

## Civil Action

### Rule 1001. Definition. Scope

(a) As used in this chapter and in Rules 1506, 1521, and 1531 through 1535, "action" means a civil action brought in or appealed to any court which is subject to these rules.

[(b)(1) All claims heretofore asserted in assumpsit or trespass shall be asserted in one form of action to be known as "civil action." ]

(b) There shall be a "civil action" in which shall be brought all claims for relief heretofore asserted in

- (1) the action of assumpsit,
- (2) the action of trespass, and
- (3) the action in equity.

NOTE: The procedural distinctions between the forms of action in assumpsit, [and] trespass and equity are abolished.

The following rules govern particular types of equitable relief: Rule 1506 (stockholder's derivative suits, Rule 1531 (injunctions), Rule 1532 (perpetuation of testimony), Rule 1533 (receivers), Rule 1534 (Accounting by Fiduciaries) and Rule 1535 (objections to security).

The action to prevent waste has been abolished. The relief formerly available in that action may be obtained in a civil action seeking equitable relief

See Rule 1041.1 for special provisions governing asbestos litigation.

**[(2)] (c)** Other forms of action which incorporate these rules by reference shall be known as "civil action--(type of action)".

NOTE: For example, the action of mandamus shall be known as "civil action--mandamus".

## **Rule 1006. Venue. Change of Venue**

(a) Except as otherwise provided by **[S]** subdivisions (b) and (c) of this rule, an action against an individual may be brought in and only in a county in which

(1) the individual may be served or in which the cause of action arose or where a transaction or occurrence took place out of which the cause of action arose or in any other county authorized by law[.]or

NOTE: For a definition of transaction or occurrence see *Craig v. W. J. Thiele & Sons, Inc.*, 395 Pa. 129, 149 A.2d 35 (1959).

(2) the property or a part of the property which is the subject matter of the action is located provided that equitable relief is sought with respect to the property.

(a.1) Except as otherwise provided by subdivision (c), a medical professional liability action may be brought against a health care provider for a medical professional liability claim only in a county in which the cause of action arose.

NOTE: See Section 5101.1(c) of the Judicial Code, 42 Pa.C.S. § 5101.1(c) for the definitions of "health care provider", "medical professional liability action" and "medical professional liability claim".

(b) Actions against the following defendants, except as otherwise provided in subdivision (c), may be brought in and only in the counties designated by the following

rules: political subdivisions, Rule 2103; partnerships, Rule 2130; unincorporated associations, Rule 2156; corporations and similar entities, Rule 2179.

NOTE: Partnerships, unincorporated associations, and corporations and similar entities are subject to subdivision (a.1) governing venue in medical professional liability actions. See Rules 2130, 2156 and 2179.

(c)(1) Except as otherwise provided by paragraph (2), an action to enforce a joint or joint and several liability against two or more defendants, except actions in which the Commonwealth is a party defendant, may be brought against all defendants in any county in which the venue may be laid against any one of the defendants under the general rules of subdivisions (a) or (b).

(2) If the action to enforce a joint or joint and several liability against two or more defendants includes one or more medical professional liability claims, the action shall be brought in any county in which the venue may be laid against any defendant under subdivision (a.1).

(d)(1) For the convenience of parties and witnesses the court upon petition of any party may transfer an action to the appropriate court of any other county where the action could originally have been brought.

(2) Where, upon petition and hearing thereon, the court finds that a fair and impartial trial cannot be held in the county for reasons stated of record, the court may order that the action be transferred. The order changing venue shall be certified forthwith to the Supreme Court, which shall designate the county to which the case is to be transferred.

NOTE: For the recusal of the judge for interest or prejudice, see Canon 3C of the Code of Judicial Conduct.

(3) It shall be the duty of the prothonotary of the court in which the action is pending to forward to the prothonotary of the county to which the action is transferred certified copies of the docket entries, process, pleadings, depositions and other papers filed in the action. The costs and fees of the petition for transfer and the removal of the record shall be paid by the petitioner in the first instance to be taxable as costs in the case.

(e) Improper venue shall be raised by preliminary objection and if not so raised shall be waived. If a preliminary objection to venue is sustained and there is a county of proper venue within the State the action shall not be dismissed but shall be transferred to the appropriate court of that county. The costs and fees for transfer and removal of the record shall be paid by the plaintiff.

(f)(1) Except as provided by paragraph (2), if the plaintiff states more than one cause of action against the same defendant in the complaint pursuant to Rule 1020(a), the action may be brought in any county in which any one of the individual causes of action might have been brought.

(2) Except as otherwise provided by subdivision (c), if one or more of the causes of action stated against the same defendant is a medical professional liability claim, the action shall be brought in a county required by subdivision (a.1).

## **Rule 1007.1. Jury Trial. Demand. Waiver**

(a) In any action in which the right to jury trial exists, that right shall be deemed waived unless a party files and serves a written demand for a jury trial not later than twenty days after service of the last permissible pleading. The demand shall be made by endorsement on a pleading or by a separate writing.

NOTE: Rule 1007.1(a) gives no specific guidance on the existence of a right to jury trial. It could not, in the face of Rule 128(f).

(b) Where an appeal is taken from an award in compulsory arbitration and jury trial has not theretofore been demanded, the right to a jury trial shall be deemed waived unless the appellant endorses a demand for a jury trial on the appeal, or unless the appellee files and serves a written demand for a jury trial not later than ten days after being served with the notice of appeal.

NOTE: Trial without jury shall be conducted in accordance with Rule 1038.

(c)(1) A demand for trial by jury may not be withdrawn without the consent of all parties who have appeared in the action.

(2) A demand for a trial by jury on behalf of a party shall be deemed withdrawn if at the time a case is called for trial that party, without satisfactory excuse, fails to appear or appears but is not ready. Any other party appearing and ready who has not already demanded a trial by jury shall forthwith demand a trial by jury or shall be deemed to have waived the same.

[(d) Rescinded.]

[NOTE: The Act of June 25, 1937, P.L. 2090, 12 P.S. § 695 relating to demand for or waiver of jury trial in Philadelphia County, formerly suspended by subdivision (d), has been repealed by Act 1978-53, the Judiciary Act Repealer Act.]

**Rule 1020. Pleading More Than One Cause of Action. Alternative Pleading. Failure to Join. Bar**

(a) The plaintiff may state in the complaint more than one cause of action cognizable in a civil action against the same defendant [heretofore asserted in assumpsit or trespass]. Each cause of action and any special damage related thereto shall be stated in a separate count containing a demand for relief.

NOTE: Rule 102 provides that the singular includes the plural and the plural includes the singular.

(b) If persons join as plaintiffs under Rules 2228, 2229(a) or (e), the complaint shall state the cause of action, any special damage, and the demand for relief of each plaintiff in a separate count, preceded by a heading naming the parties to the cause of action therein set forth.

(c) Causes of action and defenses may be pleaded in the alternative.

(d)[(1)] If a transaction or occurrence gives rise to more than one cause of action heretofore asserted in assumpsit and trespass, against the same person, including causes of action in the alternative, they shall be joined in separate counts in the action against any such person. Failure to join a cause of action as required by this subdivision shall be deemed a waiver of that cause of action as against all parties to the action.

NOTE: [Subdivision (d)(1) requires the joinder of related causes of action. The joinder of unrelated causes of action is permissive. See subdivision (a).]

Mandatory joinder is limited to related causes of action heretofore asserted in assumpsit and trespass. There is no mandatory joinder of related causes of action in equity.

[For Rules governing joinder of parties, see] See Rule 2226 et seq. governing joinder of parties.

See Rule 213(a) and (b) governing the consolidation and severance of causes of action.

[(2) Rescinded.

(3) Rescinded.

NOTE: Former subdivision (d)(3) governed election of remedies between assumpsit and trespass, joint trial of multiple causes of action, submission of specific questions to the jury and molding the verdict.

Any reference to election of remedies has become procedurally irrelevant as the result of the creation of the single form of civil action.

See Rule 213(a) and (b) governing the consolidation and severance of causes of action.

(4) Failure to join a cause of action as required by subdivision (d)(1) of this Rule shall be deemed a waiver of that cause of action as against all parties to the action.

(5) Rescinded. ]

## **Rule 1028. Preliminary Objections**

(a) Preliminary objections may be filed by any party to any pleading and are limited to the following grounds:

(1) lack of jurisdiction over the subject matter of the action or the person of the defendant, improper venue or improper form or service of a writ of summons or a complaint;

NOTE: Of the three grounds available to challenge venue, only improper venue may be raised by preliminary objection as provided by Rule 1006(e). Forum non conveniens and inability to hold a fair and impartial trial are raised by petition as provided by Rule 1006(d)(1) and (2).

See Rule of Appellate Procedure 311(b) for interlocutory appeals as of right from orders sustaining jurisdiction and venue.

(2) failure of a pleading to conform to law or rule of court or inclusion of scandalous or impertinent matter;

(3) insufficient specificity in a pleading;

(4) legal insufficiency of a pleading (demurrer); [and]

NOTE: The defense of the bar of a statute of frauds or statute of limitations can be asserted only in a responsive pleading as new matter under Rule 1030.

(5) lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action; [and]

(6) pendency of a prior action or agreement for alternative dispute resolution [.]:

NOTE: An agreement to arbitrate may be asserted by preliminary objection or by petition to compel arbitration pursuant to the Uniform Arbitration Act, 42 Pa.C.S. § 7304, or the common law, 42 Pa.C.S. § 7342(a).

(7) failure to exercise or exhaust a statutory remedy, and

(8) full, complete and adequate non-statutory remedy at law.

(b) All preliminary objections shall be raised at one time. They shall state specifically the grounds relied upon and may be inconsistent. Two or more preliminary objections may be raised in one pleading.

(c)(1) A party may file an amended pleading as of course within twenty days after service of a copy of preliminary objections. If a party has filed an amended pleading as of course, the preliminary objections to the original pleading shall be deemed moot.

(2) The court shall determine promptly all preliminary objections. If an issue of fact is raised, the court shall consider evidence by depositions or otherwise.

NOTE: Preliminary objections raising an issue under subdivision (a)(1), (5) [or], (6), (7) or (8) cannot be determined from facts of record. In such a case, the preliminary objections must be endorsed with a notice to plead or no response will be required under Rule 1029(d).

However, preliminary objections raising an issue under subdivision (a)(2), (3) or (4) may be determined from facts of record so that further evidence is not required.

Consult local rules which may contain supplementary procedures governing the filing and disposition of preliminary objections.

(d) If the preliminary objections are overruled, the objecting party shall have the right to plead over within twenty days after notice of the order or within such other time as the court shall fix.

(e) If the filing of an amendment, an amended pleading or a new pleading is allowed or required, it shall be filed within twenty days after notice of the order or within such other time as the court shall fix.

(f) Objections to any amended pleading shall be made by filing new preliminary objections.

**Rule 1031. Counterclaim**

(a) The defendant may set forth in the answer under the heading “Counterclaim” any cause of action [heretofore asserted in assumpsit or trespass] cognizable in a civil action which the defendant has against the plaintiff at the time of filing the answer.

NOTE: See Rule 213(a) and (b) governing consolidation and severance of causes of action.

(b) A counterclaim need not diminish or defeat the relief demanded by the plaintiff. It may demand relief exceeding in amount or different in kind from that demanded by the plaintiff.

**Rule 1032. Waiver of Defenses. Exceptions. Suggestion of Lack of Subject Matter Jurisdiction or Failure to Join Indispensable Party**

(a) A party waives all defenses and objections which are not presented either by preliminary objection, answer or reply, except a defense which is not required to be pleaded under Rule 1030(b), the defense of failure to state a claim upon which relief can be granted, the defense of failure to join an indispensable party, the objection of failure to state a legal defense to a claim, the defenses of failure to exercise or exhaust a statutory remedy and an adequate remedy at law and any other nonwaivable defense or objection.

NOTE: Subdivision (a) accommodates developing law with respect to defenses or objections which cannot be waived.

(b) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter or that there has been a failure to join an indispensable party, the court shall order that the action be transferred to a court of the Commonwealth which has jurisdiction or that the indispensable party be joined, but if that is not possible, then it shall dismiss the action.

NOTE: See Section 5103 of the Judicial Code, 42 Pa.C.S. § 5103, relating to the transfer of erroneously filed matters.

**Rule 1037. Judgment Upon Default or Admission. Assessment of Damages**

(a) If an action is not commenced by a complaint, the prothonotary, upon praecipe of the defendant, shall enter a rule upon the plaintiff to file a complaint. If a complaint is not filed within twenty days after service of the rule, the prothonotary, upon praecipe of the defendant, shall enter a judgment of non pros.

NOTE: See Rule 237.1(a)(2) which requires the praecipe for judgment of non pros to contain a certification of written notice of intent to file the praecipe.

(b) The prothonotary, on praecipe of the plaintiff, shall enter judgment against the defendant for failure to file within the required time a pleading to a complaint which contains a notice to defend or, except as provided by subdivision (d), for any relief admitted to be due by the defendant's pleadings.

NOTE: See Rule 237.1 which requires the praecipe for default judgment to contain a certification of written notice of intent to file the praecipe.

While the prothonotary may enter a default judgment in an action legal or equitable, only the court may grant equitable relief. See subdivision (d).

(1) The prothonotary shall assess damages for the amount to which the plaintiff is entitled if it is a sum certain or which can be made certain by computation, but if it is not, the damages shall be assessed at a trial at which the issues shall be limited to the amount of the damages.

(2) In all actions in which the only damages to be assessed are the cost of repairs made to property

(i) the prothonotary on praecipe of the plaintiff, waiving any other damages under the judgment, and the filing of the affidavits provided by subparagraphs (ii) and (iii) shall assess damages for the cost of the repairs;

(ii) the praecipe shall be accompanied by an affidavit of the person making the repairs; the affidavit shall contain an itemized repair bill setting forth the charges for labor and material used in the repair of the property; it shall also state the qualifications of the person who made or supervised the repairs, that the repairs were necessary, and that the prices for labor and material were fair and reasonable and those customarily charged;

(iii) the plaintiff shall send a copy of the affidavit and repair bill to the defendant by registered mail directed to the defendant's last known address, together with a notice setting forth the date of the intended assessment of damages, which shall be not less than ten days from the mailing of the notice and a statement that damages will be assessed in the amount of the repair bill unless prior to the date of assessment the defendant

by written praecipe files with the prothonotary a request for trial on the issue of such damages; an affidavit of mailing of notice shall be filed.

NOTE: By Definition Rule 76, registered mail includes certified mail.

(c) In all cases, the court, on motion of a party, may enter an appropriate judgment against a party upon default or admission.

NOTE: For the form of notice to defend, see Rule 1018.1.

(d) In all cases in which equitable relief is sought, the court shall enter an appropriate order upon the judgment of default or admission and may take testimony to assist in its decision and in framing the order.

### **Rule 1038. Trial Without Jury**

(a) Except as otherwise provided in this rule, the trial of an action by a judge sitting without a jury shall be conducted as nearly as may be as a trial by jury is conducted and the parties shall have like rights and privileges, including the right to [suffer or] move for nonsuit.

(b) The decision of the trial judge may consist only of general findings as to all parties but shall dispose of all claims for relief. The trial judge may include as part of the decision specific findings of fact and conclusions of law with appropriate discussion.

(c) The decision may be made orally in open court at the end of the trial, and in that event shall be forthwith transcribed and filed in the office of the prothonotary, or it may be made thereafter in writing and filed forthwith. In either event the prothonotary shall notify all parties or their attorneys of the date of filing. The trial judge shall render a decision within seven days after the conclusion of the trial except in protracted cases or cases of extraordinary complexity.

NOTE: A decision includes what were formerly known as a decree nisi and an adjudication. A decision is not a final decree, also known as a judgment.

For post-trial relief following a trial without jury, see Rule 227.1.

For entry of judgment upon praecipe of a party, see Rule 227.4.

[(d) Rescinded.

Note: For post-trial relief following a trial without jury, see Rule 227.1.

(e) Rescinded.

Note: For entry of judgment upon praecipe of a party, see Rule 227.4.

(f) Rescinded.

(g) Rule VIII of the Special Rules, Courts of Common Pleas, First Judicial District, Philadelphia County, adopted July 31, 1963 is suspended.]

### **Rule 1038.3. Equitable Relief. Advisory Verdict by Jury**

In any case in which there is a claim for equitable relief, the court on its own motion or upon the petition of any party may submit to trial by jury any or all issues of fact arising from that claim. The advisory verdict of the jury shall be in the form of answers to specific questions and shall not be binding upon the court.

NOTE: Rule 1038.3 does not confer a right to trial by jury if the right did not exist prior to the consolidation of the action in equity with the civil action.

The rule preserves the practice under former Equity Rule 1513 of allowing a court in its discretion to submit such claims to trial by jury for an advisory verdict.

## **[Action in Equity]**

### **Equitable Relief**

#### **Rule 1501. Conformity to Civil Action**

Rescinded.

NOTE: The action in equity has been abolished. Equitable relief may be obtained through a civil action, Rule 1001 et seq. Rules 1506, 1521 and 1531 through 1535 are special rules governing equitable relief sought in a civil action.

#### **Rule 1502. Court Open**

Rescinded.

NOTE: The court is “always open for the transaction of judicial business”. See Section 324 of the Judicial Code, 42 Pa.C.S. § 324

#### **Rule 1503. Venue**

Rescinded.

NOTE: See Rule 1006 governing venue in a civil action.

**Rule 1505. Defendant Not Served**

Rescinded.

**Rule 1507. Specific Averments. Possible Persons Interested in Property. Appointment of a Representative**

Rescinded.

**Rule 1508. Pleading More than One Cause of Action**

Rescinded.

NOTE: See Rule 1020 governing the pleading of more than one cause of action.

**Rule 1509. Preliminary Objections**

Rescinded.

NOTE: See Rule 1028 governing preliminary objections.

**Rule 1510. Counterclaim**

Rescinded.

NOTE: See Rule 1031 governing counterclaim in a civil action.

**Rule 1511. Judgment upon Default or Admission**

Rescinded.

NOTE: See Rule 1037 governing judgment upon default or admission.

**Rule 1512. Nonsuit**

Rescinded.

NOTE: See Rules 230 and 230.1 governing voluntary nonsuit and nonsuit at trial, respectively.

**Rule 1513. Trial by Jury. Advisory Verdict**

Rescinded.

NOTE: See Rule 1038.3 governing advisory verdict by jury.

**Rule 1514. Examiners, Masters and Auditors**

Rescinded.

**Rule 1515. Accountants and Experts**

Rescinded.

**Rule 1516. Oral Argument. Limitation on Requests for Findings and Conclusions**

Rescinded.

NOTE: See Rule 1038 for the conduct of a trial without a jury.

**Rule 1517. The Adjudication. Notice**

Rescinded.

NOTE: See Rule 1038 for the decision in a trial without a jury.

**Rule 1520. Form of Decree**

Rescinded.

NOTE: See Rule 1038 for the decision in a trial without a jury.

**Rule 1521. Indexing of Decree. Lien and Revival of Decree for Payment of Money**

(a) [Decrees, nisi] Orders, interlocutory or final, shall be entered on the judgment index [of the law side of the court].

(b) [Decrees] Orders for the payment of money shall be a lien on the real estate of the defendant named in the [decree] order in the manner, for the period and with the same effect as the lien of judgments [rendered by the law side of the court] for the payment of money.

(c) [Decrees] Orders for the payment of money or costs and not satisfied may be revived from time to time in the manner provided by law for the revival of judgments.

**Rule 1522. Rehearing**

Rescinded.

NOTE: See Rule of Appellate Procedure 1701(b) governing reconsideration of an order.

**Rule 1523. Costs**

Rescinded.

**Rule 1524. Security for Costs**

Rescinded.

**Rule 1525. Interlocutory Order for Costs**

Rescinded.

**Rule 1526. Liability for Costs**

Rescinded.

**Rule 1527. Taxation of Costs**

Rescinded.

**Rule 1528. Amendments**

Rescinded.

NOTE: See Rule 1033 governing amendment of pleadings.

**Rule 1529. Enforcement of Orders. Execution Process**

Rescinded.

**Rule 1530. Special Relief. Accounting**

Rescinded.

**Rule 1531. Special Relief. Injunctions**

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(f)(1) When a preliminary or special injunction involving freedom of expression is issued, either without notice or after notice and hearing, the court shall hold a final hearing within three days after demand by the defendant. A final [decree] order shall be filed in the office of the prothonotary within twenty-four hours after the close of the hearing. If the final hearing is not held within the three-day period, or if the final [decree] order is not filed within twenty-four hours after the close of the hearing, the injunction shall be deemed dissolved.

NOTE: The three-day period is the maximum time. In particular cases a shorter period may be required. [The equity side of the Court is always open. See Rule 1502.] The court is “always open for the transaction of judicial business”. See Section 324 of the Judicial Code, 42 Pa.C.S. § 324

(2) When the defendant demands such a final hearing, no further pleadings shall be required and Rule [1517] 1038(b) and (c) relating to [adjudication and decree nisi] decision in a trial without jury and Rules 227.1 to 227.3 relating to post-trial relief shall not apply.

(3) The trial judge shall file a written memorandum supporting the final [decree] order within five days after it is filed.

### **Rule 1532. Special Relief. Perpetuation of Testimony**

(a) In an action to perpetuate testimony the complaint shall set forth

(1) the names and addresses of all prospective parties to the contemplated action, but if the identity of the heirs or assigns of a named former owner or party in interest is unknown they may be described generally;

(2) the nature of the contemplated action, the plaintiff's interest therein and the need for perpetuating the testimony of the person to be examined;

(3) the name and address of the person whose testimony is to be perpetuated and the substance of the testimony which plaintiff expects to elicit from each.

(b) In an action to perpetuate testimony, the testimony may be taken before the court or by depositions. The procedure for the taking of the testimony by depositions shall conform as nearly as practicable to the proceedings under the rules on depositions and discovery. The final [decree] order shall direct whether or not the testimony or a part thereof shall be perpetuated.

(c) Testimony which has been perpetuated may be used at a trial or hearing in accordance with the provisions applicable to depositions under Rule 4020. The testimony may be used by or against a person succeeding to the interest of the party to the action for the perpetuation of testimony to the same extent as though the successor had been a party and had been present at the taking of the testimony. The testimony, if otherwise admissible, may be used in any other county of the Commonwealth.

### **Rule 1533. Special Relief. Receivers**

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(e) Except in the case of a public utility, a [decree] order authorizing a receiver to operate a business shall be limited to a fixed period, which may be extended from time to time upon cause shown after notice to all parties in interest.

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(g) Every [decree] order appointing a permanent receiver shall fix the time within which the receiver shall file a report setting forth the property of the debtor, the interests in and claims against it, its income-producing capacity and recommendations as to the best method of realizing its value for the benefit of those entitled.

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**Rule 1536. Effective Date. Pending Actions**

Rescinded.

**Rule 1549. Acts of Assembly Not Suspended**

[These] The rules governing a civil action shall not be deemed to suspend or affect the following Acts of Assembly:

(1) Sections 1 and 2 of the Act approved May 4, 1869, P.L. 1251, 68 P.S. §§ 115, 116.

Note: These sections make unlawful the cutting, removing or selling of timber by the owner of an undivided interest in land, without the written consent of all interests and authorize proceedings for recovery of timber or damages.

(1.1) Sections 12 and 15 of the Act approved June 4, 1901, P.L. 404, No. 231, 39 P.S. §§ 42, 48.

Note: These sections regulate receivership proceedings under the Insolvency Act of 1901.

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**Rule 1550. Acts of Assembly Suspended**

The following Acts of Assembly are suspended insofar as they apply to the practice and procedure in **[actions in equity]** a civil action to the extent hereinafter set forth, in accordance with Article V, Section 10(c) of the Constitution of 1968:

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# Conforming Amendments

## Business of the Courts

### Rule 205.4. Electronic Filing and Service of Legal Papers.

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(g) \*\*\*

NOTE: An electronic mail address set forth on letterhead is not a sufficient basis under this rule to permit electronic service of legal papers.

See Rule 236(d) providing for the prothonotary to give notice of orders[, decrees] and judgments, and also other matters, by facsimile transmission or other electronic means.

See Rule 440(d) governing service of legal papers other than original process by facsimile transmission.

### Rule 227.1. Post-Trial Relief

(a) After trial and upon the written Motion for Post-Trial Relief filed by any party, the court may

- (1) order a new trial as to all or any of the issues; or
- (2) direct the entry of judgment in favor of any party; or
- (3) remove a nonsuit; or
- (4) affirm, modify or change the decision [or decree nisi]; or
- (5) enter any other appropriate order.

NOTE: The motion for post-trial relief replaces the following motions and exceptions: motion for new trial, motion for judgment notwithstanding the verdict, motion upon the whole record after disagreement of a jury, motion in arrest of judgment, motion to remove a nonsuit[,] and exceptions following the decision of the judge in a trial without jury [and exceptions following the adjudication of the judge in an action in equity. However, certain rules retain]

The following rules provide for the filing of exceptions, e.g., Equity Rule 1530 (exceptions to an auditor's report), Equity Rule 1534 (exceptions to a fiduciary's account), Partition Rule 1569 (exceptions to a master's report) and Divorce Rule 1920.55-2 (exceptions to a master's report), Support Rule 1910.12(e) (exceptions to a hearing officer's report) and Execution Rule 3136(d) (exceptions to sheriff's schedule of proposed distribution).

(b) \*\*\*

(c) Post-trial motions shall be filed within ten days after

(1) verdict, discharge of the jury because of inability to agree, or nonsuit in the case of a jury trial; or

(2) notice of nonsuit or the filing of the decision [or adjudication] in the case of a trial without jury [or equity trial].

If a party has filed a timely post-trial motion, any other party may file a post-trial motion within ten days after the filing of the first post-trial motion.

NOTE: A motion for post-trial relief may be filed following a trial by jury[,] or a trial by a

judge without a jury [in an action at law] pursuant to Rule 1038 [or a trial by a judge without a jury in an action in equity]. A motion for post-trial relief may not be filed to orders disposing of preliminary objections, motions for judgment on the pleadings or for summary judgment, motions relating to discovery or other proceedings which do not constitute a trial. See *U.S. National Bank in Johnstown v. Johnson*, 506 Pa. 622, 487 A.2d 809 (1985).

A motion for post-trial relief may not be filed to matters governed exclusively by the rules of petition practice.

The filing of a motion for post-trial relief is prohibited by the following rules: Rule 1557 (order directing partition), Rules 1910.11(k) and 1910.12(g) (orders of support), Rule 1915.10(b) (order of custody, partial custody or visitation), and Rule 1920.55(c) (final decree of divorce based upon a master's report).

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**Rule 227.4. Entry of Judgment upon Praecept of a Party**

In addition to the provisions of any Rule of Civil Procedure or Act of Assembly authorizing the prothonotary to enter judgment upon praecipe of a party, the prothonotary shall, upon praecipe of a party:

(1) enter judgment upon the verdict of a jury or the decision of a judge following a trial without jury, [or enter the decree nisi as the final decree,] if

(a) no timely post-trial motion is filed; or

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

NOTE: If a motion for delay damages has been filed, judgment may not be entered until that motion is decided or otherwise resolved. See Rule 238(c)(3)(i).

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

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

**Rule 236. Notice by Prothonotary of Entry of Order[, Decree,] or Judgment**

- (a) The prothonotary shall immediately give written notice of the entry of
- (1) a judgment entered by confession to the defendant by ordinary mail at the address stated in the certificate of residence filed by the plaintiff together with a copy of all documents filed with the prothonotary in support of the confession of judgment. The plaintiff shall provide the prothonotary with the required notice and documents for mailing and a properly stamped and addressed envelope; and

NOTE: See Rule 2951(a) as to the requirement of filing a certificate of the residence of the plaintiff and of the defendant.

- (2) any other order[, decree] or judgment to each party's attorney of record or, if unrepresented, to each party. The notice shall include a copy of the order[, decree] or judgment.

NOTE: See Rules 1012 and 1025 as to the requirement of an address within the Commonwealth on an appearance and a pleading.

\*\*\*

- (d) \*\*\*

NOTE: \*\*\*

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Notice by facsimile transmission or other electronic means is applicable not only to [decrees,] orders and judgments under subdivision (a) but also to "other matters" such as the scheduling of a conference, hearing or trial or other administrative matters. \*\*\*

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**Rule 237. Notice of Praecept for Final Judgment [or Decree]**

No praecipe for judgment on a verdict[, ] or for judgment on a decision in a trial without a jury [or for a final decree following a decree nisi in equity] shall be accepted by the prothonotary unless it includes a certificate that a copy of the praecipe has been mailed to each other party who has appeared in the action or to the attorney of record for each other party.

**Rule 249. Authority of Individual Judge**

(a) Except where the court is required to act en banc, a [law] judge may perform any function of the court, including the entry of interlocutory or ex parte orders[, decrees] and other matters in the nature thereof.

(b) A [law] judge may perform a function of the court, other than trying an action, at any time and at any place within the judicial district.

(c) Each court may regulate the assignment of business among its judges.

**Rule 250. Scope of Chapter**

The rules of this chapter shall apply to all civil actions and proceedings [at law and in equity].

## Service of Original Process and Other Legal Papers

### Rule 400. Person to Make Service

(a) Except as provided in subdivisions (b) and (c) and in Rules 400.1 and 1930.4, original process shall be served within the Commonwealth only by the sheriff.

(b) In addition to service by the sheriff, original process may be served also by a competent adult in the following actions: [equity,]

(1) civil action in which the complaint includes a request for injunctive relief under Rule 1531, perpetuation of testimony under Rule 1532 or appointment of a receiver under Rule 1533.

(2) partition, [prevent waste,] and

(3) declaratory judgment when declaratory relief is the only relief sought.

NOTE: See Rule 76 for the definition of "competent adult".

Service of original process in domestic relations matters is governed by Rule 1930.4.

(c) When the sheriff is a party to the action, original process shall be served by the coroner or other officer authorized by law to perform the duties of coroner.

(d) If service is to be made by the sheriff in a county other than the county in which the action was commenced, the sheriff of the county where service may be made shall be deputized for that purpose by the sheriff of the county where the action was commenced.

**Rule 440. Service of Legal Papers other than Original Process**

\*\*\*

(d) \*\*\*

NOTE: See Rule 236(d) providing for the prothonotary to give notice of orders[, decrees] and judgments, and also other matters, by facsimile or other electronic means.

See Rule 205.4 governing filing and service of legal papers by electronic means other than facsimile transmission.

**Action to Quiet Title**

**Rule 1066. Form of Judgment or Order**

(a) \*\*\*

(b) Upon granting relief to the plaintiff, the court

(1) \*\*\*

(2) \*\*\*

(3) shall enter a final judgment ordering the defendant, the prothonotary, or the recorder of deeds to file, record, cancel, surrender or satisfy of record, as the case may be, any plan, document, obligation or deed determined to be valid, invalid, satisfied or discharged, and to execute and deliver any document, obligation or deed necessary to make the [decree] order effective; or

(4) \*\*\*

## **Action of Mortgage Foreclosure**

### **Rule 1141. Definitions. Conformity to Civil Action**

(a) As used in this chapter,

"action" means an action [at law] to foreclose a mortgage upon any estate, leasehold or interest in land but shall not include an action to enforce a personal liability

(b) Except as otherwise provided in this chapter, the procedure in the action shall be in accordance with the rules relating to a civil action.

## **Partition of Real Property**

### **Rule 1551. Form of Action**

Except as otherwise provided in this chapter, the procedure in an action for the partition of real estate shall be in accordance with the rules relating to the civil action [in equity].

### **Rule 1569. Master's Report. Exceptions**

(a) A master who is appointed by the court shall file a report with respect to the matters submitted. The report shall follow the form of [adjudication] decision in Rule 1570, insofar as the scope of the reference to the master permits.

(b) The master shall give all persons in interest written notice of the date on which he or she intends to file the report and proposed [decree] order and shall specify an address within the county where they may be examined. The master may change the report and proposed [decree] order as he or she deems proper before filing them, but if any changes are made written notice thereof shall be given to all parties.

(c) Within ten days after notice of the filing of the report exceptions may be filed by any party to rulings on evidence, to findings of fact, to conclusions of law and to the proposed [decree nisi] order. The court may, with or without taking testimony, remand the report or enter a [n adjudication] decision in accordance with Rule 1570 which may incorporate by reference the findings and conclusions of the master in whole or in part.

**Rule 1570. [Adjudication and Decree] Decision and Order**

(a) The [adjudication] decision shall include findings of fact as follows:

\*\*\*

(b) The [decree] order shall include:

(1) \*\*\*

(2) \*\*\*;

(3) \*\*\*

(4) [an order for] a public or private sale of the property or part thereof where required.

**Rule 1573. Return of Sale and Schedule of Distribution**

(a) Where the sale has been conducted by a master, the master shall promptly file with the prothonotary a return of sale together with a proposed [decree] order which shall

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(b) The master shall give all persons in interest written notice of the date on which he or she intends to file the return of sale and proposed [decree] order and shall specify an address within the county where they may be examined. The master may change the return of sale and proposed [decree] order as he or she deems proper before filing them, but if any changes are made written notice thereof shall be given to all parties.

(c) If the court approves the return of sale in whole or in part, the court shall enter an appropriate [decree nisi] order. Any part of the [decree nisi] order as to which a motion for post-trial relief is not filed within ten days shall become final.

## **Action to Prevent Waste**

### **Rule 1576. Remedies in Pending Actions**

Rescinded.

NOTE: A claim to prevent waste may be brought as a civil action for equitable relief.

### **Rule 1577. Original Actions. Conformity to Equity**

Rescinded.

NOTE: An original action to restrain waste should be brought as a civil action seeking equitable relief.

**Rule 1580.            Actions to Prevent Waste. Act of Assembly  
Not Suspended**

Rescinded.

NOTE:        The provision of this rule has been  
transferred to Rule 1549(1).

**Action for Declaratory Judgment**

**Rule 1601.            Action for Declaratory Relief Alone. Jury Trial. Waiver**

(a)    A plaintiff seeking only declaratory relief shall commence an action by filing a complaint captioned "Action for Declaratory Judgment". The practice and procedure shall follow, as nearly as may be, the rules governing the [Action in Equity] civil action.

(b)    If the right to trial by jury of disputed issues of fact exists in such an action, it shall be deemed waived unless demanded in the time and manner provided by Rule 1007.1.

NOTE:        Rule 1601(b) gives no specific guidance on the existence of a right to jury trial. It could not, in the face of Rule 128(f). Section 7539(b) of the Judicial Code provides:

**(b) Jury trial.--**When a proceeding under this subchapter involves the determination of an issue of fact, such issue may be tried and determined in the same manner as issues of fact are tried and determined in other civil actions in the court in which the proceeding is pending.

The existence of a right to jury trial on disputed issues of fact will be a matter of determination in each action where only declaratory relief is sought. If the right is claimed and disputed, the court must determine the question on the basis of the nature of the cause of action, the right to be enforced and the "other civil action" which would be brought to enforce it if declaratory judgment did not exist. The flexible Federal practice under Fed.R.Civ.P. 38, 39 and 57, including the procedure for the jury trial of selected issues, may be helpful. Pa.R.C.P. [1513] 1038.3 may also be applicable.

## **Rule 1602. Declaratory Judgment as Ancillary Relief**

In any civil action [at law or in equity], a party may include in the claim for relief a prayer for declaratory relief and the practice and procedure shall follow, as nearly as may be, the rules governing that action.

## **Actions by Real Parties in Interest**

### **Rule 2001. Definitions**

As used in this chapter

"action" means any civil action or proceeding [at law or in equity] brought in or appealed to any court of record which is subject to these rules.

## **Minors as Parties**

### **Rule 2026. Definitions**

As used in this chapter

"action" means any civil action or proceeding [at law or in equity] brought in or appealed to any court of record which is subject to these rules;

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"judgment" means any final judgment or final [decree] order entered in any action.

## **Incapacitated Persons as Parties**

### **Rule 2051. Definitions**

As used in this chapter

"action" means any civil action or proceeding [at law or in equity] brought in or appealed to any court of record which is subject to these rules;

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## **The Commonwealth and Political Subdivisions as Parties**

### **Rule 2101. Definitions**

As used in this chapter

"action" means any civil action or proceeding [at law or in equity] brought in or appealed to any court which is subject to these rules.

## Partnerships as Parties

### Rule 2126. Definitions

As used in this chapter

"action" means any civil action or proceeding [at law or in equity] brought in or appealed to any court which is subject to these rules;

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### Rule 2129. Actions between Partnerships and Partners

An action may be prosecuted [at law] by a partnership against one or more of the partners thereof, or against such partners together with persons not partners; or by one or more partners, or by such partners together with other persons not partners, against the partnership. [No such action may be prosecuted in equity unless there is ground for equitable jurisdiction other than the fact that the action is between a partnership and one or more partners.]

### Rule 2130. Venue

(a) Except as otherwise provided by Rule 1006(a.1) and by subdivision (c) of this rule, an action against a partnership may be brought in and only in a county where the partnership regularly conducts business, or in the county where the cause of action arose or in a county where a transaction or occurrence took place out of which the cause of actions arose or in the county where the property or a part of the property which is the subject matter of the action is located provided that equitable relief is sought with respect to the property.

NOTE: Rule 1006(a.1) governs venue in actions for medical professional liability.

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## **Unincorporated Associations as Parties**

### **Rule 2151. Definitions**

As used in this chapter

"action" means any civil action or proceeding [at law or in equity] brought in or appealed to any court which is subject to these rules;

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### **Rule 2154. Actions between Associations and Members**

An action may be prosecuted [at law] by an association against one or more of the members thereof, or against such members together with persons not members; or by one or more members, or by such members together with other persons not members, against the association. [No such action may be prosecuted in equity unless there is ground for equitable jurisdiction other than the fact that the action is between an association and one or more members.]

### **Rule 2156. Venue**

(a) Except as otherwise provided by Rule 1006(a.1) and by subdivision (b) of this rule, an action against an association may be brought in and only in a county where the association regularly conducts business or any association activity, or in the county where the cause of action arose or in a county where a transaction or occurrence took place out of which the cause of actions arose or in the county where the property or a part of the property which is the subject matter of the action is located provided that equitable relief is sought with respect to the property.

NOTE: Rule 1006(a.1) governs venue in actions for medical professional liability.

(b) \*\*\*

## **Corporations and Similar Entities as Parties**

### **Rule 2176. Definitions**

As used in this chapter

"action" means any civil action or proceeding [at law or in equity] brought in or appealed to any court which is subject to these rules;

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### **Rule 2178. Actions between a Corporation or Similar Entity and Members Thereof**

An action may be prosecuted by a corporation or similar entity against one or more of the members thereof, or against members together with persons not members; or by one or more members, or by members together with other persons not members, against the corporation or similar entity. [No such action may be prosecuted in equity unless there is ground for equitable jurisdiction other than the fact that the action is between a corporation or similar entity and one or more members thereof.]

NOTE: This rule is [an adaptation of Pa.R.C.P. No. 2129 (Partnerships as Parties), and Pa.R.C.P. No. 2154 (Unincorporated Associations as Parties)].

It is] designed to apply to all actions between a corporation or similar entity and its members, including those actions in which an accounting has been asked.

**Rule 2179. Venue**

(a) Except as otherwise provided by an Act of Assembly, by Rule 1006(a.1) or by subdivision (b) of this rule, a personal action against a corporation or similar entity may be brought in and only in

(1) the county where its registered office or principal place of business is located;

(2) a county where it regularly conducts business;

(3) the county where the cause of action arose; [or]

(4) a county where a transaction or occurrence took place out of which the cause of action arose[.], or

(5) a county where the property or a part of the property which is the subject matter of the action is located provided that equitable relief is sought with respect to the property.

NOTE: Rule 1006(a.1) governs venue in actions for medical professional liability.

(b) \*\*\*

## **Actions for Wrongful Death**

### **Rule 2201. Definitions**

As used in this chapter

"action" means any civil action or proceeding [at law] brought in or appealed to any court of record which is subject to these rules;

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## **Joinder of Parties**

### **Rule 2226. Definitions**

As used in this chapter

"action" means any civil action or proceeding [at law or in equity] brought in or appealed to any court of record which is subject to these rules.

## **Joinder of Additional Defendants**

### **Rule 2251. Definitions**

As used in this chapter

"action" means any civil action or proceeding [at law or in equity] brought in or appealed to any court of record which is subject to these rules.

## **Interpleader by Defendants**

### **Rule 2301. Definitions**

As used in this chapter

"action" means any civil action or proceeding [at law or in equity] brought in or appealed to any court which is subject to these rules:

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### **Rule 2318. Exclusive Method [at Law. Equity]. Civil Action Interpleader Preserved**

The right of interpleader conferred by these rules shall be the exclusive method of interpleader in any action [at law] and shall be in addition to, and not in lieu of, the right to [file a bill in equity] commence a civil action for an interpleader.

## **Intervention**

### **Rule 2326. Definitions**

As used in this chapter

"action" means any civil action or proceeding [at law or in equity] brought in or appealed to any court of record which is subject to these rules.

### **Rule 2328. Petition to Intervene**

(a) Application for leave to intervene shall be made by a petition in the form of and verified in the manner of a plaintiff's initial pleading in a civil action, setting forth the ground on which intervention is sought and a statement of the relief or the defense which the petitioner desires to demand or assert. The petitioner shall attach to the petition a copy of any pleading which the petitioner will file in the action if permitted to intervene or shall state in the petition that the petitioner adopts by reference in whole or in part certain named pleadings or parts of pleadings already filed in the action.

[NOTE: This subdivision adopts the equity practice. See *Franklin Nat. Bank v. Kennerly Coal & Coke Co.*, 300 Pa. 479, 483, 484, 150 A. 902 (1930).]

(b) A copy of the petition shall be served upon each party to the action.

### **Substitution of Parties**

#### **Rule 2351. Definitions**

As used in this chapter

"action" means any civil action or proceeding [at law or in equity] brought in or appealed to any court of record which is subject to these rules, including actions to obtain judgment upon a mechanics' lien claim but shall not include actions to enforce municipal liens and claims;

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## **Transfer of Judgments to Other Counties**

### **Rule 3001. Definition**

As used in this chapter

"judgment" means a judgment[, ] or order [or decree] requiring the payment of money or adjudicating the right to possession in an action of replevin, including a final or interlocutory order for the payment of costs entered in any court which is subject to these rules, either originally or upon transcript or certification from another court within the same county.

## **Enforcement of Judgments for the Payment of Money**

### **Rule 3101. Definitions. Garnishee**

(a) As used in this chapter

"judgment" means a judgment[, ] or order[, or decree] requiring the payment of money entered in any court which is subject to these rules, including a final or interlocutory order for payment of costs, except a judgment against the Commonwealth, a political subdivision or a public authority;

NOTE: The enforcement of judgments in special actions of ejectment, replevin and mortgage foreclosure [are] is governed by Rules of Civil Procedure 3160 et seq.

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**Rule 3131. Sale of Real Property Located in More than One County**

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(c) The court may enter judgment upon the pleadings or take evidence by deposition or otherwise, shall [decree] order the extent of the real property which shall be subjected to execution, describing it by metes and bounds, shall designate the place of sale, and shall control the distribution of the proceeds of sale. The court may apportion the proceeds so as to satisfy prior lienors, including those having a lien upon a portion of a single tract which lay in a different county and which was not sold on execution.

\*\*\*

**Discovery**

**Rule 4001. Scope. Definitions**

(a) The rules of this chapter apply to any civil action or proceeding [at law or in equity] brought in or appealed to any court which is subject to these rules including any action pursuant to the Eminent Domain Code of 1964 or the Municipal Claims Act of 1923.

NOTE: \*\*\*

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