examination by the Commonwealth's mental health expert(s), before imposing a sanction, the court should consider whether the defendant's failure to cooperate (1) was intentional, (2) was the result of the defendant's mental condition, and (3) will have an adverse and unfair impact on the Commonwealth's ability to respond to the defendant's claim. The court also should consider whether ordering the defendant to resubmit to the examination would result in the defendant's cooperation.

***Official Note*:** New Rule 872 adopted , 2012, effective , 2012.

Committee Explanatory Reports:

Report explaining the proposed adoption of the new rule published for comment at 42 Pa.B. 6260 (October 6, 2012).

Rule 873. Optional Pre-Trial Hearing.

(A) If the parties agree, the issue of defendant's mental retardation precluding imposition of a sentence of death may be determined by the judge after a pre-trial evidentiary hearing.

(B) The defendant shall appear in person with counsel at the hearing.

(C) The defendant shall have the burden of going forward with the evidence.

(D) No later than the beginning of the evidentiary hearing, the judge shall advise defendant that, by agreeing to have the issue of his or her mental retardation decided pre-trial, the defendant, if convicted, will not be permitted to seek a preclusion of the imposition of a sentence of death due to mental retardation with a jury. In these cases, the defendant may introduce evidence of the defendant's mental retardation for purposes of mitigation only.

(E) The attorney for the Commonwealth and the defendant's attorney may introduce evidence and cross-examine any witness, including the examining mental health experts. The judge may call and interrogate witnesses as provided by law.

(F) Within 30 days of the completion of the evidentiary hearing, the judge shall enter an order finding either that the defendant is mentally retarded and therefore is precluded from receiving a sentence of death or that the defendant is not mentally retarded.

Comment

In *Commonwealth v. Sanchez*, 36 A.3d 24 (Pa. 2011), the Pennsylvania Supreme Court held that, pursuant to *Atkins v. Virginia*, 536 U.S. 304 (2002), a determination that a defendant is precluded from receiving a sentence of death by reason of mental retardation generally is to be made by the jury.

As provided in *Sanchez*, the parties may agree to a pre-trial determination of the defendant's ineligibility for the death penalty to be made by the trial judge. The defendant has the burden of proof by a preponderance of the evidence to prove mental retardation. *See Commonwealth v. Sanchez*, ___ Pa. ___, 36 A.3d at 62-63. If the trial judge finds defendant is eligible for the death penalty, the defendant may introduce evidence of mental retardation only during the penalty portion of trial and only for purposes of mitigation.

***Official Note*:** New Rule 873 adopted , 2012, effective , 2012.

Committee Explanatory Reports:

Report explaining the proposed adoption of the new rule published for comment at 42 Pa.B. 6260 (October 6, 2012).

Rule 874. Sentencing Procedures in Cases in Which the Defendant's Mental Retardation Is Asserted.

(A) Unless the issue is decided pretrial pursuant to rule 873, in a case in which the defendant has asserted that imposition of a sentence of death is precluded by reason of his or her mental retardation, after a return of a verdict of guilty of murder in the first degree, a sentencing hearing shall be held in which all sentencing evidence shall be presented, including, but not limited to, evidence of the defendant's mental retardation and evidence of aggravating and mitigating circumstances.

(B) After presentation of the evidence, the judge shall determine if sufficient evidence exists for the jury to decide whether the imposition of a sentence of death should be precluded by reason of mental retardation.

(C) Each party shall be entitled to present one closing argument addressing all sentencing issues, including the defendant's incompetence to be executed due to mental retardation and arguments for or against the sentence of death penalty. The defendant's argument shall be made last.

(D) Upon completion of argument, the judge shall instruct the jury solely upon the issue of the defendant's mental retardation and shall submit a special issue to the jury as to whether the defendant is mentally retarded.

(E) The question of the defendant's mental retardation shall be considered and answered by the jury prior to the consideration of any other sentencing issue and the determination of sentence.

(F) If the jury determines the defendant to be mentally retarded, the judge shall declare the case noncapital and the defendant shall be sentenced to life imprisonment.

(G) If the jury finds the defendant is not mentally retarded, the judge will instruct the jury on the mitigating and aggravating circumstances and the jury shall deliberate on whether or not to impose the death penalty.

Comment

In *Commonwealth v. Sanchez*, 36 A.3d 24 (Pa. 2011), the Pennsylvania Supreme Court held that, pursuant to *Atkins v. Virginia*, 536 U.S. 304 (2002), a determination that a defendant is precluded from receiving the death penalty by reason of mental retardation is to be made by the jury as the first issue in sentencing. This rule provides the procedures for that jury determination.

This rule contemplates that a single capital sentencing hearing will be held in such cases but the jury's deliberations will be conducted sequentially with the defendant's mental retardation decided first. If the jury finds the defendant not mentally retarded, the judge will instruct the jury on the issues related to the imposition of a sentence of death, including the mitigating and aggravating circumstances, after which the jury will deliberate on the sentence.

Except as otherwise provided in Part C of this Chapter, sentencing shall proceed as provided in Chapter 7.

***Official Note*:** New Rule 874 adopted , 2012, effective , 2012.

Committee Explanatory Reports:

Report explaining the proposed adoption of the new rule published for comment at 42 Pa.B. 6260 (October 6, 2012).

Rule 875. Form for Sentencing Verdict Slip in Cases in Which the Defendant's Mental Retardation Is Asserted.

IN THE COURT OF COMMON PLEAS OF
_____ COUNTY, PENNSYLVANIA

CRIMINAL

COMMONWEALTH OF PENNSYLVANIA	:	
vs.	:	NO. _____
	:	

FIRST DEGREE MURDER
SENTENCING VERDICT SLIP

FINDINGS REGARDING MENTAL RETARDATION

INSTRUCTIONS:

Indicate whether you unanimously agree that the defendant was proven to be mentally retarded at the time of the murder.

Upon completion of deliberations on the question of the defendant's mental retardation, return to the courtroom for further instructions from the judge.

FINDINGS:

_____ We, the jury, unanimously find that the defendant has proven by a preponderance of the evidence that the defendant was mentally retarded at the time of the murder.

_____ We, the jury, unanimously find that the defendant has not proven by a preponderance of the evidence that the defendant was mentally retarded at the time of the murder.

_____ We, the jury, cannot agree unanimously that the defendant was mentally retarded at the time of the murder.

_____ DATE _____ JURY FOREPERSON

Comment

The verdict slip form was created in 2012 to provide for those cases in which the question of a defendant's mental retardation that would preclude imposition of the death penalty is determined by the jury. *See Atkins v. Virginia*, 536 U.S. 304 (2002) and *Commonwealth v. Sanchez*, 36 A.3d 24 (Pa. 2011). *See also* Rule 874. For optional procedures for a pretrial determination of the defendant's mental retardation, see Rule 873.

The judge should caution the jury that the verdict slip is to be used to record the sentencing verdict and findings, and that the slip should be completed only after their deliberations are concluded.

***Official Note*:** Rule 874 adopted , 2012, effective , 2012.

Committee Explanatory Reports:

Report explaining the proposed adoption of the new Rule 874 providing the jury verdict slip form in cases involving a determination of mental retardation precluding imposition of the death penalty published for comment at 42 Pa.B. 6260 (October 6, 2012).

REPORT

Proposed New Pa.Rs.Crim.P. 870-875; Proposed Amendments to Pa.Rs.Crim.P. 568, 807, and 809; Proposed Revision of the Comment to Pa.R.Crim.P.808

Procedures for Seeking to Preclude Imposition of a Sentence of Death By Reason Of Defendant's Mental Retardation

The Supreme Court of Pennsylvania recently directed the Criminal Procedural Rules Committee to develop notice procedures for asserting claims arising under *Atkins v. Virginia*, 536 U.S. 304 (2002), a U.S. Supreme Court case that held that the execution of the mentally retarded violates the constitutional prohibition against cruel and unusual punishment, as applied in Pennsylvania in the case of *Commonwealth v. Sanchez*, 36 A.3d 24 (Pa. 2011).

Background

The question of the availability of the death penalty for mentally retarded individuals convicted of a capital offense was definitively decided by the U.S. Supreme Court in *Atkins v. Virginia*, 536 U.S. 304 (2002). In *Atkins*, the Supreme Court found that the execution of the mentally retarded is "cruel and unusual punishment" within the meaning of the Eighth Amendment's prohibition. In this decision, however, the Court did not adopt a definition of mental retardation or a prescribed method of how the issue should be determined. Instead, the Court left those tasks to the individual states to develop, specifically noting that states are "left the task of developing appropriate ways to enforce the constitutional restriction upon execution of sentences." *Id.* at 317.[2] The concept of individual state action on *Atkins* issues was reaffirmed in the case of *Schriro v. Smith*, 546 U.S. 6 (2005), that held that the states must develop their own legal definition of mental retardation. There is currently no statute that provides for an *Atkins* determination in Pennsylvania.[3]

In the absence of action by the Legislature, the Pennsylvania Supreme Court addressed most of the substantive questions regarding adjudication of *Atkins* claims in *Commonwealth v. Sanchez*, 36 A.3d 24 (Pa. 2011). In *Sanchez*, the Court expressed frustration over the fact that ten years had gone by since the *Atkins* decision without the Legislature being able to develop *Atkins* standards in the Commonwealth. Although acknowledging that setting such standards should be a legislative matter, the delay caused the Court to act, using the *Sanchez* case to establish the parameters for making *Atkins* determinations.

Sanchez provides that the decision regarding this issue will be made by the jury as the first issue to be determined at sentencing, with the requirement that the finding of mental retardation for death penalty preclusion must be unanimous. However, the parties may agree to have the issue decided by the judge pre-trial. The Court placed the burden of proof on the proponent of the *Atkins* claim, usually the defendant, to prove mental retardation by a preponderance of the evidence.

Discussion

The Committee's examination initially focused on the question of the timing for raising this issue. The Committee believes that the rules should provide specific timing requirements for the raising of an *Atkins*/*Sanchez* claim. The Committee considered a time limit similar to that used for the Rule 568 (Notice of Insanity Defense)—the motion is to be filed not later than the time required for filing an omnibus pretrial motion, 30 days after arraignment.

Ultimately, the Committee concluded that the time limit should not be tied it to the omnibus pretrial motions rules but should be based on the arraignment date. This would be consistent with the requirements for the notice of aggravating circumstances in Rule 802. A time period

[2] The Committee had previously discussed *Atkins* in 2010, prior to the decision in *Sanchez*, ultimately concluding that, while some aspects of this issue would necessitate procedural rule changes, most of the questions were of a substantive nature and more appropriately decided by legislation or caselaw. The Committee therefore took no action at that time.

[3] "Mental retardation" was defined in Pennsylvania in *Commonwealth v. Miller*, 585 Pa. 144, 888 A.2d 624 (2005) which held that a defendant may establish mental retardation as defined by either the American Association of Mental Retardation or Diagnostic and Statistical Manual of Mental Disorders, 4th Ed. (DSM-IV)

of ninety days after arraignment was reasonable given the amount of information that must be gathered in order to present a good faith notice of mental retardation.

In addition to determining the timing for providing the notice, the Committee consider other procedures that should be addressed in the new rule including that the procedures should provide for an extension of this time limitation for cause shown, and that early involvement of the trial judge, soon after the notice was filed, would be helpful in providing appropriate supervision of the discovery and examination process. The Committee also noted that the new notice procedures should provide for a response time of 30 days. This would be comparable to the procedures for the notice of insanity defense that served as a model of these notice procedures.

In further discussions, the Committee considered whether procedures comparable to the procedures in Rule 568 be added to address a continuing duty to disclose and reciprocal notice. Lastly, the Committee also considered whether the new procedures should provide for the Commonwealth to obtain an examination of the defendant by a mental health expert similar to the procedures in Rule 569.

Because of the additional elements, particularly the disclosure and examination provisions, the Committee realized that the proposal was extending beyond notice procedures. The Committee determined that an expanded proposal, setting forth as much of the procedures for making an Atkins/Sanchez determination as possible, would be helpful to the bench and bar and so agreed to exam procedures for how this determination is to be made, either by the jury or, upon agreement of the parties and a pretrial determination.

Proposed Rule Changes

Originally, the Committee considered placing these procedures in Rule 802. But given the increased scope of the proposal, placement here would make that rule very unwieldy. Therefore, the Committee concluded that the best structure for this proposal would be a series of separate rules grouped in a new subchapter (C) in Chapter 8 that would include new Rules 870 (Scope), 871 (Notice of Mental Retardation Precluding Imposition of the Death Penalty), and 872 (Examination of Defendant by Mental Health Expert), 873 (Optional Pre-trial Hearing), 874 (Sentencing Procedures in Cases in which the Defendant's Mental Retardation is Asserted), and 875 (Form for Sentencing Verdict Slip in Cases in which the Defendant's Mental Retardation is Asserted).

Proposed new Rule 870 would establish that the rules in Part C provide the procedure for determining the defendant's ineligibility to be executed by reason of mental retardation. The Comment to Rule 870 would include citations to *Atkins* and *Sanchez*.

New Rule 871 would provide for the timing of the filing of the notices. The rule would also contain the reciprocal notice provision as well as the continuing duty to disclose. The disclosure requirements in Rule 871 are based on those for the competency to stand trial determination procedures found in Rule 568.

Additionally, Rule 871 contains in paragraph (B) provisions for the filing of the separate notice of expert evidence provision. As this proposal is modeled on the notice of insanity defense procedures, the Committee decided to retain this separate notice of expert evidence to keep the examination procedures for mental retardation similar to those for insanity.

Paragraph (E) of Rule 871 would require the clerk of courts to immediately send a copy of the notice to the trial judge to ensure the judge's supervision of the discovery and examination process at an early stage.

The notices filed under this rule would be considered "motions" and so the Comment would contain a cross-reference to Rules 575 and 576 for motion procedures and explains that the term "notices" as used in the rule fall within the definition of "motion" in Rule 575.

Rule 872 would provide the procedures by which the Commonwealth may obtain an examination of the defendant by a mental health expert. These procedures are almost identical to those found in Rule 569.

Proposed new Rule 873 would provide the procedures for an optional pre-trial hearing for the determination of the issue but, as provided in *Sanchez*, only if all the parties and the judge agree. Rule 873 also includes a time limit for when the decision of the pre-trial determination must be made. The judge would be required to enter an order within 30 days of the completion of the evidentiary hearing finding the defendant either is or is not competent to be executed due to mental retardation. Paragraph (D) would require that the judge advise the defendant that, by agreeing to have this issue decided pretrial, the defendant would not be able to argue for capital punishment preclusion with a jury but only may introduce mental retardation evidence for purposes of mitigation.

The Committee conducted a lengthy examination of the manner in which the sentencing hearing would proceed when a jury makes this determination. The proposal provides that, after the guilt determination, there will be a single capital sentencing hearing in which all sentencing evidence will be presented, followed by a single argument on all sentencing issues. At the conclusion of the arguments, the judge will instruct the jury on the mental retardation issue only. The jury then will deliberate on that single issue. If the jury finds the defendant not mentally retarded, the trial judge will instruct them on the mitigating and aggravating circumstances and the jury will deliberate on that phase of sentencing. New Rule 874 would detail this procedure.

A new separate jury verdict slip to record the jury's determinations regarding mental retardation has been developed and appears in Rule 875. Since it will be a distinct determination, the slip in Rule 875 is fairly short, with the only question that of whether the jury unanimously finds the defendant was mentally retarded at the time of the murder. If the jury finds the defendant mentally retarded, the jury would not need to consider aggravating or mitigating factors. If the jury does not find the defendant mentally retarded or if the jury cannot unanimously agree that the defendant was mentally retarded, the jury would proceed, after further instruction by the trial judge, to the capital determination guided by the jury slip in Rule 807.

While it is unlikely that a defendant to opt for a judge-alone trial and not seek the pre-trial determination, there might be a case in which that occurs. Therefore, the judge sentencing verdict slip in Rule 809 would be modified to incorporate this possibility and correlative changes also have been made to Rule 807 (B).

Finally, the proposal would make correlative changes to Rule 568 to indicate that procedures for *Atkins*/*Sanchez* determinations are in Chapter 8 Part (C).

[Pa.B. Doc. No. 12-1939. Filed for public inspection October 5, 2012, 9:00 a.m.]

Title 249—PHILADELPHIA RULES

PHILADELPHIA RULES

Amendment of Commerce Case Management Program; Administrative Doc. No. 02 of 2003

Order

And Now, this 18th day of September, 2012, it is hereby *Ordered* and *Decreed* that effective immediately, Section B. 1. 7. is amended to read as follows:

B. *Assignment of Cases Subject to Commerce Program*

1. *Cases Subject to Commerce Program.* Notwithstanding anything to the contrary in General Court Regulation 95-2 (Day Forward Program) or any other General Court Regulation, Jury, Non-Jury & Equity, and Class Action cases filed on or after January 1, 2000, but not Arbitration cases, shall be assigned to the Commerce Program if they are among the following types of actions:

* * * * *

7. Derivative actions and class actions based on claims otherwise falling within these ten types, such as shareholder class actions, but not including consumer class actions, personal injury class actions, and products liability class actions;

* * * * *

The Commerce Program Addendum shall be revised to reflect this amendment. All other provisions of Administrative Docket No. 02 of 2003 shall remain in full force and effect.

This Order is issued in accordance with Pa.R.C.P. No. 239 and the April 11, 1986 Order of the Supreme Court of Pennsylvania, Eastern District, No. 55 Judicial Administration. The original order shall be filed with the Prothonotary in a Docket maintained for Administrative orders issued by the Administrative Judge of the Trial Division, Court of Common Pleas of Philadelphia County, and shall be submitted to the *Pennsylvania Bulletin* for publication. Copies of the order shall be submitted to the Administrative Office of Pennsylvania Courts, the Civil Procedural Rules Committee, American Lawyer Media, The Legal Intelligencer, Jenkins Memorial Law Library, and the Law Library for the First Judicial District of Pennsylvania, and shall be posted on the website of the First Judicial District of Pennsylvania: http://www.courts.phila.gov/regs.

By the Court

HONORABLE JOHN W. HERRON,
Administrative Judge, Trial Division

[Pa.B. Doc. No. 12-1940. Filed for public inspection October 5, 2012, 9:00 a.m.]

Title 255—LOCAL COURT RULES

McKEAN COUNTY

Adoption of Revised Local Rules of General Civil Procedure; Civil Division; No. 158 December Term 1904

Order

And Now, this 18th day of September, 2012, it is hereby Ordered and Decreed, pursuant to Pennsylvania Rule of Civil Procedure 239, as follows:

1. The Local Rules of Civil Procedure are hereby adopted, effective 30 days after publication in the *Pennsylvania Bulletin*;

2. The District Court Administrator, Joanne L. Bly, of the 48th Judicial District is hereby directed to:

a. File one (1) certified copy of this Order and the Local Rules with the Administrative Office of Pennsylvania Courts;

b. File two (2) certified copies of this Order and the Local Rules, along with a compact disc (CD) with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*;

c. File one (1) certified copy of this Order and the Local Rules with the Pennsylvania Civil Procedural Rules Committee;

d. Provide one (1) copy of this Order and the Local Rules to each member of the McKean County Bar Association, distribution may be made electronically; and

e. Keep this Order and the Local Rules continuously available for public inspection and copying in the Office of the McKean County Prothonotary and Clerk of Courts.

It is further Ordered and Decreed that, contemporaneously with the effective date of the aforementioned Local Rules of Civil Procedure, any previously adopted local rules of civil procedure are rescinded and vacated.

By the Court

JOHN H. PAVLOCK,
President Judge

MCKEAN COUNTY RULES OF CIVIL PROCEDURE

RULES OF CONSTRUCTION

Rule L51. Title of Rules. Purpose.

These Local Rules of Civil Procedure are intended to implement the Pennsylvania Rules of Civil Procedure to which their numbers correspond. They shall be cited as "Rule L___ ."

THE BUSINESS OF THE COURTS

Rule L205.2(a). Filing of Legal Papers.

In addition to the requirements forth in Pa.R.C.P. No. 204.1:

(1) All papers filed with the prothonotary shall be without folds to facilitate scanning and flat filing.

(2) All papers having multiple pages shall be numbered consecutively. The number shall appear at the bottom center position of each page.

(3) All papers having multiple pages shall be bound at the top with a binding clip or single staple in the middle, not the side.

(4) No tape, headers or backers shall be used without prior approval of the prothonotary.

(5) Attachments to any paper filed with the prothonotary shall be clearly legible. Copies shall faithfully represent the original in every respect.

Rule L205.2(b). Cover Sheet.

(1) Pursuant to Pa.R.C.P. No. 205.5 the initial pleading in any civil action including actions for custody and visitation of minor children, actions for divorce, actions in domestic relations generally and actions in the Orphan's Court except actions filed pursuant to the Protection from Abuse Act, 23 Pa.C.S.A. § 1601 et seq. and actions for support, shall be accompanied by the cover sheet published by the court administrator of Pennsylvania available on the website of the Administrative Office of Pennsylvania Courts and from the prothonotary. The party filing the initial pleading in any other type of case not listed on the cover sheet or for which there is not an applicable header (e.g. TORT) under which the case type can be added on the line "Other:" shall mark in the lower right hand corner of the cover sheet under the heading "MISCELLANEOUS" sub-heading "Other:" Family Law, Orphan's Court and attach the supplement set forth in subdivision (3) of this rule.

The following are a list of case types that should be used when completing the Rule 205.5 Cover Sheet where not identified.

TORT: Assault, Wrongful Death/Survival, Minor's or Incapacitated Person's Compromise

CONTRACT: Mechanic's Lien, Insurance, Negotiable Instrument, Warranty

CIVIL APPEALS: Award of Viewers, Local Agency, Board of Elections

MISCELLANEOUS: Equitable Relief (Injunction), Labor Dispute, Confirm/Vacate Arbitration Award and any other case not specifically addressed in this rule.

(2) All pleadings including the initial pleading and entries of appearance filed in any matter shall be accompanied by the local cover sheet set forth in subdivision (3) of this rule.

(3) The court administrator shall design and publish the supplement referred to in subparagraph (1) of this rule and the local cover sheet referred to in subsection (2) of this rule. The latest version of these forms shall be available from the prothonotary and on the court's website at www.mckeancountypa.org/Departments/Court_Of_Common_Pleas/Index.aspx. The prothonotary shall assist a party appearing pro se in the completion of these forms.

Comment

A "complex case" is an action that requires exceptional judicial management to avoid placing unnecessary burdens on the court or the litigants and to expedite the case, keep costs reasonable, and promote effective decision making by the court, the parties, and counsel. The factors to be used in determining if a case is "complex" are among other things, whether the action is likely to involve numerous pretrial motions raising difficult or novel legal issues that will be time consuming to resolve, management of a large number of witnesses or a substantial amount of documentary evidence, management of a large number of separately represented parties, or the trial of the case will take more than 2 days. An action is presumptively a complex case if it involves one or more of the following types of claims: medical malpractice, construction defect claims involving many parties; claims for wrongful death; or, insurance coverage claims arising out of any of the claims listed above.

Plaintiff/Defendant shall furnish the prothonotary with a copy of the cover sheet(s) and supplement, if any, for the court administrator.

Rule L206.4(c). Petition Procedure: Issuance of a Rule to Show Cause.

(1) Filing:

(a) All petitions shall be filed with the prothonotary in the form prescribed in Pa.R.C.P. Nos. 204.1, 206.1 and Rule L205.2(a).

(b) Scope: As used in this rule, "petition" means any application to open a default judgment or a judgment of non pros.

(c) The issuance of a Rule to Show Cause upon presentation of a petition shall be discretionary. A petitioner seeking the issuance of a Rule to Show Cause shall attach to the petition a proposed order in the form prescribed in Pa.R.C.P. No. 206.5(d). The court in its discretion may delete paragraphs (4) and (5) of the form order (regarding discovery and argument) and provide instead that the matter will proceed before the court on an evidentiary hearing to resolve disputed issues of fact. The court may also enter an order to require the filing of briefs or to authorize discovery to proceed other than by deposition.

(d) Petitions should not be filed with the court administrator. All petitions shall be filed with the prothonotary. Courtesy copies for the court are not required. Petitions should not be filed in duplicate or by facsimile transmission, except in emergency circumstances.

(e) The court will take no action until a petition has been filed of record, except in unusual circumstances.

(f) In the event a Rule to Show Cause is not issued, the court shall issue an appropriate order directing the respondent to file an answer to the petition and the petition will be decided under Pa.R.C.P. No. 206.7.

(2) The petition seeking the issuance of a Rule to Show Cause shall be supported with an appropriate statement of authority citing a statute, rule of court, or case law in support of the requested relief. The statement may be in the form of a brief or memorandum of law filed contemporaneously with the petition; or, in a routine petition that does not raise complex legal or factual issues, in the body of the petition itself.

(3) Any request for stay of execution pending disposition of a petition to open judgment shall be filed by separate motion.

(4) The petition and any motion seeking a stay of execution shall be scheduled for argument or hearing by the court administrator and it is not necessary for the moving party to request hearing or argument.

Comment

See Pa.R.C.P. No. 210 and L210 for the form of a brief or memorandum of law. See also Rule L303.1 and the Explanatory Comment that follows.

A petition for relief from a judgment by confession is governed by Pa.R.C.P. No. 2959.

A petition to open or strike a judgment is governed by Rule L315.

A petition to compromise, settle, or discontinue an action in which a minor has an interest under Pa.R.C.P. No. 2039 is governed by Rule L2039.1.

A petition to compromise, settle, or discontinue an action in which an incapacitated person has an interest under Pa.R.C.P. No. 2064 is governed by Rule L2064.1.

A petition to compromise, settle, or discontinue a wrongful death or survival action in which a minor or incapacitated person has an interest under Pa.R.C.P. No. 2206 is governed by Rule L2206.1.

Except as otherwise provided by the Pennsylvania Rules of Civil Procedure or by statute, all other applications for relief shall be in the form of a motion and shall be governed by Rule L208.3(a).

Rule L208.2(c). Statement of Authority.

All motions, except motions for continuances, shall be supported by a statement of authority citing a statute, rule of court or case law in support of the requested relief. The statement may be in the form of a brief or memorandum of law filed contemporaneously with the motion; or, in routine motions that do not raise complex legal or factual issues, in the body of the motion itself.

Comment

See Pa.R.C.P. No. 210 and Rule L210 for the form of a brief or memorandum of law. See also Rule L303.1 and the Explanatory Comment that follows.

Rule L208.2(d). Certification of Position: Motions.

Prior to submitting any motion, the movant or his/her counsel shall confer with all counsel of record and any unrepresented parties to determine their position with respect to the motion. The movant or his/her counsel shall include in or attach to his/her motion a certification that the movant or his/her counsel has conferred, or attempted to confer, with all interested parties to ascertain their position on the motion (contested, uncontested or no position). The ascertained position shall be indicated in the certification.

Rule L208.2(e). Discovery Motions.

A motion relating to discovery shall contain a certification by counsel for the moving party that counsel has conferred with all interested parties in an attempt to resolve the matter without court action and has been unable to reach a satisfactory resolution of the issues presented.

Rule L208.3(a). Motion Procedure: Scheduling and Argument.

(1) Filing and Scheduling:

(a) All motions shall be filed with the prothonotary in the form prescribed in Pa.R.C.P. Nos. 204.1, 208.2 and Rule L205.2(a) and shall be accompanied by a proposed order.

(b) Scope: As used in this rule, "motion" means any application to the court made in any civil action or proceeding except as provided by subdivision (b)(1) and (2) of Pa.R.C.P. No. 208.1.

(c)(i) Motions should not be filed with the court administrator. All motions shall be filed with the prothonotary. Courtesy copies for the court are not required.

(c)(ii) Motions should not be filed in duplicate or by facsimile transmission, except in emergency circumstances. The prothonotary shall immediately forward emergency and continuance motions to the court administrator. Continuances will be granted only in accordance with the court's continuance policy (See memorandum of November 16, 1993) available on the court's website at www.mckeancountypa.org/Departments/Court_Of_Common_Pleas/Index.aspx. See also Pa.R.C.P. No. 216. No such request will be granted unless good cause is shown.

(c)(iii) Every motion shall contain the certification required by Rule L208.2(d).

(d) The court will take no action until a motion has been filed of record, except in unusual circumstances.

(e) Unless the motion is certified as uncontested, the court shall provide the opportunity for argument either by written briefs or orally in open court. If oral argument is held, the court, in its discretion, may decide the matter at argument or take the matter under advisement. The court may deny the moving party's request for relief, without argument, when the motion is procedurally defective, is untimely filed or fails to set forth adequate grounds for relief. If an order is entered without oral argument, the court shall hear oral argument on an application by any party for reconsideration of such order. The application for reconsideration shall be filed within 10 days after the filing of the decision.

(f) No oral testimony shall be heard at the time of argument except by direction of the court.

(2)(a) Appearance by Advanced Communication Technology: The court, in its discretion, may permit any party to appear by telephone or by a system providing two-way simultaneous audio-visual communication. Any party wanting to participate in any argument or hearing utilizing advanced communication technology shall file a written request with the judge presiding over the matter not later than the 5th day preceding the argument or hearing unless good cause can be shown for the request's late filing. Every request to appear by advanced communication technology shall contain the certification required by Rule L208.2(d). The party or parties appearing utilizing advanced communication technology shall bear the cost thereof, unless the court provides otherwise. Notwithstanding, any Judge of this court may adopt an alternate procedure governing appearances utilizing advanced communication technology.

(b) If a party choosing to appear utilizing advanced communication technology fails to call the court or is unavailable when called to participate in the call with the court, the court may pass the matter or may treat the failure to call or participate as a failure to appear.

(3) Transcripts: The moving party in all post-trial or post-hearing motions or petitions shall, if the argument relates to the testimony presented, arrange for the transcription of so much of the testimony as may be required to resolve the issues presented.

Comment

All motions, upon filing, except motions for continuances and to appear by advanced communication technology, must be supported by a statement of authority citing a statute, rule of court or case law in support of the requested relief. See Rules L208.2(c) and L303.1. A motion decided on the papers filed of record or on such briefs or memorandums of law as may be filed by the parties will normally be decided within 30 days of the date on which the response to the motion is filed. Motions certified as uncontested will normally be decided within a few days after the motion is filed. See Rule L208.2(d). A motion on which oral argument is held will normally not be decided for 90—120 days after the motion is filed. Notwithstanding, any party or a party's attorney has the right to appear before a Judge of this court and argue any motion. See Pa.R.C.P. No. 211.

EXCEPT FOR THE ACTIONS OR PROCEEDINGS DESCRIBED IN PA.R.C.P. NO. 208.1(b)(1) AND THE MATTERS DESCRIBED IN PA.R.C.P. NO. 208.1(b)(2) EVERY APPLICATION REQUESTING A JUDGE TO ENTER AN ORDER OF COURT IS GOVERNED BY THE MOTION RULES PA.R.C.P. NOS. 208.1—208.4 AND L208.2(c)—208.3(a). IT DOES NOT MATTER WHETHER THE MOVING PARTY REFERS TO THE APPLICATION AS A "PETITION," AS A "MOTION," OR EVEN AS AN "APPLICATION." THE MOTION RULES 208.1—208.4 APPLY.

For example, Pa.R.C.P. No. 3279(a), governing deficiency judgments, provides that the proceeding shall be commenced "by filing a petition" and Pa.R.C.P. Nos. 2301 et seq., governing interpleader by defendants, permit the commencement of the proceeding upon "petition" of a defendant and sets forth what the "petition for interpleader" shall allege. These proceedings are not governed by the rules governing petitions (General and Rules 206.1 et seq.) because the term petition, as used in these rules, is defined to cover only an application to open a default judgment or judgment of non pros. Every other application, even if described as a petition in other rules comes within Rule 208.1(a)'s definition of motion.

Rule 208.3(b). Motion Procedure: When Response Required.

A response along with a supporting brief or memorandum of law shall be filed by any party opposing a motion governed by Rule L208.3(a) within 20 days after service of the motion unless the time for filing the response is modified by court order or a Pennsylvania Rule of Court. If a response is not filed as provided above, the court may treat the motion as uncontested.

Comment

A response shall be filed by any party opposing a motion governed by Rule 208.3(a) even if there are no disputed facts because the response is the opposing party's method of indicating opposition.

Rules L210 and L303.1 govern the form of briefs and memorandums of law.

Rule L210. Form of Briefs and Memorandums of Law.

(a) Briefs and Memorandums of Law shall be typewritten using a 12 pt font or greater, double spaced (except for quotations) on paper 8-1/2 inches by 11 inches in size, shall be bound at the top, not at the side, and shall contain:

(1) A history of the case.

(2) A statement of the question or questions involved.

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

(4) An argument with citation of the authority relied upon.

(5) A short conclusion stating the precise relief sought.

(b) The argument shall be divided into as many parts as there are questions involved

(c) Memorandums of Law need not contain a history of the case.

(d) The brief of the responding party need only contain the argument and conclusion, but the responding party may add a counter history of the case.

(e) Briefs shall not exceed 20 pages in length without prior court approval. Memorandums of Law shall not exceed 10 pages.

(f) All briefs and memorandums of law shall be filed with the prothonotary. A courtesy copy of the brief or memorandum of law is not required.

Comment

Please see the Explanatory Comment following Rule L303.1 regarding the court's request that counsel provide copies of out of jurisdiction cases and other not readily available source material.

Rule L212.1. Pre-Trial Procedure.

(a) This rule shall apply to all civil actions, both jury and non-jury, with the exception of cases covered by Rule L1301.2, appeals from compulsory arbitration and actions in divorce under 23 Pa. C.S.A. § 3301, subsections (a), (b) and (d) of the Divorce Code, actions of annulment, and other issues permitted by law relating to the termination or validity of marriages.

(b) The parties shall complete discovery within 210 days from the filing of the complaint. Discovery will not be permitted after the 210 day period except by order of court upon good cause shown.

(c) In those cases where it is apparent that extensive discovery will be required or when the pleadings have not closed within 60 days from the filing of the complaint, the court will hold a status/case management conference to establish an alternative discovery timetable.

(d) All parties shall file with the court administrator on or before the 180th day from the filing of the complaint a status report showing:

(1)(i) whether or not discovery has been completed;

(ii) if discovery has not been completed, why discovery has not been completed;

(iii) the date by which the party reasonably believes discovery will be complete;

(iv) whether or not experts have been engaged;

(v) if experts have been engaged whether or not the case can proceed in the manner proscribed in subparagraphs (4) and (5) of this rule and, if not, the date by which the parties reasonably believe the exchange of expert reports will be complete;

(vi) what unusual questions of law are anticipated with respect to issues in the case supported with a statement of authority supporting the position taken with respect to such unusual questions of law; and

(vii) the settlement status of the case.

(2) No fee shall be charged for the filing of the report required by this rule.

(3) If a party shall fail to file the report required by this rule the court administrator shall schedule a status conference.

(4) The court administrator shall design and publish the status report. The latest version of the form shall be available from the court administrator and on the court's website at www.mckeancountypa.org/Departments/Court_Of_Common_Pleas/Index.aspx.

(e) The Plaintiff's expert report(s) shall be served on the defendant within 60 days from the close of discovery except medical reports which shall be provided to opposing counsel within 30 days of the examination. See Rule L4010.

(f) The Defendant's expert report(s) shall be served on the Plaintiff within 30 days of service of Plaintiff's expert's report(s) except medical report(s) which shall be provided to opposing counsel within 30 days of the examination. See Rule L4010.

(g) The parties shall file all dispositive motions within 120 days of the close of discovery.

(h) All motions will be decided under Rule L208.3(a) and the case listed for trial pursuant to Rule L308.1 or arbitration pursuant to Rule L1303.1(a)(1).

(i)(1) If the case is not listed for trial by one or more of the parties within 30 days of the court's final ruling on all dispositive motions the court administrator may place the case on the trial list, notify the parties of the earliest date on which the case may be tried and schedule a pre-trial conference. The filing fee shall be charged to the Plaintiff.

(2) If the case is arbitrable under Rule L1301.1 and not listed for arbitration by one or more of the parties within 30 days of the court's final ruling on all dispositive motions the court may list the case for arbitration pursuant to Rule L1303.1(a)(2)(i). The filing fee shall be charged to the Plaintiff.

(j) If before the close of discovery counsel agree on a schedule for disposition of the case which substantially meets the requirements contained in this rule, and submit the agreement to the court as a proposed order the court shall adopt the proposed order as an order of court or direct the parties to attend a case management conference.

(k) If matters arise at any time during the discovery period or thereafter which counsel reasonably believes has or will prejudice their case or has or will cause counsel to fall out of compliance with this rule, counsel shall request a status conference.

(l) At any time, the court may, in its discretion, direct the parties to attend a status conference, attend a case management conference, modify the above timetable, refer the case to mediation, list a case for arbitration, direct a case be listed for trial, or otherwise intervene to expedite the litigation.

(m) If at any time the case is referred to mediation under Rule L1341 the above timetable shall be stayed pending the conclusion of the mediation.

Explanatory Comment

It is the intention of this rule to have a case trial ready and listed for pre-trial conference within 12 months from the filing of the complaint. The time standards for general civil matters is: all non-jury cases should be tried or otherwise disposed of within 12 months/360 days after initial filing and all jury cases should be tried or otherwise disposed of within 18 months/540 days after initial filing. It is contemplated that there will be instances when a shorter or longer timetable will be indicated. In these instances the court will enter an appropriate order pursuant to subsection (11) of this rule.

Rule L212.2. Pre-Trial Statement.

(a) Three days prior to the date scheduled for the pre-trial conference each party shall submit to the court and to other counsel of record a pre-trial statement containing those items set forth in Pa.R.C.P. No. 212.2.

(b) If a party, in the exercise of reasonable diligence, first becomes aware after the pre-trial conference of the necessity or desirability of using a witness, an exhibit, a hypothetical question, plot or plan, he shall forthwith provide the court and other counsel with the same information with respect to such witness, exhibit, hypothetical question, plot or plan as is required on the pre-trial statement set forth in Pa.R.C.P. No. 212.2. Failure to provide such information shall not be compliance with this subsection, and may, in the discretion of the court, justify refusal by the court to permit the use of such witness, exhibit, hypothetical question, plot or plan at trial.

Rule L212.3. Pre-Trial Conference.

(a) For purposes of this rule, "pre-trial" shall mean a type of conference described in Pa.R.C.P. No. 212.3.

(b) Except as otherwise ordered by the court, pre-trial conferences shall be held at times directed by the court. Pre-trial conferences are extended to all actions not subject to arbitration under Rule L1301.

(c) Any application for continuance of the conference shall be by motion addressed to the court.

(d) Counsel attending the pre-trial conference must have complete authority to stipulate on items of evidence and admissions and must have full settlement authority. If counsel does not have such authority then the person or corporation having the actual interest in the case, whether as a party, as an insurance carrier or otherwise, shall be personally present at the pre-trial conference.

(e) The Court may impose appropriate sanctions upon a party for failure to abide by any rule pertaining to pre-trial statements or pre-trial conferences.

Rule L225. Addresses and Summing Up.

(a) Opening addresses may be made by all parties or groups of parties at the commencement of the trial in the order of their appearing in the pleadings. Any party may reserve his opening address until immediately before presenting his evidence.

(b) After the close of the testimony, each party or group of parties shall have the right of final address or argument in inverse order to the order of opening addresses, unless otherwise ordered by the court.

(c) Counsel shall not consume more than thirty minutes in either the opening address or the summing up address, except by special allowance.

Rule L226. Pre-Trial Matters, Points for Charge.

(a) Before the beginning of any jury trial counsel shall present to the court a concise memorandum of the applicable law and requested points for charge. Requested points for charge shall be exchanged by counsel at the close of evidence.

(b) All requested points for charge shall contain a citation of authority.

(c) In so far as possible, all exhibits shall be marked for identification before the beginning of trial.

Rule L227.1. Post-Trial Conferences.

In every case in which a Motion for Post-Trial Relief has been filed, the court may schedule a post-trial conference to be held as soon as the business of the court permits. The purpose of such conference shall be to determine the precise issue or issues that will be before the court on said motion and the extent of the trial record which will need to be transcribed.

MISCELLANEOUS COURT MATTERS

The Pennsylvania Rules of Civil Procedure do not specifically deal with the matters covered by Rules L300

through L507 and, therefore, there are no Pennsylvania Rules of Civil Procedure corresponding to Rules L300 through L507.

Rule L300. Service Requirements of All Papers.

Unless otherwise provided by an Act of Assembly or Rule of court, a copy of each paper filed in any case, other than the writ, complaint, or other process by which an action is commenced, shall be served by the party filing it promptly upon all other parties to the litigation or their attorneys of record. The manner of service shall be in conformity with Pa.R.C.P. No. 440. No matter shall be considered by the court unless there has been filed either a proof of service, acceptance of service or certificate of service.

Rule L301. Copies of Writings.

Whenever a copy of a writing is attached to a pleading, brief or other paper submitted to the court, such copy shall be clearly legible and faithfully represent the original in every respect, and unless the original itself is not legible the court may require a substitute copy to be made and filed before the pleading, brief or other paper will be considered by the court.

Rule L302. Reserved.

Rule L303. Matters for Argument.

(a) Upon the filing of any motion, petition, exceptions, or the like, requiring legal argument or a hearing, not otherwise covered by these Rules, an administrative order or a rule of Pennsylvania civil procedure, the court shall enter an appropriate order that sets forth the procedures the court will use for deciding the motion, petition or exceptions which may include, inter alia, one or more of the following: the filing of an answer, the filing of briefs, the conduct of discovery, and the issuance of a Rule to Show Cause.

(b) The court may provide in the order for disposition upon briefs rather than oral argument.

(c) Notice of the entry of the order shall be provided to all parties by the moving party.

Rule L303.1. Supporting Brief or Memorandum of Law.

All motions, responses, exceptions, preliminary objections, and petitions, upon filing, must be supported by a brief or memorandum of law in support thereof. If not so supported, then the motion, responses, exceptions, objections or petition shall be summarily disposed of, unless counsel promptly requests permission for good cause to file the required brief or memorandum of law at a later date.

This rule shall not apply to exceptions taken to the recommendation of the Family Law Master or Permanent Hearing Officer.

Explanatory Comment

It is not the intention of this rule to require "full blown" briefs on simple or routine issues. The extent of briefs or memorandums of law submitted in support of the pleading should be in proportion to the complexity of the issue which the pleading raises.

Consequently, a complicated motion, such as a motion for summary judgment, should be supported by a brief or memorandum of law which fully discusses the facts and the applicable law. See Pa.R.C.P. No. 210 and Rule L210 for the form of briefs or memorandums of law.

A routine motion or a motion presenting uncomplicated issues may be supported by a recitation of fact or authority in the motion itself or in a cover letter. In those situations, all that is required is a citation to the appropriate rule, statute or case law which establishes that the movant is entitled to the relief requested and that the court has the power to grant it. A clean copy of the case or cases that clearly support the proposition and which the court is being asked to rely on in making its decision may be attached to the motion itself. Examples: A motion for a continuance shall cite Pa.R.C.P. No. 216. A motion for sanctions for failure to serve answers to written interrogatories under Pa.R.C.P. No. 4005 shall cite Pa. R.C.P.C.P. No. 4019 (a)(1)(i) and Pa. R.C.P. No. 4019(c).

Counsel are requested to include with their brief or memorandum of law a separate appendix that contains a clean copy of any source material that the court is being asked to rely on in making its decision that comes from a jurisdiction other than Pennsylvania (cases, rulings, etc.) or to which the court does not have convenient access (treatises, law review articles, etc.) The appendix will not be made part of the record. Do not make reference to the appendix in your brief or memorandum of law.

Rule L304. Motions and Petitions.

(a) Motions and petitions shall be filed with the prothonotary or clerk of the Orphans Court for presentation to the court.

(b) Except for emergency matters and routine matters that are not contested, no motion or petition requesting ex parte action shall be heard by the court unless prior notice of its presentation has been given to opposing counsel of record.

Rule L305. Motions: Post-Trial and Post-Hearing.

The moving party in all post-trial and post-hearing motions or petitions shall, if argument thereon is to be with reference to the testimony, include a request for a transcript of the testimony, or such part thereof as the moving party desires to have transcribed for the purposes of such motion.

Rule L306. Notice.

(a) All notices shall be in writing.

(b) Except as otherwise provided by Act of Assembly, rule or special order of court, whenever any process, paper or notice is required to be served upon a party, such service shall be made in accordance with the procedure set forth in Pa.R.C.P. Nos. 400—441; if service is to be made by publication, then service shall be made as provided by Rule L430.

Rule L307. Prothonotary.

(a) The prothonotary shall immediately endorse all papers filed with the date of such filing, and shall enter into an appropriate docket all pleadings, rules, orders of court and other papers filed in every case.

(b) The prothonotary shall be responsible for the safe keeping of all records and papers belonging in her office. No paper may be taken from the files of the prothonotary without the consent of the prothonotary or one authorized by the prothonotary to give such consent. A record shall be made of any paper removed from the prothonotary's office and the person who receipts for such paper shall be responsible for return of the same and for any financial loss occasioned by failure to return the paper.

(c) Only the prothonotary, his/her clerks, attorneys registered in McKean County and such other persons as

the prothonotary shall specially authorize shall be permitted direct access to the prothonotary's files.

(d) No entries shall be made in any prothonotary's docket except at the direction of the prothonotary or by order of court.

Rule L308. Listing Cases for Trial.

(a) Jury and non-jury trials: Trials will be held at such times and on such dates as shall be established by the court.

(b) To place a case on the trial list, one or more of the parties in the case or their counsel shall proceed as herein provided.

(1) File a Praecipe to List for Trial that shall substantially conform to the form shown below and serve the praecipe on all other parties and if they be represented by counsel on their counsel. The praecipe shall contain a certification by the listing party or counsel that: the pleadings are closed; there are no outstanding motions; all pretrial discovery is completed; if a jury trial has or has not been demanded; an estimate of time required for the trial; all counsel of record and self represented litigants agree that the matter is presently ready for trial and that they do not object to its listing.

(2) By motion that shall substantially conform to the form shown below showing that all counsel and unrepresented parties do not agree that the case is presently ready for trial, and requesting that the court order the case to trial. The court shall then promptly schedule a hearing to consider the matter.

(c) The prothonotary shall upon receipt of the praecipe or court order place the case upon the prothonotary's Active Trial List and shall not less frequently than monthly forward to the court administrator an updated trial list reflecting all new cases listed for trial, settlements, continuances, discontinuances or other dispositions of cases.

(d) In no event shall any matter proceed to jury selection or shall trial dates be reserved unless the pleadings are closed, discovery is completed, and there is no other impediment to the immediate trial of the case, unless the court orders otherwise for good cause.

(e) Pre-Trial Conference: The court administrator shall schedule a pre-trial conference on every case added to the trial list since the date of the last update. Said conference shall be held in the manner provided by Rule L212.3. At the pre-trial conference a date will be reserved for the trial and jury selection if there is to be a jury trial.

(f) Continuances: Once a case has been given a trial date continuances will not be granted except for extraordinary reasons. When a continuance is granted the court may impose on the party making the application the reasonable costs actually incurred by the opposing party which would not have been incurred if the application had not been made.

Form—Praecipe to List for Trial

_____	:	IN THE COURT OF COMMON PLEAS OF
Plaintiff	:	McKEAN COUNTY, PENNSYLVANIA
vs.	:	CIVIL DIVISION -_____
	:	____ Medical Professional Liability Action
_____		
Defendant	:	NO. _____

PRAECIPE TO LIST FOR TRIAL

To the Prothonotary:

As listing counsel, pursuant to Rule 308, I hereby certify:

1. The pleadings are closed.

2. There are no outstanding motions.

3. All discovery is completed.

4. A jury trial ____ has ____ has not been demanded.

5. Preliminary estimate of time required for trial. ____ days ____ hours ____ minutes

6. All counsel of record and unrepresented parties have been contacted and agree that this matter is presently ready for trial and that they do not object to its listing.

7. A copy of this praecipe has been served on all counsel of record and unrepresented parties in the following manner:

Respectfully Submitted,

_____
[Print Name]

_____

Date: _____ Counsel for _____
[Strike if not Applicable]

Form—Motion to Place Case on Trial List

_____	:	IN THE COURT OF COMMON PLEAS OF
Plaintiff	:	McKEAN COUNTY, PENNSYLVANIA
vs.	:	CIVIL DIVISION -_____
	:	____ Medical Professional Liability Action
_____		
Defendant	:	NO. _____

MOTION TO PLACE CASE ON TRIAL LIST

COMES NOW, _____ plaintiff/defendant (circle one) or _____ counsel for _____ , and requests that the court place the above captioned matter on the trial list, pursuant to Rule L308(b)(2).

The undersigned has contacted all counsel of record and unrepresented parties and all parties do not agree that the matter is presently ready for trial.

Proof of Service is attached.

Respectfully Submitted,

_____
[Print Name]

_____

Date: _____ Counsel for _____
[Strike if not Applicable]

Rule L309. Manner of Scheduling Equity Cases.

Any party to a cause of action in equity who desires that the case be advanced for early trial listing may request by motion that the case be given priority trial status (1) after the pleadings are closed (2) after 60 days from the filing of the complaint or (3) at any time with the consent of all other parties to the action. Upon receipt of such request the prothonotary shall forthwith transmit the record papers to the court administrator who shall then schedule the case for pretrial conference and trial as soon as the business of the court permits.

Rule L310. Court Calendar.

At the beginning of each calendar year, the court shall prepare a court calendar for the current year which shall have the effect of a rule of court establishing the times that the matters set forth in the court calendar shall be heard.

Rule L311. Security For Costs.

(a) The defendant or any interested party may petition the court to require the plaintiff who resides out of state, or who is in bankruptcy, or has insolvency proceedings pending against him, to file security for costs.

(b) The court, by special order upon cause shown, may require a plaintiff or a defendant who seeks affirmative relief to enter security for costs.

(c) The claimant in a sheriff's interpleader issue shall be construed to be a plaintiff within the meaning of this rule.

(d) In default of security entered at the time fixed by the court, judgment of default or other appropriate court order may be made in favor of the party obtaining the order.

Rule L312. Bills of Costs.

(a) Bills of costs must contain the names of the witnesses, the dates of their attendance, the number of miles actually traveled by them, and the place from which mileage is claimed. The bill shall be verified by the affidavit of the party filing it or his agent or attorney that the witnesses named were actually present in court, and that, in his opinion, they were material witnesses. A copy of the bill shall be served on opposing counsel.

(b) The party upon whom a bill of costs has been served may, within 10 days after such service, file exception thereto, and the issue shall be determined by the court. Failure to file exception within 10 days shall be deemed a waiver of all objections.

Rule L313. Default Judgments.

(a) Whenever a judgment for money is taken by default and the party in whose favor the judgment is entered has filed an instrument or copy thereof, upon which the amount of the judgment is based and a calculation of the judgment is submitted, the prothonotary shall enter the judgment for the amount shown to be due upon the face of the instrument.

(b) If a default judgment cannot be made certain by computation, Pa.R.C.P. No. 1037 shall apply.

(c) In all cases in which a party to an action has appeared but subsequently defaults, before any decree or judgment shall be entered, the opposing party shall file an affidavit stating that the defaulting party is not in military service of the United States, or if the information is not available, the affidavit shall state what efforts have been made to obtain facts.

Comment

Subparagraph (c) of this rule is mandated by the "Service Members Civil Relief Act," Title 50 App. U.S.C. Section 501 et seq.

Rule L314. Judgment on Verdict.

Judgment shall not be entered on a verdict within the time allowed for motions for judgment n.o.v., for new trial, or for arrest of judgment, nor until the party obtaining the verdict shall have paid the prothonotary the required jury fee as provided by law.

Rule L315. Striking or Opening Judgments Other Than Confessed Judgments Covered by Pa.R.C.P. 2959.

The pleadings and procedure for relief from judgments, other than confessed judgments, shall be the same as the

pleadings and procedure for relief set forth in Pa.R.C.P. No. 2959 and Pa.R.C.P. No. 2960 for confessed judgments.

Rule L316. Judgment by Agreement.

Except in actions to which a minor or an incompetent is a party and in actions for wrongful death in which a minor or incompetent has an interest, verdicts and nonsuits, and judgments by agreement may be entered at any time but only upon written stipulation signed by the parties or by their counsel of record and filed in the case.

Rule L317. Judgments: Re-Indexing.

Judgments entered on confession may be subsequently re-indexed against any defendant under any alias name upon the plaintiff's attorney filing a praecipe therefore supported by an affidavit that such alias defendant is the same person against whom the judgment was originally entered and indexed. The subsequent re-indexing shall be noted on the docket of the original number and term and shall be re-indexed on a separate line in the judgment index, clearly showing the date of such re-indexing.

Rule L318. General Pleading Form.

Except as otherwise provided by statute, or rule of court, pleadings in all actions shall, as nearly as possible, conform to the rules relating to civil actions law.

Rule L319. Reserved.

Rule L320. Retention of Notes and Digital Recordings Made by a Court Reporter or Monitor.

(a) In all cases other than criminal cases, the court administrator is authorized to direct the destruction of notes and digital recordings made by a court reporter or monitor at any time after 7 years from the date when such notes were taken or digital recordings made.

(b) In any case in which the court reporter or monitor has transcribed from notes taken or digital recordings made and such transcription has been approved by the court and filed. The court reporter or monitor may destroy any such notes or digital recordings any time 90 days from the date of filing of the transcription.

(c) Any party may petition the court for an order directing the retention of particular notes or digital recordings of the court reporter or monitor for a period of time beyond that required herein.

Rule L430. Service, Petitions, Rules, Orders and Notices—Publication.

(a) If a defendant is dead or his identity or whereabouts is unknown and the plaintiff moves the court pursuant to Pa.R.C.P. No. 430 for a special order directing service on the defendant by publication, the plaintiff shall attach to his/her motion an affidavit that shall state:

(1) that at least four (4) of the following have been attempted: (i) sheriff service to all known addresses; (ii) inquiry of relatives, neighbors, friends and employers of defendants (3 of 4); (iii) examination of local phone directories, local tax records and voter registration records (2 of 3); (iv) inquiry of postal authority including inquiry pursuant to the Freedom of Information Act, 39 C.F.R. Part 265; (v) examination of motor vehicle records (PENN DOT Form DL-503); (vi) any other method that would reasonably lead to service on the defendant.

(2) In an action involving title to, interest in, or possession of real property including title to or interest in oil, gas and minerals:

(i) that he/she has caused to be examined the records in the offices of the Register and Recorder to ascertain the date of death of the defendant, whether he or she died testate or intestate, the names and addresses of all the defendant's heirs, legatees or devises, and whether or not there has been any adverse conveyance or distribution of the property that is the subject of the suit.

(ii) that he/she has contacted all individuals who are currently living in the vicinity of the subject property who may have or may know someone who does or may have an interest in the subject property, informed them of the pending action and have ascertained with their assistance the names of any other parties who may have an interest in the subject property.

(iii) that in the case of a corporation that has been dissolved, he/she has caused the records in the offices of the Register and Recorder to be examined to ascertain whether or not there has been an adverse conveyance or distribution of the real estate that is the subject of the suit.

(b) Whenever service by publication is authorized by law or rule of court and the manner of publication is not otherwise specified, such service shall be made by publication for two consecutive weeks in a newspaper of general circulation within McKean County. No further action can be taken until 20 days after the last publication. Proof of publication shall be filed in the prothonotary's office.

Comment

See Pa.R.C.P. No. 430(b)(1) for the form of the notice.

Rule L500. Auditors and Auditor's Reports.

(a) Auditors shall be members of the bar.

(b) Auditors' hearings shall be held at the courthouse and testimony taken either by a court stenographer or by a stenographer to be agreed upon by the parties in interest.

(c) Auditors shall give public notice of the time and place of hearings before them, by advertisement once a week for 2 successive weeks in a newspaper of general circulation of McKean County, stating therein that all persons must prove their claims before them or be debarred from coming upon the fund. In addition thereto, auditors shall obtain from the assignors or debtors, a list of their creditors, and, if the proceeds of the sale of real estate are to distributed, searches for liens and encumbrances, and award distribution accordingly, unless objections be made, in which event those whose claims are objected to shall be notified to prove their claims or be debarred from coming in upon the fund.

(d) Any person desiring an issue to be granted shall present his petition to the auditor within 48 hours after the testimony in relation to the matter in dispute is closed, setting forth under oath or affirmation that material facts are in dispute and the nature and character thereof; and it shall be the duty of the auditor forthwith to make report thereof to the court for its action.

(e) The auditor shall not file his report until 10 days after he has notified all the parties who appeared before him that it is subject to their inspection, and that it will be filed on a given date, unless written exceptions are filed with him before that time. If exceptions are filed, he shall re-examine the subject and amend his report, if, in his opinion, the exceptions are in whole or in part, well founded.

(f) The argument before the court shall be confined to the exceptions filed with the auditor; the court will, however, recommit the report if of the opinion that justice requires it.

(g) If no exceptions are filed with the auditor, the report, on motion, will be confirmed by the court.

(h) When facts are controverted before the auditor, he shall report the same as proved, in a concise or digested form and shall also state concisely the questions of law raised before him and his decisions thereon, with his reasons therefore, and when distribution is made, a distinct account or schedule of the liens on the funds, paid and unpaid, in a form convenient for review shall be made out and presented with the report showing precisely the disposition made of the funds. The testimony, documentary or otherwise shall be returned separately and filed with the report.

(i) The auditor shall file his completed report with the prothonotary, who shall mark it confirmed nisi, which confirmation shall become absolute, without further order, if no objection thereto is made within 10 days. If objection to the report is made, it shall be treated as renewal of the exceptions filed by the party with the auditor; and in this case or if exceptions are filed with the prothonotary within this ten day period, the prothonotary shall enter the case on the argument list to be taken up in due course.

(j) Upon motion made by a party interested, of misconduct or unreasonable delay on the part of any auditor, the court may either vacate his appointment or grant a rule on him to show cause why he should not proceed forthwith in the duties of his appointment; and in case of contempt, may punish him by fine or attachment.

Rule L501. Distribution.

(a) Whenever the aid of the court is desired in the distribution of money in court or in the hands of any collecting officer of the court, the party asking its interposition shall present to the court a written statement of the facts, showing its necessity or propriety, and thereupon the court may appoint an auditor to report the facts and make distribution or make such other order as may seem best calculated to bring the matter to a speedy close.

(b) The court may, on motion and upon satisfactory evidence, decree distribution of any portion of the fund in court, not included in any controversy, before or during the pendency of the audit, and order such portions of the fund that is being audited to be deposited or invested during the controversy.

(c) Duplicate receipts shall be given for all moneys paid in pursuance of such distribution, one of which shall be filed in the case and the other upon the original lien docket.

Rule L502. Receivers and Assignees for Creditors.

(a) Assignees for the benefit of creditors and receivers shall, after they have entered security, give notice of their appointment, to every creditor and party in interest of whom they have knowledge, and shall also publish notice thereon once a week for two successive weeks in a newspaper of general circulation published in McKean County.

(b) The assignee shall file with the account a petition for distribution in form similar to that of petitions for distribution required by the Orphans' Court Division of this county and all such accounts and petitions for distribution shall be filed in the office of the prothonotary.

(c) The assignee shall give written notice of the filing of the account, the petition for distribution and of the call for the audit or confirmation thereof to all parties interested. Such notice shall be given by mailing the same to the last known address of the one entitled to receive the same, at least three weeks before the presentation of the account to the court, and shall also be published by the prothonotary for two successive weeks in one newspaper of general circulation published in McKean County.

(d) Any such account filed for audit and confirmation shall be audited preliminarily by the prothonotary and then presented to the court, together with the proofs of publication and proof of the giving of the required notice to interested parties at the time fixed for the audit or confirmation thereof; and if no exceptions have been filed, the account may be confirmed absolutely.

Rule L503. Sheriff.

[Intentionally Omitted]

Rule L504. Limitations on Bail and Security.

Neither the prothonotary, nor his deputy, nor the sheriff or sheriff's deputy or clerk, shall be admitted as bail or surety in any action, civil or criminal unless by leave of the court for special reasons shown.

Rule L506. Money Paid Into Court.

(a) A party to an action may, upon motion and such notice to the adverse party as the court may direct, pay into court the amount admitted to be due, together with costs, if any. The party entitled to the money may accept the money and settle and discontinue the action or may refuse the money and proceed with the action. If the adverse party shall not recover more than the amount paid into court, all additional costs shall be deducted from the money. This tender into court shall in no way alter the rights of the parties as to legal tender made before suit.

(b) Parties wishing to extinguish liens upon real estate in which they have an interest may, on motion and such notice to the creditor as the court may direct, pay into court the amount due and have satisfaction entered upon the lien.

(c) Upon payment of money into court the same shall be deposited by the prothonotary in an account in the name of the prothonotary kept for such purposes or into an account agreed to by the parties in writing, and shall be payable only by a check signed by the prothonotary pursuant to order of court. Such interest as accrues shall enure to the benefit of those entitled to the principal. In creating any account hereunder, the prothonotary shall use the social security number or employer identification number of the person or entity entitled to such interest.

Comment

When money is paid into court the prothonotary is required to collect poundage for the handling of the money. See 42 P. S. § 21071.

Rule L507. Deputy Constables.

Petitions for approval of the appointment or revocation of the appointment of deputy constables shall set forth the following facts:

(a) The act of assembly authorizing the appointment.

(b) Name and address of the petitioner.

(c) The name of the municipality or district in which petitioner was elected.

(d) The date of commencement and expiration of the term of office of the petitioner.

(e) The name and full address of the surety on petitioner's bond and an averment that the surety has had notice of the petition, to be evidenced by the written joinder of the surety in the prayer of the petitioner.

(f) The name and full address of the person to be appointed deputy constable, or whose appointment is to be revoked, and an averment that the person to be appointed is of good repute and has not been convicted of a felony or misdemeanor.

(g) A full statement of the necessity, facts and reasons for making or revoking the appointment.

(h) If any security of any kind is given or to be given by the petitioner or his surety, then the nature, character, and extent shall be fully set forth or, in lieu thereof, an averment that no security is being given.

CIVIL ACTION—LAW

Rule L1012. Entry of Written Appearance.

All appearances shall be entered in writing by praecipe filed and where there are several plaintiffs or defendants, an appearance will be deemed for all unless expressly restricted.

Explanatory Comment

While the Pennsylvania Rules of Civil Procedure do not require an attorney to enter a written appearance, please be advised that it is the custom and practice in McKean County that an attorney do so and that failure to do so may result in notices of scheduled events being sent to your clients instead of you. Notwithstanding, the first pleading filed by an attorney on behalf of a party shall constitute the attorney's entry of appearance for that party. Further, if you have not entered a written appearance or have not filed a pleading and appear on behalf of any party in any proceeding the court will deem that you have entered your appearance generally in the case unless you inform the court otherwise at the commencement of the proceeding.

Withdrawal of appearances shall be made in accordance with Pa.R.C.P. No.1012 and the procedure outlined in the court's memorandum of May 1, 2007 available on the court's website at www.mckeancountypa.org/Departments/Court_Of_Common_Pleas/Index.aspx.

Rule L1018.1. Notice to Defend.

The party, to be named in the notice to defend, from whom legal help can be obtained is:

Northwestern Legal Services
100 Main Street
Bradford, PA 16701
Telephone: 814-362-6596

The notice shall substantially conform to the form shown below.

Form 1018.1 Notice to Defend

_____	:	IN THE COURT OF COMMON PLEAS OF
Plaintiff	:	McKEAN COUNTY, PENNSYLVANIA
vs.	:	CIVIL DIVISION -_____
	:	____ Medical Professional Liability Action
_____		
Defendant	:	NO. _____

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

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

Northwestern Legal Services 100 Main Street
Bradford, Pennsylvania 16701
Telephone: 1-814-362-6596

Rule L1028(c). Preliminary Objections.

(1) Filing. All preliminary objections shall be filed with the prothonotary in the form prescribed in Pa.R.C.P. No. 204.1 and Rule L205.2(a). Preliminary Objections should not be filed with the court administrator. Courtesy copies for the court are not required. Preliminary Objections should not be filed in duplicate or by facsimile transmission, except in emergency circumstances. Preliminary Objections which assert facts not otherwise of record, including but not limited to an objection under Pa.R.C.P. No. 1028(a)(1), (5) or (6) shall be endorsed with a notice to plead pursuant to Pa.R.C.P. No. 1361.

(2) The court will take no action until the preliminary objections have been filed of record, except in unusual circumstances.

(3) Statement of applicable authority: All preliminary objections shall be supported by a statement of authority citing a statute, rule of court, or case law in support of the requested relief. The statement may be in the form of a brief or memorandum of law filed contemporaneously with the preliminary objections; or, if the preliminary objections do not raise complex legal or factual issues, in the body of the preliminary objections itself. If not so supported, then the preliminary objections shall be summarily disposed of unless counsel promptly requests

permission for good cause to file the required brief or memorandum of law at a later date.

(4) Amended Complaint, Answer or Reply brief: The opposing party shall file an amended complaint, answer or reply brief to the preliminary objections within 20 days after service of them unless the time for filing the response is modified by court order. If an amended complaint, answer or reply brief is not timely filed, then the preliminary objections shall be sustained unless counsel promptly requests permission for good cause to file the required amended complaint, answer or reply brief at a later date.

(5) The court shall provide the opportunity for argument either by written briefs or orally in open court. If oral argument is held, the court, in its discretion, may decide the matter at argument or take the matter under advisement. If an order is entered without oral argument, the court shall hear oral argument on an application by any party for reconsideration of such order. The application for reconsideration shall be filed within 10 days after the filing of the decision.

(6) No oral testimony shall be heard at the time of argument except by direction of the court.

(7) In the event there are disputed issues of fact, the court will schedule the matter for hearing.

(8)(a) Appearance by Advanced Communication Technology: The court, in its discretion, may permit any party to appear by telephone or by a system providing two-way simultaneous audio-visual communication. Any party wanting to participate in any argument or hearing utilizing advanced communication technology shall file a motion not later than the 5th day preceding the argument or hearing unless good cause can be shown for the late filing of the motion. Every request to appear by advanced communication technology shall contain the certification required by Rule L208.2(d). The party or parties appearing utilizing advanced communication technology shall bear the cost thereof, unless the court provides otherwise. Notwithstanding, any Judge of this court may adopt an alternate procedure governing appearances utilizing advanced communication technology.

(b) If a party choosing to appear utilizing advanced communication technology fails to call the court or is unavailable when called to participate in the call with the court, the court may pass the matter or may treat the failure to call or participate as a failure to appear.

Comment

All Preliminary Objections, upon filing, must be supported by a statement of authority citing a statute, rule of court, or case law in support of the requested relief. The statement may be in the form of a brief or memorandum of law filed contemporaneously with the preliminary objections; or, if the preliminary objections do not raise complex legal or factual issues, in the body of the preliminary objections itself. See Pa.R.C.P. No. 210, Rules L210 and L303.1 and the Explanatory Comment that follows. Preliminary Objections decided on the papers filed of record or on such briefs or memorandums of law as may be filed by the parties will normally be decided within 30 days of the date on which the answer or reply brief is filed. Preliminary Objections on which oral argument is held will normally not be decided for 90—120 days after the Preliminary Objections are filed. Notwithstanding, any party or a party's attorney has the right to appear before a Judge of this court and argue any motion. See Pa.R.C.P. No. 211.

Failure to answer preliminary objections raising questions of fact and endorsed with a notice to plead constitutes an admission of the facts pleaded.

Rule L1033. Amended Pleading.

Whenever an amended pleading is filed, such pleading shall be a complete pleading and not merely set forth the amendments to the former pleading. The amended pleading shall clearly indicate that it is an amended pleading, the paragraphs shall be renumbered, and the new portion shall be underlined.

Rule L1034(a). Motion for Judgment on the Pleadings.

(1) Filing. A motion for judgment on the pleadings shall be filed with the prothonotary in the form prescribed in Pa.R.C.P. No. 204.1 and Rule L205.2(a). It should not be filed with the court administrator. Courtesy copes for the court are not required. It should not be filed in duplicate or by facsimile transmission, except in emergency circumstances.

(2) The court will take no action until the motion has been filed of record, except in unusual circumstances.

(3) Statement of applicable authority. All Motions for Judgment on the Pleadings shall be supported by a brief or memorandum of law filed contemporaneously with the motion.

(4) Reply brief: The opposing party shall file an answer or reply brief to the motion within 20 days after service of the motion unless the time for filing the response is modified by court order. If a response is not filed as provided above, the court may treat the motion as uncontested.

(5) The court shall provide the opportunity for argument either by written briefs or orally in open court. If oral argument is held, the court, in its discretion, may decide the matter at argument or take the matter under advisement. If an order is entered without oral argument, the court shall hear oral argument on an application by any party for reconsideration of such order. The application for reconsideration shall be filed within 10 days after the filing of the decision.

(6) No oral testimony shall be heard at the time of argument except by direction of the court.

(7)(a) Appearance by Advanced Communication Technology: The court, in its discretion, may permit any party to appear by telephone or by a system providing two-way simultaneous audio-visual communication. Any party wanting to participate in any argument utilizing advanced communication technology shall file a motion not later than the 5th day preceding the argument unless good cause can be shown for the late filing of the motion. Every request to appear by advanced communication technology shall contain the certification required by Rule L208.2(d). The party or parties appearing utilizing advanced communication technology shall bear the cost thereof, unless the court provides otherwise. Notwithstanding, any Judge of this court may adopt an alternate procedure governing appearances utilizing advanced communication technology.

(b) If a party choosing to appear utilizing advanced communication technology fails to call the court or is unavailable when called to participate in the call with the court, the court may pass the matter or may treat the failure to call or participate as a failure to appear.

Comment

All Motions for Judgment on the Pleadings, upon filing, must be supported by a brief or memorandum of law filed

contemporaneously with the motion. See Pa.R.C.P. No. 210, Rules L210 and L303.1 and the Explanatory Comment that follows. A Motion for Judgment on the Pleadings decided on the papers filed of record or on such briefs or memorandums of law as may be filed by the parties will normally be decided within 30 days of the date on which the reply brief is filed. A Motion for Judgment on the Pleadings on which oral argument is held will normally not be decided for 90—120 days after the motion is filed. Notwithstanding, any party or a party's attorney has the right to appear before a Judge of this court and argue any motion. See Pa.R.C.P. No. 211.

Rule L1035.2(a). Motion for Summary Judgment.

The procedures for the disposition of a Motion for Summary Judgment are identical to the procedures for the disposition of a Motion for Judgment on the Pleadings described in Rule L1034(a) except that a Response in Opposition to the Motion for Summary Judgment shall be filed as provided in Pa.R.C.P. No. 1035.3.

Rule L1038(a). Proposed Findings of Fact, Conclusions of Law and Memorandum in Support.

At any non-jury trial, except by leave of court, no party shall be permitted to present evidence either in support of or in opposition to any claim or cause of action unless the party has first presented proposed findings of fact, conclusions of law and a memorandum in support thereof unless the presentation of same are postponed by court order.

The court, in its discretion, may grant a continuance to allow the non-filing party to prepare the required findings, conclusions of law and memorandum, except the costs of litigation thereby caused to the other party or parties to the action may be imposed as a sanction on the non-filing party.

Rule L1038(b). Trial without Jury.

Parties who elect to have their case tried without a jury after demand for jury trial has been filed shall enter into and file the following stipulation:

"The undersigned parties in the above captioned case hereby agree that it shall be tried by a Judge without a jury in accordance with Pa.R.C.P. No. 1038."

ACTION TO QUIET TITLE

Rule L1066. Form of Judgments or Order.

Any order entered under Pa.R.C.P. No. 1066(b)(1) shall include a description of the property. If notice of the entry of such an order is given by publication, it shall be given as provided by Rule L1064.

ARBITRATION

Rule 1301.1. Scope.

(a) All cases which are at issue, where the amount in controversy (exclusive of interest and costs) shall be $50,000 or less, except those involving title to real estate, equity actions, mortgage foreclosure, and other actions which do not involve the recovery of money damages, including divorce, mandamus and quo warranto, shall be submitted to and heard and decided by a Board of Arbitration.

(b) This rule shall apply to cases involving more than one claim, including counter claims, if none of such claims exceed $50,000 exclusive of interest and costs.

(c) Cases which are not at issue, and whether or not suit has been filed, may be submitted to a Board of Arbitration by agreement of reference signed by all parties or their counsel. The agreement of reference shall define the issues to be submitted to the Board, and, when agreeable to the parties, shall also contain stipulations with respect to facts agreed or defenses waived. When a case is submitted to the Board by agreement of reference, the agreement shall take the place of pleadings and shall be filed of record in the office of the prothonotary and shall be assigned a number and term.

(d) Any case not arbitrable under this rule may be submitted to arbitration according to the procedure herein provided, by stipulations of all parties thereto or their counsel.

(e) The court may, at any time, in its discretion, enter an order allowing any case, arbitrable under this rule to be listed for trial pursuant to Rule L308.1. A dismissal or judgment which results from this rule will be treated as any other final judgment in a civil action subject to Pa.R.C.P. No. 227.1.

(f) The court may, at any time, in its discretion, enter an order transferring a case to arbitration even though the original demand may have exceeded $50,000.

Comment

While a Board of Arbitration may hear a lawsuit in which any party claims an amount in excess of $50,000, the award of the Board of Arbitration to any party may not exceed $50,000 (exclusive of interest and costs). However, with the agreement of all parties, a Board of Arbitration may award up to the amount agreed upon in excess of $50,000 if all parties also agree that the arbitration award is final and cannot be appealed to court.

Rule 1301.2. Pleading, Discovery and Dispositive Motions—Small Claims.

(a) This rule shall cover all arbitrable cases that:

(1) arise from an appeal to the decision of a Magisterial District Judge even if the Plaintiff's claim is for an amount in excess of $12,000;

(2) are commenced with the filing of a simple complaint wherein the amount in controversy is $12,000 or less; or

(3) are commenced with a complaint prepared in conformity with Pa.R.C.P. No. 204.1 and Pa.R.C.P. Nos. 1019 et seq. wherein the amount in controversy is $12,000 or less.

(b) In all cases covered by this rule, a simplified complaint and a simplified answer shall be permitted and encouraged. The simplified complaint and the simplified answer shall be available from the prothonotary and online at www.mckeancountypa.org/Departments/Court_Of_Common_Pleas/Index.aspx.

(c) Discovery in cases covered by this rule, including a Request for Admission under Pa.R.C.P. No. 4014, is discouraged and shall be permitted only by order of court. A party wanting to conduct discovery shall file a motion pursuant to Rule L208.3(a). The requirement that a statement of applicable authority accompany the motion is waived. The motion shall, inter alia, contain the reason or reasons why discovery is needed and what information, documents etc. are being sought.

(d) Preliminary Objections may be filed to any pleading. No objection shall be made based on the failure of the pleading to conform to a rule of court.

(e) Motions for Judgment on the Pleadings and for Summary Judgment shall not be permitted in cases covered by this rule.

(f) The failure of a party to raise a defense or objection in his or her simplified answer or by preliminary objection shall not constitute a waiver of such defense or objection under Pa.R.C.P. No. 1032 and may be heard at the time of the hearing at the discretion of the Board of Arbitration.

(g) A self represented litigant may file a simplified answer to a complaint nonetheless filed in conformity with the Pa.R.C.P. No. 204.1 and Pa.R.C.P. Nos. 1019 et seq. The self represented litigant when replying to such a complaint should reply using separate numbered paragraphs corresponding to the numbered paragraphs of the complaint. Any matter not covered in the self represented litigant's replies to the separate paragraphs of the complaint should be set forth in separately numbered paragraphs under the caption "New Matter, Counterclaim or Cross-Claim".

(h) Self represented litigants who appeal from a decision of a Magisterial District Judge in matters covered by this rule shall be furnished with a copy of the simplified complaint or simplified answer, ancillary forms and printed instructions for their use.

Explanatory Comment

This rule is intended to afford represented and self represented litigants reasonable access to the court and to provide a timely and affordable means to resolve small claims not involving complex issues or needing extensive discovery. Certain rules of pleading and evidence have been established to enable fair and prompt resolution of claims.

This rule does not affect for compulsory arbitration cases which are appealed pursuant to Pa.R.C.P. Nos. 1308—1311 the right to discovery provided by Pa.R.C.P. Nos. 4001—4020, the right to file a motion for judgment on the pleadings provided by Pa.R.C.P. No. 1034 and L1034(a) or, the right to file a motion for summary judgment provided by Pa.R.C.P. No. 1035.2 and L1035.2(a).

Comment

A party wanting to conduct discovery after an appeal is taken is required to obtain court approval pursuant to Rule L1308(b).

Rule 1301.3. Discovery (Except Small Claims)—Personal Injury.

(a) For any personal injury claim filed, the plaintiff may serve arbitration discovery requests that conform substantially to the form available from the court administrator and on the court's website at www.mckeancountypa.org/Departments/Court_Of_Common_Pleas/Index.aspx. They may be served together with the copy of the Complaint or on the defendant thereafter.

(b) The defendant shall furnish the information sought in the discovery requests within 30 days of receipt of the discovery requests.

(c) For any personal injury claim filed, any defendant may serve arbitration discovery requests that substantially conform to the form available from the court administrator and on the court's website at www.mckeancountypa.org/Departments/Court_Of_Common_Pleas/Index.aspx. They may be served together with the copy of the Answer or on the plaintiff thereafter.

(d) The plaintiff shall furnish the information sought in the discovery requests within 30 days of receipt of the discovery requests.

(e)(1) A party may not seek additional discovery through interrogatories or requests for production of documents until that party has sought discovery through the arbitration discovery requests described herein.

(2) A party may not include any additional interrogatories or requests for production of documents in the arbitration discovery requests provided for in this rule.

(f) This rule applies to additional defendants.

(g) This rule does not apply to claims that do not exceed the sum of $12,000 (exclusive of interest and costs) wherein the parties' right to discovery for Small Claims shall be governed by Rule L1301.2(c).

Comment

While this rule does not bar additional discovery in arbitration proceedings, it is anticipated that depositions, additional interrogatories or additional requests for the production of documents will be unreasonably burdensome in most arbitration proceedings involving personal injury claims.

This rule does not affect the right to discovery provided by Pa.R.C.P. Nos. 4001—4020 for compulsory arbitration cases which are appealed pursuant to Pa.R.C.P. Nos. 1308—1311.

Rule L1302. Arbitrators.

(a) The Board of Arbitration shall be composed of 3 attorneys. The prothonotary shall maintain a list of available arbitrators who shall all be members of the Bar actively engaged in the practice of law primarily in McKean County. The Board of Arbitration shall be chaired by a member of the bar admitted to the practice of law for at least 3 years.

(b) After an arbitration panel has been selected and all parties notified thereof, any party or their counsel may request that an arbitrator disqualify themselves if their impartiality might reasonably be questioned including but not limited to instances where: they have a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding, or they have served as a lawyer in the matter in controversy or they have a substantial financial interest in the matter in controversy.

(c) Before entering upon their duties the members of the Board of Arbitration shall subscribe to an oath to perform their duties and decide the case submitted to them justly and equitably, and with due diligence, which oath shall be filed with their award. In all cases, a decision by majority of the members of the Board of Arbitration shall be conclusive.

(d) Each member of a Board of Arbitration who has signed the award shall receive as compensation for his/her services in each case or if several cases are heard on the same day by the same Board of Arbitration for each half day session a fee of $250. In cases requiring hearings of unusual duration or involving questions of unusual complexity, the court, on petition of the members of the Board and for cause shown, may allow additional compensation. The members of a Board shall not be entitled to receive their fees until after filing an award with the prothonotary. When the same is filed, the prothonotary shall issue an order for payment of such fees which shall be immediately paid from County funds as in the case of all other County debts. Fees paid to Arbitrators shall not be taxed as costs or follow the award as other costs.

Rule 1303.1. Hearing.

(a)(1) After the pleadings have been closed for 30 days cases may be listed for arbitration by one or more of the parties in the case or their counsel filing a Praecipe for Arbitration that shall include, to the extent possible, an estimate of the number of hours, or portion thereof, anticipated to be needed for the hearing, together with a listing fee in the amount of $100. The praecipe shall substantially conform to the form shown below. The party or counsel filing the Praecipe for Arbitration shall deliver a copy to the court administrator and shall forthwith serve a copy of the praecipe upon all other counsel of record and any unrepresented parties, who, if for any reason oppose such listing, shall within 10 days thereafter file their objection(s). Ten days after the case has been praeciped onto the list, if no objections thereto have been filed, the prothonotary shall promptly appoint a panel of 3 arbitrators one of whom to be appointed chairperson to hear and decide the case, and shall forward copies of all pleadings and other documents filed in the case to all arbitrators. The chairperson so appointed shall forthwith establish the time, date and place of the hearing and notify all counsel of record, unrepresented parties, and members of the arbitration panel thereof at least 30 days in advance unless a shorter time is stipulated to. All hearings shall be held within 60 days of the date the chairperson is appointed by the prothonotary. In the event the case is settled prior to hearing but after the chairperson has scheduled a hearing, $50 of the filing fee shall be paid to the chairperson as reimbursement for office expenses. In the event the case has been settled prior to hearing and before the chairperson has scheduled a hearing, $50 of the filing fee shall be refunded to the party who paid it. In either event the remaining $50 shall be retained by the prothonotary to reimburse expenses. The filing fee shall be charged to the party first listing the case for hearing, and only be assessed one time per case.

(a)(2)(i) The court may at any time, in its discretion, enter an order listing any case, arbitrable under this rule, for arbitration and may also set the time, date and place for the hearing. The court administrator shall forthwith notify all counsel of record and unrepresented parties that the case has been listed for arbitration and if a hearing date has been set, the time, date and place of the hearing. Counsel or any party who for any reason oppose such listing, shall within 10 days thereafter file their objection(s). Ten days after the case has been listed, if no objection thereto has been filed or no praecipe has been filed marking the case "settled and discontinued", the prothonotary shall promptly appoint a panel of 3 arbitrators one of whom to be appointed chairperson to hear and decide the case, and shall forward copies of all pleadings and other documents filed in the case to all arbitrators. In the event the case is settled before the Board of Arbitration is appointed no fee shall be assessed. In the event the case is settled after the Board of Arbitration has been appointed and before the hearing a fee in the amount of $50 shall be collected by the prothonotary from the Plaintiff to reimburse the prothonotary for expenses. A party who demonstrates a financial inability to pay all or a part of the aforesaid fee may request the court waive all or part of the fee.

(a)(2)(ii) If the court has entered an order listing the case for arbitration and did not in its order set the time, date and place for the hearing of the case and the Board of Arbitration has been appointed by the prothonotary, the chairperson shall forthwith establish the time, date and place of the hearing and notify all counsel of record, unrepresented parties, and members of the arbitration panel thereof at least 30 days in advance unless a shorter time is stipulated to. All hearings shall be held within 60 days of the date the Board of Arbitration is appointed by the prothonotary. In the event the case is settled before the Board of Arbitration is appointed no filing fee shall be assessed. In the event the case is settled after the Board of Arbitration has been appointed and before the chairperson has scheduled the hearing a fee in the amount of $50 shall be collected by the prothonotary from the Plaintiff as reimbursement to the prothonotary for expenses. In the event the case is settled after the chairperson has scheduled the hearing and before the hearing a fee in the amount of $100 shall be collected by the prothonotary from the Plaintiff, $50 of the fee shall be paid to the chairperson as reimbursement for his or her office expenses and the remaining $50 shall be retained by the prothonotary. A party who demonstrates a financial inability to pay all or a part of the aforesaid fee may request the court waive all or part of it.

Comment

In the event the matter is settled prior to hearing but after the Board of Arbitration has been appointed, counsel, or if there is no counsel involved, the parties, shall notify the chairperson of the Board of Arbitration of the terms of the settlement. See Rule L1306.

Form—Praecipe to List for Arbitration

_____	:	IN THE COURT OF COMMON PLEAS OF
Plaintiff	:	McKEAN COUNTY, PENNSYLVANIA
vs.	:	CIVIL DIVISION - Law
_____		
Defendant	:	NO. _____

PRAECIPE TO LIST FOR ARBITRATION

To the Prothonotary:

Please list the above captioned matter for arbitration pursuant L1301.3(a)(1).

1. Are the pleadings closed? ____ yes ____ no (if no, explain below):

_____

_____

2. Are there any outstanding motions? ____ yes ____ no (if no, explain below):

_____

_____

3. Is discovery completed? ____ yes ____ no (If no, explain below):

_____

_____

4. The number of hours estimated to be needed for the hearing are: ____ hour(s).

5. A copy of this praecipe has been served on all counsel of record and unrepresented parties in the following manner:

Respectfully Submitted,

_____
[Print Name]

_____

Date: _____ Counsel for _____
[Strike if not Applicable]

Rule 1303.2. Notice.

The notice required to be given of the hearing pursuant to Pa.R.C.P. No. 1303(a)(1) shall be as follows:

Form—Arbitration Hearing Notice

_____	:	IN THE COURT OF COMMON PLEAS OF
Plaintiff	:	McKEAN COUNTY, PENNSYLVANIA
vs.	:	CIVIL DIVISION - Law
_____		
Defendant	:	NO. _____

ARBITRATION HEARING NOTICE

Your case will be heard before a Board of Arbitration at the McKean County Courthouse, 500 Main Street, Smethport, Pennsylvania, on _____, ____, 201____ at ____ 9:00 A.M. ____ 1:00 P.M. Requests for continuances shall be made as soon as possible after receipt of this notice. The attached Motion for Continuance shall be used. Last minute requests for continuances ordinarily will not be granted.

DUTY TO APPEAR AT THE HEARING

THIS MATTER WILL BE HEARD BY A BOARD OF ARBITRATION AT THE TIME, DATE AND PLACE SPECIFIED BUT, IF ONE OR MORE OF THE PARTIES IS NOT PRESENT AT THE HEARING, THE MATTER MAY BE HEARD AT THE SAME TIME AND DATE BEFORE A JUDGE OF THE COURT WITHOUT THE ABSENT PARTY OR PARTIES. THERE IS NO RIGHT TO A TRAIL DE NOVO ON APPEAL FROM A DECSION ENTERED BY A JUDGE.

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

Northwestern Legal Services
100 Main Street
Bradford, Pennsylvania 16701
Telephone: 1-814-362-6596

Rule 1303.3. Failure to Appear for Hearing.

If a party fails to appear for a scheduled arbitration hearing, the matter may, if all present parties agree, be transferred immediately to a Judge of the Court of Common Pleas for an ex parte hearing on the merits and entry of a non-jury verdict, from which there shall be no right to a trial de novo on appeal.

Comment

This rule results in the loss of a right to a trial de novo on appeal. A dismissal or judgment which results from this rule will be treated as any other final judgment in a civil action subject to Pa.R.C.P. No. 227.1.

Rule 1304.2. Conduct of Hearing.

(a) The Board of Arbitration, or a majority of the members thereof, shall conduct the hearing before them with due regard to the law and according to the established rules of evidence, and shall have the general powers of a court including, but not limited to, the following powers:

(1) To issue subpoenas to witnesses to appear before the Board as in other civil actions, and to issue an attachment upon allowance by the court for failure to comply therewith.

(2) To compel the production of all books, papers and documents which they shall deem material to the case.

(3) To administer oaths or affirmations to witnesses, to determine the admissibility of evidence, to permit testimony to be offered by deposition, and to decide the law and facts of the case submitted to them.

(4) To adjourn their meetings from time to time.

(i) If, after the appointment of a Board of Arbitration, but before hearing, one of the members thereof shall die or become incapable of acting, or shall refuse to attend the hearing, or shall remove or depart from the county, the remaining members of the Board shall, upon agreement of the parties, proceed to hear the matter at issue.

(ii) If a member of the Board dies or becomes incapable of acting, or shall fail or refuse to perform his duties, after hearing but before an award shall be made, the case shall be decided and the award signed by the remaining members of the Board. If they cannot agree, the matters shall be heard de novo by a new Board, to consist of the remaining members plus a third to be appointed by the prothonotary.

(b)(1) The Board shall have the right to proceed ex parte in a proper case if, after due notice, one of the parties fails to appear at the hearing and does not request a continuance for good cause, or

(2) If a party fails to appear at the hearing the case may be transferred immediately to a Judge of the court of common pleas for an ex parte hearing on the merits and entry of a non-jury verdict, from which there shall be no right to a trial de novo on appeal. A non-jury verdict entered at a hearing held pursuant to this rule shall not exceed $50,000 (exclusive of interest and costs) to any party.

(c) In all cases the filing of proposed findings of fact, conclusions of law and a memorandum of support shall be permitted and encouraged. The findings of fact, conclusions of law and memorandum shall be filed with the prothonotary in advance of the arbitration hearing and a copy served on each party and each arbitrator.

(d) At least 7 days before the date of the hearing, the case may be continued 1 time by agreement of all counsel and unrepresented parties. The counsel or party requesting the continuance shall give written notice of such continuance to the arbitrators. The chairperson of the Board of Arbitration shall reschedule the case to be heard within 30 days, with notice of hearing to be provided to all arbitrators, counsel and unrepresented parties. In the event that the parties cannot agree to a continuance more than 7 days prior to the scheduled hearing date a motion for continuance must be made to and ruled upon by the court. If the case is continued by the court, the chairperson shall reschedule the hearing following the procedure set forth above.

Rule 1306. Award.

(a) In the event the matter is settled prior to hearing but after the Board of Arbitration is appointed counsel or, if there is no counsel involved, the parties shall notify the chairperson of the Board of Arbitration of the terms of the settlement and the Board of Arbitration shall enter an award consistent with the terms of settlement and file the same with the prothonotary.

(b) The Board of Arbitration shall make their decision promptly and shall file their award with the prothonotary within 7 days after the making of their decision. The award shall be signed by all or a majority of the members of the Board. The award shall dispose of all claims for relief and shall comply with Pa.R.C.P. No. 1312. The prothonotary shall file the award and enter the same in the proper dockets and transmit a copy thereof by mail to the parties or their counsel. The prothonotary shall record any award in the judgment index as verdicts are now recorded.

(c) Any party seeking damages under Pa.R.C.P. 238 (relating to award of damages for delay in an action for bodily injury, death or property damage) shall at the conclusion of the hearing submit to the Board of Arbitration, in a sealed envelope, a statement substantially in the form shown below. If no settlement offer has been made by any one or more defendants the Board of Arbitration shall reconvene the hearing for the purpose of assessing delay damages. The arbitrators shall not open said envelope until they have reached their basic award. The envelope and the writing contained therein shall be filed with the papers in the case.

Form—Delay Damages

_____	:	IN THE COURT OF COMMON PLEAS OF
Plaintiff	:	McKEAN COUNTY, PENNSYLVANIA
vs.	:	CIVIL DIVISION - Law
_____		
Defendant	:	NO. _____

DELAY DAMAGES

To the Board of Arbitration:

(1) On what date did the cause of action accrue?_____

(2) On what date was the Complaint filed?_____

(3) Was a written offer of settlement made by the Defendant, or additional Defendant?
____ Yes

If yes, by whom? _____ and state:

(a) The date of the written offer _____ ;

(b) Was it in effect at the time of commencement of the hearing? ____ Yes ____ No;

(c) The amount of the offer of settlement was _____ ;

Attach a copy of the written offer of settlement.
____ No

Respectfully submitted,

Attorney for Plaintiff(s) _____

Attorney for Defendant(s) _____

Rule 1308. Appeal.

(a) The award, if any, unless appealed from as herein provided, shall be final and shall have all the attributes and legal effect of a judgment entered by a court of competent jurisdiction. If no appeal is taken within the time allotted therefore, execution process may be issued on the award as in the case of other judgments.

(b) An appeal from an award by the Board of Arbitration shall be taken pursuant to Pa.R.C.P. Nos. 1308—1311. Appellant shall furnish the prothonotary with a copy of the appeal from the award of the Board of Arbitration for the court administrator. Discovery shall be permitted only by order of court upon good cause shown.

(c) The appealing party shall pay to the prothonotary the sum of $750.00 but not more than 50% of the amount in controversy, as compensation for the Arbitrators, which shall not be taxed as costs or be recoverable in any proceeding. A party who demonstrates a financial inability to pay all or a part of the aforesaid fee may request the court waive all or part of it.

(d) All appeals shall be de novo except when the case is transferred to and decided by a Judge of the Court of Common Pleas pursuant to Rule L1304.2(b)(2). Despite any costs which a successful appellant may recover from the adverse party, he shall nevertheless not be entitled to recover the arbitrators' fees paid by him as a condition of taking his appeal.

(e) Any party may file exceptions with the court from the decision of the Board of Arbitration within 20 days from the filing of the award for either or both of the following reasons and for no other:

(1) That the arbitrators misbehaved themselves in the conduct of the case;

(2) That the actions of the Board were procured by corruption or other undue means. If such exceptions shall be sustained, the award of the Board shall be vacated by the court.

Comment

An appeal from an award of a Board of Arbitration is governed by Pa.R.C.P. Nos. 1308, et seq.

MEDIATION

The Pennsylvania Rules of Civil Procedure contain 3 rules that relate to mediation. They are Pa.R.C.P. No. 1042.21 (Medical Professional Liability Actions), Pa.R.C.P. No. 4011(d) (Limitation of Discovery and Deposition) and Pa.R.C.P. No.1940.1 et seq. (Mediation in Custody Actions) See also L1940.1. There is no Pennsylvania Rule of Civil Procedure that corresponds to Rule L1341.

Rule L1341. Mediation.

(a) Appropriate civil cases including medical professional liability actions that have progressed beyond the exchange of expert reports and family law cases that involve a claim for equitable distribution of property may be referred to mediation by order of the court (mediation of custody disputes is addressed by Rule L1940.1), on the motion of any party which shall include a certification that it believes there is a realistic possibility of settlement, following a stipulation by all parties, or on the court's initiative.

(b)(1) The parties shall within 30 days after the date of the court order referring the case to mediation choose a mediator who is available during the appropriate period and has no apparent conflict of interest. If the parties are unable to choose a mutually acceptable mediator the court will appoint a mediator.

(2) Except by agreement of all the parties or as otherwise ordered by the court, one-half the cost of the mediator's services must be borne by the plaintiff(s) and one-half by the defendant(s). In a case with third-party defendants, the cost must be divided into three equal shares. Compensation must be paid directly to the mediator upon the conclusion of the mediation, or as otherwise agreed to by the parties and the mediator. Failure to pay the mediator shall be brought to the court's attention.

(3) A party who demonstrates a financial inability to pay all or a part of that party's pro rata share of the mediator's fee may request the court waive all or part of that party's share of the fee. Other parties to the case who are able to pay the fee must bear their pro rata portions of the fee.

(c) Promptly after being chosen to mediate a case, the mediator shall, after consulting with all parties, fix the date, time and place of the mediation. All mediations shall be held within 90 days of the court's order referring the case to mediation.

(d) At least 10 days before the date of the mediation, the mediation may be continued 1 time by agreement of all counsel. The counsel or party requesting the continu-

ance shall give written notice of such continuance to the mediator. The mediator shall reschedule the case to be heard within 60 days, with notice of hearing to be provided to all counsel. In the event that the parties cannot agree to a continuance more than 10 days prior to the scheduled mediation date a motion for continuance must be made to and ruled upon by the court. If the case is continued by the court, the mediator shall reschedule the mediation in accordance with the court's order granting the continuance.

(e)(1) All named parties and their counsel are required to attend the mediation unless excused under subparagraph (d) below. A party other than a natural person (e.g. a corporation or an association) satisfies this attendance requirement if represented by a decision maker(s) (other than outside counsel) who has full settlement authority and is knowledgeable about the facts of the case. A unit or agency of government satisfies this attendance requirement if represented by a person who has, to the greatest extent feasible, full settlement authority, and is knowledgeable about the facts of the case, the government unit's position, and the procedures and policies under which the government unit decides whether to accept proposed settlements. If the action is brought by the government on behalf of one or more individuals, at least one such individual also must attend. Any party who fails to have physically in attendance the necessary decision maker(s) will be subject to sanctions.

(2) Each represented party must be accompanied at the mediation by the lawyer who will be primarily responsible for handling the trial of the matter. If a party is preceding pro se and if any other party is being represented by a lawyer at the mediation, the court will appoint an attorney to assist the pro se party at the mediation. The appointed attorney shall receive as compensation for his/her services a fee of $250.00 that shall be paid by the pro se party. In mediations of unusual duration (more than 1 day) the court, on petition of the attorney and for cause shown, may allow additional compensation. The court may waive all or part of the attorney's fee if the pro se party demonstrates a financial inability to pay.

(3) Insurer representatives are required to attend in person unless excused under subparagraph (4) below, if their agreement would be necessary to achieve a settlement.

(4) A person who is required to attend mediation may be excused from attending in person only after a showing that personal attendance would impose an extraordinary or otherwise unjustifiable hardship. A person seeking to be excused must file a motion with the court no fewer than 10 days before the date set for the mediation, simultaneously copying all counsel and the mediator.

(5) A person excused from appearing in person at mediation must be available to participate by telephone.

(f) The mediation must be informal and must employ a facilitative method. The mediator may hold separate, private caucuses with each side or each lawyer or, if the parties agree, with the parties only. The mediator may not disclose communications made during the caucus to another party or counsel without the consent of the party who made the communication.

(g) Within 5 days of the conclusion of the mediation, the mediator shall file a written report with the court that includes the caption and case number, the date of the mediation, whether any follow up is scheduled, whether the case settled in whole or in part, and any stipulations the parties agree may be disclosed.

Explanatory Comment

Mediation is a flexible, non-binding, confidential process (See 42 Pa.C.S. § 5949) in which a neutral person (the mediator), selected by the parties, facilitates settlement negotiations. The mediator improves communication across party lines, helps parties articulate their interests and understand those of their opponent, identifies issues and helps generate options for a mutually agreeable resolution to the dispute. A hallmark of mediation is its capacity to expand traditional settlement discussion and broaden resolution options, often by exploring litigant needs and interests that may be formally independent of the legal issues in controversy.

Comment

All named parties and their counsel are required to attend the mediation This requirement reflects the court's view that the principal values of mediation include affording litigants opportunities to articulate directly to the other parties their positions and interests and to hear, first hand, their opponent's version of the matters in dispute. Mediation also enables parties to search directly with their opponent for mutually agreeable solutions.

MINORS AS PARTIES

Rule L2039.1. Minors—Compromise, Settlement, Discontinuance and Distribution.

(a) A petition for settlement of a case in which a minor has an interest shall be filed with the prothonotary.

(b) The petition shall:

(1) Set forth the factual circumstances of the case;

(2) State the reasons why the settlement is a proper one; and

(3) Be accompanied by the following:

(i) A proposed Order of Distribution;

(ii) A written report of a physician;

(iii) In property damage claims, a statement by the party who made the repairs or appraised the loss;

(iv) A statement under oath by the guardian certifying (1) the present physical or mental condition of the minor, and (2) approval of the proposed settlement and distribution thereof;

(v) A statement of the professional opinion of counsel as to the reasonableness of the proposed settlement and the basis for such opinion; and,

(vi) In the event that the minor is 16 years of age or over, his or her written approval of the proposed settlement and distribution thereof.

(c) The Order of Distribution shall include an award of counsel fees. The standard for the award of counsel fees in the representation of minors is that the fees be reasonable in accordance with the guidelines set forth in Rule 1.5 of the Rules of Professional Conduct. The attorney fee determined shall be reduced by the amount of collateral payments received as counsel fees for representation involving the same matter from third parties such as BlueCross/Blue Shield.

(d) The court, may in its discretion, require the personal appearance of the minor, his or her guardian(s), his or her doctor, or any other relevant party, as well as the production of any evidence deemed necessary for approval of the Petition.

Comment

Under normal circumstances a counsel fee in the amount of one-quarter of the net fund recovered shall be considered reasonable, subject to the approval of the court.

INCAPACITATED PERSONS AS PARTIES

Rule L2064.1. Incapacitated Persons

Compromise, Settlement, Discontinuance and Distribution.

(a) A petition for settlement of a case in which an incapacitated person has an interest shall be filed with the prothonotary.

(b) The petition shall:

(1) Set forth the factual circumstances of the case;

(2) State the reasons why the settlement is a proper one; and

(3) Be accompanied by the following:

(i) A proposed Order of Distribution;

(ii) A written report of a physician;

(iii) In property damage claims, a statement by the party who made the repairs or appraised the loss;

(iv) A statement under oath by the guardian certifying (1) the present physical or mental condition of the incompetent person, and (2) approval of the proposed settlement and distribution thereof;

(v) A statement of the professional opinion of counsel as to the reasonableness of the proposed settlement and the basis for such opinion; and,

(c) The Order of Distribution shall include an award of counsel fees. The standard for the award of counsel fees is that the fees be reasonable in accordance with the guidelines set forth in Rule 1.5 of the Rules of Professional Conduct. The attorney fee determined shall be reduced by the amount of collateral payments received as counsel fees for representation involving the same matter from third parties such as BlueCross/Blue Shield.

(d) The court, may in its discretion, require the personal appearance of the incompetent person, his or her guardian, his or her doctor, or any other relevant party, as well as the production of any evidence deemed necessary for approval of the Petition.

Comment

Under normal circumstances a counsel fee in the amount of one-quarter of the net fund recovered shall be considered reasonable, subject to the approval of the court.

UNINCORPORATED ASSOCIATIONS AS PARTIES

Rule L2152. Actions by Associations.

The Plaintiff's initial pleading in an action prosecuted by an association shall set forth the names and addresses of the officers thereof or of all persons known to be holding themselves out as such. In case the said officers do not constitute the trustees ad litem, or have not consented to the prosecution of the action by consent in writing attached to the initial pleading, the plaintiffs shall serve notice, in the manner provided in Pa.R.C.P. No. 440 of the bringing of the action upon said officers within 10 days thereafter and file proof thereof in the action; otherwise, the action shall be automatically stayed until such proof is filed.

ACTIONS FOR WRONGFUL DEATH

Rule L2205. Notice to Persons Entitled to Damages.

Notice shall in all cases be given personally or by registered or certified mail to each person entitled by law to recover damages in the action, unless the plaintiff shall file an affidavit that the identity or whereabouts of any such person is unknown to him after diligent search therefore, in which case the plaintiff shall cause the notice to be advertised one time in a newspaper of general circulation published in McKean County. Proof of such publication shall be filed in the prothonotary's office

Rule L2206.1. Minors and Incapacitated Persons.

Actions for Wrongful Death Compromise, Settlement, Discontinuance and Judgment

The procedures for compromise, settlement, discontinuance and distribution in wrongful death and survival actions in which a minor or an incapacitated person has an interest shall be identical to the procedures for the approval of settlements described in Rules L2039.1 or L2064.1.

Rule L2232. Service of Notice to Persons Required to be Joined.

Service under this rule shall be made by personal service by any competent adult as provided in Pa.R.C.P. No. 402 or by registered mail pursuant to Pa.R.C.P. No. 403.

SUBSTITUTION OF PARTIES

Rule L2353. Service of Rule.

When a party seeks to serve a successor by publication, he shall advertise a notice of the Rule one time in a newspaper of general circulation published in McKean County. Proof of such publication shall be filed in the prothonotary's office.

Rule L2952. Confessed Judgments.

When a judgment is entered upon any instrument containing a warrant of attorney, which instrument accompanies a mortgage, a statement shall be placed in the complaint showing the book and the page where said mortgage is recorded. If the instrument is entered without a complaint, a statement shall be placed upon the instrument itself.

ENFORCEMENT OF JUDGMENTS

Rule L3110. Execution Against Contents of Safe Deposit Box.

When the Plaintiff seeks to serve a party by publication as provided in Pa.R.C.P. No. 3110(c) it shall be sufficient service to publish said notice one time in a newspaper of general circulation in McKean County. Proof of such publication shall be filed in the prothonotary's office.

Rule L3112. Service upon Garnishee.

Real Property of Defendant in Name of Third Party

Whenever a party seeks to serve a garnishee by publication as provided in Pa.R.C.P. No. 3112(c) it shall be sufficient service to publish said notice one time in a newspaper of general circulation in McKean County. Proofs of publication shall be filed in the prothonotary's office.

Rule L3123. Debtor's Exemption.

The sheriff following an appraisal or designation shall immediately thereafter and before sale give notice thereof by first class United States mail to all interested parties

of the appraisal or designation, which notice shall set forth the right of appeal to the Court of Common Pleas within 48 hours thereof.

Rule L3128. Notice of Sale of Personal Property.

One copy of the handbill shall be mailed, by certified United States mail, to the defendant by the sheriff.

DEPOSITIONS AND DISCOVERY

Rule L4010. Exchange of Medical Reports.

When a mental or physical examination has been made pursuant to Pa.R.C.P. No. 4010, counsel shall be prepared to exchange medical reports, as provided therein, not more than 30 days after the examination has been made.

[Pa.B. Doc. No. 12-1941. Filed for public inspection October 5, 2012, 9:00 a.m.]

McKEAN COUNTY

Adoption of Revised Local Rules of Motions Practice of Civil Procedure; Civil Division; No. 158 December Term 1904

Order

And Now, this 18th day of September, 2012, it is hereby Ordered and Decreed, pursuant to Pennsylvania Rule of Civil Procedure 239.8, as follows:

1. The Local Rules of Civil Procedure L205.2(a), L205.2(b), L206.4(c), L208.2(c), L208.2(d), L208.2(e), L208.3(a), L208.3(b), L210, L1028(c), L1034(a), and L1035.2(a) are hereby adopted, effective upon publication on the Pennsylvania Judiciary Web Application Portal at http://ujsportal.pacourts.us;

2. The District Court Administrator, Joanne L. Bly, of the 48th Judicial District is hereby directed to:

a. Transmit one (1) copy of this Order and the previously-mentioned Local Rules to the Pennsylvania Civil Procedural Rules Committee which shall then forward a copy to the Administrative Office of Pennsylvania Courts for publication on the Pennsylvania Judiciary Web Portal Application, transmission to the Committee may be made via the Note in Rule 239.8;

b. File two (2) certified copies of this Order and the previously-mentioned Local Rules, along with a compact disc (CD) with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*;

c. Provide one (1) copy of this Order and the previously-mentioned Local Rules to each member of the McKean County Bar Association, distribution may be made electronically; and

d. Keep this Order and the previously-mentioned Local Rules continuously available for public inspection and copying in the Office of the McKean County Prothonotary and Clerk of Courts.

By the Court

JOHN H. PAVLOCK,
President Judge

MCKEAN COUNTY RULES OF CIVIL PROCEDURE

MOTIONS PRACTICE

Rule L205.2(a). Filing of Legal Papers.

In addition to the requirements forth in Pa.R.C.P. No. 204.1:

(1) All papers filed with the prothonotary shall be without folds to facilitate scanning and flat filing.

(2) All papers having multiple pages shall be numbered consecutively. The number shall appear at the bottom center position of each page.

(3) All papers having multiple pages shall be bound at the top with a binding clip or single staple in the middle, not the side.

(4) No tape, headers or backers shall be used without prior approval of the prothonotary.

(5) Attachments to any paper filed with the prothonotary shall be clearly legible. Copies shall faithfully represent the original in every respect.

Rule L205.2(b). Cover Sheet.

(1) Pursuant to Pa.R.C.P. No. 205.5 the initial pleading in any civil action including actions for custody and visitation of minor children, actions for divorce, actions in domestic relations generally and actions in the Orphan's Court except actions filed pursuant to the Protection from Abuse Act, 23 Pa.C.S.A. § 1601 et seq. and actions for support, shall be accompanied by the cover sheet published by the court administrator of Pennsylvania available on the website of the Administrative Office of Pennsylvania Courts and from the prothonotary. The party filing the initial pleading in any other type of case not listed on the cover sheet or for which there is not an applicable header (e.g. TORT) under which the case type can be added on the line "Other:" shall mark in the lower right hand corner of the cover sheet under the heading "MISCELLANEOUS" sub-heading "Other:" Family Law, Orphan's Court and attach the supplement set forth in subdivision (3) of this rule.

The following are a list of case types that should be used when completing the Rule 205.5 Cover Sheet where not identified.

TORT: Assault, Wrongful Death/Survival, Minor's or Incapacitated Person's Compromise

CONTRACT: Mechanic's Lien, Insurance, Negotiable Instrument, Warranty

CIVIL APPEALS: Award of Viewers, Local Agency, Board of Elections

MISCELLANEOUS: Equitable Relief (Injunction), Labor Dispute, Confirm/Vacate Arbitration Award and any other case not specifically addressed in this rule.

(2) All pleadings including the initial pleading and entries of appearance filed in any matter shall be accompanied by the local cover sheet set forth in subdivision (3) of this rule.

(3) The court administrator shall design and publish the supplement referred to in subparagraph (1) of this rule and the local cover sheet referred to in subsection (2) of this rule. The latest version of these forms shall be available from the prothonotary and on the court's website at www.mckeancountypa.org/Departments/Court_Of_Common_Pleas/Index.aspx. The prothonotary shall assist a party appearing pro se in the completion of these forms.

Comment

A "complex case" is an action that requires exceptional judicial management to avoid placing unnecessary burdens on the court or the litigants and to expedite the case, keep costs reasonable, and promote effective decision making by the court, the parties, and counsel. The factors to be used in determining if a case is "complex"

are among other things, whether the action is likely to involve numerous pretrial motions raising difficult or novel legal issues that will be time consuming to resolve, management of a large number of witnesses or a substantial amount of documentary evidence, management of a large number of separately represented parties, or the trial of the case will take more than 2 days. An action is presumptively a complex case if it involves one or more of the following types of claims: medical malpractice, construction defect claims involving many parties; claims for wrongful death; or, insurance coverage claims arising out of any of the claims listed above.

Plaintiff/Defendant shall furnish the prothonotary with a copy of the cover sheet(s) and supplement, if any, for the court administrator.

Rule L206.4(c). Petition Procedure: Issuance of a Rule to Show Cause.

(1) Filing:

(a) All petitions shall be filed with the prothonotary in the form prescribed in Pa.R.C.P. Nos. 204.1, 206.1 and Rule L205.2(a).

(b) Scope: As used in this rule, "petition" means any application to open a default judgment or a judgment of non pros.

(c) The issuance of a Rule to Show Cause upon presentation of a petition shall be discretionary. A petitioner seeking the issuance of a Rule to Show Cause shall attach to the petition a proposed order in the form prescribed in Pa.R.C.P. No. 206.5(d). The court in its discretion may delete paragraphs (4) and (5) of the form order (regarding discovery and argument) and provide instead that the matter will proceed before the court on an evidentiary hearing to resolve disputed issues of fact. The court may also enter an order to require the filing of briefs or to authorize discovery to proceed other than by deposition.

(d) Petitions should not be filed with the court administrator. All petitions shall be filed with the prothonotary. Courtesy copies for the court are not required. Petitions should not be filed in duplicate or by facsimile transmission, except in emergency circumstances.

(e) The court will take no action until a petition has been filed of record, except in unusual circumstances.

(f) In the event a Rule to Show Cause is not issued, the court shall issue an appropriate order directing the respondent to file an answer to the petition and the petition will be decided under Pa.R.C.P. No. 206.7.

(2) The petition seeking the issuance of a Rule to Show Cause shall be supported with an appropriate statement of authority citing a statute, rule of court, or case law in support of the requested relief. The statement may be in the form of a brief or memorandum of law filed contemporaneously with the petition; or, in a routine petition that does not raise complex legal or factual issues, in the body of the petition itself.

(3) Any request for stay of execution pending disposition of a petition to open judgment shall be filed by separate motion.

(4) The petition and any motion seeking a stay of execution shall be scheduled for argument or hearing by the court administrator and it is not necessary for the moving party to request hearing or argument.

Comment

See Pa.R.C.P. No. 210 and L210 for the form of a brief or memorandum of law. See also Rule L303.1 and the Explanatory Comment that follows.

A petition for relief from a judgment by confession is governed by Pa.R.C.P. No. 2959.

A petition to open or strike a judgment is governed by Rule L315.

A petition to compromise, settle, or discontinue an action in which a minor has an interest under Pa.R.C.P. No. 2039 is governed by Rule L2039.1.

A petition to compromise, settle, or discontinue an action in which an incapacitated person has an interest under Pa.R.C.P. No. 2064 is governed by Rule L2064.1.

A petition to compromise, settle, or discontinue a wrongful death or survival action in which a minor or incapacitated person has an interest under Pa.R.C.P. No. 2206 is governed by Rule L2206.1.

Except as otherwise provided by the Pennsylvania Rules of Civil Procedure or by statute, all other applications for relief shall be in the form of a motion and shall be governed by Rule L208.3(a).

Rule L208.2(c). Statement of Authority.

All motions, except motions for continuances, shall be supported by a statement of authority citing a statute, rule of court or case law in support of the requested relief. The statement may be in the form of a brief or memorandum of law filed contemporaneously with the motion; or, in routine motions that do not raise complex legal or factual issues, in the body of the motion itself.

Comment

See Pa.R.C.P. No. 210 and Rule L210 for the form of a brief or memorandum of law. See also Rule L303.1 and the Explanatory Comment that follows.

Rule L208.2(d). Certification of Position: Motions.

Prior to submitting any motion, the movant or his/her counsel shall confer with all counsel of record and any unrepresented parties to determine their position with respect to the motion. The movant or his/her counsel shall include in or attach to his/her motion a certification that the movant or his/her counsel has conferred, or attempted to confer, with all interested parties to ascertain their position on the motion (contested, uncontested or no position). The ascertained position shall be indicated in the certification.

Rule L208.2(e). Discovery Motions.

A motion relating to discovery shall contain a certification by counsel for the moving party that counsel has conferred with all interested parties in an attempt to resolve the matter without court action and has been unable to reach a satisfactory resolution of the issues presented.

Rule L208.3(a). Motion Procedure: Scheduling and Argument.

(1) Filing and Scheduling:

(a) All motions shall be filed with the prothonotary in the form prescribed in Pa.R.C.P. Nos. 204.1, 208.2 and Rule L205.2(a) and shall be accompanied by a proposed order.

(b) Scope: As used in this rule, "motion" means any application to the court made in any civil action or proceeding except as provided by subdivision (b)(1) and (2) of Pa.R.C.P. No. 208.1.

(c)(i) Motions should not be filed with the court administrator. All motions shall be filed with the prothonotary. Courtesy copies for the court are not required.

(c)(ii) Motions should not be filed in duplicate or by facsimile transmission, except in emergency circumstances. The prothonotary shall immediately forward emergency and continuance motions to the court administrator. Continuances will be granted only in accordance with the court's continuance policy (See memorandum of November 16, 1993) available on the court's website at www.mckeancountypa.org/Departments/Court_Of_Common_Pleas/Index.aspx. See also Pa.R.C.P. No. 216. No such request will be granted unless good cause is shown.

(c)(iii) Every motion shall contain the certification required by Rule L208.2(d).

(d) The court will take no action until a motion has been filed of record, except in unusual circumstances.

(e) Unless the motion is certified as uncontested, the court shall provide the opportunity for argument either by written briefs or orally in open court. If oral argument is held, the court, in its discretion, may decide the matter at argument or take the matter under advisement. The court may deny the moving party's request for relief, without argument, when the motion is procedurally defective, is untimely filed or fails to set forth adequate grounds for relief. If an order is entered without oral argument, the court shall hear oral argument on an application by any party for reconsideration of such order. The application for reconsideration shall be filed within 10 days after the filing of the decision.

(f) No oral testimony shall be heard at the time of argument except by direction of the court.

(2)(a) Appearance by Advanced Communication Technology: The court, in its discretion, may permit any party to appear by telephone or by a system providing two-way simultaneous audio-visual communication. Any party wanting to participate in any argument or hearing utilizing advanced communication technology shall file a written request with the judge presiding over the matter not later than the 5th day preceding the argument or hearing unless good cause can be shown for the request's late filing. Every request to appear by advanced communication technology shall contain the certification required by Rule L208.2(d). The party or parties appearing utilizing advanced communication technology shall bear the cost thereof, unless the court provides otherwise. Notwithstanding, any Judge of this court may adopt an alternate procedure governing appearances utilizing advanced communication technology.

(b) If a party choosing to appear utilizing advanced communication technology fails to call the court or is unavailable when called to participate in the call with the court, the court may pass the matter or may treat the failure to call or participate as a failure to appear.

(3) Transcripts: The moving party in all post-trial or post-hearing motions or petitions shall, if the argument relates to the testimony presented, arrange for the transcription of so much of the testimony as may be required to resolve the issues presented.

Comment

All motions, upon filing, except motions for continuances and to appear by advanced communication technology, must be supported by a statement of authority citing a statute, rule of court or case law in support of the requested relief. See Rules L208.2(c) and L303.1. A motion decided on the papers filed of record or on such briefs or memorandums of law as may be filed by the parties will normally be decided within 30 days of the date on which the response to the motion is filed. Motions certified as uncontested will normally be decided within a few days after the motion is filed. See Rule L208.2(d). A motion on which oral argument is held will normally not be decided for 90—120 days after the motion is filed. Notwithstanding, any party or a party's attorney has the right to appear before a Judge of this court and argue any motion. See Pa.R.C.P. No. 211.

EXCEPT FOR THE ACTIONS OR PROCEEDINGS DESCRIBED IN PA.R.C.P. NO. 208.1(b)(1) AND THE MATTERS DESCRIBED IN PA.R.C.P. NO. 208.1(b)(2) EVERY APPLICATION REQUESTING A JUDGE TO ENTER AN ORDER OF COURT IS GOVERNED BY THE MOTION RULES PA.R.C.P. NOS. 208.1—208.4 AND L208.2(c)—208.3(a). IT DOES NOT MATTER WHETHER THE MOVING PARTY REFERS TO THE APPLICATION AS A "PETITION," AS A "MOTION," OR EVEN AS AN "APPLICATION." THE MOTION RULES 208.1—208.4 APPLY.

For example, Pa.R.C.P. No. 3279(a), governing deficiency judgments, provides that the proceeding shall be commenced "by filing a petition" and Pa.R.C.P. Nos. 2301 et seq., governing interpleader by defendants, permit the commencement of the proceeding upon "petition" of a defendant and sets forth what the "petition for interpleader" shall allege. These proceedings are not governed by the rules governing petitions (General and Rules 206.1 et seq.) because the term petition, as used in these rules, is defined to cover only an application to open a default judgment or judgment of non pros. Every other application, even if described as a petition in other rules comes within Rule 208.1(a)'s definition of motion.

Rule 208.3(b). Motion Procedure: When Response Required.

A response along with a supporting brief or memorandum of law shall be filed by any party opposing a motion governed by Rule L208.3(a) within 20 days after service of the motion unless the time for filing the response is modified by court order or a Pennsylvania Rule of Court. If a response is not filed as provided above, the court may treat the motion as uncontested.

Comment

A response shall be filed by any party opposing a motion governed by Rule 208.3(a) even if there are no disputed facts because the response is the opposing party's method of indicating opposition.

Rules L210 and L303.1 govern the form of briefs and memorandums of law.

Rule L210. Form of Briefs and Memorandums of Law.

(a) Briefs and Memorandums of Law shall be typewritten using a 12 pt font or greater, double spaced (except for quotations) on paper 8-1/2 inches by 11 inches in size, shall be bound at the top, not at the side, and shall contain:

(1) A history of the case.

(2) A statement of the question or questions involved.

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

(4) An argument with citation of the authority relied upon.

(5) A short conclusion stating the precise relief sought.

(b) The argument shall be divided into as many parts as there are questions involved

(c) Memorandums of Law need not contain a history of the case.

(d) The brief of the responding party need only contain the argument and conclusion, but the responding party may add a counter history of the case.

(e) Briefs shall not exceed 20 pages in length without prior court approval. Memorandums of Law shall not exceed 10 pages.

(f) All briefs and memorandums of law shall be filed with the prothonotary. A courtesy copy of the brief or memorandum of law is not required.

Comment

Please see the Explanatory Comment following Rule L303.1 regarding the court's request that counsel provide copies of out of jurisdiction cases and other not readily available source material.

Rule L1028(c). Preliminary Objections.

(1) Filing. All preliminary objections shall be filed with the prothonotary in the form prescribed in Pa.R.C.P. No. 204.1 and Rule L205.2(a). Preliminary Objections should not be filed with the court administrator. Courtesy copies for the court are not required. Preliminary Objections should not be filed in duplicate or by facsimile transmission, except in emergency circumstances. Preliminary Objections which assert facts not otherwise of record, including but not limited to an objection under Pa.R.C.P. No. 1028(a)(1), (5) or (6) shall be endorsed with a notice to plead pursuant to Pa.R.C.P. No. 1361.

(2) The court will take no action until the preliminary objections have been filed of record, except in unusual circumstances.

(3) Statement of applicable authority: All preliminary objections shall be supported by a statement of authority citing a statute, rule of court, or case law in support of the requested relief. The statement may be in the form of a brief or memorandum of law filed contemporaneously with the preliminary objections; or, if the preliminary objections do not raise complex legal or factual issues, in the body of the preliminary objections itself. If not so supported, then the preliminary objections shall be summarily disposed of unless counsel promptly requests permission for good cause to file the required brief or memorandum of law at a later date.

(4) Amended Complaint, Answer or Reply brief: The opposing party shall file an amended complaint, answer or reply brief to the preliminary objections within 20 days after service of them unless the time for filing the response is modified by court order. If an amended complaint, answer or reply brief is not timely filed, then the preliminary objections shall be sustained unless counsel promptly requests permission for good cause to file the required amended complaint, answer or reply brief at a later date.

(5) The court shall provide the opportunity for argument either by written briefs or orally in open court. If oral argument is held, the court, in its discretion, may decide the matter at argument or take the matter under advisement. If an order is entered without oral argument, the court shall hear oral argument on an application by any party for reconsideration of such order. The application for reconsideration shall be filed within 10 days after the filing of the decision.

(6) No oral testimony shall be heard at the time of argument except by direction of the court.

(7) In the event there are disputed issues of fact, the court will schedule the matter for hearing.

(8)(a) Appearance by Advanced Communication Technology: The court, in its discretion, may permit any party to appear by telephone or by a system providing two-way simultaneous audio-visual communication. Any party wanting to participate in any argument or hearing utilizing advanced communication technology shall file a motion not later than the 5th day preceding the argument or hearing unless good cause can be shown for the late filing of the motion. Every request to appear by advanced communication technology shall contain the certification required by Rule L208.2(d). The party or parties appearing utilizing advanced communication technology shall bear the cost thereof, unless the court provides otherwise. Notwithstanding, any Judge of this court may adopt an alternate procedure governing appearances utilizing advanced communication technology.

(b) If a party choosing to appear utilizing advanced communication technology fails to call the court or is unavailable when called to participate in the call with the court, the court may pass the matter or may treat the failure to call or participate as a failure to appear.

Comment

All Preliminary Objections, upon filing, must be supported by a statement of authority citing a statute, rule of court, or case law in support of the requested relief. The statement may be in the form of a brief or memorandum of law filed contemporaneously with the preliminary objections; or, if the preliminary objections do not raise complex legal or factual issues, in the body of the preliminary objections itself. See Pa.R.C.P. No. 210, Rules L210 and L303.1 and the Explanatory Comment that follows. Preliminary Objections decided on the papers filed of record or on such briefs or memorandums of law as may be filed by the parties will normally be decided within 30 days of the date on which the answer or reply brief is filed. Preliminary Objections on which oral argument is held will normally not be decided for 90—120 days after the Preliminary Objections are filed. Notwithstanding, any party or a party's attorney has the right to appear before a Judge of this court and argue any motion. See Pa.R.C.P. No. 211.

Failure to answer preliminary objections raising questions of fact and endorsed with a notice to plead constitutes an admission of the facts pleaded.

Rule L1034(a). Motion for Judgment on the Pleadings.

(1) Filing. A motion for judgment on the pleadings shall be filed with the prothonotary in the form prescribed in Pa.R.C.P. No. 204.1 and Rule L205.2(a). It should not be filed with the court administrator. Courtesy copes for the court are not required. It should not be filed in duplicate or by facsimile transmission, except in emergency circumstances.

(2) The court will take no action until the motion has been filed of record, except in unusual circumstances.

(3) Statement of applicable authority. All Motions for Judgment on the Pleadings shall be supported by a brief or memorandum of law filed contemporaneously with the motion.

(4) Reply brief: The opposing party shall file an answer or reply brief to the motion within 20 days after service of the motion unless the time for filing the response is modified by court order. If a response is not filed as provided above, the court may treat the motion as uncontested.

(5) The court shall provide the opportunity for argument either by written briefs or orally in open court. If oral argument is held, the court, in its discretion, may decide the matter at argument or take the matter under advisement. If an order is entered without oral argument, the court shall hear oral argument on an application by any party for reconsideration of such order. The application for reconsideration shall be filed within 10 days after the filing of the decision.

(6) No oral testimony shall be heard at the time of argument except by direction of the court.

(7)(a) Appearance by Advanced Communication Technology: The court, in its discretion, may permit any party to appear by telephone or by a system providing two-way simultaneous audio-visual communication. Any party wanting to participate in any argument utilizing advanced communication technology shall file a motion not later than the 5th day preceding the argument unless good cause can be shown for the late filing of the motion. Every request to appear by advanced communication technology shall contain the certification required by Rule L208.2(d). The party or parties appearing utilizing advanced communication technology shall bear the cost thereof, unless the court provides otherwise. Notwithstanding, any Judge of this court may adopt an alternate procedure governing appearances utilizing advanced communication technology.

(b) If a party choosing to appear utilizing advanced communication technology fails to call the court or is unavailable when called to participate in the call with the court, the court may pass the matter or may treat the failure to call or participate as a failure to appear.

Comment

All Motions for Judgment on the Pleadings, upon filing, must be supported by a brief or memorandum of law filed contemporaneously with the motion. See Pa.R.C.P. No. 210, Rules L210 and L303.1 and the Explanatory Comment that follows. A Motion for Judgment on the Pleadings decided on the papers filed of record or on such briefs or memorandums of law as may be filed by the parties will normally be decided within 30 days of the date on which the reply brief is filed. A Motion for Judgment on the Pleadings on which oral argument is held will normally not be decided for 90—120 days after the motion is filed. Notwithstanding, any party or a party's attorney has the right to appear before a Judge of this court and argue any motion. See Pa.R.C.P. No. 211.

Rule L1035.2(a). Motion for Summary Judgment.

The procedures for the disposition of a Motion for Summary Judgment are identical to the procedures for the disposition of a Motion for Judgment on the Pleadings described in Rule L1034(a) except that a Response in Opposition to the Motion for Summary Judgment shall be filed as provided in Pa.R.C.P. No. 1035.3.

[Pa.B. Doc. No. 12-1942. Filed for public inspection October 5, 2012, 9:00 a.m.]

MONROE COUNTY

Administrative Order 2012.5; No. AD No. 36

Order

And Now, this 24th day of August, 2012, in order to comply with the specific coverage requirements of Pa.R.Crim.P. 117 for Magisterial District Judges, the following schedule for coverage is adopted:

1. *Normal Business Hours*

(a) Normal business hours shall be Monday through Friday from 8:30 a.m. to 4:30 p.m. except when a Court holiday has been declared on such day.

(b) All court proceedings normally conducted before a Magisterial District Judge, which occur during normal business hours of the Court, shall be conducted by the appropriate Magisterial District Judge as determined by the rules relating to venue.

(c) The Magisterial District Judge shall be available for all court proceedings without unreasonable delay during normal business hours for the purpose of accepting the posting of a defendant's bail, performing preliminary arraignments, and issuing warrants.

(d) The Magisterial District Judge shall use advanced communication technology in execution of his or her duties. Each Magisterial District Judge, as an "issuing authority" under Pennsylvania Rules of Criminal Procedure 203, 513 and 540, shall have the discretion, in a particular case or situation, to require on an individual case basis an individual to appear in person, rather than to conduct said judicial business using advanced communication technology.

The Magisterial District Judge shall not, as a matter of discretion, have the right to make a blanket refusal to utilize advanced communication technology in all such cases.

(e) Priority of judicial business demands prompt and proper attention by Magisterial District Judges before partaking in any other endeavor, pursuant to Rule 3(A) of Rules Governing Standards of Conduct of Magisterial District Judges. If a magisterial district judge will not be available within one hour of any request for service, that Judge shall have pre-arranged judicial coverage from a cooperating Judge who will immediately meet the judicial responsibilities of the requesting absent Judge. The arrangement of judicial coverage shall be in writing by any method of communication and shall not exceed eight continuous hours of coverage. A copy of all communications for coverage shall be made immediately available to the Magisterial District Judge Court Administrator upon request.

2. *Duty Magisterial District Judge*

(a) The Duty Magisterial District Judge is the MDJ assigned by the MDJ court administrator to conduct business outside of normal business hours.

(b) The Magisterial District Judge Court Administrator shall establish a rotating schedule assigning a Duty Magisterial District Judge to be on-call outside of the normal business hours of the Court to fulfill all duties of an issuing authority within the 43rd Judicial District, Monroe County, as required by the Rules of Criminal Procedure and the Protection from Abuse Act.

(c) On weekdays when the Court is open for business, the Duty Magisterial District Judge shall commence their duty at 4:30 p.m. until 8:30 a.m. the following morning. At any time during weekends and holidays the Magisterial District Judge shall be on duty from 4:30 p.m. the day their duty starts until 8:30 a.m. when the court next opens for business.

(d) The Duty Magisterial District Judge shall use advanced communication technology in execution of his or her responsibilities. Each Magisterial District Judge, as

an "issuing authority" under Pennsylvania Rules of Criminal Procedure 203, 513 and 540, shall have the discretion, in a particular case or situation, to require on an individual case basis an individual to appear in person, rather than to conduct said judicial business using advanced communication technology.

The Magisterial District Judge shall not, as a matter of discretion, have the right to make a blanket refusal to utilize advanced communication technology in all such cases.

3. *Preliminary Arraignments Outside Normal Business Hours*

(a) Weekdays—When an individual is placed under arrest by law enforcement and requires arraignment:

1. The Duty Magisterial District Judge shall be contacted by the Monroe County Control Center and be available to conduct preliminary arraignments between the hours of 4:30 p.m. and 11:00 p.m. without unreasonable delay.

2. Between the hours of 11:00 p.m. and 8:30 a.m. the on-call MDJ may defer the performance of Rule 117(A)(2)(a) services until no later than 9:00 a.m. the following morning.

3. The Magisterial District Judge shall use advanced communication technology in execution of his or her duties. Each Magisterial District Judge, as an "issuing authority" under Pennsylvania Rules of Criminal Procedure 203, 513 and 540, shall have the discretion, in a particular case or situation, to require on an individual case basis an individual to appear in person, rather than to conduct said judicial business using advanced communication technology.

The Magisterial District Judge shall not, as a matter of discretion, have the right to make a blanket refusal to utilize advanced communication technology in all such cases.

(b) Saturdays, Sundays and Holidays—When an individual is placed under arrest by law enforcement and requires arraignment:

1. The Duty Magisterial District Judge shall be contacted by the Monroe County Control Center and shall be available to conduct preliminary arraignments between the hours of 8:30 a.m. and 11:00 p.m. without unreasonable delay.

2. Between the hours of 11:00 p.m. and 8:30 a.m., the duty Magisterial District Judge may defer the performance of Rule 117(A)(2)(a) services until no later than 9:00 a.m. the following morning.

(c) The Magisterial District Judge shall use advanced communication technology in execution of his or her duties. Each Magisterial District Judge, as an "issuing authority" under Pennsylvania Rules of Criminal Procedure 203, 513 and 540, shall have the discretion, in a particular case or situation, to require on an individual case basis an individual to appear in person, rather than to conduct said judicial business using advanced communication technology.

The Magisterial District Judge shall not, as a matter of discretion, have the right to make a blanket refusal to utilize advanced communication technology in all such cases.

4. *Bail Outside Normal Business Hours*

Monetary bail shall be posted outside of normal business hours at the Monroe County Correctional Facility. The Warden of the Monroe County Correctional Facility, or her designee in charge, shall be authorized to accept bail deposits as provided in Rule 117, having the defendant sign the bail bond, releasing the defendant and delivering the bail deposit and bail bond to the issuing authority or to the Clerk of Courts.

After hour bail deposits must be in the form of cash, money order or bail bond. The posting of $10,000.00 or more in cash shall require the submission of IRS Form 8300. All persons wishing to post bail after hours shall contact the Monroe County Correctional Facility at (570) 992-3232.

5. *Warrants*

The Duty Magisterial District Judge shall be available at all times during the week after normal business hours and at all times during weekends and holidays without unnecessary delay to issue search warrants pursuant to Pa.R.Crim.P. 203, arrest warrants pursuant to Pa.R.Crim.P. 513 and emergency orders under the Protection from Abuse Act.

Advanced communication technology may be utilized to submit the warrant application and affidavit(s) and to issue warrants in accordance with the requirements of Rules 203 and 513.

Each Magisterial District Judge shall be responsible for processing his or her summary warrants outside of normal business hours.

6. *PFA*

When an individual seeks an emergency protection from abuse order outside normal business hours, the Duty Magisterial District Judge shall, without unreasonable delay, speak with the Plaintiff by phone to establish a time when the individual will be available for hearing. At the agreed time, the Duty Magisterial District Judge shall receive the petition for relief, conduct an ex-parte hearing, and either issue or deny the requested order.

7. *Juvenile Offenders*

The Duty Magisterial District Judge shall be the designated issuing authority for purposes of Pa. R.J.C. P. 210(A) outside normal business hours

It Is Ordered that one (1) certified copy of this Order shall be filed with the Administrative Office of Pennsylvania Courts; that two (2) certified copies and one (1) diskette shall be filed with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*; that one (1) certified copy shall be filed with the Criminal Procedural Rules Committee of the Supreme Court of Pennsylvania; that this local rule be published on the Unified Judicial System's web site at http://ujsportal.pacourts.us/localrules/ruleselection.aspx; one copy to the *Monroe County Legal Reporter* for publication, and that one copy shall be filed with the Clerk of Courts—Criminal of the Court of Common Pleas of Monroe County.

The effective date of this Order shall be 60 days after publication in the *Pennsylvania Bulletin*.

By the Court

MARGHERITA PATTI WORTHINGTON,
President Judge

[Pa.B. Doc. No. 12-1943. Filed for public inspection October 5, 2012, 9:00 a.m.]

SUPREME COURT

Philadelphia Traffic Court Judge Robert Mulgrew; No. 388 Judicial Administration Doc.

Order

Per Curiam:

And Now, this 19th day of September, 2012, it is hereby Ordered that Philadelphia Traffic Court Judge Robert Mulgrew is hereby relieved of any and all judicial and administrative responsibilities as a judge of the Philadelphia Traffic Court.

It is further Ordered that Judge Robert Mulgrew is suspended without pay pending further Order of this Court.

This Order is without prejudice to the rights of Judge Robert Mulgrew to seek relief in this Court for the purpose of vacating or modifying this Order. *In re: Avellino*, 690 A.2d 1138 (Pa. 1997); and see, *In re: McFalls*, 795 A.2d 367 (Pa. 2002).

[Pa.B. Doc. No. 12-1944. Filed for public inspection October 5, 2012, 9:00 a.m.]