

**CHAPTER 37. BUSINESS OF THE COMMONWEALTH COURT****IN GENERAL**

- Rule  
3701. Amendments to Chapter.

**THE COMMONWEALTH COURT**

3702. Office of the Prothonotary.  
3702.1. Office of Chief Legal Counsel.  
3703. Regular Sessions.  
3704. Special Sessions.  
3705. Seal of the Commonwealth Court.  
3706. Docketing Statement.  
3707. Preargument Matters; Applications and Motions.

**ORIGINAL MATTERS**

3709. Designation of Legal Aid Sources.

**BRIEFING AND LISTING OF CASES FOR ARGUMENT**

3711. All Cases to be Heard on Fixed Date.  
3712. Manner of Listing of Cases.  
3713. Argument En Banc or Before a Panel.  
3714. Listing of Cases and Briefing Schedules.  
3715. Distribution of Briefs.  
3716. Citing Judicial Opinions in Filings.

**ARGUMENT BEFORE COURT EN BANC OR A PANEL**

3721. Composition of Court.  
3722. Presiding Judge of Panel.  
3723. Application for Reargument En Banc.

**EVIDENTIARY HEARINGS**

3731. Assignment of Judge.  
3732. Setting of Hearing.  
3733. Rotation of Assignments.  
3734. Record in Evidentiary Hearing Cases.  
3735. Jury Trials.

**POST DECISION**

3740. Request to Report Unreported Opinion.  
3751. Taxation of Costs.

**ENFORCEMENT OF AGENCY ORDER**

3761. Enforcement Proceedings.

**SUMMARY AND FORMAL PROCEEDINGS AGAINST INSURERS**

- 3771. Scope of Rules.
- 3772. Definitions.
- 3773. Filings; Number of Copies.
- 3774. Manner of Initiating Article V Proceedings.
- 3775. Intervention in Formal Proceedings.
- 3776. Applications for Relief or Court Approval.
- 3777. Docketing.
- 3778. Master Service List.
- 3779. Website.
- 3780. Service and Notice.
- 3781. Claim Procedure in Liquidation Proceedings.
- 3782. Claim Procedure in Rehabilitation Proceedings.
- 3783. Adversarial Proceedings.
- 3784. Reporting.

**IN GENERAL****Rule 3701. Amendments to Chapter.**

This chapter may be added to or otherwise amended by order of the Supreme Court, or by order of the Commonwealth Court pursuant to Pa.R.A.P. 104 (Rules of Court).

**Source**

The provisions of this Rule 3701 amended January 17, 2020, effective immediately, 50 Pa.B. 651. Immediately preceding text appears at serial page (377822).

**THE COMMONWEALTH COURT****Rule 3702. Office of the Prothonotary.**

All business of the Commonwealth Court, except as otherwise provided by law, by these rules or by order of Court, shall be administered through the Office of the Prothonotary maintained by the Court at the seat of government in the City of Harrisburg. All matters within the jurisdiction of the Court may be filed in the Office of the Prothonotary. Writs or other process issuing out of the Court shall exit from the Office of the Prothonotary and shall be returnable there.

**Official Note:** Based on former Commonwealth Court Rule 2 and makes no change in substance.

**Source**

The provisions of this Rule 3702 amended May 14, 2013, 43 Pa.B. 3225; amended January 17, 2020, effective immediately, 50 Pa.B. 651. Immediately preceding text appears at serial page (377822).

**Rule 3702.1. Office of Chief Legal Counsel.**

The Office of Chief Legal Counsel shall provide legal support and counsel to the Judges, the Prothonotary, and the Executive Administrator; assist the Court in reviewing and processing filings; prepare memos for the Court as directed; screen cases; certify cases to advise the Court of apparent conflicts; prepare memos to

inform the Court of recent Supreme Court decisions; and accept such other responsibilities as may be assigned by the Court or President Judge.

**Source**

The provisions of this Rule 3702.1 adopted January 17, 2020, effective immediately, 50 Pa.B. 651.

**Rule 3703. Regular Sessions.**

Regular sessions of the Court, including regular sessions to hear cases listed for argument, shall be held at the seat of government in the City of Harrisburg and in the cities of Philadelphia and Pittsburgh as fixed by court calendars adopted from time to time.

**Official Note:** Former Commonwealth Court Rule 10 renumbered.

**Source**

The provisions of this Rule 3703 amended January 17, 2020, effective immediately, 50 Pa.B. 651. Immediately preceding text appears at serial page (377822).

**Rule 3704. Special Sessions.**

(a) *General rule.*—A special session of the Court may be held in any judicial district of the Commonwealth whenever the Court deems such a session to be in the interests of justice because of the convenience of parties or witnesses or both or for any other reason.

(b) *Application.*—An application for such a special session shall state in detail the reasons therefor and shall contain a certification pursuant to 42 Pa.C.S. § 563(b) (other sessions) of the availability, without cost to the Commonwealth, of suitable courtroom and related facilities, a court reporter and necessary personnel.

**Official Note:** Based on former Commonwealth Court Rule 11 and makes no change in substance.

**Source**

The provisions of this Rule 3704 amended December 11, 1978, effective December 30, 1978, 8 Pa.B. 3802; amended January 17, 2020, effective immediately, 50 Pa.B. 651. Immediately preceding text appears at serial page (377823).

**Cross References**

This rule cited in 210 Pa. Code § 67.5 (relating to duty rosters—location of proceedings).

**Rule 3705. Seal of the Commonwealth Court.**

The seal of the Commonwealth Court shall be in the following form:



**Official Note:** See note to Rule 3302 (seal of the Supreme Court).

**Source**

The provisions of this Rule 3705 adopted May 16, 1979, effective September 30, 1979, 9 Pa.B. 1740.

**Rule 3706. Docketing Statement.**

(a) The Prothonotary shall develop such Docketing Statement forms as may be necessary for the purposes of reviewing new matters filed in the Court's appellate and original jurisdiction and screening matters for the Court's Mediation Program.

(b) In counseled matters, the Prothonotary shall send, along with the notice of docketing as required by Pa.R.A.P. 907(a) or 1514(a)(3), the relevant Docketing Statement form to counsel for the appellant, petitioner or plaintiff.

(1) Counsel for the appellant, petitioner or plaintiff shall file an original and one copy of the Docketing Statement and all required attachments within ten days of receipt of the notice of docketing.

(2) An unrepresented party shall not be required to file a Docketing Statement.

(c) The party filing the Docketing Statement shall include as attachments:

(1) A statement of issues that shall be no more than two pages in length, and shall set forth a brief summary of the issues and the case sufficient for an understanding of the nature of the appeal, petition for review or complaint. Information in the statement of issues shall be used to screen cases for the Mediation Program, shall not bind any party, and any issue omitted shall not constitute a waiver of the issue before the Court. The statement of issues shall follow the format required by Pa.R.A.P. 124(a).

(2) In matters addressed to the Court's appellate jurisdiction, a copy of the judgment or order on appeal and any opinion or adjudication issued by the common pleas court or agency.

(3) Proof of Service of the Docketing Statement and all attachments indicating service on all parties in accordance with Pa.R.A.P. 121.

(d) Failure to file a Docketing Statement and all attachments as required may result in the dismissal of the matter.

**Official Note:** The Commonwealth Court Mediation Program is governed by Section 501 of the Internal Operating Procedures of the Commonwealth Court, 210 Pa. Code § 69.501 (Mediation). Counsel must draft the statement of issues so as to provide all the information required by paragraph (c)(1) and allow for adequate screening for mediation. Counsel should not simply attach a copy of the Pa.R.A.P. 1925(b) statement of errors complained of on appeal filed in the trial court, because that statement would not provide an adequate "summary of the issues and the case sufficient for an understanding of the nature" of the matter. The attachments required by paragraph (c)(2) may include, for example, the trial court order and opinion, the order and adjudication of a zoning hearing board, the decision of a Workers' Compensation Judge, and similar orders.

**Source**

The provisions of this Rule 3706 adopted January 17, 2020, effective immediately, 50 Pa.B. 651; amended October 2, 2020, effective immediately, 50 Pa.B. 5731. Immediately preceding text appears at serial page (400516).

**Rule 3707. Preargument Matters; Applications and Motions.**

Prior to filing an application or a motion with the Court, a party shall confer with all counsel of record and any unrepresented parties to determine their position. Applications and motions shall include a paragraph indicating whether the other parties concur with the relief sought. If the other party does not respond to an inquiry regarding concurrence within a reasonable time, the party filing the application or motion shall set forth in detail the efforts made to obtain a response and that no response was received. This requirement shall not apply to preliminary objections, motions for judgments on the pleadings, motions for summary judgment or summary relief, petitions to open or strike judgments, applications for supersedeas, petitions to proceed in forma pauperis, and motions for post-trial relief. This requirement also shall not apply to actions involving incarcerated individuals.

**Source**

The provisions of this Rule 3707 adopted January 17, 2020, effective immediately, 50 Pa.B. 651.

**ORIGINAL MATTERS****Rule 3709. Designation of Legal Aid Sources.**

Whenever a matter not subject to Chapter 15 (judicial review of governmental determinations) is brought before the Commonwealth Court within its original jurisdiction, the following names and related information shall be included in the notice to defend set forth in the complaint pursuant to Pa.R.C.P. No. 1018.1:

Mid Penn Legal Services  
213-A North Front Street  
Harrisburg, Pennsylvania 17101  
(717) 232-0581  
and  
Dauphin County Lawyer Referral Service  
Dauphin County Bar Association  
213 North Front Street  
Harrisburg, Pennsylvania 17101  
(717) 232-7536

**Official Note:** Based on former Commonwealth Court Rule 119A and makes no change in substance.

**Source**

The provisions of this Rule 3709 amended May 14, 2013, 43 Pa.B. 3225. Immediately preceding text appears at serial pages (361771) to (361772).

**BRIEFING AND LISTING OF CASES FOR ARGUMENT****Rule 3711. All Cases to Be Heard on Fixed Date.**

Cases shall be listed for argument on a fixed date during the regular sessions of the Court.

**Official Note:** Former Commonwealth Court Rule 30 renumbered.

**Source**

The provisions of this Rule 3711 amended January 17, 2020, effective immediately, 50 Pa.B. 651. Immediately preceding text appears at serial page (377824).

**Rule 3712. Manner of Listing of Cases.**

Subject to the time limitations and conditions of Pa.R.A.P. 3713 (argument en banc or before a panel) where applicable:

(1) Each appeal from a court of common pleas, each other matter which under the applicable law is required to be determined by the Court upon the record before the government unit below, and each matter subject to Pa.R.A.P. 1542 (Evidentiary Hearing) in which no order for an evidentiary hearing has been entered, shall be listed for argument by the Prothonotary on a specified date, of which notice shall be given by the Prothonotary to the parties.

(2) An election matter shall be argued before the Judge or Judges to whom it is assigned immediately after the record is closed and briefs shall be submitted to the Court at or before argument as directed.

(3) An appeal or petition for review (except a matter subject to Paragraphs (1) or (2) of this rule) which under the applicable law may be determined in whole or in part upon the record made before the Court, shall be listed for argument by the Prothonotary on a specified date upon order of the Judge to whom it is assigned or upon *praecipe* of either party certifying that it is at issue for argument, and notice shall be given by the Prothonotary to the parties of the date fixed.

(4) A matter, except a matter subject to Pa.R.A.P. 1542, commenced in the Court within its original jurisdiction when at issue for argument on preliminary matters or after the record has been made shall be listed by the Prothonotary for argument upon the order of the President Judge or the Judge before whom the record has been made.

**Official Note:** Based upon former Commonwealth Court Rule 31A to D.

**Source**

The provisions of this Rule 3712 amended May 14, 2013, 43 Pa.B. 3225; amended January 17, 2020, effective immediately, 50 Pa.B. 651. Immediately preceding text appears at serial pages (377824) to (377825).

**Rule 3713. Argument En Banc or Before a Panel.**

On the initiative of the Court, or at the request of either party and approved by the Judge to whom the matter is assigned, argument after the record has been made may be heard by the Court en banc or by a panel of at least three Judges.

**Official Note:** Based on former Commonwealth Court Rule 31E and makes no change in substance.

**Source**

The provisions of this Rule 3713 amended January 17, 2020, effective immediately, 50 Pa.B. 651. Immediately preceding text appears at serial page (377825).

**Rule 3714. Listing of Cases and Briefing Schedules.**

(a) *Matters heard solely on certified record.* An appeal from a court of common pleas and each other matter which under the applicable law is required to be determined by the Court upon the record before the government unit below shall be eligible for listing for argument after the record has been filed. When all briefs and reproduced records have been filed, the Prothonotary shall list the matter for oral argument on a specified date and shall give at least ten days written notice by first class mail to all parties of the date scheduled for the argument. The Court may direct any matter to be submitted on briefs without oral argument.

(b) *Original jurisdiction matters.* A matter commenced in whole or in part within the original jurisdiction of the Court including matters under Pa.R.A.P. 1571 (determinations of the Board of Finance and Revenue) when at issue for argument on preliminary matters or after the record has been made may be listed for oral argument after the Court establishes a briefing schedule.

(c) *Extensions of time to file briefs or reproduced record.* A party may submit a written request for an extension of time to file briefs or the reproduced record, which the Prothonotary may grant, if the requested extension is: (1) for thirty days or less; (2) the first one sought; and (3) unopposed by all other parties. If any of the three enumerated criteria do not exist, the party must submit its extension request by formal application. The Prothonotary or Chief Legal Counsel may act on the formal application.

**Official Note:** Under Rule 105 the court may reduce or enlarge any of the time periods specified in the rule. Preliminary matters referred to in Subdivision (b) include preliminary objections, motions for judgment on the pleadings, motions for summary judgment and motions to quash.

See Pa.R.A.P. 123 regarding the form of an application for relief, which is necessary if the three requirements in Pa.R.A.P. 3714(c) cannot be met.

**Source**

The provisions of this Rule 3714 amended through December 10, 1986, effective January 31, 1987, and shall govern all matters thereafter commenced and, insofar as just and practicable, matters then pending, 16 Pa.B. 4951; amended May 14, 2013, 43 Pa.B. 3225; amended June 16, 2015, 45 Pa.B. 3975; amended January 17, 2020, effective immediately, 50 Pa.B. 651. Immediately preceding text appears at serial pages (377825) to (377826).

**Rule 3715. Distribution of Briefs.**

The Prothonotary shall distribute to each Judge who is to hear an argument, whether *en banc* or before a panel, at least five days before the argument date, copies of all briefs and reproduced records that have been filed by the parties.

**Official Note:** Based on former Commonwealth Court Rule 33 and makes no change in substance.

**Source**

The provisions of this Rule 3715 amended May 14, 2013, 43 Pa.B. 3225; amended January 17, 2020, effective immediately, 50 Pa.B. 651. Immediately preceding text appears at serial page (377826).

**Rule 3716. Citing Judicial Opinions in Filings.**

(a) A reported opinion of the Commonwealth Court en banc or three-Judge panel may be cited as binding precedent.

(b) An unreported panel decision of this Court issued after January 15, 2008, may be cited for its persuasive value, but not as binding precedent.

(c) Any unreported opinion of this Court may be cited and relied upon when it is relevant under the doctrine of law of the case, res judicata or collateral estoppel.

(d) A reported single Judge opinion in an election law matter filed after October 1, 2013, may be cited as binding precedent only in an election law matter.

(e) All other single Judge opinions of this Court, even if reported, shall be cited only for persuasive value and not as binding precedent.

**Official Note:** A special election panel is one designated by the president judge to hear election law matters on an expedited basis. Decisions by such panels are made by only the members of the panel without the participation of judges who are not part of the panel. See Internal Operating Procedure § 112(b) (Courts En Banc and Panels; Composition), § 258 (Decision; Election Law Appeals), § 416 (Reporting of Unreported Opinions).

**Source**

The provisions of this Rule 3716 adopted June 16, 2015, 45 Pa.B. 3975; amended January 17, 2020, effective immediately, 50 Pa.B. 651. Immediately preceding text appears at serial page (377826).

**ARGUMENT BEFORE COURT EN BANC OR A PANEL****Rule 3721. Composition of Court.**

Argument of cases shall be heard by the Court en banc or by a panel as determined by the Court in its discretion. The President Judge shall, insofar as practicable, assign the members of the Court to panels in such fashion that each member sits substantially the same number of times with each other member.

**Official Note:** The first sentence of the rule is based on former Commonwealth Court Rule 41.

**Source**

The provisions of this Rule 3721 amended December 11, 1978, effective December 30, 1978, 8 Pa.B. 3802; amended January 17, 2020, effective immediately, 50 Pa.B. 651. Immediately preceding text appears at serial page (377827).

**Rule 3722. Presiding Judge of Panel.**

The President Judge or the President Judge's designee shall preside over any panel.

**Source**

The provisions of this Rule 3722 amended December 11, 1978, effective December 30, 1978, 8 Pa.B. 3802; amended January 17, 2020, effective immediately, 50 Pa.B. 651. Immediately preceding text appears at serial page (377827).

**Rule 3723. Application for Reargument En Banc.**

In matters argued before a single Judge, as in petitions for review of determinations of government units which are determined in whole or in part upon the record made before the Court, or in matters argued before a panel of Judges, the Court, at any time on its own initiative before its order becomes final, or upon application for reargument pursuant to these rules, may allow reargument before the Court en banc. Such action will be taken only for compelling and persuasive reasons.

**Official Note:** Based on former Commonwealth Court Rule 43. The time for applying for reargument is increased from ten to 14 days. See Rule 2542(a)(1) (time for application for reargument).

**Source**

The provisions of this Rule 3723 amended January 13, 2009, effective as to all appeals filed 60 days or more after adoption, 39 Pa.B. 1094; amended January 17, 2020, effective immediately, 50 Pa.B. 651. Immediately preceding text appears at serial page (377827).

**EVIDENTIARY HEARINGS****Rule 3731. Assignment of Judge.**

Each matter which under the applicable law may be determined in whole or in part upon the record made before the Court, and each election case shall be assigned by the President Judge to a Judge, who shall be responsible for all aspects of the matter until such time as it is concluded by the Judge or is at issue for argument.

**Official Note:** Based on former Commonwealth Court Rule 50 and makes no change in substance. See also 42 Pa.C.S. § 564 (evidentiary hearings) which provides that in any matter which requires the taking of testimony, the President Judge of the Commonwealth Court may assign a judge of the court, or another judge temporarily assigned to the court pursuant to 42 Pa.C.S. § 4121 (assignment of judges), to sit and receive evidence, and to perform such other duties as may be prescribed by rule or order of court.

**Source**

The provisions of this Rule 3731 amended December 11, 1978, effective December 30, 1978, 8 Pa.B. 3802; amended January 17, 2020, effective immediately, 50 Pa.B. 651. Immediately preceding text appears at serial pages (377827) to (377828).

**Rule 3732. Setting of Hearing.**

An evidentiary hearing shall be held when set by the President Judge or by the Judge to whom the matter is assigned or after a praecipe therefor has been filed by any party. If the President Judge has not set the time and place for an evidentiary hearing, the Judge to whom the matter is assigned shall fix the time and place for hearing of each matter, subject to the approval of the President Judge as to space and staff limitations.

**Official Note:** Former Commonwealth Court Rule 51 renumbered.

**Source**

The provisions of this Rule 3732 amended January 17, 2020, effective immediately, 50 Pa.B. 651. Immediately preceding text appears at serial page (377828).

**Rule 3733. Rotation of Assignments.**

Inssofar as is practicable in view of the pending case loads of individual Judges, and the duties and responsibilities of the President Judge, assignments shall be made on a rotating basis to and among the Judges.

**Official Note:** Former Commonwealth Court Rule 52 renumbered.

**Source**

The provisions of this Rule 3733 amended January 17, 2020, effective immediately, 50 Pa.B. 651. Immediately preceding text appears at serial page (377828).

**Rule 3734. Record in Evidentiary Hearing Cases.**

In matters which under the applicable law may be determined in whole or in part upon the record made before the Court, the record made before the Court as transcribed and filed, together with the pleadings and other documents filed incident to the matter (including any record certified pursuant to Chapter 19 (preparation and transmission of the record and related matters)), shall comprise the record in the Court and need not be reproduced for purposes of argument, except as prescribed in Pa.R.A.P. 2111(c) (pleadings).

**Official Note:** Based on former Commonwealth Court Rule 81 and makes no change in substance.

**Source**

The provisions of this Rule 3734 amended January 17, 2020, effective immediately, 50 Pa.B. 651. Immediately preceding text appears at serial page (377828).

**Rule 3735. Jury Trials.**

Upon notice from the Commonwealth Court that a matter in that Court is to be tried by jury, the court of common pleas of a county in which the matter is to be tried shall provide courtroom facilities and a jury. The matter shall be tried as a Commonwealth Court case at such time as the president judge of the designated court of common pleas and the President Judge of the Commonwealth Court shall agree.

**Official Note:** The judge who presides over the trial of such a Commonwealth Court case will be a judge assigned under Rule 3731 (assignment of judge), who may be either a judge of the Commonwealth Court or another judge (whether or not of the judicial district which provides the jury) temporarily assigned to the Commonwealth Court pursuant to Rule 701 of the Pennsylvania Rules of Judicial Administration (assignment of judges to courts). See also note to Rule 3731 (assignment of judge).

**Source**

The provisions of this Rule 3735 amended March 7, 1978, effective April 1, 1978, 8 Pa.B. 824; amended December 11, 1978, effective December 30, 1978, 8 Pa.B. 3802; amended January 17, 2020, effective immediately, 50 Pa.B. 651. Immediately preceding text appears at serial page (377829).

**Cross References**

This rule cited in 210 Pa. Code § 67.5 (relating to duty rosters—location of proceedings).

## POST DECISION

**Rule 3740. Request to Report Unreported Opinion.**

Within 30 days after an opinion has been filed as unreported, any person may file an application to report the opinion. Except as noted in the next sentence, grant of the application requires an affirmative majority vote of the Commissioned Judges. Grant of an application to report an opinion of a single Judge or an opinion of a special election panel requires an affirmative two-thirds vote of the Commissioned Judges.

**Official Note:** A decision may be reported when it:

- (1) establishes a new rule of law;
- (2) applies an existing rule of law to facts significantly different than those stated in prior decisions;
- (3) modifies or criticizes an existing rule of law;
- (4) resolves an apparent conflict of authority;
- (5) involves a legal issue of continuing public interest; or
- (6) constitutes a significant, non-duplicative contribution to law because it contains:
  - (i) an historical review of the law,
  - (ii) a review of legislative history,
  - (iii) a review of conflicting decisions among the courts of other jurisdictions.

*See also* IOP § 412.

**Source**

The provisions of this Rule 3740 adopted July 16, 2015, 45 Pa.B. 3975; amended January 17, 2020, effective immediately, 50 Pa.B. 651. Immediately preceding text appears at serial page (377829).

**Rule 3751. Taxation of Costs.**

A party who desires costs to be taxed under Pa.R.A.P. 2762(b) (procedure for collection of costs on appeal) shall state them in an itemized and verified bill of costs which such party shall file with the Prothonotary within 14 days after entry of the judgment or other final order.

**Official Note:** As to taxation of costs generally see Chapter 27 (fees and costs in appellate courts and on appeal).

**Source**

The provisions of this Rule 3751 adopted April 26, 1982, effective September 12, 1982, 12 Pa.B. 1536; amended May 14, 2013, 43 Pa.B. 3225; amended January 17, 2020, effective immediately, 50 Pa.B. 651. Immediately preceding text appears at serial page (377830).

**ENFORCEMENT OF AGENCY ORDER****Rule 3761. Enforcement Proceedings.***(a) Government Unit's Enforcement of its Own Orders.*

(1) *Petition.* When a government unit seeks to enforce an order issued under a statute which it administers, it may initiate the proceedings by filing a petition to enforce.

(2) *Service.* The petitioner shall serve the petition and order in the manner prescribed by the Pennsylvania Rules of Civil Procedure for service of original process and shall file the return or certificate of service prescribed by the same rules.

(3) *Hearing and Notice.* Upon the filing of a petition to enforce, the Court will issue an order setting a date for a hearing and a date by which the respondent must answer the petition. The petitioner shall serve the Court's order upon the respondent in the manner prescribed by Pa.R.A.P. 121 and 122.

(4) *Relief.* Following the hearing, the Court will enter such orders as may be appropriate.

(5) *Discovery.* Discovery shall be allowed only upon leave of court.

*(b) Enforcement of Final Determinations of the Office of Open Records.*

(1) *Petition.* When a party to a proceeding before the Office of Open Records seeks to enforce a final determination regarding a record requested from a Commonwealth Agency, Legislative Agency, or Judicial Agency, it may initiate proceedings in the Commonwealth Court by filing a petition to enforce.

(2) *Caption.* The petition shall name as the petitioner the party seeking relief. The government unit alleged not to have complied with the final determination and all others who participated in the proceedings before the Office of Open Records shall be named as respondents.

(3) *Form.* The petition shall be divided into consecutively numbered paragraphs. Each paragraph shall contain, as nearly as possible, a single allegation of fact or other statement.

(4) *Content.* The petition shall state the basis for the jurisdiction of the Court, identify the parties, state the date that the final determination was entered, state the material facts giving rise to the need for judicial review, and include a short statement of the relief sought.

(5) *Final determination.* A copy of the final determination sought to be enforced shall be attached to the petition as an exhibit.

(6) *Verification.* The petition shall be verified.

(7) *Service.* The petitioner shall serve the petition in the manner prescribed by the Pennsylvania Rules of Civil Procedure for service of original process and shall file the return or certificate of service prescribed by those rules.

(8) *Hearing and Notice.* Upon the filing of a petition to enforce, the Court will issue an order setting a date for a hearing and a date by which the respon-

dent(s) must answer the petition. The petitioner shall serve the Court's order upon the respondent in the manner prescribed by Pa.R.A.P. 121 and 122.

(9) *Discovery*. Discovery shall be allowed only upon leave of court.

(10) *Relief*. Following the hearing, the Court will enter such orders as may be appropriate.

(c) *Compliance with Public Access Policy*. The petition shall include a certificate of compliance as required by Pa.R.A.P. 127.

**Official Note:** Pa.R.A.P. 3761 implements *Pennsylvania Human Relations Commission v. School District of Philadelphia*, 557 Pa. 126, 132, 732 A.2d 578, 581 (1999), in which the Court held that “just as enforcement proceedings are not originally commenced in Commonwealth Court, they are also in the appellate, rather than the original, jurisdiction of the court. It then follows that the rules of appellate procedure, rather than the rules of civil procedure, govern enforcement proceedings in Commonwealth Court.” This analysis was confirmed in *Department of Environmental Protection v. Township of Cromwell*, 613 Pa. 1, 32 A.3d 639 (2012). Petitions for enforcement are not within any other provisions of the Rules of Appellate Procedure. Thus absent Pa.R.A.P., 3761, there would be no clear method of presenting enforcement actions to the Commonwealth Court.

Pa.R.A.P. 3761(b) provides the method for seeking compliance with a final determination of the Office of Open Records in the Commonwealth Court. This differs from proceeding in the courts of common pleas, where the method to obtain judicial review of alleged failure to comply with a final determination of the Office of Open Records may be an action in mandamus or other petition authorized by local rule. *Capinski v. Upper Pottsgrove Township*, 164 A.3d 601 (Pa. Cmwlth. 2017). Use of this petition is appropriate when the final determination was not appealed. If an appeal was taken and the order affirmed by the Commonwealth Court, enforcement is not of the final determination of the Office of Open Records, but rather of the order of the Commonwealth Court.

Because the petition in Pa.R.A.P. 3761(b) is similar to the petition for enforcement of a government unit's own orders described in Pa.R.A.P. 3761(a), both are deemed to be addressed to the appellate jurisdiction of the Commonwealth Court, and thus appealable to the Supreme Court only by filing a petition for allowance of appeal. *Township of Cromwell*, 32 A.3d at 649; *School District of Philadelphia*, 732 A.2d at 581.

#### Source

The provisions of this Rule 3761 adopted January 28, 2002, effective January 28, 2002, 32 Pa.B. 876, reprinted at 34 Pa.B. 2688 (May 22, 2004); amended May 14, 2013, 43 Pa.B. 3225; amended January 17, 2020, effective immediately, 50 Pa.B. 651; amended October 2, 2020, effective immediately, 50 Pa.B. 5731. Immediately preceding text appears at serial page (400524).

### SUMMARY AND FORMAL PROCEEDINGS AGAINST INSURERS

#### Rule 3771. Scope of Rules.

Pa.R.A.P. 3771—3784 apply to all actions in the Commonwealth Court arising under Article V of The Insurance Department Act of 1921, Act of May 17, 1921, P.L. 789, added by the Act of December 14, 1977, P.L. 280, as amended, 40 P.S. §§ 221.1—221.63 (concerning summary and formal proceedings against insurers) (Article V). The rules are intended to govern practice and procedures in Article V proceedings. In the event of any inconsistency, the provisions of Article V control.

## **210 Rule 3771**

## **APPELLATE PROCEDURE**

### **Source**

The provisions of this Rule 3771 adopted June 8, 2012, effective July 30, 2012, 42 Pa.B. 3569; amended January 17, 2020, effective immediately, 50 Pa.B. 651. Immediately preceding text appears at serial page (377831).

**Rule 3772. Definitions.**

(a) Unless otherwise stated, words and phrases used in these rules shall have the meanings given to them under Article V.

(b) *Administrative case docket*—A docket created upon the initiation of a formal proceeding by the filing of a petition to rehabilitate or liquidate an insurance company.

(c) *Adversarial proceeding*—Any action (1) initiated by the rehabilitator or liquidator against persons other than the insurer, (2) asserting a right or interest afforded by Article V and for which neither Article V nor prior orders of the Court provide an avenue for redress, and (3) that the Court determines shall be governed by Pa.R.A.P. 3783 (adversarial proceedings) as an adversarial proceeding.

(d) *Ancillary case docket*—A docket created when an adversarial proceeding is initiated or when a creditor files an objection to the liquidator's claim determination under Pa.R.A.P. 3781(c) (claim procedure).

(e) *Court*—The Commonwealth Court of Pennsylvania.

(f) *Formal proceeding*—An action to rehabilitate or liquidate an insurer pursuant to Sections 515 or 520 of Article V, 40 P.S. §§ 221.15, 221.20.

(g) *Master service list*—The list maintained by the Commissioner or receiver, as the case may be, as directed in Pa.R.A.P. 3778 (master service list).

**Official Note:** *Administrative Case Docket*—The following illustrates the types of filings that may appear on an administrative case docket: any response to the petition to rehabilitate or liquidate; applications to intervene; a receiver's applications for approval of reports, partial distributions, administrative expenses, etc. and any responses thereto; applications seeking to compel the issuance of a notice of determination on a proof of claim or any other filings by the receiver related to the administration of the liquidation or rehabilitation. Other than the filing that initiated an ancillary case docket, the administrative case docket will not usually include filings related to matters assigned to an ancillary case docket.

*Adversarial proceeding*—This type of proceeding does not include objections filed by a claimant to the liquidator's notice of determination. Objections to a notice of determination on a claim are specially governed by Rule 3781 (claim procedure).

**Source**

The provisions of this Rule 3772 adopted June 8, 2012, effective July 30, 2012, 42 Pa.B. 3569; amended January 17, 2020, effective immediately, 50 Pa.B. 651. Immediately preceding text appears at serial pages (377831) to (377832).

**Rule 3773. Filings; Number of Copies.**

(a) *General rule.* Each paper filing shall consist of the original document, two (2) copies, and a labeled CD-ROM or USB flash drive containing a copy of the filing in portable document format (PDF).

(b) *Exception.* A copy on a labeled CD-ROM or USB flash drive is not required for a proof of service or report of the performance of a ministerial task.

(c) *No courtesy copies.* Courtesy copies of filings shall not be provided to the Judge's chambers.

**Official Note:** *Electronic Filing*—The Court adopted these Rules before electronic filing became available. When electronic filing becomes available this Rule will be reviewed.

**Source**

The provisions of this Rule 3773 adopted June 8, 2012, effective July 30, 2012, 42 Pa.B. 3569; amended January 17, 2020, effective immediately, 50 Pa.B. 651. Immediately preceding text appears at serial page (361779).

**Rule 3774. Manner of Initiating Article V Proceedings.**

(a) *Judicial review of summary orders (Section 510 of Article V, 40 P. S. § 221.10).* A request for judicial review of a summary order issued by the Commissioner shall be presented by petition for review and shall conform to the provisions of Chapter 15 of the Pennsylvania Rules of Appellate Procedure applicable to matters in the Court’s original jurisdiction.

(b) *Court’s seizure order (Section 512 of Article V, 40 P. S. § 221.12).* A petition by the Commissioner for a seizure order shall state the material facts that constitute the grounds for relief. The petition for seizure may be decided with or without an answer or a hearing. An insurer may petition the Court for hearing and review of an *ex parte* seizure order at any time and shall set forth the factual and legal basis in support of a contention that the Court should vacate or modify the seizure order. The Court may set a time for the Commissioner to file an answer, but in any event the Court shall decide the petition for hearing and review in accordance with Sections 512(d) and 513(a), (b), 40 P. S. §§ 221.12(d) and 221.13(a), (b).

(c) Formal proceedings to commence rehabilitation or liquidation (Sections 515 and 520 of Article V, 40 P. S. §§ 221.15 and 221.20).

(1) A petition by the Commissioner for rehabilitation or liquidation shall state the material facts that constitute the grounds for relief.

(2) Unless the Court otherwise orders, within thirty (30) days of the filing of a petition for rehabilitation or a petition for liquidation, the insurer shall file either an answer to the petition or consent to the entry of an order granting the relief the Commissioner seeks in the petition. An answer shall state the material facts that constitute a defense to the petition. No other response by the insurer is permitted.

(3) Following the entry of an order to rehabilitate or liquidate the business of an insurer, the Court may enter a case management order to supplement these Rules.

**Official Note:** *Special forms of petition*—A petition by the Commissioner for a seizure order or a petition by the Commissioner for an order of rehabilitation or liquidation is not a petition for review governed by Chapter 15 of the Appellate Rules because neither of these petitions present a challenge to government action. The term “petition” is used because it is used in Article V.

For determining a petition for a seizure order, Section 512 establishes a process that does not conform to the provisions of Chapter 15. Such a petition should be decided in accordance with the statutory process in conjunction with an order.

Rules 3771—3784 establish procedures for addressing petitions for rehabilitation or liquidation and matters associated with rehabilitation or liquidation of an insurer.

A petition by an insurer for hearing and review of a seizure order presents a matter properly addressed to the Court's original jurisdiction. *See* 42 Pa.C.S. § 761 (establishing the Court's original jurisdiction over all matters arising under Article V of the Insurance Department Act). However, the provisions of Chapter 15 applicable to original jurisdiction matters have little or no practical applicability to a petition for a hearing and review of an ex parte seizure order for which Section 512 confers upon the petitioner a right to a hearing within ten days. Consequently, a petition for hearing and review of a seizure order should be decided in accordance with the statutory process in Section 512 or Court order.

The special forms of petition named in Rule 3774 (initiating Article V proceedings) are not subject to the Rules of Civil Procedure.

**Source**

The provisions of this Rule 3774 adopted June 8, 2012, effective July 30, 2012, 42 Pa.B. 3569.

**Rule 3775. Intervention in Formal Proceedings.**

(a) *Intervention.* A person not named as a respondent in a formal proceeding who has a direct and substantial interest in the administration of the insurer's business or estate may request leave of court to intervene.

(b) *Application to intervene.* A request for leave to intervene, generally or for a limited purpose, shall be by application and answer, if any, in accordance with Pa.R.A.P. 123 (application for relief). The application shall contain a concise statement of the interest of the applicant and the purposes for which the applicant seeks to intervene. A copy of the document to be filed if the Court allows intervention shall be attached to the application.

(c) *Action on application.* Intervention in a formal proceeding shall be allowed if the proven or admitted allegations of the application establish a sufficient interest in the proceedings, unless the interest of the applicant is already adequately represented or intervention will unduly delay or prejudice the adjudication of the rights of the parties.

(1) *General intervention.* When the applicant demonstrates an ongoing interest in the administration of the insurer's business or estate, the Court may grant the applicant general intervention. The general intervenor shall remain on the master service list until the formal proceeding is completed.

(2) *Limited intervention.* When the applicant's interest involves a discrete controversy relating to the administration of the insurer's business or estate, the Court may grant the applicant limited intervention to participate as a party in the discrete controversy. The limited intervenor shall not be placed upon the master service list unless the Court orders otherwise.

(d) Upon grant of an application to intervene, the document attached to the application to intervene, that is, the application for relief under Pa.R.A.P. 3776 or

complaint under Pa.R.A.P. 3783, shall be deemed filed, and the Court shall direct the time for filing a response.

**Official Note:** *General or limited intervention*—Intervention, whether general or limited in scope, may be granted for purposes such as, but not limited to:

- (1) Oppose a petition by the Commissioner for an order of liquidation or rehabilitation;
- (2) Oppose an application by the receiver for an order relating to the administration of the insurer's business or of estate;
- (3) Object to a report by the receiver;
- (4) Seek relief from any order;
- (5) Assert any rights or interest afforded to the person by Article V and for which neither Article V nor prior orders of the Court provide an avenue for redress; or
- (6) Compel the liquidator to issue a notice of determination if the liquidator has failed to do so in conformity with Pa.R.A.P. 3781 (claim procedure).

*Relief from stay*—Intervention is a prerequisite to filing an application for relief from the stay of actions against the insurer that is imposed under Section 526, 40 P.S. § 221.26.

**Source**

The provisions of this Rule 3775 adopted June 8, 2012, effective July 30, 2012, 42 Pa.B. 3569; amended January 17, 2020, effective immediately, 50 Pa.B. 651. Immediately preceding text appears at serial pages (361780) to (361781).

**Rule 3776. Applications for Relief or Court Approval.**

Relief or approval from the Court shall be requested by application. An application for relief or an application by the receiver for the Court's approval shall comply with Pa.R.A.P. 123 (application for relief), except that a response, if any, shall be filed within thirty (30) days of service of an application for relief or an application for Court approval. Upon application, the Court may alter the time for response. The application and any response may be supported by a memorandum of law.

**Official Note:** *Alteration of the time for response*—Requests based on an agreement of the parties are more likely to receive favorable consideration.

*Court approval*—From time to time, the receiver must obtain the Court's approval of an action proposed to be taken in the course of administering the estate, such as, but not limited to, making an interim distribution of assets.

**Source**

The provisions of this 3776 adopted June 8, 2012, effective July 30, 2012, 42 Pa.B. 3569; amended January 17, 2020, effective immediately, 50 Pa.B. 651. Immediately preceding text appears at serial pages (361781) to (361782).

**Rule 3777. Docketing.**

(a) *Administrative case docket.* Upon the filing of a petition to rehabilitate or liquidate an insurance company under Article V, the Prothonotary shall create an administrative case docket and assign the petition a number thereon. All filings directly related to the Court's consideration of the petition for rehabilitation or

liquidation shall be filed at that number, and this docket will contain all filings concerning the administration of the insurer’s business or estate should the petition be granted.

(b) *Case caption—administrative case docket.* The caption of the proceeding assigned to an administrative case docket shall be substantially in the following form:

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

IN RE: XYZ Insurance Company :  
In Liquidation [Rehabilitation] : No. 1 XYZ 20xx  
:  
[Title of Document]

(c) *Ancillary case docket.* When a complaint is filed by or against the receiver to commence an adversarial proceeding under Pa.R.A.P. 3783 (adversarial proceeding), when the Court *sua sponte* directs that a dispute initiated by an application for relief under Pa.R.A.P. 3776 (applications) be treated as an adversarial proceeding under Pa.R.A.P. 3783 or when an objection is filed to a notice of determination under Pa.R.A.P. 3781 (claim procedure), the Prothonotary will note such filing on the administrative case docket, establish an ancillary case docket and assign a number for each such matter. The party initiating an ancillary case shall file a completed cover sheet that may be obtained from the Prothonotary or at [www.pacourts.us/T/Commonwealth/](http://www.pacourts.us/T/Commonwealth/).

(d) *Case caption—ancillary dockets.* Matters that receive ancillary case docket numbers shall be captioned substantially in accordance with the following examples:

(1) An adversarial proceeding under Pa.R.A.P. 3783 (adversarial proceedings) shall be captioned:

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

\_\_\_\_\_, :  
Plaintiff/Applicant :  
 :  
v. :  
 : No. \_\_\_\_\_  
\_\_\_\_\_, :  
Defendant/Respondent :  
 :  
(Ancillary to IN RE: :  
XYZ Insurance Company :  
In Liquidation :  
No. 1 XYZ 20xx) :  
[Title of Document]

(2) An objection to the liquidator’s determination on a proof of claim under Pa.R.A.P. 3781 (claim procedure) shall be captioned:

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

John Doe Company,	:	
Objector	:	Objection to Notice of
	:	Determination
	:	
	:	Re: Proof of Claim
	:	No. _____
	:	
v.	:	
	:	
	:	
XYZ Insurance Co., in	:	
Liquidation	:	No. _____
(Ancillary to IN RE:	:	
XYZ Insurance Company	:	
In Liquidation	:	
No. 1 XYZ 20xx)	:	

Objection to Liquidator’s Notice(s) of Determination

**Official Note:** *Listing proof of claim number(s)*—All claim numbers should be listed in the caption to the right of the dotted line and on the cover sheet. If the objection relates to proof of claim numbers too numerous to conveniently be listed in the caption, the first claim number followed by “et al” must be shown in the caption and additional proof of claim numbers shall be listed in a footnote on page one.

**Source**

The provisions of this Rule 3777 adopted June 8, 2012, effective July 30, 2012, 42 Pa.B. 3569; amended January 17, 2020, effective immediately, 50 Pa.B. 651. Immediately preceding text appears at serial pages (361782) to (361784).

**Rule 3778. Master Service List.**

(a) *General rule.* As soon as practicable after filing a petition to rehabilitate or liquidate an insurer, the Commissioner shall create and maintain a master service list. If the Court grants the petition to liquidate or rehabilitate, the receiver will assume the duty to maintain the master service list. The master service list shall include the name, address, telephone number, facsimile (fax) number and electronic mail (e-mail) address of counsel for each party and for each pro se party in the proceeding at the administrative case docket number.

The receiver is not required to include on the master service list any limited intervenor or the limited intervenor’s counsel.

Changes in contact information, including transfer of responsibilities to another attorney in the firm and requests to be removed from the master service list may be accomplished by notifying the Commissioner or receiver, as the case may be, by e-mail, fax or mail in accordance with the Commissioner's or receiver's instructions.

(b) *Request of non-party for inclusion on master service list.* Any interested person may be added to the master service list by sending a written request to the Commissioner or receiver, as the case may be, including name, address, telephone number, facsimile number and electronic mail address. A person included on the master service list pursuant to this subsection shall be designated thereon as a non-party.

(c) *Availability of master service list.* The Commissioner or receiver, as the case may be, shall post and maintain the master service list on any website established under Pa.R.A.P. 3779 (website). If no website has been established, the master service list shall be available by e-mail upon request. A paper copy of the master service list shall be available for a standard fee.

**Official Note:** *Court Maintains Its Own Service List*—The master service list maintained by the Commissioner or receiver is not the Court's service list. The two lists are separately managed. Amendment or deletion of information on one list does not affect the other list. Notice of any change must be given to both the Commissioner or receiver and the Court.

**Source**

The provisions of this Rule 3778 adopted June 8, 2012, effective July 30, 2012, 42 Pa.B. 3569; amended January 17, 2020, effective immediately, 50 Pa.B. 651. Immediately preceding text appears at serial page (361784).

**Rule 3779. Website.**

Unless otherwise ordered by the Court, when the Commissioner files a petition to rehabilitate or liquidate an insurer, the Commissioner shall establish and maintain a website for the purpose of listing filings with and orders of the Court in accordance with these rules, and when required, posting access to the listed documents. If the Court grants the petition to liquidate or rehabilitate, the receiver will maintain the website.

On the website, the receiver shall post: all documents filed at the administrative case docket number; a proof of claim form; a statement describing the procedure for filing claims pursuant to Pa.R.A.P. 3781 (claim procedure); and a statement regarding the requirements in Pa.R.A.P. 3781(c)(4) (corporate representation) and (5) (*pro hac vice*), for corporate representation and admission *pro hac vice* for attorneys.

The receiver shall note any ancillary docket number on the website and state the nature of the dispute. The receiver may but is not required to post filings at an ancillary case docket number.

**Source**

The provisions of this Rule 3779 adopted June 8, 2012, effective July 30, 2012, 42 Pa.B. 3569; amended January 17, 2020, effective immediately, 50 Pa.B. 651. Immediately preceding text appears at serial page (361785).

**Rule 3780. Service and Notice.**

(a) *Service of parties.* All documents filed by any party shall be served on all other parties at the appropriate docket number assigned to the matter in accordance with Pa.R.A.P. 121 (filing and service). Proof of service shall comply with Pa.R.A.P. 122 (proof of service).

(b) *Notice to non-parties listed on the master service list.* The receiver shall promptly notify all non-parties named on the master service list of any filing at the administrative case docket number. The notice shall include:

- (1) A description and the date of the filing;
- (2) A statement that the filing is available for viewing, downloading, or printing at the website;
- (3) Directions on how interested persons may view, download, or print a copy of the filing from the website;
- (4) A name, address, telephone number, fax number, and e-mail address as a contact for those unable to view, download, or print the filing from the website.

(c) *Filings not posted on website.* Any non-party on the master service list desiring a copy of a filing listed, but not posted, on the website may obtain a copy from the receiver.

(d) *Alternative service.* A non-party listed on the master service list who is unable to receive electronic notice of filings, shall notify the receiver in writing of this inability. The receiver shall then provide notice of a filing by United States Postal Service.

**Source**

The provisions of this Rule 3780 adopted June 8, 2012, effective July 30, 2012, 42 Pa.B. 3569; amended January 17, 2020, effective immediately, 50 Pa.B. 651. Immediately preceding text appears at serial pages (361785) to (361786).

**Rule 3781. Claim Procedure in Liquidation Proceedings.**

(a) *Filing a proof of claim.*

(1) A creditor asserting a monetary claim against the insurer's estate shall file a proof of claim with the liquidator in accordance with Article V.

(2) In the notice to potential creditors of the insurer's estate, the liquidator shall provide a proof of claim form that complies with Article V.

(3) The completed proof of claim form and supporting documentation shall be filed with the liquidator. A proof of claim form is filed when received by the liquidator except as described below. The liquidator is deemed to have received the proof of claim form on the date of mailing as established by a United Postal Service Form 3817 Certificate of Mailing or by any similar form from which the date of deposit in the mail can be verified or the date of transmission by facsimile (fax) or electronic mail (e-mail), as documented by the sender's fax or computer. If filing is accomplished by fax, the claimant shall also comply with the requirements of Pa.R.C.P. No. 440(d)(2), relating to a fax cover sheet.

(b) *Notice of determination.*

(1) Unless otherwise ordered, the liquidator shall issue a written notice of determination within one hundred and eighty (180) days of the filing of the proof of claim, unless the liquidator seeks additional information on a claim pursuant to Section 538(b), 40 P. S. § 221.38(b). If additional information is requested, the liquidator shall issue a notice of determination within ninety (90) days of the date on which the additional information is received.

(2) The notice of determination shall include:

- (i) the allowed amount of the claim;
- (ii) the priority class assigned to the claim;
- (iii) if the claim is disallowed in whole or in part, a brief statement of the reason(s) for the liquidator's determination;
- (iv) a statement advising the claimant of the requirements set forth in Pa.R.A.P. 3781(c)(1) (time for filing); and
- (v) notice that if a claimant fails to file an objection with the Court within sixty (60) days from the mailing date on the notice of determination, the claimant cannot later object to the liquidator's determination.

(3) If the liquidator determines that the claim has been submitted to a state guaranty association, the liquidator may defer further review of the proof of claim until the guaranty association has made its final determination and has returned the closed claim file to the liquidator. In such a case, the liquidator shall notify the claimant of the decision to defer review.

(c) *Objections.*

(1) *Time for filing.* If a claimant disputes the allowed amount or priority class assigned to the claim, the claimant shall file an objection with the Court within sixty (60) days from the mailing date on the notice of determination. The objection must present the factual and legal basis for the objection and include a copy of the notice of determination. The objection may include relevant supporting documentation and be accompanied by a memorandum of law.

(2) *Service.* The claimant shall serve a copy of the objection on the liquidator in accordance with Pa.R.A.P. 121 (service).

(3) *Response.* The liquidator shall promptly acknowledge receipt of an objection, contact the claimant, and attempt to resolve the objection. If the objection is not resolved within sixty (60) days, the liquidator shall file with the Court and serve on the claimant a written response to the objection. The response may be accompanied by a memorandum of law. The claimant and the liquidator may agree in writing to extend these deadlines. Any such agreement must be filed with the Court.

(4) *Corporate representation.* If the claimant is an entity other than a natural person, an attorney admitted to practice in Pennsylvania must enter an appearance for the claimant within sixty (60) days of the filing of the objection, or the Court may dismiss the objection.

(5) *Pro hac vice admission.* If a claimant wishes to be represented by an attorney not admitted to practice in Pennsylvania, that attorney must be admitted to practice *pro hac vice*, in accordance with Pa.R.C.P. No. 1012.1, Pa.B.A.R. 301, and 204 Pa. Code § 81.505, within sixty (60) days of the filing of the objection, or the Court may dismiss the objection.

(d) *Resolution of objections.*

(1) *Scheduling hearing.* Upon receipt of the liquidator's response to the objection, the Court shall establish a time for a hearing.

(2) *Assignment of Judge.* Objections may be assigned to a single Judge for disposition.

(3) *Assignment of referee.* Upon the parties' request or on its own initiative, the Court may appoint a referee to hear the objection and submit to the Court a recommended decision, which shall include findings of fact, conclusions of law, and a proposed order.

(e) *Referees.*

(1) *Compensation.* Referees serve at the pleasure of the Court and shall be compensated from the insurer's estate at an hourly rate to be set by the Court at the beginning of each calendar year and posted on the website created under Pa.R.A.P. 3779 and on the Court's website. The hourly rate shall be clearly set forth in the appointment order, subject to any annual adjustment.

(2) *Litigation costs.* Each party shall bear its own costs associated with the hearing before the referee. Unless the Court orders otherwise, the parties shall share equally the costs for transcribing a hearing and any costs that may be incurred by a referee in complying with Pa.R.A.P. 3781(e)(7) (maintaining a record) and (f)(4) (filing recommended decision).

(3) *Conflict of interest.* No referee may appear as counsel in any matter connected to the liquidation proceeding.

(4) *Authority of the referee.* The referee shall have authority to:

(i) receive and consider evidence that is in addition to the information provided with the proof of claim;

(ii) establish discovery schedules where discovery is necessary;

(iii) establish procedures to expedite the presentation of evidence; and

(iv) establish hearing dates and briefing schedules.

(5) *Rules of evidence.* The Pennsylvania Rules of Evidence shall apply to all evidentiary hearings conducted by a referee.

(6) *Efficient and cost effective.* The referee shall resolve the objection in a cost-effective and efficient manner, using stipulations and depositions and conducting hearings by teleconference or videoconference where appropriate. The referee may bifurcate a proceeding to address issues *seriatim*.

(7) *Maintain a record.* The referee shall maintain a record consisting of everything submitted for consideration. The referee shall also keep a chronological list of the contents of the record. In the case of materials submitted as evidence, the referee shall mark each exhibit offered into evidence as admitted

or excluded. While an objection is pending before a referee, nothing directly related to the merits of that objection shall be filed with the Court.

(8) *Filing recommended decision.* The referee shall file and serve a recommended decision, a proposed order, and a list of all documents submitted by the parties and compiled in accordance with Pa.R.A.P. 3781(e)(7) (maintaining a record).

(9) *Failure to cooperate with referee.* If a claimant or the liquidator fails to cooperate with the referee or to participate in good faith in proceedings before the referee, the referee may include findings regarding party conduct in the recommended decision and recommend appropriate sanctions. Appropriate sanctions may include a recommendation that the objection be sustained or dismissed.

(f) *Exceptions to the referee's recommended decision.*

(1) *Time for filing.* Any party may file with the Court exceptions to the referee's recommended decision no later than thirty (30) days after the filing date of the recommended decision. The exceptions shall be served on any other party and the referee.

(2) *Content and form of exceptions.* In separately numbered paragraphs, the exceptions shall specify the errors in the referee's recommended decision. There shall be attached as exhibits to the exceptions: the liquidator's notice of determination; the objection; the liquidator's response; and the referee's recommended decision. Exceptions shall be accompanied by a memorandum of law.

(3) *Response.* Any response to the exceptions shall be filed and served on the other party and the referee within fourteen (14) days of the filing date of the exceptions. A response shall be accompanied by a memorandum of law. The time for response may be extended by agreement of the parties with the approval of the Court.

(4) *Filing referee's record.* Within twenty-eight (28) days of the filing of the recommended decision, the referee shall file with the Court the record of the proceedings.

(5) *Court action.* When exceptions are filed, the Court may, on its own motion or upon application, direct an evidentiary hearing or oral argument. The Court may adopt the referee's recommended decision in whole or in part, adopt specific findings of fact, modify findings of fact or recommit the matter to the referee with instructions.

(6) *Final order.* Upon completion of its review of exceptions, the Court will enter a final order sustaining or overruling exceptions in whole or in part. An order of Court sustaining or dismissing an objection as a sanction pursuant to Pa.R.A.P. 3781(e)(9) is the final disposition of a claim.

(7) *When no exceptions filed.* Any party may apply to the Court for, or the Court on its own initiative may issue, an order either adopting the recommended decision or stating that in the absence of exceptions, the referee's proposed order is entered as the order of the Court.

(8) *Issue preclusion.* Findings of fact or conclusions of law in a referee’s recommended decision are not controlling in any subsequent proceeding, unless the Court expressly adopted the findings of fact or conclusions of law.

(9) *Waiver.* Unless otherwise ordered by the Court, failure to file timely exceptions to a referee’s recommended decision shall be deemed a waiver of further appeal if the Court approves the recommended decision without modification.

**Source**

The provisions of this Rule 3781 adopted June 8, 2012, effective July 30, 2012, the provisions in Rule 3781(e)(7), (8) and (f)(4) shall apply only prospectively to cases assigned to a referee after the effective date, 42 Pa.B. 3569; amended January 17, 2020, effective immediately, 50 Pa.B. 651. Immediately preceding text appears at serial pages (361786) to (361789).

**Rule 3782. Claim Procedure in Rehabilitation Proceedings.**

When an approved plan of rehabilitation includes the filing of claims by creditors, the rehabilitation plan shall follow the claim procedures set forth in Pa.R.A.P. 3781, unless modified by the Court.

**Source**

The provisions of this Rule 3782 adopted June 8, 2012, effective July 30, 2012, 42 Pa.B. 3569; amended January 17, 2020, effective immediately, 50 Pa.B. 651. Immediately preceding text appears at serial page (361789).

**Rule 3783. Adversarial Proceedings.**

(a) *Initiating adversarial proceedings.* Adversarial proceedings shall be initiated by the filing of a complaint.

(b) *Rules governing adversarial proceedings.* The Pennsylvania Rules of Civil Procedure shall apply to adversarial proceedings.

(c) *Appointment of referee.* The Court may appoint a referee to hear the complaint and make recommended findings of fact and conclusions of law and propose an order for review by the Court in the same manner and pursuant to the same procedure prescribed for the disposition of objections to a notice of determination. The Court shall determine who shall pay the referee’s fee and costs.

**Official Note:** Adversarial proceedings may not be commenced by filing a writ of summons.

**Source**

The provisions of this Rule 3783 adopted June 8, 2012, effective July 30, 2012, 42 Pa.B. 3569.

**Rule 3784. Reporting.**

(a) *Claims report.* At least annually, the liquidator shall file a report of the claims against the insurer’s estate that have been resolved, with the liquidator’s recommendations (“Claims Report”). The Claims Report shall include the fol-

lowing: each claimant's name, address, priority class, allowed amount, and whether the claim determination was finalized because no objection was filed, no exceptions were taken to a referee's recommended decision, a recommended decision was sustained by the Court or the parties agreed to a settlement. The liquidator shall serve a copy of the Claims Report on those listed on the master service list in accordance with these rules. No claim shall be paid, in part or in whole, until the report is approved by the Court.

(b) *Status report.* The receiver shall file a comprehensive report on the status of the insurer's business or the administration of the insurer's estate as frequently as ordered by the Court. The liquidator shall serve a copy of the Status Report on those listed on the master service list in accordance with these rules.

**Source**

The provisions of this Rule 3784 adopted June 8, 2012, effective July 30, 2012, 42 Pa.B. 3569; amended January 17, 2020, effective immediately, 50 Pa.B. 651. Immediately preceding text appears at serial page (361790).

[Next page is 38-1.]

37-26

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