

**IN THE
SUPREME COURT OF PENNSYLVANIA**

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|--|----------|-------------------------------|
| IN RE: Amendment of Rules of Civil | : | NO. 345 |
| | : | |
| Procedure Governing Associations as | : | CIVIL PROCEDURAL RULES |
| | : | |
| Parties | : | DOCKET NO. 5 |

ORDER

PER CURIAM:

AND NOW, this 29th day of December, 2000, Pennsylvania Rules of Civil Procedure 76, 2126, 2151, 2176 and 2179 are amended to read as attached hereto.

This order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective July 1, 2001.

NOTE: Underscored material is added.
Bracketed material is deleted.

Rules of Construction

Rule 76. Definitions

The following words and phrases when used in any rule promulgated by the Supreme Court under the authority of Article V, Section 10(c) of the Constitution of 1968, or of any Act of Assembly, shall have the following meanings, respectively, unless the context clearly indicates otherwise or the particular word or phrase is expressly defined in the chapter in which the particular rule is included:

"political subdivision," any county, city, borough, incorporated town, township, school district, vocational school district, [or] county institution district or municipal or other local authority;

NOTE: The definition of the term "political subdivision" in this rule has no bearing upon whether a particular entity is or is not a political subdivision for substantive matters.

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;

"firm name" means any name, fictitious or otherwise, by which a partnership conducts business or is commonly known whether or not such name has been filed or registered;

"liquidator" means any person legally engaged in winding up the affairs of a dissolved partnership;

"partner" means only a general partner or a limited partner who has become subject to the liability of a general partner;

"partnership" means [only] a general or limited partnership, whether it is also a registered limited liability partnership or electing partnership, and does not mean a [partnership association, registered partnership,] limited liability company, unincorporated association, joint stock company or similar association.

Unincorporated Association 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;

"association" means an unincorporated association conducting any business or engaging in any activity of any nature whether for profit or otherwise under a common name, but does not mean [an incorporated association, general partnership, limited partnership, registered partnership, partnership association, joint stock company or similar association] a partnership as defined in Rule 2126 or a corporation or similar entity as defined in Rule 2176.

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;

"corporation or similar entity" includes any public, quasi-public or private corporation, insurance association or exchange, [registered partnership, partnership association limited,] joint stock company or association, ["Massachusetts trust",] limited liability company, professional association, business trust, or any other association which is regarded as an entity distinct from the members composing the association, but does not include the Commonwealth of Pennsylvania, a [county, city, borough, town, township, school district or institution district] political subdivision as defined in Rule 76, [or] a partnership as defined in Rule 2126, or an unincorporated association as defined in Rule 2151;

"corporate name" means any name, real or fictitious, under which a corporation or similar entity was organized, or conducts business, whether or not such name has been filed or registered;

"executive officer" means a chairman, president, vice-president, treasurer, secretary, general manager, or any like officer of a corporation or similar entity;

"member" includes any shareholder in a corporation or similar entity[;

"executive officer" means a chairman, president, vice-president, treasurer, secretary, general manager, or any like officer of a corporation or similar entity].

Note: The term "corporation or similar entity" as defined above includes all associations and business entities which are regarded as separate and distinct from their members. No attempt has been made to enumerate all the various classes of private corporations falling within the definition.

Rule 2179. Venue

(a) Except as otherwise provided by an Act of Assembly 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;

[Note: See Rule 2198.]

(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.

(b) ***

Explanatory Comment

The Supreme Court of Pennsylvania has amended the following rules of civil procedure: Rule 76 which contains a definition of the term "political subdivision", Rules 2126, 2151 and 2176 which provide definitions governing associations as parties and Rule 2179(a)(2) which governs venue when a corporation or similar entity is a party to an action.

Political Subdivision

The rules of civil procedure have heretofore made no provision for a municipal authority as a party. The definition of the term "political subdivision" as set forth in Definition Rule 76 has now been amended to include the phrase "municipal or other local authority". The phrase "municipal or other local authority" is derived from Section 102 of the Judicial Code and Section 101 of Title 2 of the Consolidated Statutes relating to Administrative Law and Procedure.

The primary effect of the amendment is to bring a municipal or other local authority within the chapter of rules governing the Commonwealth and Political Subdivisions as Parties and subject an authority to three rules. Under Rule 2102(b) governing the style of action, an action will be brought by or against an authority "in its name." Rule 2103(b) will limit venue to the county in which the political subdivision is located unless the Commonwealth is the plaintiff or an Act of Assembly provides otherwise. Service upon an authority will be made pursuant to subdivision (b) of Rule 422 governing service upon a political subdivision.

It is recognized that a municipal or other local authority may perform a "sovereign or governmental" function, a "business or proprietary" function or a combination of both. It is useful, however, to have a unified practice which applies to all such entities. It is

therefore appropriate that municipal or other local authorities be made subject to the rules governing political subdivisions in view of their performance of sovereign or governmental functions.

The characterization of a municipal or other local authority as a political subdivision is a procedural device only. As the note to the definition states, "[t]he definition of the term 'political subdivision' in this rule has no bearing upon whether a particular entity is or is not a political subdivision for substantive matters."

Partnerships as Parties

The amendment to Rule 2176 defining the term "partnership" continues to provide that "partnership means a general or limited partnership" and adds new language: "whether it is also a registered limited liability partnership or electing partnership". The reference to a registered limited liability partnership and an electing partnership is derived from Section 8311(b) of the Associations Code, "Partnership defined".

The amendment excludes from the definition "limited liability company, unincorporated association, joint stock company or similar association". The reference to a limited liability company is new and takes into account Act No. 126 of 1994 which amended Title 15 of the Consolidated Statutes, the Associations Code, by adding Chapter 89 relating to limited liability companies. Although excluded here from the definition of partnership, the limited liability company is included in the revised definition of "corporation or similar entity" found in Rule 2176.

As revised, the exclusionary language of the definition no longer contains the terms "partnership association and registered partnership" which are obsolete.

Unincorporated Associations as Parties

The term “association” as used in Rule 2151 et seq. is not the broad term found in the “Associations Code”. Rather, it has the limited meaning set forth in Rule 2151. The basic definition continues unchanged: “an unincorporated association conducting any business or engaging in any activity of any nature whether for profit or otherwise under a common name....” However, the definition excludes certain types of “associations” as used in the broader sense of that term. Whereas the former rule excluded from the definition the catalog of “an incorporated association, general partnership, limited partnership, registered partnership, partnership association, joint stock company or similar association”, the amended definition simply states that “unincorporated association” does not include “a partnership as defined in Rule 2126 or a corporation or similar entity as defined in Rule 2176.”

Corporations or Similar Entities as Parties

Rule 2176 is revised in two respects. First, the term “executive officer” is put in its rightful place alphabetically in the list of definitions but it is not otherwise changed. Second, the term “corporation or similar entity” is revised to include the terms “limited liability company, professional association and business trust” and to delete as obsolete the terms “registered partnership”, “Massachusetts Trust” and “partnership association limited”.

The addition of “business trust” includes within the definition of corporation or similar entity a “trust subject to Chapter 95 (relating to business trusts).” The addition of “professional association” includes a professional association as defined in Section 9302 of the Associations Code, i.e., “a professional association organized under the Act of August 7, 1961 (P.L. 941, No. 416), known as the Professional Association Act....”

The addition of a "limited liability company to the definition is in accord with the Source Note to Section 8906 of the Associations Code which states:

Notwithstanding the policy of Chapter 89 that a limited liability company is a form of partnership entity, for purposes of the Pennsylvania Rules of Civil Procedure a limited liability company will probably be deemed a "corporation or similar entity" under Pa.R.C.P. 2176, rather than a "partnership" under Pa.R.C.P. 2126 or an "association" under Pa.R.C.P. 2151.

The amendment to Rule 2179(a)(2) governing venue when a corporation or similar entity is a party to an action simply deletes a note containing an obsolete cross-reference.

By the Civil Procedural
Rules Committee

Rea Boylan Thomas,
Chair