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- * Resigned 6-98
- ** Term expired 6-30-98
- + Appointed 6-30-98
- ++ Resigned 9-98
- # Retired 10-1-98
- ## Term expires 6-30-99

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. In 1997 membership was reduced from 18 lawyers and judges to 15 plus one *ex officio* member.

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

1998 Activities

The Civil Procedural Rules Committee held five meetings in 1998 as follows:

January	Pittsburgh
April	Philadelphia
June	Pittsburgh
September	Erie
November	via conference call

In addition, a subcommittee met several times by conference call to develop proposed rules governing liens of verdicts and judgments and amendments to rules governing revival of judgments. Subcommittee meetings were similarly held to consider proposed rules governing appeals from district justices and proposed amendments to the rules governing service of original process.

The committee continued to work on other projects begun in prior years. Principal among these were Recommendations No. 142

relating to service of original process and Recommendation No. 144 relating to amendment of pleadings.

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

The year 1998 marked the third year during which the committee maintained a home page on the Internet. The committee site is accessed through the home page of the Administrative Office of Pennsylvania Courts at www.courts.state.pa.us.

The site includes an index page, which provides access to the following materials:

- recently promulgated rules and amendments to rules
- a schedule of effective dates
- proposed recommendations of new rules and amendments to existing rules
- the prime rate, which forms the basis for calculating damages for delay under Rule of Civil Procedure 238.

The Administrative Office of Pennsylvania Courts includes a list of the members of the committee as part of its home page.

Judicial Council of Pennsylvania

The Judicial Council of Pennsylvania was reactivated during 1998 and the chairman of the Civil Procedural Rules Committee, Edwin L. Klett, Esq., was appointed to membership. Mr. Klett and the staff of the Civil Procedural Rules Committee were requested to furnish assistance

to the council by revising both Rule of Judicial Administration 301 *et seq.* governing the Judicial Council and the Rules of the Judicial Council as set forth in Title 204 of the Pennsylvania Code, Chapters 101 through 111.

Mr. Klett was assigned to one of the Judicial Council's four newly created standing committees, the Statewide Rules Committee, chaired by Madame Justice Sandra Schultz Newman. Madame Justice Newman requested that the Civil Procedural Rules Committee review the issue of local rules and statewide uniformity of practice with a view toward developing broad recommendations and methodology. The Civil Procedural Rules Committee considered the matter at its June and September meetings and prepared a report which was submitted to Madame Justice Newman in the fall of 1998.

1998 Amendments to the Rules of Civil Procedure

The Supreme Court acted upon several committee recommendations in 1998, 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

Recommendations Effective in 1998

The following recommendations promulgated in 1997 became effective January 1, 1998. They are described in the 1997 annual report.

Recommendation No. 130: Voir Dire Added new Rule 220.1.

Recommendation No. 134: Compulsory Arbitration Amended Rule 1305 governing conduct of a hearing before a board of arbitrators.

Recommendation No. 140: Delay Damages and Post-Trial Practice Amendment to Rule 238 governing delay damages and a note to Rule 227.4 governing post-trial practice.

Recommendations Promulgated in 1998

Recommendation No. 143: Physical and Medical Examination of Persons Amended Rule 4010 so that psychologists and dentists as well as physicians would be authorized to make examinations. Also, certain protections were provided to the parties facing examination, including the right to have counsel or another representative present at the examination and a limitation upon the examiner's interrogation of the person to be examined. In addition, the rule was made gender neutral.

At the same time, new Rule 4010.1 was promulgated to govern evaluation of earning capacity and provide for an evaluation "by a suitably licensed or certified evaluator" when "the earning capacity of a party, or of a person in the custody or under the legal control of a party, is in controversy."

Promulgated April 24, 1998, effective July 1, 1998.

Recommendation No. 145: Rule 3101 *et seq.* (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. 145 virtually completed the technical revision of the rules of civil procedure in light of JARA. The rules affected by the recommendation were Rule 3101 *et seq.*, governing the enforcement of judgments for the payment of money.

Rule 3104 governing the indexing of the writ of execution is the one execution rule which was not included in the recommendation. It will be included in a separate recommendation relating to liens upon real property and revival of judgments.

Promulgated April 20, 1998, effective July 1, 1998.

Recommendation No. 146: Filing Copies; Service by Facsimile Transmission Added new Rule 205.3 providing that parties may file "of record" with the prothonotary copies of documents which will thereafter be deemed originals in most instances. The copy must reveal the signature of the attorney or party and a verification, if applicable. A party may require that the original document be filed, especially when the authenticity of the document is questioned.

A note to the rule made clear that the proposed rule was concerned with the filing of copies of documents and did not authorize the filing of documents by "fax."

In addition, proposed amendment of Rules 440 and 1035 provided for the service by "fax" of legal papers other than original process. The amended rules would permit, on a voluntary basis, the use of technology which now is encountered on a daily basis in virtually every law office.

Promulgated August 3, 1998, effective January 1, 1999.

Recommendation No. 147: Discovery Added to Rule 4007.1 new subdivision (f) governing proceedings under § 5326 of the Judicial Code, a part of the Uniform Interstate and International Procedure Act. That section provides aid to litigants and tribunals outside the Commonwealth with respect to depositions. To prevent unreasonable expense or burden to the person whose deposition is sought, the new subdivision limits the venue of proceedings to obtain an order under the code to "the county in which the

person who is the subject of the order resides, is employed or regularly transacts business in person." Promulgated August 4, 1998, effective January 1, 1999.

Amendments Promulgated without Prior Publication

Several amendments were promulgated without prior publication because of their perfunctory nature.

Rule 235: Notice to the Attorney General Brought the rule into conformity with the Commonwealth Attorneys Act, 71 P.S. § 732-204(c), which provides that the attorney general "may intervene in any other action, including those involving charitable bequests and trusts or the constitutionality of any statute." The rule, which already provided for notice in an action involving the constitutionality of a statute, was expanded to coincide with the act and require notice when an action involves a charitable bequest or trust. Promulgated August 3, 1998, effective January 1, 1999.

Rule 2958.3: Execution upon a Confessed Judgment The amendment to subdivision (a) of Rule 2958.3 was perfunctory in nature, adding the words "and attached," which had been inadvertently omitted. Effective July 1, 1998.

Rule 231.4, Rule 4009;21(a): Subpoenas; Production of Documents and Things It had appeared that attorneys were of the belief that a subpoena pursuant to Rule 4009.21 *et seq.* is the sole manner of seeking production from a person not a party to an action. The amendment of the note to the rule was designed to change this perception and create an awareness that there are viable alternatives. The alternatives set forth in the note are a deposition upon oral examination under Rule 4007.1 (d) and an independent action.

In a related matter, some attorneys and judges were of the impression that the 20-day prior notice provision of Rule 4009.21 for the

issuance of a subpoena to produce documents or things applied to a subpoena *duces tecum* issued under Rule 234.1 in connection with an oral deposition. A note was added to Rule 234.1(a) effective January 1, 1999, to alert the bench and bar that the 20-day notice did not apply to the subpoena *duces tecum*.

Effective January 1, 1999.

Rule 400.1: Service of Original Process in Philadelphia County The Supreme Court of its own motion amended this rule by making the rule permanent and extending its scope to all courts of the First Judicial District. The title of the rule, "Temporary Provisions for Philadelphia County," was revised to read "Provisions for All Courts of the First Judicial District." Effective August 1, 1998.

Recommendations Published to Bench and Bar

Recommendation 148: Production of Medical Records Proposes to amend Rule 234.1 governing subpoenas to eliminate a conflict with Section 6152(c) of the Judicial Code as amended by Act No. 1998-26. The code conflicts with Rule 4007.1(d)(2) governing oral depositions to the extent that it authorizes the health care provider or facility to deliver the records prior to the date set forth in the subpoena. The recommendation proposes that new subdivision (d) be added to Rule 234.1 requiring that, when medical records are to be produced in connection with the subpoena to attend and testify, a special notice be attached to the front of a subpoena advising that the records are not to be produced before the date set forth in the subpoena in the absence of an authorization from the plaintiff or the plaintiff's attorney.

Recommendation No. 149: Service upon Associations Proposes to amend Rule 423 governing service of original process upon partnerships and unincorporated associations and Rule 424 governing service of original process upon corporations and similar entities. These

rules currently provide, *inter alia*, a method of service whereby a copy of process may be handed to "the manager, clerk or other person for the time being in charge of any regular place of business or activity." A barrier of a reception-ist or security guard, however, often makes such service difficult to effect. The recommendation would add a provision to both rules that service may be made upon "a person responsible for receiving visitors, or business mail or deliveries addressed to" the particular association, at any office or regular place of business of the association.

Recommendation No. 150: Associations as Parties Proposes to modernize the definitions of the terms "partnership," "unincorporated association," and "corporation or similar entity." The definitions contain terminology which has become obsolete since the rules governing these associations were adopted in 1939.

Recommendation No. 151: Liens upon Real Property and Revival of Judgments Rules 3025 through 3049 were promulgated in 1964 to provide the procedure in proceedings to revive and continue the lien of a judgment. The note to Rule 3025 advised the bench and bar: "For the substantive law governing the revival of judgment against defendants and terre tenants see the Judgment Lien Law of 1947, 12 P.S. 877 *et seq.*"

The Judgment Lien Law was repealed by the Judiciary Act Repealer Act (JARA) in 1978, but no successor provisions were enacted as part of the Judicial Code or otherwise and the 1947 Act disappeared from Purdon's Pennsylvania Statutes. Unless the superseded volumes of former Title 12 were retained, the Judgment Lien Law became unavailable to the legal community. Yet, as no general rules had been promulgated to date to replace the repealed act, the Judgment Lien Law continued as part of the common law of the Commonwealth under the fail-safe provision of JARA, 42 P.S., § 20003(b).

Recommendation No. 151 proposes to amend the rules of civil procedure to fill the void

left by the repeal of the 1947 Act. It is the last of the major projects arising from JARA.

Recommendation No. 152: Judgment of *Non Pros* for Inactivity Proposes to codify the three-prong test for the entry of a judgment of *non pros* for inactivity as set forth in *James Brothers Lumber Co. v. Union Banking and Trust*, 432 Pa. 129, 247 A.2d 587 (1968) as reaffirmed in *Jacobs v. Halloran, et al.*, 551 Pa. 350, 710 A.2d 1098 (1998). The proposal contains three principal points. First, the test for activity sufficient to avoid a judgment of *non pros* includes activity both on the docket and outside the record. Second, there is no presumption of prejudice which arises from the mere passage of time; rather, prejudice must be actual and not presumed. Finally, the proposed rule requires a written notice of the intention to file a petition for a judgment of *non pros*, thus giving the opposing party the opportunity to exercise due diligence and proceed with reasonable promptitude.

Recommendation No. 153: Electronic Filing of Legal Papers Proposes to amend the rules of civil procedure by adapting them to accommodate the electronic filing of legal papers. The rules are presently based upon a system using paper or "hard copy," and revision is required to take advantage of the technological advances heralded for the twenty-first century. The proposed rules do not authorize the electronic filing of legal papers, but merely set forth procedural guidelines to allow pilot projects and eventual general use when authorized by general rule, rule of court, or special order.


Recommendation No. 154: Conduct of jury trial Proposes to add new subdivision (b) to rule 23 to provide techniques which may be

used in the conduct of a jury trial. The proposal, which reflects a heightened interest in the jury trial nationwide, is directed toward providing jurors with a greater understanding of the case which they are witnessing and, if appropriate, an opportunity to participate more actively in the trial. The rule is designed to be a catalog, advising both the bench and bar of the options available and the court's power to invoke them.

Continuing Responsibilities

The Judicial Code and the JARA have provided the committee with the basis for much of its work since 1978. During 1998 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 and come to an end with a review of Rule 3026 *et seq.* governing revival of judgments and Execution Rule 3104.

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 civil.rules@supreme.court.state.pa.us. 

Status of Recommendations

Recommendation	Subject	Status
130	New Rule 220.1 governing voir dire	Promulgated 8-14-97, effective 1-1-98
134	Amendment of Rule 1305 governing compulsory arbitration	Promulgated 9-5-97, effective 1-1-98
138	Amendment of Rule 1303 governing compulsory arbitration	Promulgated 7-30-98, effective 1-1-99
140	Amendment of Rule 238 governing damages for delay	Promulgated 9-24-97, effective 1-1-98
142	Amendment of Rule 400 et seq. governing service of original process	Pending before Court
143	Amendment of Rule 4010 governing physical and mental examination of persons; proposed Rule 4010.1 governing evaluation of earning capacity	Promulgated 4-24-98, effective 7-1-98
144	Amendment of Rule 1033 governing amendment of pleadings	Pending before Court
145	Technical amendment (JARA) of Rule 3101 et seq. governing enforcement	Promulgated 4-20-98, effective 7-1-98
146	New Rule 205.3 governing filing of copies; amendment of Rules 440 and 1025 to provide for service of legal papers by facsimile transmission	Promulgated 8-3-98, effective 1-1-99
147	New Rule 4007.1(f) governing application for an order under Section 5326(a) of the Judicial Code relating assistance to litigants outside the Commonwealth	Promulgated 8-4-99, effective 1-1-99
148	Amendment of Rules 234.1 and 4007.1(d) governing issuance of a subpoena duces tecum for medical records and charts	Published to bench and bar for comment

continued...

Chart 3.3.1

Status of Recommendations, continued		
Recommendation	Subject	Status
149	Amendment of Rules 423 and 424 governing service of original process upon associations	Published to bench and bar for comment
150	Amendment of Rules 2126, 2151 and 2176 defining partnerships, unincorporated associations, and corporations and similar entities	Published to bench and bar for comment
151	Promulgation and amendment of rules governing lines upon real property and revival of judgments	Published to bench and bar for comment
152	Promulgation of New Rule 229.1 governing entry of judgment of non pros for inactivity	Published to bench and bar for comment
153	Promulgation of new Rule 205.4 and amendment of Rule 440 to provide for electronic filing and service of legal papers	Published to bench and bar for comment
154	Amendment of Rule 223 governing conduct of the jury trial	Published to bench and bar for comment

Chart 3.3.1, cont'd.