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## Staff:

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

- \* Term expired 1-1-98
- \*\* Resigned 6-98
- + Term expired 6-30-98
- ++ Appointed 6-30-98

## Legal Authorization:

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

**Civil**

**Procedural**

**Rules**

**Committee**

Suite 700  
5035 Ritter Road  
Mechanicsburg, PA 17055  
(717) 795-2110  
e-mail [cprc@courts.state.pa.us](mailto:cprc@courts.state.pa.us)

## 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.

## 1997 Activities

The Civil Procedural Rules Committee held four meetings in 1997 as follows:

January	Pittsburgh
April	Philadelphia
June	Pittsburgh
September	Pittsburgh

In addition, a subcommittee met four times by conference call to develop proposed rules governing liens of verdicts and judgments and amendments to rules governing revival of judgments.

The committee continued to work on projects begun in prior years. Principal among these was Recommendation No. 142 relating to service of original process. In addition, the committee's 1997 agenda included such topics as technology as affecting civil procedure, court-annexed alternative dispute resolution techniques, minors as parties, juries and jurors, and 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

The Civil Procedural Rules Committee continues to publish electronically its proposed recommendations as well as those new rules and amendments promulgated by the Supreme Court and the schedule of amendments' effective dates. These publications can be found on the home page of the Administrative Office of Pennsylvania Courts at <http://www.courts.state.pa.us> under "Supreme Court Committees." Comments regarding the Web page or any of the amendments may be sent to the committee at [cprc@courts.state.pa.us](mailto:cprc@courts.state.pa.us).

## 1997 Amendments to the Rules of Civil Procedure

The Supreme Court acted upon several committee recommendations in 1997, 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 No. 130: Voir Dire** Added new Rule 220.1 specifying, as a minimum, the

information which the parties should be able to obtain through voir dire. The rule does not, however, require a particular manner of voir dire. Promulgated August 14, 1997, effective January 1, 1998.

**Recommendation No. 131: Production of Documents and Things; Entry Upon Property** Rescinds Rule 4009 governing production of documents and things and entry upon land and replaces it with a new chapter of rules, Rule 4009.1 *et seq.* The new chapter provides for two subchapters, one for each topic.

New Rule 4009.1 is derived from former Rule 4009(a) and contains general provisions describing production of documents and things. New Rules 4009.11 and 4009.12 provide a detailed procedure for requesting documents and things from a party. New Rules 4009.21 through 4009.27 contain a new procedure to subpoena documents and things from a person not a party to an action.

New Rule 4009.31 is also derived from present Rule 4009(a) and contains general provisions describing entry upon land. New Rule 4009.32 provides a procedure to request entry upon land of a party, and new Rule 4009.33 provides a motion procedure for entry upon land of a person not a party to an action.

Promulgated April 7, 1997, effective July 1, 1997.

**Recommendation No. 134: Compulsory Arbitration** Amends 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. The revision of subdivision (b) requires the admission into evidence of specified documents if the procedure of the rule is followed and broadens the categories of such evidence to include business and governmental records (subdivision (b)(1)(ii)) and expert reports and qualifications (subdivision (b)(1)(iv)).

New subdivision (b)(4) continued the prior practice that a party may subpoena for attendance at the hearing a person whose testimony is waived by the rule. A new sentence was added imposing on the party issuing the subpoena the payment of reasonable fees and costs of the person subpoenaed to testify, including a reasonable expert witness fee if applicable. This sentence evoked a dissenting statement by Mr. Justice Zappala, joined by Mr. Justice Castille.

Promulgated September 5, 1997, effective January 1, 1998.

**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 continued 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 the 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 following rules governing the **abolition of special actions** were rescinded as obsolete: Rules 1480 and 3249 (attachment) and Rules 1481 and 3250 (arrest before and after judgment).

Promulgated March 5, 1997, effective July 1, 1997.

**Recommendation No. 137: Discovery** Broadens Rule 4011(c) to refer to Rules 4003.1 through 4003.6, thereby encompassing all of the concepts of those rules. The rule was previously incomplete since Rules 4003.1 through 4003.6 governing the scope of discovery refer to

other matters as well as privilege. Promulgated March 5, 1997, effective July 1, 1997.

**Recommendation No. 139: Sheriff's Interpleader** Continues the process of updating the rules of civil procedure in light of JARA. The rules affected by this recommendation, were Rules 3201 through 3216 governing sheriff's interpleader. Promulgated April 8, 1997, effective July 1, 1997.

**Recommendation No. 140: Delay Damages and Post-Trial Practice** Amendment to Rule 238(c)(3)(I) to prohibit the entry of judgment until disposition of a pending motion for delay damages by order of court has been made, by *praecipe* pursuant to revised Rule 238(c)(2) or by other resolution. Under Rule 227.4, a party may enter judgment upon a verdict or decision if a motion for post-trial relief is not decided within a 120-day period. One Court of Common Pleas ruled that the entry of judgment under Rule 227.4 prior to the disposition of an unop-posed motion for delay damages under Rule 238 precludes the award of such damages. Recommendation 140 was proposed to avoid this unintended result. Promulgated September 24, 1997, effective January 1, 1998.

**Recommendation 140: Pre-Trial Practice** Affects rules in three areas of civil procedure. Rule 1023 governing the signing of pleadings has been broadened to include other legal papers, to expand the certification by the signature that the document is submitted in good faith and to provide for sanctions for a bad faith violation of the rule. New Rules 212.1 and 212.2 have added mandatory provisions governing pre-trial proceedings in a civil action to be tried by jury. The new rules require the filing of a pre-trial statement and specify its content. New Rule 4003.7 places under the control of the court the discovery of information regarding net worth when there is a claim for punitive damages.

The recommendation came about when, on January 17, 1997, the Supreme Court suspended the procedural provisions of Act No. 135 of 1996 amending the Health Care Services

Malpractice Act. The Order of Suspension further directed the committee to consider certain matters contained in the suspended portions of the act.

Promulgated August 11, 1997, effective December 1, 1997.

*Recommendations Published to Bench and Bar*

**Recommendation No. 142: Service of Original Process** Proposes two major revisions to the rules of civil procedure governing service of original process. First, service could be made in all actions by a competent adult who is not a party as well as by the sheriff. In effect, the recommendation would extend throughout the Commonwealth the practice under Rule 400.1 which is presently limited to Philadelphia. Second, service by United States mail, presently of limited application under the rules, would be extended to all actions as well.

**Recommendation No. 143: Physical and Medical Examination of Persons** Proposes to amend Rule 4010 so that psychologists as well as physicians would be authorized to make examinations, and to provide certain protections to the parties facing examination. These protections include the right to have counsel or another representative present at the examination, the right to make a stenographic or audio recording of the examination, and a limitation upon the examiner's interrogation of the person to be examined.

In addition, proposed new Rule 4010.1 provides 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."

**Recommendation No. 144: Pleading** Proposes to amend Rules 1019 and 1033. Amendment to Rule 1019 would add new subdivision

(l) providing that "theories of negligence may be averred generally." Under this system of pleading, factual detail would be revealed in discovery proceedings.

Amendment to Rule 1033 proposes the addition of new subdivision (b), providing for the substitution of a party and the relation back of that substitution "to the date of the commencement of the action." The amendment would clarify two situations. First, new subdivision (b)(1) is directed solely to the instance when the wrong party has been sued and would allow substitution of the correct party under specified circumstances. Second, new subdivision (b)(2) provides for the substitution of the personal representative when the plaintiff unwittingly sues a defendant who is deceased or when the named defendant dies after the suit was commenced.

**Recommendation No. 145: Rule 3101 et seq. (JARA Amendments)** Recommendation No. 145 virtually completes the technical revision of the rules of civil procedure in light of JARA. The nature of the amendments is set forth under Recommendations Nos. 136 and 139 adopted by the Supreme Court during 1997 and discussed above.

**Recommendation No. 146: Filing Copies; Service by Facsimile Transmission** Adds 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.

The note makes clear that the proposed rule is concerned with the filing of copies of documents and does not authorize the filing of documents by "fax."

In addition, proposed amendment of Rules 440 and 1035 provides 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.

## Continuing Responsibilities

The Judicial Code and the JARA have provided the committee with the basis for much of its work since 1978. During 1997 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 will finally 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 [cprc@courts.state.pa.us](mailto:cprc@courts.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
131	New Rule 4009.1 et seq. governing production of documents and things and entry upon land	Promulgated 4-7-97, effective 7-1-97
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	Superseded by Recommendation 142
134	Amendment of Rule 1305 governing compulsory arbitration	Promulgated 9-5-97, effective 1-1-98
135	Promulgation of Rule 3276 et seq. governing deficiency judgments	Promulgated 12-6-96, effective 1-1-97
136	Technical amendment (JARA) of Rules 3001 through 3011 and Rules 3160 through 3190	Promulgated 3-5-97, effective 7-1-97
137	Amendment of Rule 4011 governing discovery	Promulgated 3-5-97, effective 7-1-97
138	Amendment of Rule 1303 governing compulsory arbitration	Pending before Court
139	Technical Amendment (JARA) of Rule 3201 et seq. governing sheriff's interpleader	Promulgated 4-8-97, effective 7-1-97
140	Amendment of Rule 238 governing damages for delay	Promulgated 9-24-97, effective 1-1-98
141	Promulgation of Rules 212.1, 212.2, 212.3 and 4003.7; amendment of Rule 1023	Promulgated 8-11-97, effective 12-1-97
142	Amendment of Rule 400 et seq. governing service of original process	Pending in committee

continued...

Table 3.3.1

Status of Recommendations, continued		
Recommendation	Subject	Status
143	Amendment of Rule 4010 governing physical and mental examination of persons; proposed Rule 4010.1 governing evaluation of earning capacity	Pending before Court
144	Amendment of Rule 1033 governing amendment of pleadings	Pending before Court
145	Technical Amendment (JARA) of Rule 3101 et seq. governing enforcement of judgments for the payment of money; amendment of the note to Rule 4009.22(a)	Pending before Court
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	Pending before Court

Table 3.3.1, contd.