

THE COURTS

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 200]

Damages for Delay

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 200. BUSINESS OF COURTS

Rule 238. Damages for Delay in an Action for Bodily Injury, Death or Property Damage.

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Addendum to Explanatory Comment (2022)

The prime rate as set forth in the first edition of the Wall Street Journal for a particular year is the basis for calculating damages for delay under [Pa.R.C.P. No.] Pa.R.Civ.P. 238 as revised November 7, 1988. The prime rate published in the first edition of the Wall Street Journal for each of the years specified is as follows:

<i>Date of Publication</i>	<i>Prime Rate Percentage</i>
January 3, 2022	3 1/4
January 4, 2021	3 1/4
January 2, 2020	4 3/4
January 2, 2019	5 1/2
January 2, 2018	4 1/2
January 3, 2017	3 3/4
January 4, 2016	3 1/2
January 2, 2015	3 1/4
January 2, 2014	3 1/4
January 2, 2013	3 1/4
January 3, 2012	3 1/4
January 3, 2011	3 1/4
January 4, 2010	3 1/4
January 2, 2009	3 1/4
January 2, 2008	7 1/4
January 2, 2007	8 1/4
January 3, 2006	7 1/4
January 3, 2005	5 1/4
January 2, 2004	4
January 2, 2003	4 1/4
January 2, 2002	4 3/4
January 2, 2001	9 1/2
January 3, 2000	8 1/2
January 4, 1999	7 3/4
January 2, 1998	8 1/2

[*Note*] *Comment*: The prime rate for the years 1980 through 1997 may be found in the Addendum to the Explanatory Comment published in the *Pennsylvania Bulletin*, 33 Pa.B. 634 (February 1, 2003), and on the web site of the Civil Procedural Rules Committee at <http://www.pacourts.us>.

[Pa.B. Doc. No. 22-110. Filed for public inspection January 21, 2022, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 200]

Order Adopting Rule 242 of the Pennsylvania Rules of Civil Procedure; No. 726 Civil Procedural Rules Docket

Order

Per Curiam

And Now, this 5th day of January, 2022, upon the recommendation of the Civil Procedural Rules Committee; the proposal having been published for public comment at 51 Pa.B. 1002 (February 27, 2021):

It is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule 242 of the Pennsylvania Rules of Civil Procedure is adopted in the attached form.

This Order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective April 1, 2022

Justice Brobson did not participate in the consideration or decision of this matter.

(This is an entirely new rule.)

(*Editor's Note*: This new rule is printed in regular type to enhance readability.)

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 200. BUSINESS OF COURTS

Rule 242. Citation of Authorities.

Citation of authorities in matters subject to these rules shall be in accordance with Pa.R.A.P. 126.

Note: See also 210 Pa. Code § 65.37 and *Wenk v. State Farm Fire and Casualty Co.*, 228 A.3d 540, 552 n.11 (Pa. Super. 2020) for citing to non-precedential decisions of the Superior Court; and Pa.R.A.P. 3716 and 210 Pa. Code § 69.414 for citing to non-precedential decisions of the Commonwealth Court.

CIVIL PROCEDURAL RULES COMMITTEE ADOPTION REPORT

Adoption of Pa.R.Civ.P. 242

On January 5, 2022, the Supreme Court adopted Pennsylvania Rule of Civil Procedure 242 governing the citation of authorities in the trial courts. The Civil

Procedural Rules Committee has prepared this Adoption Report describing the rulemaking process. An Adoption Report should not be confused with Comments to the rules. *See* Pa.R.J.A. 103, Comment. The statements contained herein are those of the Committee, not the Court.

The Committee received a request to consider procedures permitting the citation of non-precedential appellate court decisions for their persuasive value in the courts of common pleas. The request noted the recent adoption of Pennsylvania Rule of Appellate Procedure 126 permitting such citation in the appellate courts. The request also advocated that permitting citation to these decisions would provide significant benefits to the bench and bar such as:

- promoting consistency among the trial courts on routine issues, as well as a more informed analysis on controversial issues;
- providing the trial courts with more guidance about the current state of the law, which in turn should bring more predictability in resolving all civil matters as well as more efficiency and cost-effectiveness for parties and the courts;
- allowing the use of similar fact patterns or legal analyses to support or refute a position;
- allowing the citation of opinions that may be more illustrative and more current than binding precedent; and
- retaining the trial court's discretion to give appropriate weight to these decisions as persuasive value.

At the outset of its review, the Committee observed that the current Rules of Civil Procedure are silent as to the citation of authorities in the trial courts; there is likewise no prohibition to the citation of non-precedential appellate court decisions. In the absence of any prohibition, it is assumed these decisions may be cited.

The Committee examined Pa.R.A.P. 126, as well as the restrictions imposed by the intermediate appellate courts for citing to each court's respective non-precedential decisions for their persuasive value. *See* 210 Pa. Code § 65.37 regarding citation to Superior Court non-precedential decisions and Pa.R.A.P. 3716 and 210 Pa. Code § 414 regarding citation to Commonwealth Court non-precedential decisions.

The Committee noted at that Pa.R.A.P. 126 establishes an overarching temporal limitation to citation of these decisions - citation is permitted for non-precedential appellate decisions issued after January 14, 2008 for Commonwealth Court decisions, and after May 1, 2019 for Superior Court decisions. They may be cited only for their persuasive value unless related to the doctrine of the law of the case, *res judicata*, collateral estoppel, or if relevant to a criminal proceeding because it recites issues raised and reasons for a decision affecting the same defendant in a prior proceeding. In addition, the internal operating procedures (I.O.P.s) and other intermediate appellate court-specific rules add an additional layer to the parameters for citation of non-precedential appellate decisions. Yet, the permissibility and parameters are located exclusively within appellate authority, which trial court practitioners and judges may not intuitively consult for proceedings in the courts of common pleas.

Given the complexity to the limitations required generally by Pa.R.A.P. 126 and the overlay of the intermediate appellate courts' I.O.P.s, the Committee proposed Rule 242 so that it does not disturb these carefully constructed parameters for citation of authorities in appellate practice. Rather, the rule incorporates by reference Pa.R.A.P.

126 and cross references the I.O.P.s. In doing so, the rule alerts both jurists and practitioners to consult the Rules of Appellate Procedure and intermediate appellate court I.O.P.s for existing limitations, provides the benefits of a rule expressly authorizing such citation, and provides instant, continued uniformity with appellate practice should those rules or I.O.P.s ever be amended in the future.

The Committee published proposed Rule 242 for comment. *See* 51 Pa.B. 1002 (February 27, 2021). The Committee received one comment to publication in support of the proposal.

In sum, new Rule 242 makes explicit the assumption that non-precedential appellate court decisions may be cited in the trial courts. However, respectful of the limitations the intermediate appellate courts have placed on the citation of their decisions, Rule 242 incorporates Pa.R.A.P. 126 and cross references the I.O.P.s for the specific requirements when citing to non-precedential appellate court decisions for their persuasive value in the trial courts. A note to the rule is intended to inform practitioners of the Superior Court and Commonwealth Court operating procedures.

The rule becomes effective April 1, 2022.

[Pa.B. Doc. No. 22-111. Filed for public inspection January 21, 2022, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

PART II. ORPHANS' COURT RULES

[231 PA. CODE PART II]

Order Amending Rules 1.3, 2.11, 9.1, 9.2, 9.4, 9.5, 9.6, 9.7, and 9.8 of the Pennsylvania Rules of Orphans' Court Procedure; No. 898 Supreme Court Rules Docket

Order

Per Curiam

And Now, this 6th day of January, 2022, upon the recommendation of the Orphans' Court Procedural Rules Committee; the proposal having been published for public comment at 51 Pa.B. 5194 (August 21, 2021):

It is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rules 1.3, 2.11, 9.1, 9.2, 9.4, 9.5, 9.6, 9.7, and 9.8 of the Pennsylvania Rules of Orphans' Court Procedure are amended in the attached form.

This Order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective on April 1, 2022.

Justice Brobson did not participate in the consideration or decision of this matter.

Additions to the rules are shown in bold and are underlined.

Deletions from the rules are shown in bold and brackets.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART II. ORPHANS' COURT RULES

CHAPTER 1. PRELIMINARY RULES

Rule 1.3. Definitions.

The following words and phrases when used in these Rules shall have the following meanings, respectively, unless the context clearly indicates otherwise or the particular word or phrase is expressly defined in the Chapter in which the particular Rule is included:

* * * * *

“Guardian *ad litem* or Trustee *ad litem*”—a fiduciary who is appointed by a court in a legal proceeding to represent an individual or class of individuals under a legal disability;

“**Hearing Officer**”—a person who is appointed by the court to investigate any issue of fact and to report findings of fact, conclusions of law, and recommendations to the court. A hearing officer shall include any person now or formerly referred to as a master by rule of court or statute;

“Incapacitated Person”—a person determined to be incapacitated under the provisions of Chapter 55 of Title 20 (relating to incapacitated persons);

* * * * *

[**Note**] **Comment:** This definitional section is new; but, some of the definitions are substantively identical to the definitions in former Rule 2.3 and other definitions are taken from and are similar to Pa.R.Civ.P. No. 76. The term “hearing officer” is used in these Rules in the same manner as “master” in the Probate, Estates and Fiduciaries Code, 20 Pa.C.S. §§ 101 et seq. See, e.g., 20 Pa.C.S. § 751(1).

CHAPTER II. ACCOUNTS, OBJECTIONS AND DISTRIBUTIONS

Rule 2.11. Appointment of Official Examiners.

The court, by local rule or order in a particular matter, may appoint an official examiner who shall examine the assets held by or the transactions of any fiduciary.

[**Note**] **Comment:** Rule 2.11 is substantively identical to former Rule 9.1. The appointment and conduct of Auditors and [**Masters**] **Hearing Officers** is provided for in Chapter IX.

CHAPTER IX. AUDITORS AND [**MASTERS**] **HEARING OFFICERS****Rule 9.1. Notice of Hearings.**

An auditor or [**master**] **hearing officer** appointed pursuant to 20 Pa.C.S. § 751 shall give notice of scheduled hearings in such manner and to such parties as local rules shall prescribe.

[**Note**] **Comment:** Rule 9.1 is substantively identical to former Rule 8.1.

Rule 9.2. Filing of Report.

An auditor or [**master**] **hearing officer** shall file his or her report within 90 days after his or her appointment, unless the court extends the time upon request.

[**Note**] **Comment:** Rule 9.2 is based upon former Rule 8.2.

Rule 9.4. Form of [**Master’s**] **Hearing Officer’s** Report.

A [**master’s**] **hearing officer’s** report shall state the number, times, dates, and duration of the hearings held, the number, extent, and causes of any delays or continuances, and the basis of the court’s jurisdiction, and shall include a statement and discussion of the questions involved, findings of fact and conclusions of law, and specific recommendations.

[**Note**] **Comment:** Rule 9.4 is **substantively** identical to former Rule 8.4.

Rule 9.5. Transcript of Testimony.

The transcript of testimony taken before an auditor or [**master**] **hearing officer** shall be filed with the report.

[**Note**] **Comment:** Rule 9.5 is **substantively** identical to former Rule 8.5.

Rule 9.6. Notice of Filing Report.

An auditor or [**master**] **hearing officer** shall give notice of the filing of the report or of the intention to file the report in such manner and to such parties as local rules shall prescribe.

[**Note**] **Comment:** Rule 9.6 is **substantively** identical to former Rule 8.6.

Rule 9.7. Confirmation of Report.

(a) The report of an auditor shall be confirmed in such manner as local rules shall prescribe.

(b) The report of a [**master**] **hearing officer** shall not be approved until a decree is entered adopting its recommendations.

[**Note**] **Comment:** Rule 9.7 is **substantively** identical to former Rule 8.7.

Rule 9.8. Security for Expenses and Fees.

An auditor or [**master**] **hearing officer**, the accountant, or any interested party may apply to the court at any time for leave to require security for the payment of the auditor’s or [**master’s**] **hearing officer’s** expenses and fees, and, when such leave is granted, the auditor or [**master**] **hearing officer** may decline to proceed until security is entered.

[**Note**] **Comment:** Rule 9.8 is substantively identical to former Rule 8.8.

ORPHANS' COURT PROCEDURAL RULES
COMMITTEE ADOPTION REPORTAmendment of Pa.R.O.C.P. 1.3, 2.11, 9.1, 9.2, 9.4, 9.5,
9.6, 9.7, and 9.8

On January 6, 2022, the Supreme Court amended Pennsylvania Rules of Orphans’ Court Procedure 1.3, 2.11, 9.1, 9.2, 9.4, 9.5, 9.6, 9.7, and 9.8, replacing the term “master” with “hearing officer.” The Orphans’ Court Procedural Rules Committee has prepared this Adoption Report describing the rulemaking process as it relates to these Rule amendments. An Adoption Report should not be confused with Comments to the rules. See Pa.R.J.A. 103, Comment. The statements contained herein are those of the Committee, not the Court.

The purpose of the amendments is two-fold. First, while the term “master” has traditionally identified a quasi-judicial officer and is considered neutral in legal proceedings, a pejorative connotation has been ascribed to the

term in modern parlance outside of court. The term has been used in the procedural rules and statutorily in both state and federal systems and is firmly rooted in the judicial process. However, the term has racially divisive and offensive connotations, as well.

Second, the term has been either already replaced or proposed to be replaced in other bodies of rules. See 47 Pa.B. 2313 (April 22, 2017) (amendments to the Rules of Juvenile Court Procedure); 51 Pa.B. 6764 (October 30, 2021) (amendments to the Rules of Civil Procedure governing domestic relations proceedings); and 51 Pa.B. 4262 (August 7, 2021) (proposed amendments to the Rules of Civil Procedure). In addition, the Committee observes that a number of judicial districts have also changed this terminology in their local rules.

The term “master” continues to be used in relevant statutes. See, e.g., 20 Pa.C.S. § 751(1) (“a master to investigate any issue of fact and to report his findings of fact, conclusions of law and recommendations to the court”). Rule 1.3 is amended to add a new definition of “hearing officer.” The Comment to Rule 1.3 is amended to clarify that the new term, “hearing officer,” is used in the Rules in the same manner as “master” in the Probate, Estates and Fiduciaries Code, 20 Pa.C.S. §§ 101 *et seq.* Finally, the amendments to Rules 2.11, 9.1, 9.2, 9.4, 9.5, 9.6, 9.7, and 9.8, replace the term “master” with “hearing officer” throughout the Rules.

[Pa.B. Doc. No. 22-112. Filed for public inspection January 21, 2022, 9:00 a.m.]

Title 255—LOCAL COURT RULES

FAYETTE COUNTY

Detention or Incarceration of Juveniles Pursuant to Amendments of the Federal Juvenile Justice Reform Act; No. 15 AD 2021

Order

And Now, this 28th day of December 2021, it is hereby Ordered that the Administrative Order for the Detention or Incarceration of Juveniles Pursuant to Amendments of the Federal Juvenile Justice Reform Act is adopted as follows.

Copies of the administrative order should be distributed according to the following schedule:

A. One copy to the Administrative Office of Pennsylvania Courts via e-mail to adminrules@pacourts.us.

B. Two paper copies and one electronic copy in a Microsoft Word format only on a CD-ROM to the Legisla-

tive Reference Bureau for publication in the *Pennsylvania Bulletin* to the following address:

Pa. Code and Bulletin
Legislative Reference Bureau
647 Main Capitol Building
Harrisburg PA 17120

The Administrative Office of Fayette County Courts is directed as follows:

Publish a copy of the Administrative Order on the website of the Administrative Office of Fayette County Courts.

Thereafter, compile the Administrative Order within the complete set of local rules no later than 30 days following the publication in the *Pennsylvania Bulletin*.

File one copy of the administrative order in the appropriate filing office for public inspection and copying.

The Administrative Order for Detention or Incarceration of Juveniles Pursuant to Amendments of the Federal Juvenile Justice Reform Act shall become effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

By the Court

JOHN F. WAGNER, Jr.,
President Judge

Detention or Incarceration of Juveniles Pursuant to Amendments of the Federal Juvenile Justice Reform Act

Administrative Order—No. 15 AD 2021

And Now, December 20, 2021, pursuant to recent amendments of the Federal Juvenile Justice Reform Act (JJRA) of 2018, 34 U.S.C. § 11101 *et seq.*, it is hereby *Ordered* and *Directed* that a juvenile (a child under the age of eighteen) arrested on or after December 21, 2021, for an act designated as a crime under the laws of this Commonwealth and subject to adult criminal proceedings, including criminal proceedings initiated pursuant to provisions of the Juvenile Act (42 Pa.C.S. §§ 6302 and 6355), and who is not released on bail, shall be detained at Aspire or other juvenile facility until such time as a common pleas judge, upon motion of the Commonwealth, promptly makes the “interest of justice” determination required by 34 U.S.C. § 11133(a)(3)(B) and commits the juvenile for incarceration in the Fayette County Prison. The period(s) of incarceration of the subject juvenile shall be in accordance with the requirements of the JJRA, unless waived in writing or on the record by the juvenile.

By the Court

JOHN F. WAGNER, Jr.,
President Judge

[Pa.B. Doc. No. 22-113. Filed for public inspection January 21, 2022, 9:00 a.m.]