

Explanatory Comment

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I. Statewide Practice of Law

The primary obstacle to the statewide practice of law has been the inability of lawyers to learn how each court of common pleas actually operates, particularly with respect to pre-trial applications. New Rules 239.1 through 239.8 and the amendment to Rule 239 adding new subdivision (c)(7) will eliminate this obstacle through three requirements: (1) the promulgation of local rules which describe the steps that litigants must take to have pre-trial matters decided, (2) the use of a standardized numbering system for the local rules, and (3) the publication of the local rules on the web site of the Administrative Office of Pennsylvania Courts (AOPC).

The new rules enable a litigant to obtain the details of a local practice from the AOPC web site by referring to the particular county and the number of the local rule for a specific procedure. For example, new Rule 239.3(c) provides that a court may require any motion relating to discovery to include a certification that counsel has conferred with all interested parties in order to resolve the matter without court action. A common pleas court, which requires such certification, must promulgate a local rule, numbered Local Rule 208.2(e), describing its requirement. Consequently, a litigant can learn from the AOPC web

site whether a particular court has promulgated Local Rule 208.2(e) and, if so, the requirements of that rule.

These new rules of civil procedure do not change the practice and procedure relating to pre-trial applications. They are directed to the courts of common pleas which are required to promulgate local rules describing their local practices.

II. Preliminary Objections, Motions for Judgment on the Pleadings and Motions for Summary Judgment

New Rules 239.5, 239.6 and 239.7 impose identical requirements upon every court of common pleas to promulgate local rules which describe the court's procedures for the disposition of preliminary objections (Local Rule 1028(c)), motions for judgment on the pleadings (Local Rule 1034(a)) and motions for summary judgment (Local Rule 1035.2(a)). These local rules must set forth the manner in which preliminary objections and motions for judgment on the pleadings and summary judgment are scheduled, argued and decided. They may impose various requirements including the filing of briefs.

Practice and procedure under the rules of civil procedure governing preliminary objections and motions for judgment on the pleadings or summary judgment remain unchanged.

III. Petitions

Petitions continue to be governed by Pa.R.C.P. 206.1 et seq. Amendments to these rules affect two aspects of petition practice.

First, the scope of the petition rules is set forth in new subdivision (a) of Rule 206.1 which defines the term "petition". As used in these rules governing petition and motion practice, "petition" means an application to open a default judgment or a judgment of non pros and any other application to the court which is designated by local rule, numbered Local Rule 206.1(a), to be governed by the petition rules, Pa.R.C.P. No. 206.1 et seq.

Second, petitions proceed pursuant to a rule to show cause. New Rule 239.2(b) requires every court to promulgate a local rule, numbered Local Rule 206.4(c), which describes the court's procedures for the issuance of a rule to show cause.

IV. Motions

a. Scope and form

New Rule 208.1(a) provides that a motion is any application to the court for an order sought in a civil action or proceeding other than those matters described in Rule 208.1(b)(1) and (2). Examples of excluded matters include preliminary objections, motions for judgment on the pleadings and summary judgment, petitions, motions for special relief and motions for post-trial relief. In addition, the following actions or proceedings are also excluded from operation of the new motion rules: asbestos litigation, actions in replevin, class actions, family law actions and Orphans' Court proceedings.

New Rule 208.2 sets forth very basic form and content requirements for motions. In addition, new Rule 239.3 authorizes the local courts to impose three specific requirements:

1. New Rule 239.3(a) permits a court to promulgate a local rule, numbered Local Rule 208.2(c), requiring that the motion set forth the applicable authority.
2. New Rule 239.3(b) permits a court to promulgate a local rule, numbered Local Rule 208.2(d), imposing a certification requirement for motions that are presented as uncontested.
3. New Rule 239.3(c) permits a court to promulgate a local rule, numbered Local Rule 208.2(e), setting forth a requirement that any motion relating to discovery include a certification that counsel has conferred with all interested parties in order to resolve the matter without court action.

b. Alternative procedures

New Rule 208.3 provides two approaches to the disposition of a motion. First, subdivision (a) states that, except as provided by subdivision (b), a motion shall be considered initially by the court without written responses or briefs. New Rule 239.3(d) requires every court to promulgate a local rule, numbered Local Rule 208.3(a), describing the local court procedure governing motions under Rule 208.3(a).

Second, subdivision (b) of Rule 208.3 provides that a court by local rule, numbered Local Rule 208.3(b), may require that a response be filed to the types of motions identified in the local rule and impose briefing requirements. In other words, motions are governed by the simplified procedure of Rule 208.3(a) except for those types of motions which the common pleas court has designated by local rule to be governed by the procedure of Rule 208.3(b) in which responses and briefs may be required.

c. Disposition of motions

New Rule 208.4 governs motions filed pursuant to either Rule 208.3(a) or Rule 208.3(b). It provides that at the initial consideration of the motion, the court may enter an order that disposes of the motion or an order that “sets forth the procedures the court will use for deciding the motion”. While not intending to limit the procedural options that a court might employ, Rule 208.4(a)(2) catalogs six procedures for use in deciding the motion which might be included in the court’s order.

A court may decide that a particular motion is best resolved through a rule to show cause procedure. Subparagraph (iv) of Rule 208.4(a)(2) provides for this option and Rule 208.4(b) sets forth the procedure.

V. Additional Provisions

The following new rules of civil procedure address the obligation of the courts of common pleas to promulgate specific local rules.

a. Pleadings and other legal papers

New Rule 239.1(a) allows a court to promulgate a local rule, numbered Local Rule 205.2(a), which imposes requirements governing the physical characteristics of pleadings and other legal papers. Subdivision (b) of the rule allows a court to promulgate a local rule, numbered Local Rule 205.2(b), which requires pleadings and other legal papers to be accompanied by a cover sheet in the form set forth in the local rule.

b. Briefs

New Rule 239.4 permits a court to promulgate a local rule numbered Local rule 210, imposing requirements governing the form and content of a brief.

VI. Effective Date

New Rule 239.8 states that the local rules required by Rules 239.2, 239.3, 249.5, 239.6, and 239.7 shall be promulgated not later than nine months following the date of the Order of the Supreme Court promulgating the rule.