

THE COURTS

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CHS. 200 AND 1000]

Promulgation of Rule 1042.72 Governing Excessive Damage Awards for Noneconomic Loss in Medical Professional Liability Actions and Amendment of Rule 227.4 Governing Entry of Judgment upon Praecipe of a Party; No. 418 Civil Procedural Rules; Doc. No. 5

Amended Order

Per Curiam:

And Now, this 17th day of September, 2004, the Pennsylvania Rules of Civil Procedure are amended as follows:

1. New Rule 1042.72 is promulgated to read as follows, and
2. Rule 227.4 is amended to read as follows.

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

This order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective December 1, 2004.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 200. BUSINESS OF COURTS

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

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

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

* * * * *

(b) one or more timely post-trial motions are filed and the court does not enter an order disposing of all motions within one hundred twenty days after the filing of the first motion. A judgment entered pursuant to this subparagraph shall be final as to all parties and all issues and shall not be subject to reconsideration; **or**

Official Note:

* * * * *

Rule 1042.72(e)(3) prohibits the entry of judgment in a medical professional liability action if a motion for post-trial relief under Rule 227.1 is pending with respect to the ground that a damage award for noneconomic loss is excessive.

(2) enter judgment when a court grants or denies relief but does not itself enter judgment or order the prothonotary to do so.

Official Note: See Rule 236 requiring the prothonotary to give notice of the entry of an order or judgment and Rule 237 requiring notice of filing of praecipe for judgment. For illustrative Rules of Civil Procedure specifically authorizing entry of judgment by the prothonotary on praecipe of a party, see Rules 1037, [1511(a),] 1659, 3031(a), and 3146.

CHAPTER 1000. ACTIONS

Subchapter B. ACTION IN TRESPASS

PRE-TRIAL CONFERENCE

Rule 1042.72. Medical Professional Liability Actions. Motion for Post-Trial Relief. Excessive Damage Award for Noneconomic Loss.

(a) In a medical professional liability action in which the trier of fact has made separate findings specifying the amount of noneconomic loss, any defendant may include in a motion for post-trial relief under Rule 227.1 the ground that the damage award for noneconomic loss is excessive.

Official Note: A damage award for noneconomic loss does not include amounts awarded for medical and other related expenses, loss of earnings or earning capacity, or punitive damages.

(b) A damage award is excessive if it deviates substantially from what could be reasonable compensation. In deciding whether the award deviates substantially from what could be considered reasonable compensation, the court shall consider (1) the evidence supporting the plaintiff's claim; (2) factors that should have been taken into account in making the award; and (3) whether the damage award, when assessed against the evidentiary record, strongly suggests that the trier of fact was influenced by passion or prejudice.

Official Note: The defendant has the burden of convincing the court that the award deviates substantially from what could be reasonable compensation.

The factors that the trier of fact should take into account are those set forth in the jury instructions described in Rule 223.3.

(c) If the court finds that the damage award for noneconomic loss is excessive, the court shall remit the award. If the plaintiff declines to accept the award as remitted, the court shall grant a new trial limited to a damage award for noneconomic loss. The verdict or decision as to liability, economic damages, and punitive damages shall not be set aside under this rule.

(d) The court in granting or denying the motion shall issue an opinion which discusses the evidence and the factors taken into account in making its decision.

(e)(1) The court shall enter an order disposing of a motion, or portion thereof, raising the ground of an excessive damage award for noneconomic loss within one hundred twenty days of the filing of the motion.

(2) If an order has not been entered as required by subdivision (e)(1), the judge who is deciding the motion shall immediately file a report with the Court Administrator of Pennsylvania and his or her president judge

which explains why the motion, or portion thereof, has not been decided and when a decision is anticipated.

(3) A judgment may not be entered pursuant to Rule 227.4 if a motion for post-trial relief is pending with respect to the ground that the damage award for noneconomic loss is excessive.

(f) This rule shall expire five years from its promulgation date unless continued by order of the Supreme Court.

(g) This rule shall apply to all cases for which a verdict or decision has not been rendered prior to its effective date.

[Pa.B. Doc. No. 04-1814. Filed for public inspection October 1, 2004, 9:00 a.m.]

Title 255—LOCAL COURT RULES

MONTGOMERY COUNTY

Amendment to Local Rule of Civil Procedure 208.3(b) and Rescission of Local Rule of Civil Procedure 208.4

Order

And Now, this 16th day of August, 2004, the Court approves and adopts the following Amendment to Montgomery County Local Rule of Civil Procedure 208.3(b) and Rescission of Local Rule of Civil Procedure 208.4. In conformity with Pa.R.C.P. 239(c)(7), this Amendment and Rescission shall become effective upon publication on the web site of the Administrative Office of Pennsylvania Courts (www.ujportal.pacourts.us).

The Court Administrator is directed to publish this Order once in the *Montgomery County Law Reporter* and in *The Legal Intelligencer*. In further conformity with Pa.R.C.P. 239, seven (7) certified copies of the within Order shall be filed by the Court Administrator with the Administrative Office of Pennsylvania Courts. Two (2) certified copies shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*. One (1) certified copy shall be filed with the Civil Procedural Rules Committee. One (1) copy shall be filed with the Prothonotary, one (1) copy with the Clerk of Courts, and (1) copy with the Court Administrator of Montgomery County, one (1) copy with the Law Library of Montgomery County and one (1) copy with each Judge of this Court.

By the Court

S. GERALD CORSO,
President Judge

Rule 208.3(b). Motion Practice. Rule to Show Cause. Disposition of Motions.

(1) *Filing*. All other "motions" as defined by Rule 208.1, excepting those listed above in Local Rule 208.3(a), shall be governed by this Rule. All such motions shall be faced with a cover sheet of the moving party in the form set forth in Local Rule 205.2(b) and shall be accompanied by the moving party's proposed order. The motion, together with the cover sheet, shall be presented to the Court Administrator, after filing with the Prothonotary, for a return day on the rule.

(2) *Listing*. Excepting motions for sanctions or contempt of a prior court order, the Court Administrator shall fix promptly a return day which shall not be less than thirty (30) days from the date of filing of said motion, and the moving party shall forthwith serve the respondent with a copy of the motion and the cover sheet indicating the return day thereon. The moving party shall thereafter file a certification that the motion and the rule return date were served upon all parties, in substantially the following form:

See Form *Certificate of Service*

Motions for sanctions or contempt of a prior court order shall be forwarded by the Court Administrator to the assigned Judge for the scheduling of a hearing.

Motions that are alleged to be "emergencies" will not initially be given a rule return date, but rather the Court Administrator will forward the emergency motion to the assigned Judge. If the matter is deemed to be an emergency by the assigned Judge, the Judge will process the matter accordingly. If the matter is not deemed to be an emergency, the matter will be returned to the Court Administrator for listing pursuant to this Rule.

(3) *Response*. At or before the call of the list on the return day, the respondent shall file an answer to the motion, even if there are no contested issues of fact. The answer shall be faced with the respondent's cover sheet in the form set forth in Rule 205.2(b) and shall be accompanied by a proposed order.

(4) *Initial Consideration of Motion—Rule Return Day*. On the return day, the Court Administrator or his/her designee shall call all matters listed. If a response is not filed to the motion at or before the call of the list, the court will treat the motion as uncontested, and grant the requested relief, if appropriate, and if a proper certificate of service was filed pursuant to Local Rule 208.3(b)(2). In the absence of a proper certificate of service, the motion will be stricken.

Matters relating to discovery in which responses have been filed will proceed by Local Rule 4019*. Motions raising appealable matters in which responses have been filed will proceed pursuant to section (2) herein. All other matters (interlocutory) in which responses have been filed will forthwith be referred to the assigned Judge for disposition, including argument, if requested.

(5) *Praecepte*. On all motions raising appealable matters in which responses have been filed, the Court Administrator, after the return day, will issue an order directing the completion of discovery, if necessary, within sixty (60) days of the date of the order. Upon completion of discovery, if necessary, any party may file with the Prothonotary, in duplicate, a praecipe for argument in the form set forth herein, including a certification that a copy thereof has been served upon all other parties. The Prothonotary shall forthwith deliver a copy of the praecipe to Court Administration. The praecipe shall be in the following form:

See Form *Argument Praecepte*

(6) *Briefs*. For motions raising appealable matters, the brief of the moving party shall be filed in the Prothonotary's Office within thirty (30) days of the filing of the praecipe for argument, unless otherwise directly by the assigned Judge. Regarding appealable matters, the brief of the respondent shall be filed within thirty (30) days of the date of the filing of the moving party's brief.

For motions raising interlocutory matters, where the Court orders briefs, the brief of the moving party shall be

filed in the Prothonotary's Office within thirty (30) days of the date of said order and the respondent's brief shall be filed within thirty (30) days of the filing of the brief of the moving party, unless otherwise directly by the assigned Judge. A party may also voluntarily file a brief regarding interlocutory matters even though not specifically directed by the Court.

If the brief of either party is not timely filed, either per the directive of this Rule or by order of the Court, the assigned Judge may:

(a) Dismiss the motion where the moving party has failed to comply;

(b) Grant the requested relief where the respondent has failed to comply, except that no civil action or proceeding shall be dismissed for failure to comply;

(c) List the matter for argument, at which time only the complying party shall be heard; or

(d) Impose such other sanctions upon the non-complying party as the Judge shall deem proper.

(7) *Disposition.* Once briefs, if required, are filed, the matter shall be referred to the assigned Judge for disposition. If oral argument was requested by either party on either their respective cover sheets or the argument praecipe, the matter shall be scheduled for argument. If oral argument was not requested by either party, the

assigned Judge may direct the scheduling of argument, or may simply decide the matter upon the filings.

Comments:

1. Rule 208.1(b)(1)(iv) specifically excludes motions to exclude expert testimony pursuant to Rule 207.1 and motions in limine from the above process. These motions are filed with the Prothonotary and referred to the trial judge, upon assignment of trial.

2. Rule 208.1(b)(2)(i) specifically excludes asbestos litigation matters from the above process. Motions filed in said matters are handled pursuant to Local Rule 1041.1*.

3. Requests for leave to withdraw an appearance in family court actions pursuant to Rule 1012 and requests under local Rule 229(a)*(1) are considered "motions" that are subject to this Rule.

4. Appealable matters are those that are before the Court for final judgment or adjudication. Please refer to the Pennsylvania Rules of Appellate Procedure for further guidance.

5. Motions relating to discovery in family law actions—excluded from the above process by Rule 208.1(b)(2)(iv)—are governed by Local Rule 4019.1* Family Discovery Master.

Rule 208.4. Disposition of Motions.

Rescinded.

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA
CIVIL DIVISION

VS. : NO.

CERTIFICATE OF SERVICE

I, _____, hereby certify that a true and correct copy of _____ noting a
(Name of Server) (Name of Motion/Petition)

Rule Return date of _____ in Video Room "1" of the Montgomery County Court House, Airy &
(Date of Rule Return)

Swede Streets, Norristown, PA at 1:00 p.m. has been served upon the following persons:

(Insert Complete Name(s) and Address(s))

Via: _____ on _____
(Form of Delivery e.g. Mail/Courier etc.) (Date Mailed or Delivered)

(Signature of Server)

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA
CIVIL ACTION—LAW

VS. : NO.

THE COURTS

ARGUMENT PRAECIPE

Please submit the following matter to the designated Judge for disposition:

INTERLOCUTORY matter:

(Specify) _____

(Name of Moving Party) _____

APPEALABLE matter:

(Specify) _____

(Name of Moving Party) _____

ORAL ARGUMENT: Requested Waived

NO ANSWER FILED—(for petitions governed by Rule 206.1 ONLY)—Petitioner certifies that the time period for response to the above petition, as directed in the proposed order attached to the petition, has expired, and that no answer was filed to the subject petition. Accordingly, petitioner requests the court to consider the petition without the need for briefs, and enter an appropriate order in accordance with Rule 206.7(a).

Signature of Filing Party

Name Typed and Attorney I.D. #

Phone Number

NOTE—PRAECIPES TO BE FILED IN DUPLICATE WITH THE PROTHONOTARY
BRIEFS OR MEMORANDUMS TO BE FILED WITH THE PROTHONOTARY

[Pa.B. Doc. No. 04-1815. Filed for public inspection October 1, 2004, 9:00 a.m.]
