

IN THE
SUPREME COURT OF PENNSYLVANIA

IN RE:	:	No. 284
Amendment of Rules of Civil Procedure 212 and 1023;	:	Civil Procedural Rules
Promulgation of New Rules 212.1, 212.2 and 4003.7	:	Docket No. 5

O R D E R

PER CURIAM:

AND NOW, this 11th day of August, 1997, the Pennsylvania Rules of Civil Procedure are amended as follows:

1. Rules 212 and 1023 are amended to read as attached hereto.
2. New Rules 212.1, 212.2 and 4003.7 are promulgated to read as attached hereto.

This Order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective December 1, 1997.

NOTE:

Underscored material is added.
Bracketed material is deleted.
New rules are not underscored.

I. Rule 1023 is amended to read as follows:

Rule 1023. Signing

(a) Every pleading, motion, legal paper or other paper directed to the court and every discovery request or response of a party represented by an attorney shall be signed by at least one attorney of record in [his] the attorney's individual name. [A party not represented by an attorney shall sign his own pleading.] Every such document of a party not represented by an attorney shall be signed by the party.

(b) The signature to a [pleading] document described in subdivision (a) constitutes a [certificate] certification that the person signing it has read it, that to the best of [his] the signer's knowledge or information and belief there is good ground to support it, and that it is submitted in good faith [and that it is not interposed for delay]. There is good ground to support the document if the signer has a reasonable belief that existing law supports the document or that there is a good faith argument for the extension, modification or reversal of existing law.

(c) The court may impose an appropriate sanction for a bad faith violation of subdivision (b).

NOTE: The court in its discretion at any stage of the proceedings may deny a motion for sanctions without hearing or argument.

The grant or denial of relief (e.g., grant or denial of preliminary objections, motion for summary judgment or discovery application) does not, of itself, ordinarily warrant the imposition of sanctions against the party opposing or seeking the relief.

The inclusion in the rule of a provision for "an appropriate sanction" is designed to prevent the abuse of litigation. The rule is not a fee shifting rule per se although the award of reasonable attorney's fees may be an appropriate sanction in a particular case.

The following provisions of the Judicial Code, 42 Pa.C.S., provide additional relief from dilatory or frivolous proceedings: (1) Section 2503 relating to the right of participants to receive counsel fees and (2) Section 8351 et seq. relating to wrongful use of civil proceedings.

(d) Section 8355 of the Judicial Code, 42 Pa.C.S. § 8355, is suspended absolutely, in accordance with the provisions of the Constitution of 1968, Article V, Section 10(c).

NOTE: Section 8355 of the Judicial Code provides for the certification of pleadings, motions and other papers.

See also Order of January 17, 1997, Civil Procedural Rules Docket No. 5, No. 269, suspending the following sections of the Health Care Services Malpractice Act, added by Act No. 1996 - 135: Section 813-A, 40 P.S. § 1301.813-A, providing for the signing and certification of pleadings, motions and other papers and Section 821-A, 40 P.S. § 1301.821-A, providing for the signing and certification of a complaint.

II. Rule 212 is amended and renumbered as Rule 212.3 and new Rules 212.1 and 212.2 are promulgated to read as follows:

**Rule 212.1. Civil Actions to be Tried by Jury. Notice of
Earliest Trial Date. Time for Completing
Discovery and Filing Pre-trial Statement**

(a) In a civil action in which the damages sought exceed the jurisdictional limit for compulsory arbitration and which is to be tried by a jury, notice shall be given by the court of the earliest date on which the case may be tried. The notice should be given at least thirty days before the plaintiff's pre-trial statement is due to be filed. The notice may include a date by which discovery shall be completed.

NOTE: It is not intended by this rule to change the form and manner of notice of trial.

(b) A pre-trial statement shall be filed

(1) by the plaintiff not later than sixty days prior to the earliest trial date,

(2) by the defendant not later than thirty days prior to the earliest trial date, and

(3) by an additional defendant not later than fifteen days prior to the earliest trial date.

NOTE: A copy of the pre-trial statement must be served upon every other party to the action. See Rule 440(a).

(c)(1) The times set forth in subdivision (b) may be made earlier by published local rule or by special order or as set forth in a trial list published in the county law journal or otherwise made available to the parties.

(2) The times set forth in subdivision (b) may be made later by published local rule or by special order in a particular case.

NOTE: In a county which requires that discovery be complete and expert reports be exchanged prior to listing a case for trial, the court by local rule may provide for the simultaneous filing of pre-trial statements.

The court by local rule may extend Rules 212.1 and 212.2 to apply to actions to be tried non-jury as well as by jury and to other forms of action in addition to civil actions.

Rule 212.2. Civil Actions to be Tried by Jury.

Pre-trial Statement. Content. Sanctions

(a) A pre-trial statement shall contain

(1) a brief narrative statement of the case;

(2) a list of the types and amounts of all damages claimed;

(3) a list of the names and addresses of all persons who may be called as witnesses by the party filing the statement, classifying them as liability or damage witnesses. A reference which does not state the name of the witness shall be

permitted when the witness is described by title or representative capacity;

NOTE: A listing of "anyone named in discovery" is insufficient under this rule. A listing of a "records custodian" of a specific entity is a sufficient listing.

This rule does not contemplate that the pre-trial statement include a list of witnesses for use in rebuttal or for impeachment. These matters are governed by case law.

(4) a list of all exhibits which a party intends to use at trial;

NOTE: This rule does not contemplate that the pre-trial statement include a list of exhibits for use in rebuttal or for impeachment. These matters are governed by case law.

(5) a copy of the written report, or answer to written interrogatory consistent with Rule 4003.5, containing the opinion and the basis for the opinion of any person who may be called as an expert witness;

NOTE: The notes or records of a physician may be supplied in lieu of written reports.

(6) stipulations of the parties, if any; and

(7) such additional information as the court by local rule or special order may require.

(b) The exhibits listed in the pre-trial statement, or copies thereof, shall be made available by the party filing the statement.

(c) Where the trial judge determines that unfair prejudice shall occur as the result of non-compliance with subdivisions (a) and (b), the trial judge shall grant appropriate relief which may include

(1) the preclusion or limitation of the testimony of

(i) any witness whose identity is not disclosed in the pre-trial statement, or

(ii) any expert witness whose opinions have not been set forth in the report submitted with the pre-trial statement or otherwise specifically referred to in the pre-trial statement, consistent with Rule 4003.5, and

(2) the preclusion of exhibits not listed in the pre-trial statement and made available.

Rule 212.3. Pre-Trial Conference

(a) In any action the court, of its own motion or on motion of any party, may direct the attorneys for the parties to appear for a conference to consider:

[(a)](1) The simplification of the issues;

[(b)](2) The necessity or desirability of amendments to the pleadings;

[(c)](3) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;

[(d)](4) The limitation of the number of expert witnesses;

[(e)](5) The advisability of a preliminary reference of issues to a master for findings to be used as evidence when the trial is to be by jury;

[(f)](6) Such other matters as may aid in the disposition of the action.

(b) The court may make an order reciting the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and limiting the issues for trial to those not disposed of by admissions or agreements of the attorneys. Such order when entered shall control the subsequent course of the action unless modified at the trial to prevent manifest injustice.

(c) The court may establish by rule a pre-trial list on which actions may be placed for consideration as above provided, and may either confine the list to jury actions or to non-jury actions, or extend it to all actions.

III. New Rule 4003.7 is promulgated to read as follows:

Rule 4003.7. Punitive Damages

A party may obtain information concerning the wealth of a defendant in a claim for punitive damages only upon order of court setting forth appropriate restrictions as to the time of the dis-

covery, the scope of the discovery, and the dissemination of the material discovered.

NOTE: Discovery may also proceed pursuant to the agreement of the parties. See Rule 4002.

EXPLANATORY COMMENT

The following innovations to Pennsylvania civil practice and procedure have recently been adopted by the Supreme Court of Pennsylvania.

I. Amendment of Rule 1023

Rule 1023 governing signing is revised in several respects. First, the category of documents subject to the requirement of signing is significantly expanded beyond pleadings to include a "motion, legal paper or other paper directed to the court and every discovery request or response."

Second, the certification which arises from the act of signing is broadened to provide that the document "is submitted in good faith". Since the document is submitted in good faith, the reference to a document "interposed for delay" is unnecessary and is deleted. A sentence is added defining the existing requirement that there be "good ground" to support the document.

Third, a provision for sanctions is added for a bad faith violation of the rule. In providing that the "court may impose an appropriate sanction," the rule leaves the matter to the sound discretion of the court.

Finally, a note elaborates on the application of the rule.

II. New Rules 212.1 and 212.2

New Rules 212.1 and 212.2 are mandatory provisions governing pre-trial proceedings in civil actions to be tried by jury. A note

to the rule advises that a court may extend the application of the rules to non-jury actions and additional forms of action.

Rule 212.1 requires the court to provide a notice which must advise the parties of the earliest trial date and which may impose a date for the completion of discovery. The rule also requires the parties to file pre-trial statements according to a specified schedule.

Rule 212.2 specifies the content of the pre-trial statement and sets forth sanctions for violation of the rule. Copies of the written reports of expert witnesses, or answers to written interrogatories consistent with Rule 4003.5, must be included as part of the pre-trial statement.

Present Rule 212 governing the pre-trial conference remains unchanged in substance but is renumbered as Rule 212.3. The paragraphs and subparagraphs of the rule are lettered and numbered to conform to the format of the rules of civil procedure.

Rule 212.3 stands in contrast to proposed Rules 212.1 and 212.2 which are of mandatory application. While Rule 212.3 specifies the nature of a pre-trial conference, it does not mandate that a conference be held.

III. New Rule 4003.7

New Rule 4003.7 places under the control of the court the discovery of information concerning the wealth of a defendant when there is a claim for punitive damages. A note serves as a reminder

that such discovery may be had also pursuant to agreement of the parties under Rule 4002.

The term "wealth" found in the rule is used by the Supreme Court of Pennsylvania in *Kirkbride v. Contractors Inc.*, 521 Pa. 97, 555 A.2d 800 (1989) and by the Restatement of Torts Second, § 908(2), cited in *Kirkbride*. However, many cases, both appellate and common pleas court, and texts use the term "net worth" alone or in addition to "wealth."

**By the Civil Procedural
Rules Committee**

**Edwin L. Klett
Chairman**