

PART VI. BOARD OF CLAIMS

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CHAPTER 899. RULES OF PROCEDURE

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Authority

The provisions of this Chapter 899 issued under sections 6, 306, 405, 1003, 1101—1103 of The Fiscal Code (72 P. S. §§ 6, 306, 405, 1003 and 1101—1103); amended under section 10 of the act of May 20, 1937 (P. L. 728, No. 193) (72 P. S. § 4651-10), unless otherwise noted.

Source

The provisions of this Chapter 899 adopted November 21, 1975, effective November 22, 1975, 5 Pa.B. 3026; amended June 27, 1997, effective July 28, 1997, 27 Pa.B. 3046, unless otherwise noted.

Editor's Note: This chapter was renumbered from Chapter 851 at 22 Pa.B. 3064 (June 20, 1992).

Rules 899.1—899.12. [Reserved].

Source

The provisions of these Rules 899.1—899.12 reserved June 27, 1997, effective July 28, 1997, 27 Pa.B. 3046. Immediately preceding text appears at serial pages (215883) to (215888).

Notes of Decisions

Confiscation of items from prison cell was not consensual, and therefore, the mutual consent necessary for the formation of a contractual relationship was absent. Board lacked jurisdiction in that claim was not based on an express, implied or quasi-contract with the Commonwealth. *Department of Revenue v. Board of Claims*, 580 A.2d 923 (Pa. Cmwlth. 1990).

The Board of Claims exceeded its equity jurisdiction by reforming a lease agreement between the Department of General Services and a real estate agency when a valid contract existed. *Department of General Services v. Lhormer Real Estate Agency, Inc.*, 549 A.2d 1008 (Pa. Cmwlth. 1988); appeal denied 575 A.2d 118 (Pa. 1990).

Since a “Memorandum of Understanding” with a first level supervisory unit is not a binding contract, the existence of such “memorandum” did not deprive the Board of Claims of its exclusive jurisdiction under section 4 of the act of May 20, 1937 (P. L. 728) (72 P. S. § 4651-4), to hear and

determine claims previously acted upon by the Auditor General and State Treasurer under Article X of the Fiscal Code (72 P. S. §§ 1001—1004). *Liquor Control Board v. Clark*, 509 A.2d 928 (Pa. Cmwlth. 1986).

Were the Board of Claims to accept claimant's implied contract theory, as an alternative to his claim under a Memorandum of Understanding, the Board of Claims could have jurisdiction even though the Memorandum of Understanding contained an arbitration clause. *Shaffer v. Liquor Control Board*, 500 A.2d 917 (Pa. Cmwlth. 1985).

Since a Memorandum of Understanding arrived at through the "meet and discuss" provisions of the Public Employee Relations Act (43 P. S. § 1101.704), is neither a collective bargaining agreement nor a contract, a dispute arising under the Memorandum is not precluded from Board of Claims jurisdiction under the rule of *Kapil v. Association of Pennsylvania State College and University Facilities*, 504 Pa. 92, 470 A.2d 482 (1983) and *Liquor Control Board v. Shulin*, 471 A.2d 599 (Pa. Cmwlth. 1984). *Shaffer v. Liquor Control Board*, 500 A.2d 917 (Pa. Cmwlth. 1985).

Where the claim accrued before there was an unequivocal denial of responsibility by defendant and more than 6 months before the claim was filed, the Board of Claims properly determined that the statute of limitations had been exceeded. *Darien Capital Management, Inc. v. Public School Employees' Retirement System*, 668 A.2d 210 (Pa. Cmwlth. 1995).

Appellant cannot clarify a statement that did not appear in the notice of appeal. It is undisputed that the appellant's notice of appeal contained no statement of objections to the order of the Board of Claims. Thus, the appellant's petition for review has added, rather than clarified, objections to the order of the Board of Claims. *Shovel Transfer & Storage, Inc. v. Liquor Control Board*, 666 A.2d 395 (Pa. Cmwlth. 1995).

In order for a party to properly preserve an issue for appellate review pursuant to Chapter 15 of the Pennsylvania Rules of Appellate Procedure, a petition for review which complies with the rules, particularly Pa.R.A.P. 1513, must be filed within the applicable appeal period or the appeal may be quashed. It is the responsibility of parties seeking review of governmental determinations to familiarize themselves with and thereafter to comply with, the governing rules of appellate procedure. *Shovel Transfer & Storage, Inc. v. Liquor Control Board*, 666 A.2d 395 (Pa. Cmwlth. 1995).

Subchapter A. PRELIMINARY PROVISIONS

- Rule
- 899.101. Title and citation of rules.
 - 899.102. Scope of rules.
 - 899.103. Definitions.
 - 899.104. Principles of interpretation.
 - 899.105. [Reserved].
 - 899.106. Representation by counsel.
 - 899.107. Entry of appearance.
 - 899.108. Service of legal papers.
 - 899.109. Copy fees.

Rule 899.101. Title and citation of rules.

This chapter shall be known as the Board of Claims Rules of Procedure and may be cited as BOC R.P.

Rule 899.102. Scope of rules.

(a) This chapter and the Pennsylvania Rules of Civil Procedure (Pa.R.C.P.) govern all matters before the Board. If a discrepancy between this chapter and the Pa.R.C.P. arises, this chapter applies.

(b) When circumstances arise in individual cases when the application of any Board rule is impractical or inequitable, the Board, on its own motion or upon the request of a party and after notice to the parties, may prescribe other procedures as may be required by the circumstances in the particular case.

Rule 899.103. Definitions.

In addition to the definitions in Pa.R.C.P. No. 76, the following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Board—The Board of Claims of the Commonwealth.

Claim—The statement of facts filed by a contractor or Commonwealth agency stating the grounds upon which the contractor or Commonwealth agency asserts a controversy exists.

Rule—A rule adopted by the Board.

Authority

The provisions of this Rule 899.103 amended under the Commonwealth Procurement Code, 62 Pa.C.S. § 1722(6); and sections 504(a) and 1307 of the Right-to-Know Law (65 P. S. §§ 67.504(a) and 67.1307).

Source

The provisions of this Rule 899.103 amended May 15, 2015, effective May 16, 2015, 45 Pa.B. 2359. Immediately preceding text appears at serial page (279297).

Rule 899.104. Principles of interpretation.

The principles of interpretation and rules of construction embodied in Pa.R.C.P. Nos. 101—153 apply to this chapter.

Rule 899.105. [Reserved].**Authority**

The provisions of this Rule 899.105 reserved under the Commonwealth Procurement Code, 62 Pa.C.S. § 1722(6); and sections 504(a) and 1307 of the Right-to-Know Law (65 P. S. §§ 67.504(a) and 67.1307).

Source

The provisions of this Rule 899.105 reserved May 15, 2015, effective May 16, 2015, 45 Pa.B. 2359. Immediately preceding text appears at serial page (279297).

Rule 899.106. Representation by counsel.

(a) A person may be represented before the Board by an attorney who is admitted to practice and is in good standing before the Supreme Court of Pennsylvania.

(b) Parties represented by counsel not admitted to practice in this Commonwealth shall associate counsel qualified under subsection (a).

Rule 899.107. Entry of appearance.

When counsel for plaintiff files a claim and counsel for defendant files a response, their appearances are deemed entered before the Board. Thereafter, a counsel's appearance for a party may not be withdrawn without leave of the Chief Administrative Judge, unless another lawyer has previously entered or simultaneously enters an appearance for the party.

Rule 899.108. Service of legal papers.

Pleadings and other documents filed with the Board shall be served by the filing party upon all other parties to the action by mail. A certificate of service shall be attached to all filings with the Board.

Authority

The provisions of this Rule 899.108 amended under the Commonwealth Procurement Code, 62 Pa.C.S. § 1722(6); and sections 504(a) and 1307 of the Right-to-Know Law (65 P. S. §§ 67.504(a) and 67.1307).

Source

The provisions of this Rule 899.108 amended May 15, 2015, effective May 16, 2015, 45 Pa.B. 2359. Immediately preceding text appears at serial page (279298).

Rule 899.109. Copy fees.

Charges for copying, certifying or otherwise producing documents requested from the Board will be as established by the Board in its Right-to-Know Law Policy which is posted at the Board's office and on its web site in accordance with the Right-to-Know Law (65 P. S. §§ 67.101—67.3104).

Authority

The provisions of this Rule 899.109 amended under the Commonwealth Procurement Code, 62 Pa.C.S. § 1722(6); and sections 504(a) and 1307 of the Right-to-Know Law (65 P. S. §§ 67.504(a) and 67.1307).

Source

The provisions of this Rule 899.109 amended May 15, 2015, effective May 16, 2015, 45 Pa.B. 2359. Immediately preceding text appears at serial page (279298).

Subchapter B. PLEADINGS

- Rule
899.201. Statement of claim.
899.202. Copies of written contracts.
899.203. Oral contracts.
899.204. Response to claim.
899.205. Preliminary objections.
899.206. Amendment of pleadings.

Rule 899.201. Statement of claim.

(a) A plaintiff shall prepare a concise and specific written statement of the claim, signed and verified by the plaintiff. The caption of the claim shall contain the full names of all parties to the claim. Each claim shall contain the name, address, telephone number and Supreme Court Identification Number of counsel for the plaintiff.

(b) The plaintiff shall file an original and three copies of the claim with the Board, accompanied by a \$50 check made payable to the Commonwealth of Pennsylvania.

(c) The Board will deliver to the Attorney General a copy of the claims, counterclaims or cross-claims made against the Commonwealth, and any amendments thereto.

Authority

The provisions of this Rule 899.201 amended under the Commonwealth Procurement Code, 62 Pa.C.S. § 1722(6); and sections 504(a) and 1307 of the Right-to-Know Law (65 P. S. §§ 67.504(a) and 67.1307).

Source

The provisions of this Rule 899.201 amended May 11, 2001, effective June 11, 2001, 31 Pa.B. 2474; amended May 15, 2015, effective May 16, 2015, 45 Pa.B. 2359. Immediately preceding text appears at serial page (279298).

Rule 899.202. Copies of written contracts.

When the contract on which the claim is based is in writing, in whole, or in part, the plaintiff shall attach copies of the contract or relevant portions of the contract as an exhibit to all copies of the claim, unless one of the following exists:

- (1) The plaintiff avers in the claim that all copies of the contract are in the possession of the defendant.
- (2) The Chief Administrative Judge directs that the contract or relevant portions not be attached.

Rule 899.203. Oral contracts.

When the contract on which the claim is based is oral, in whole or in part, the plaintiff shall plead the terms and details of the contract with particularity, and shall identify all agents who are alleged to have contracted on behalf of the defendant.

Rule 899.204. Response to claim.

Within 30 days of service of the claim, the defendant shall file an original and two copies of its answer or other response with the Board. The answer, or other response, shall contain the name, address, telephone number and Supreme Court Identification Number of counsel for the defendant. The defendant or its counsel shall sign and verify the answer or other response.

Rule 899.205. Preliminary objections.

(a) Preliminary objections shall be filed with the Board and served upon the adverse parties or their counsel. Preliminary objections shall be accompanied by a supporting brief. Failure to file a brief may result in automatic dismissal of the preliminary objections.

(b) Within 30 days after service of the preliminary objections, the adverse parties or their counsel shall file a response and a responsive brief with the Board and serve it upon the opposing parties or counsel.

Rule 899.206. Amendment of pleadings.

(a) *Form of amended pleading.* An amended pleading, whether filed under Pa.R.C.P., by the agreement of the parties or by leave of the Board, shall be entirely restated and comply with the form of the original pleading, except an amendment allowed in the course of a hearing.

(b) *Allowance by Board.*

(1) If the amended pleading requires leave of the Board before a hearing, the party seeking the amendment shall give 5 days' notice to all parties of the intended application, enclosing a copy of the proposed amended pleading. The Board may allow the amendment or order the issue for argument.

(2) If the request for an amendment to a pleading is made at the hearing, the Board will dispose of the request at its discretion. If a continuance is granted by the Board, the party in whose favor the amendment is allowed shall file the amended pleading within 20 days after allowance by the Board, unless otherwise ordered.

Subchapter C. MOTIONS

Rule
899.301. Motions and petitions.
899.302. Form of briefs.

Rule 899.301. Motions and petitions.

(a) Each motion or petition shall be deemed contested unless certified to the contrary by the moving party. Except as provided in subsection (c) and Rule 899.402(b) (relating to discovery motions), a brief shall accompany each motion or petition. A motion or petition not accompanied by a brief may be dismissed by the Board.

(b) Each answering party shall file its response with the Board within 30 days of the date of service of the moving party's motion or petition. A response shall be accompanied by a supporting brief.

(c) If the moving party certifies that the motion or petition is uncontested, no brief is required.

Cross References

This rule cited in 61 Pa. Code Rule 899.401 (relating to discovery); 61 Pa. Code Rule 899.402 (relating to discovery motions); and 61 Pa. Code Rule 899.403 (relating to limitation on discovery).

Rule 899.302. Form of briefs.

A brief shall contain a statement of the pertinent facts of the case, the questions involved and the argument. The statement of questions involved shall be drawn so that the Board may quickly determine all the legal questions requiring determination. The argument shall be divided into as many parts as there are questions involved.

Subchapter D. DISCOVERY

Rule
899.401. Discovery.
899.402. Discovery motions.
899.403. Limitation on discovery.

Rule 899.401. Discovery.

(a) Except when required under subsection (c) or (d), discovery material may not be filed with the Board. The party serving the discovery material or taking the deposition shall retain the original and be custodian of it.

(b) If a part of discovery material is used as evidence in connection with a motion, the relevant part shall be set forth, verbatim, in the motion or response. If discovery material is used as evidence at the hearing, the party offering it shall read it into the record or, if directed to do so by the Board, offer it as an exhibit.

(c) The Board will resolve a dispute concerning the accuracy of a quotation of discovery material used as provided in subsection (b) and may require production of the original paper or transcript.

(d) The Board, on its own motion, on the motion of a party or on an application by a nonparty, may require the filing of original discovery material. The parties may provide for the filing by stipulation.

(e) A party serving a request for discovery including depositions by oral examination, and a party filing written responses thereto shall file with the Board and serve upon all other parties or their counsel a notice of service substantially in the form prescribed in subsection (f). A party which files a motion or petition under Rule 899.301 or Rule 899.402 (relating to motions and petitions; and discovery motions) in response to a discovery request or a discovery response is not required to file and serve a notice of service in addition thereto.

(f) The notice of service required by subsection (e) shall be substantially in the following form:

(CAPTION)

Notice of Service

You are hereby notified that on the _____ day of _____, 20____, (identify discovery request or response) was served upon the following parties or their counsel via United States Mail, first class, postage prepaid, and addressed as follows:

(names and addresses to whom discovery request or response were directed)

Name
Supreme Court I. D. No.
Address
Phone
Attorneys for

Authority

The provisions of this Rule 899.401 amended under the Commonwealth Procurement Code, 62 Pa.C.S. § 1722(6); and sections 504(a) and 1307 of the Right-to-Know Law (65 P. S. §§ 67.504(a) and 67.1307).

Source

The provisions of this Rule 899.401 amended May 15, 2015, effective May 16, 2015, 45 Pa.B. 2359. Immediately preceding text appears at serial page (232229).

Rule 899.402. Discovery motions.

(a) A discovery motion shall be prepared in accordance with Rule 899.301 (relating to motions and petitions).

(b) A moving party filing a motion to compel answers to interrogatories or production of documents need not file a brief with the motion, if the motion avers

only that a response or objection has not been timely served. The Pa.R.C.P. which are relied upon shall be cited in the motion. The Board may grant or deny the motion without waiting for a response.

Cross References

This rule cited in 61 Pa. Code Rule 899.301 (relating to motions and petitions); and 61 Pa. Code Rule 899.401 (relating to discovery).

Rule 899.403. Limitation on discovery.

(a) During the pendency of an action, a party may not serve on another party more than 60 interrogatories, including all subparts and requests for admission.

(b) If the party files a motion showing good cause, the Chief Administrative Judge may allow a party to exceed the limit in subsection (a). The motion shall be prepared in accordance with Rule 899.301 (relating to motions and petitions).

Subchapter E. PREHEARING

Rule
899.501. Prehearing procedure.

Rule 899.501. Prehearing procedure.

(a) *Status conference.*

(1) At the discretion of the Chief Administrative Judge, a status conference may be held within 120 days after the filing of the claim. The conference may be by telephone or in person. Matters to be considered at the conference include:

- (i) Jurisdictional defects.
- (ii) Prospects of amicable settlement.
- (iii) Establishing a schedule for remaining prehearing proceedings including discovery deadlines and prehearing memoranda filings.

(2) A scheduling order will be issued as soon as practical after the conference.

(b) *Prehearing memoranda.* Prehearing memoranda shall be filed and served as directed by the Chief Administrative Judge in the scheduling order. Unless the scheduling order directs otherwise, the prehearing memorandum of each party shall include:

- (1) A statement of the issues in the case.
- (2) The identification and numbering of exhibits.
- (3) A stipulation of facts not in dispute to be prepared jointly by the parties, which may include qualification of expert witnesses and admission of exhibits.
- (4) Identification of witnesses who will appear at the hearing and a short summary of the testimony expected from each witness.

(5) Copies of expert witnesses' final reports.

(c) *Prehearing conferences and settlement conferences.*

(1) The Chief Administrative Judge will determine the necessity for the scheduling of, and the procedures for, a prehearing or settlement conference. Notice of a conference will be given to counsel or unrepresented parties.

(2) The Chief Administrative Judge may dismiss the case, or enter judgment against a party for failing to participate in a prehearing conference or failing to provide the required memorandum.

(3) The Board may refuse to allow a party to call witnesses or offer evidence not disclosed at the prehearing conference or in the prehearing memorandum.

Subchapter F. HEARINGS

Rule
899.601. Place of hearings.

Rule 899.601. Place of hearings.

Unless the Board directs another location, proceedings before the Board and its panels will be held in Harrisburg.

Subchapter G. SETTLEMENT

Rule
899.701. Notice of proposed settlement.
899.702. Termination of case by settlement.

Rule 899.701. Notice of proposed settlement.

If during the pendency of an action before the Board the parties agree upon a proposed settlement, the parties shall immediately notify the Board.

Rule 899.702. Termination of case by settlement.

Within 10 days after the conclusion of the settlement, the parties shall notify the Board in writing. The Board will mark its record of the case "settled."

Subchapter H. POSTHEARING

Rule
899.801. No posthearing motions.

Rule 899.801. No posthearing motions.

After hearing and the issuance by the Board of its findings of fact, conclusions of law, opinion and order, posthearing motions may not be filed. The findings of fact, conclusions of law, opinion and order are a final appealable order.

Source

The provisions of this Rule 899.801 adopted May 11, 2001, effective June 11, 2001, 31 Pa.B. 2474.

[Next page is 900-1.]

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