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Margaret A. Stein, Esq., *Research Assistant*
Sharon L. Ciminera, *Office Manager*

* Resigned 4-17-96

** Appointed 4-22-96; term expires 6-30-97

Legal Authorization:

Pa. Constitution, Article V, § 10(c)
42 Pa. C.S., § 1722

Civil

Procedural

Rules

Committee

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History/Background

The Civil Procedural Rules Committee sets the rules of procedure and practice for civil actions in Pennsylvania's Courts of Common Pleas. This includes all aspects of civil matters except those issues relating to the work of the Orphans' Court and Family Court divisions. It was first commissioned by the Supreme Court in 1937.

Committee members are appointed to three-year terms by the Court and each may serve a maximum of two full terms. The current committee is composed of 18 lawyers and judges.

The committee's office is located in Mechanicsburg and the staff of three includes an executive director/counsel, a research assistant and an office manager. The executive director and research assistant are both members of the bar of the Supreme Court of Pennsylvania.

1996 Activities

The Civil Procedural Rules Committee held five meetings in 1996 as follows:

February	Philadelphia
April	Mechanicsburg
June	Pittsburgh
September	Hollicong, Bucks County
November	Philadelphia

It continued work on projects begun in prior years. Principal among these were Recommendations 126, 127 and 128 relating to confession of judgment and summary judgment.

In addition, the committee's 1996 agenda included such topics as

- technology as affecting civil procedure
- service of original process
- court-annexed alternative dispute resolution techniques
- compulsory arbitration
- minors as parties

- depositions and discovery
- juries and jurors
- trial practice

The committee also continued to furnish assistance to the Supreme Court and to act as a clearinghouse for numerous amendments suggested by members of the bench and bar. The chairman and counsel answered countless inquiries regarding the Rules of Civil Procedure from local courts and attorneys and from courts and attorneys in sister states.

Internet

Nineteen-ninety-six saw the advent of the Civil Procedural Rules Committee's presence on the Internet. The committee now publishes electronically its proposed recommendations as well as those new rules and amendments promulgated by the Supreme Court along with the schedule of effective dates amendments. The committee's publications can be found on the home page of the Administrative Office of Pennsylvania Courts at <http://www.courts.state.pa.us>. Comments regarding the Web page or any of the amendments may be sent to the committee at cprc@courts.state.pa.us.

The committee's presence on the Internet will allow the bench and bar continuous access to the committee's recommendations, enable them to respond to the recommendations electronically and also alert them to and provide the text of new rules and amendments.

1996 Amendments to the Rules of Civil Procedure

The Supreme Court acted upon numerous committee recommendations in 1996,

promulgating new rules and amending existing ones. The committee issued several additional recommendations, which were published to the bench and bar for comment. These recommendations are described below and are listed in the Status of Recommendations chart which follows this report.

Recommendations Promulgated by the Supreme Court

Recommendation 112: Case Submitted on Stipulated Facts New Rule 1038.1 added to govern submission of a case on stipulated facts for decision by a judge without a jury. Practice and procedure follow a known model, i.e., a trial without jury under Rule 1038. Also, new Rule 1038.2 was added to abolish the common law procedure of a case stated, which has been variously described in case law as "an anachronistic procedure," "a misunderstood procedure" and "a trap for the unwary." Promulgated August 9, 1996, effective January 1, 1997.

Recommendation No. 126: Confession of Judgment for Money Revises rules governing confession of judgment for money by abolishing confession of judgment in a consumer credit transaction and imposing a requirement to notify the defendant prior to or with execution upon a confessed judgment. The notice requirement was prompted by the decision of the U.S. Third Circuit Court of Appeals in *Jordan v. Fox, Rothschild, O'Brien & Frankel*, 20 F.3d 1250 (C.A. 3 1994), under which a judgment creditor and the judgment creditor's attorney may be held liable under § 1983 of the Civil Rights Act if judgment by confession is entered without a valid waiver of the due process rights to notice and hearing. Promulgated April 1, 1996, effective July 1, 1996.

Recommendation No. 127: Confession of Judgment in Ejectment for Possession of Real Property Abolishes confession of judgment for the possession of real property in connection

with a residential lease and requires that a notice be served upon the defendant in the confessed judgment. Promulgated April 1, 1996, effective July 1, 1996.

Recommendation No. 128: Summary Judgment Rescinds former Rule 1035 governing summary judgment and replaces it with Rules 1035.1 through 1035.4 governing definitions, motion, answer, affidavits and the procedure when judgment is denied or not rendered upon the whole case. The new rules take note of the *Nanty-Glo* rule relating to the effect of oral testimony upon a motion for summary judgment and expressly authorizes the filing of a motion when the record does not contain sufficient evidence to make out a *prima facie* cause of action or defense. Promulgated February 14, 1996, effective July 1, 1996.

Recommendation No. 132: Minors and Incapacitated Persons Identical amendments to three rules governing compromise, settlement, discontinuance and distribution conform the rules to Act 102 of 1994, which increased from \$10,000 to \$25,000 the size of a small estate for which a guardian is not required. Rules covered include Rule 2039 (Minors), Rule 2064 (Incapacitated Persons) and Rule 2206 (Wrongful Death Actions). The amendments also provide for the use of a trust or a structured settlement and enlarge the categories of investments permitted under the rule. Adopted October 3, 1996, effective January 1, 1997.

Recommendation No. 135: Deficiency Judgments New Rules 3276 *et seq.* supply the procedure governing proceedings for deficiency judgments and authorize filing a petition for a deficiency judgment as a proceeding supplementary to an action of mortgage foreclosure, an *action de terris*. The Deficiency Judgment Law of 1941 had been repealed by the Judiciary Act Repealer Act and the successor provision, § 8103 of the Judicial Code, omitted much of the procedure previously contained in the repealed statute. Promulgated December 6, 1996, effective January 1, 1997.

Miscellaneous Technical Amendments:

Amendments to the notes to Rules 227.1(c) and 1557 and to the explanatory comment to Rule 1038.1 to update obsolete references. The amendments do not affect practice or procedure. Promulgated December 5, 1996, effective immediately.

Recommendations Published to Bench and Bar

Recommendation No. 130: Voir Dire Proposes adoption of new Rule 220.1 to further the goal of establishing a uniform civil practice throughout the Commonwealth with respect to the information which the parties may obtain concerning prospective jurors. The proposed rule does not dictate the mechanics of voir dire, but leaves that to the local Courts of Common Pleas.

Recommendation No. 131: Production of Documents and Things; Entry Upon Property Proposes rescission of Discovery Rule 4009 governing production of documents and things and entry upon land and replacement with a new chapter of rules, Rule 4009.1 *et seq.* The new chapter would be divided into two parts, one relating to production of documents and things and the other relating to entry upon property. The proposed rules also feature new procedures governing discovery from persons not parties to an action. These include a subpoena to produce documents and things under proposed Rule 4009.21 *et seq.* and a motion for entry upon land under proposed Rule 4009.33.

Recommendation No. 133: Service of Original Process Proposes amendment of Rules 401 and 404 to facilitate parties in their attempts to make a good faith effort to effectuate service of original process. The recommendation and the broader subject of service of original process remain under consideration by the committee.

Recommendation No. 134: Compulsory Arbitration Proposes to amend in several respects Rule 1305(b), which relaxes the rules of evidence

as to the introduction of certain types of written evidence at a hearing before a board of arbitrators in compulsory arbitration. One revision would broaden the categories of such evidence to include business and governmental records and expert reports and qualifications. Another revision would direct the board of arbitrators in its consideration and use of the documents admitted into evidence.

Recommendation No. 136: JARA Amendments The Judiciary Act Repealer Act (JARA), enacted in 1978, repealed thousands of statutory provisions governing civil practice and procedure and amended many others. Since that time the references to these repealed and amended statutes contained in the Rules of Civil Procedure have been eliminated gradually. Recommendation No. 136 proposes to continue this process, rescinding certain rules which preserve or suspend repealed statutes and amending other rules by eliminating obsolete references and citations.

The rules affected by this recommendation include those governing transfer of judgments (Rules 3001 through 3011) and the enforcement of judgments in special actions (Rules 3160 through 3190). In addition, the recommendation proposes to rescind as obsolete the following rules governing the abolition of special actions: Rules 1480 and 3249 (Attachment) and Rules 1481 and 3250 (Arrest before and after Judgment).

Recommendation No. 137: Discovery Present Rule 4011(c), which prohibits the discovery of "matter which is privileged" is incomplete since Rules 4003.1 through 4003.6 governing the scope of discovery refer to other matters as well as privilege. Recommendation No. 137 proposes to broaden Rule 4011(c) to refer to Rules 4003.1 through 4003.6 and thereby encompass all of the concepts of those rules.

Recommendation No. 138: Compulsory Arbitration Proposes to amend Rule 1303 to provide that, upon notice and agreement of all parties present in a compulsory arbitration, the matter may be heard by the Common Pleas Court on the day of the scheduled arbitration hearing. The hearing before the court would avoid the two-step procedure of arbitration award and appeal to the court. The matter would proceed like any other matter in Common Pleas Court with the entry of a *non pros* if the plaintiff does not appear or a decision if the defendant does not appear.

This proposal comes about because of instances in which a party fails to appear for a hearing before a board of arbitrators in compulsory arbitration and then files an appeal for a trial *de novo* in Common Pleas Court. Currently, no remedy exists for this situation in which a party flouts the compulsory arbitration process.

Recommendation No. 139: Sheriff's Interpleader Proposes to delete obsolete references to the Act of June 22, 1931, P.L. 883, 12 P.S. § 2358 *et seq.*, which formed the basis for both the substantive and procedural law governing sheriff's interpleader, but was repealed in 1978 by the Judiciary Act Repealer Act (JARA).

Recommendation No. 140: Delay Damages and Post-Trial Practice Proposes several revisions, including an amendment to Rule 238(c)(3)(I) to prohibit entry of judgment until

disposition of a pending motion for delay damages has been made by order of court, by *praecipe* pursuant to revised Rule 238(c)(2), or by other resolution. Under present practice, a party may enter judgment under Rule 227.4 upon a verdict or decision if a motion for post-trial relief is not decided within a 120-day period. One Common Pleas Court ruled that the entry of judgment under Rule 227.4 prior to the disposition of an unopposed motion for delay damages under Rule 238 precludes the award of such damages.

Continuing Responsibilities

The Judicial Code and the JARA have provided the committee with the basis for much of its work since 1978 and continue to do so. During 1996 the committee continued to review the rules for obsolete references and to close gaps in procedure resulting from these statutes. This project will continue into the coming year as well.

Contact Person

Anyone wishing to learn more about the Civil Procedural Rules Committee or having questions regarding civil rules may contact Executive Director Harold Don at (717) 795-2110 or write to him at Suite 700; 5035 Ritter Road; Mechanicsburg, PA 17055 or via e-mail at cprc@courts.state.pa.us.



Status of Recommendations		
Recommendation	Subject	Status
112	Revises Rule 237.1 governing notice of intention to file praecipe for default judgment	Promulgated 8-9-96, effective 1-1-97
126	Amendment of Rule 2950 et seq., governing confession of judgment for money	Promulgated 4-1-96, effective 7-1-96
127	Amendment of Rule 2970 et seq. governing confession of judgment in ejectment for possession of real property	Promulgated 4-1-96, effective 7-1-96
128	Revision of Rule 1035 and promulgation of new Rule 1035.1 et seq. governing summary judgment	Promulgated 2-14-96, effective 7-1-96
130	Proposing new Rule 220.1 governing voir dire	Pending in committee
131	Proposing revision of Rule 4009 governing production of documents and things and entry upon land	Pending in committee
132	Amendment of Rules 2039, 2064 and 2206 governing settlement of actions involving minors and incapacitated persons	Promulgated 10-3-96, effective 1-1-97
133	Amendment of Rules 401 and 404 governing service of original process	Pending in committee
134	Amendment of Rule 1305 governing compulsory arbitration	Pending in committee
135	Promulgation of Rule 3276 et seq. governing deficiency judgments	Promulgated 12-6-96, effective 1-1-97
	Amendment of Notes to Rule 227.1(c) governing post-trial practice and Rule 1557 governing partition of real property	Promulgated 12-5-96, effective immediately
136	Technical amendment (JARA) of Rules 3001 through 3011 and Rules 3160 through 3190	Pending in committee

continued...

Status of Recommendations, continued

Recommendation	Subject	Status
137	Amendment of Rule 4011 governing discovery	Pending in committee
138	Amendment of Rule 1303 governing compulsory arbitration	Published to bench and bar for comment
139	Technical Amendment (JARA) of Rule 3201 et seq. governing sheriff's interpleader	Published to bench and bar for comment
140	Amendment of Rule 238 governing damages for delay	Published to bench and bar for comment

Table 3.3.1, contd.