

SUPREME COURT OF PENNSYLVANIA

NOTICE OF PROPOSED RULEMAKING

Proposed New Pa.R.J.A. 104-115; Rescission of Pa.R.Civ.P. 101-104, 106-108, & 127-153; Amendment of Pa.R.Civ.P. 126, Pa.R.O.C.P. 1.2, Pa.R.Crim.P. 101, Pa.R.J.C.P. 101 & 1101, Pa.R.A.P. 107 & 903, Pa.R.Civ.P.M.D.J. 204, Pa.R.E. 101

A proposal is being considered for the proposed adoption of amendment of Pennsylvania Rules of Judicial Administration 104-115, the rescission of Pennsylvania Rules of Civil Procedure 101-104, 106-108, and 127-153, and the amendment of Pennsylvania Rule of Civil Procedure 126, Pennsylvania Rule of Orphans' Court Procedure 1.2, Pennsylvania Rule of Criminal Procedure 101, Pennsylvania Rules of Juvenile Court Procedure 101 and 1101, Pennsylvania Rules of Appellate Procedure 107 and 903, Pennsylvania Rule of Civil Procedure before Magisterial District Judges 204, and Pennsylvania Rule of Evidence 101 to establish and reference rules of construction for the Court's procedural and evidentiary bodies of rules for the reasons set forth in the accompanying publication report. Pursuant to Pa.R.J.A. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any publication report accompanying the proposal has been prepared for the convenience of those using the rules. Such a report will neither constitute a part of the rules nor be officially adopted by the Supreme Court.

Additions to the text of the proposal are bolded and underlined; deletions to the text are bolded and bracketed.

All interested persons are invited to submit comments, suggestions, or objections in writing to:

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All communications in reference to the proposal should be received by **November 1, 2021**. E-mail is the preferred method for submitting comments,

suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. Receipt of all submissions will be acknowledged.

Pennsylvania Rules of Judicial Administration
[These are entirely new rules.]

Rule 104. Principles of Construction.

In the construction of procedural or evidentiary rules adopted by the Supreme Court, the principles set forth in Rules 105 to 115 shall be observed, unless the application of such principles would result in a construction inconsistent with the manifest intent of the Supreme Court.

Rule 105. Number. Tense.

The singular shall include the plural, and the plural, the singular. Words used in the past or present tense shall include the future.

Rule 106. Words and Phrases.

- (a) Words and phrases shall be construed according to rules of grammar and according to their common and approved usage; but technical words and phrases and such others as have acquired a peculiar and appropriate meaning or as are expressly defined by rule shall be construed according to such peculiar and appropriate or express meaning or definition.
- (b) General words shall be construed to take their meanings and be restricted by preceding particular words.

Comment: A word or phrase's common meaning may be discerned through examination of its dictionary definition and its legal meaning may be gleaned from its use in the *corpus juris*. See *Commonwealth v. Wardlaw*, 249 A.3d 937, 947 (Pa. 2021).

Rule 107. Computation of Time.

- (a) **Days.** When any period of time is referred to in any rule, such period, except as otherwise provided in subdivisions (c) and (d), shall be computed to exclude the first and include the last day of such period.
- (b) **Omitted Days.** Whenever the last day of any such period shall fall on Saturday or Sunday, or on any day made a legal holiday by the laws of this Commonwealth or of the United States, such day shall be omitted from the computation.

- (c) **Successive Weeks.** Whenever in any rule providing for the publishing of notices, the phrase “successive weeks” is used, weeks shall be construed as calendar weeks. The publication upon any day of such weeks shall be sufficient publication for that week, but at least five days shall elapse between each publication. At least the number of weeks specified in “successive weeks” shall elapse between the first publication and the day for the happening of the event for which publication shall be made.
- (d) **Months.** Whenever in any rule the lapse of a number of months after or before a certain day is required, such number of months shall be computed by counting the months from such day, excluding the calendar month in which such day occurs, and shall include the day of the month in the last month so counted having the same numerical order as the day of the month from which the computation is made, unless there are not so many days in the last month so counted, in which case the period computed shall expire with the last day of such month.

Rule 108. Construction of Rules. Intent of Supreme Court Controls.

- (a) The object of all interpretation and construction of rules is to ascertain and effectuate the intention of the Supreme Court.
- (b) Every rule shall be construed, if possible, to give effect to all its provisions. When the words of a rule are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.
- (c) When the words of a rule are not explicit, the intention of the Supreme Court may be ascertained by considering, among other matters:
 - (1) precedent of the Supreme Court interpreting the current rule;
 - (2) the commentary accompanying the rule;
 - (3) the rulemaking history;
 - (4) other procedures governing the same or similar subjects;
 - (5) the practice followed under the rule; and
 - (6) the consequences of a particular interpretation.

Comment: For “commentary accompanying the rule,” see Pa.R.J.A. 103, Comment. Concerning subdivision (c)(3), consideration of the rulemaking history may include the occasion and necessity for a rule, circumstances under which it was promulgated, prior practice, and the objective to be attained. Such information may be found in Rules Committees’ reports. See *id.* Statements contained in these reports have not been adopted by the Supreme Court and should only be consulted for the limited purpose of understanding the history of a rule. For subdivision (c)(6), see Pa.R.J.A. 109 (Presumptions in Ascertaining the Intent of the Supreme Court).

Rule 109. Presumptions in Ascertaining the Intent of the Supreme Court.

Ascertaining the Supreme Court’s intention in the adoption or amendment of a rule may be guided by the following presumptions among others:

- (a) The Supreme Court does not intend a result that is absurd, impossible of execution or unreasonable;
- (b) The Supreme Court intends the entire rule or chapter of rules to be effective and certain;
- (c) The Supreme Court does not intend to violate the Constitution of the United States or of this Commonwealth;
- (d) If the Supreme Court has construed the language used in a rule or statute, the Supreme Court in promulgating a rule on the same subject matter which employs the same language intends the same construction to be placed upon such language;
- (e) The Supreme Court intends to favor the public interest as against any private interest; and
- (f) No rule shall be construed to confer a right to trial by jury where such right does not otherwise exist.

Rule 110. Titles, Conditions, Exceptions, and Headings.

- (a) The title or heading of a rule may be considered in construing the rule.
- (b) Conditions shall be construed to limit rather than to extend the operation of the clauses to which they refer.
- (c) Exceptions expressed in a rule shall be construed to exclude all others.

- (d) The title or heading prefixed to a chapter of rules shall not be considered to control but may be used in construing the rules.

Rule 111. Rules in Derogation of the Common Law.

The principle that laws in derogation of the common law are to be strictly construed, shall have no application to the rules promulgated by the Supreme Court.

Rule 112. Rules *In Pari Materia*.

Rules or parts of rules are *in pari materia* when they relate to the same proceedings or class of proceedings. Rules *in pari materia* shall be construed together, if possible, as one rule or one chapter of rules.

Rule 113. Particular Controls General.

Whenever a general provision in a rule shall be in conflict with a particular provision in the same or another rule, the two shall be construed, if possible, so that effect may be given to both. If the conflict between the two provisions is irreconcilable, the particular provisions shall prevail and shall be construed as an exception to the general provision, unless the general provision shall be promulgated later and it shall be the manifest intention of the Supreme Court that such general provision shall prevail.

Rule 114. Construction of Rule Amendments.

- (a) **Textual Indicators.** Amended text indicated by the text in bold font within brackets shall be omitted, and the text in bold font and underscored shall be read as part of the rule.
- (b) **Amendments.** Whenever a rule or part of a rule is amended, the amendment shall be construed to merge into the original rule, become a part thereof, and replace the part amended. The remainder of the original rule and amendment shall be read together and viewed as one rule promulgated at one time; but the portions of the rule which were not altered by the amendment shall be construed as effective from the time of their original promulgation and the new provisions shall be construed as effective only from the date when the amendment became effective.

- (c) **Merger of Subsequent Amendments.** Whenever a rule has been more than once amended, the latest amendment shall be read into the original rule as previously amended and not into such rule as originally promulgated.

Rule 115. Procedures Inconsistent with Rules.

Procedures set forth in statute or local rule shall be inapplicable to the extent that they are inconsistent with rules prescribed by the Supreme Court governing proceedings on the same subject matter.

Comment: See Pa. Const. art. V, § 10(c); 42 Pa.C.S. § 1722(a)(1); see also Pa.R.J.A. 103(d)(2); *Appeal of Gibbons*, 104 Pa. 587, 591 (1884) (court of common pleas cannot adopt rules inconsistent with Supreme Court rules).

Pennsylvania Rules of Civil Procedure

[Rule 101. Principles of Interpretation.

In the construction of any rule, the principles set forth in Rules 102 to 108 shall be observed, unless the application of such principles would result in a construction inconsistent with the manifest intent of the Supreme Court.

Rule 102. Number. Gender. Tense.

The singular shall include the plural, and the plural, the singular. Words used in the past or present tense shall include the future.

Rule 103. Words and Phrases.

- (a) Words and phrases shall be construed according to rules of grammar and according to their common and approved usage; but technical words and phrases and such others as have acquired a peculiar and appropriate meaning or as are expressly defined by rule shall be construed according to such peculiar and appropriate or express meaning or definition.**
- (b) General words shall be construed to take their meanings and be restricted by preceding particular words.**

Rule 104. Numerals.

The Roman numerals and Arabic numerals shall be deemed parts of the English language.]

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[Rule 106. Computation of Time.

- (a) When any period of time is referred to in any rule, such period in all cases, except as otherwise provided in Rules 107 and 108, shall be so computed as to exclude the first and include the last day of such period.**

- (b) Whenever the last day of any such period shall fall on Saturday or Sunday, or on any day made a legal holiday by the laws of this Commonwealth or of the United States, such day shall be omitted from the computation.

Rule 107. Time. Publication for Successive Weeks.

Whenever in any rule providing for the publishing of notices, the phrase “successive weeks” is used, weeks shall be construed as calendar weeks. The publication upon any day of such weeks shall be sufficient publication for that week, but at least five days shall elapse between each publication. At least the number of weeks specified in “successive weeks” shall elapse between the first publication and the day for the happening of the event for which publication shall be made.

Rule 108. Time. Computation of Months.

Whenever in any rule the lapse of a number of months after or before a certain day is required, such number of months shall be computed by counting the months from such day, excluding the calendar month in which such day occurs, and shall include the day of the month in the last month so counted having the same numerical order as the day of the month from which the computation is made, unless there are not so many days in the last month so counted, in which case the period computed shall expire with the last day of such month.]

Rule 126. [Liberal Construction and Application of Rules] Purpose and Construction.

- (a) The rules shall be liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding to which they are applicable. The court at every stage of any such action or proceeding may disregard any error or defect of procedure which does not affect the substantial rights of the parties.

- (b) In the construction of the Pennsylvania Rules of Civil Procedure, the principles set forth in Pa.R.J.A. 104 to 115 shall be observed.

Comment: Former Pa.R.C.P. 101-104, 106-108, and 127-153 were rescinded and replaced as follows:

<u>Subject</u>	<u>Former Rule</u>	<u>Current Rule</u>
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<u>Principles</u>	<u>Pa.R.C.P. 101</u>	<u>Pa.R.J.A. 104</u>
<u>Number/Tense</u>	<u>Pa.R.C.P. 102</u>	<u>Pa.R.J.A. 105</u>
<u>Words/Phrases</u>	<u>Pa.R.C.P. 103</u>	<u>Pa.R.J.A. 106</u>
<u>Numerals</u>	<u>Pa.R.C.P. 104</u>	--
<u>Comp Time</u>	<u>Pa.R.C.P. 106</u>	<u>Pa.R.J.A. 107(a)-(b)</u>
<u>Time - Weeks</u>	<u>Pa.R.C.P. 107</u>	<u>Pa.R.J.A. 107(c)</u>
<u>Time - Months</u>	<u>Pa.R.C.P. 108</u>	<u>Pa.R.J.A. 107(d)</u>
<u>Court Intent</u>	<u>Pa.R.C.P. 127</u>	<u>Pa.R.J.A.108</u>
<u>Presumptions</u>	<u>Pa.R.C.P. 128</u>	<u>Pa.R.J.A.109</u>
<u>Titles</u>	<u>Pa.R.C.P. 129</u>	<u>Pa.R.J.A.110</u>
<u>Common Law</u>	<u>Pa.R.C.P. 130</u>	<u>Pa.R.J.A.111</u>
<u><i>In Pari Materia</i></u>	<u>Pa.R.C.P. 131</u>	<u>Pa.R.J.A.112</u>
<u>Inconsistent</u>	<u>Pa.R.C.P. 133</u>	<u>Pa.R.J.A.115</u>
<u>Controls</u>	<u>Pa.R.C.P. 132</u>	<u>Pa.R.J.A.113</u>
<u>Amendatory</u>	<u>Pa.R.C.P. 152</u>	<u>Pa.R.J.A.114(b)</u>
<u>Merger</u>	<u>Pa.R.C.P. 153</u>	<u>Pa.R.J.A.114(c)</u>

[Rule 127. Construction of Rules. Intent of Supreme Court Controls.

- (a) The object of all interpretation and construction of rules is to ascertain and effectuate the intention of the Supreme Court.
- (b) Every rule shall be construed, if possible, to give effect to all its provisions. When the words of a rule are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.
- (c) When the words of a rule are not explicit, the intention of the Supreme Court may be ascertained by considering, among other matters:
 - (1) the occasion and necessity for the rule;
 - (2) the circumstances under which it was promulgated;
 - (3) the mischief to be remedied;
 - (4) the object to be attained;
 - (5) the prior practice, if any, including other rules and Acts of Assembly upon the same or similar subjects;

- (6) the consequences of a particular interpretation;
- (7) the contemporaneous history of the rule; and
- (8) the practice followed under the rule.

Rule 128. Presumptions in Ascertaining the Intent of the Supreme Court.

In ascertaining the intention of the Supreme Court in the promulgation of a rule, the courts may be guided by the following presumptions among others:

- (a) That the Supreme Court does not intend a result that is absurd, impossible of execution or unreasonable;
- (b) That the Supreme Court intends the entire rule or chapter of rules to be effective and certain;
- (c) That the Supreme Court does not intend to violate the Constitution of the United States or of this Commonwealth;
- (d) That if the Supreme Court has construed the language used in a rule or statute, the Supreme Court in promulgating a rule on the same subject matter which employs the same language intends the same construction to be placed upon such language;
- (e) That the Supreme Court intends to favor the public interest as against any private interest;
- (f) That no rule shall be construed to confer a right to trial by jury where such right does not otherwise exist.

Rule 129. Construction of Rules. Titles, Provisos, Exceptions and Headings. Use of Notes and Explanatory Comments.

- (a) The title or heading of a rule may be considered in construing the rule.
- (b) Provisos shall be construed to limit rather than to extend the operation of the clauses to which they refer.

- (c) Exceptions expressed in a rule shall be construed to exclude all others.
- (d) The title or heading prefixed to a chapter of rules shall not be considered to control but may be used in construing the rules.
- (e) A note to a rule or an explanatory comment is not a part of the rule but may be used in construing the rule.

Rule 130. Rules in Derogation of the Common Law.

The principle that laws in derogation of the common law are to be strictly construed, shall have no application to the rules promulgated by the Supreme Court.

Rule 131. Rules *in Pari Materia*.

Rules or parts of rules are *in pari materia* when they relate to the same proceedings or class of proceedings. Rules *in pari materia* shall be construed together, if possible, as one rule or one chapter of rules.

Rule 132. Particular Controls General.

Whenever a general provision in a rule shall be in conflict with a particular provision in the same or another rule, the two shall be construed, if possible, so that effect may be given to both. If the conflict between the two provisions is irreconcilable, the particular provisions shall prevail and shall be construed as an exception to the general provision, unless the general provision shall be promulgated later and it shall be the manifest intention of the Supreme Court that such general provision shall prevail.

Rule 133. Rules Inconsistent with Laws.

All laws shall be suspended to the extent that they are inconsistent with rules prescribed under the Constitution of 1968.

Official Note: See Article V, Section 10(c) of the Constitution of 1968 and Section 1722(a)(1) of the Judicial Code, 42 Pa.C.S. § 1722(a)(1).

Rule 152. Construction of Amendatory Rules.

Whenever a rule or part of a rule is amended, the amendment shall be construed to merge into the original rule, become a part thereof, and replace the part amended. The remainder of the original rule and amendment shall be read together and viewed as one rule promulgated at one time; but the portions of the rule which were not altered by the amendment shall be construed as effective from the time of their original promulgation and the new provisions shall be construed as effective only from the date when the amendment became effective.

Rule 153. Merger of Subsequent Amendments.

Whenever a rule has been more than once amended, the latest amendment shall be read into the original rule as previously amended and not into such rule as originally promulgated.]

Pennsylvania Rules of Orphans' Court Procedure

Rule 1.2. [Construction and Application of Rules] Purpose and Construction.

- (a) The Rules adopted by the Supreme Court regulating the practice and procedure of the Orphans' Court Divisions of this Commonwealth and the local rules adopted by such courts shall be liberally construed to secure the just, timely and efficient determination of every action or proceeding to which they are applicable. The court at every stage of any action or proceeding may disregard any error or defect of procedure that does not affect the substantive rights of the parties in interest.

- (b) **[The principles of interpretation and related matters set forth in Pa.R.C.P. Nos. 102 through 153 inclusive, with the exception of Pa.R.C.P. No. 126, shall apply to these Rules.] In the construction of the Pennsylvania Rules of Orphans' Court Procedure, the principles set forth in Pa.R.J.A. 104 to 115 shall be observed.**

Note: Rule 1.2(a) is identical to former Rule 2.1. Rule 1.2(b) is new.

[Explanatory] Comment: The Orphans' Court Division exercises equitable powers and applies equitable principles. *Estate of Hahn*, 369 A.2d 1290, 1291-92 (Pa. 1977); *Estate of Freihofer*, 174 A.2d 282, 284 (Pa. 1961).

[The question frequently arises as to the effect and use of the notes and explanatory comments which are issued with the Orphans' Court Rules. Notes and explanatory comments are not part of the Rules but they may be used in construing the Rules. The Supreme Court of Pennsylvania has stated in *Laudenberger v. Port Authority of Allegheny County*, 436 A.2d 147, 151 (Pa. 1981):

These explanatory notes have not been officially adopted or promulgated by this Court, nor do they constitute part of the rule. However, they indicate the spirit and motivation behind the drafting of the rule, and they serve as guidelines for understanding the purpose for which the rule was drafted.]

Pennsylvania Rules of Criminal Procedure

Rule 101. Purpose and Construction.

- (A) These rules are intended to provide for the just determination of every criminal proceeding.
- (B) These rules shall be construed to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay.
- (C) **[To the extent practicable, these rules shall be construed in consonance with the rules of statutory construction.] In the construction of the Pennsylvania Rules of Criminal Procedure, the principles set forth in Pa.R.J.A. 104 to 115 shall be observed.**

Comment

These rules were adopted under the Act of July 11, 1957, P. L. 819, 17 P. S. 2084 (Supp.), which was repealed by JARA, 42 P. S. § 20002(a), and replaced by 42 Pa.C.S. § 1722(a)(1).

Pennsylvania Rules of Juvenile Court Procedure

Rule 101. Purpose and Construction.

- (A) These rules are intended to provide for the just determination of every delinquency proceeding.
- (B) These rules establish uniform practice and procedure for courts exercising jurisdiction as provided in the Juvenile Act, 42 Pa.C.S. §§ 6301 *et seq.*, and shall be construed to secure uniformity and simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay.
- (C) These rules shall be interpreted and construed to effectuate the purposes stated in the Juvenile Act, 42 Pa.C.S. § 6301(b).
- (D) **[To the extent practicable, these rules shall be construed in consonance with the rules of statutory construction.] In the construction of the Pennsylvania Rules of Juvenile Court Procedure, the principles set forth in Pa.R.J.A. 104 to 115 shall be observed.**

Rule 1101. Purpose and Construction.

- (A) These rules are intended to provide for the just determination of every dependency proceeding.
- (B) These rules establish uniform practice and procedure for courts exercising jurisdiction as provided in the Juvenile Act, 42 Pa.C.S. §§ 6301 *et seq.*, and shall be construed to secure uniformity and simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay.
- (C) These rules shall be interpreted and construed to effectuate the purposes stated in the Juvenile Act, 42 Pa.C.S. § 6301(b).
- (D) **[To the extent practicable, these rules shall be construed in consonance with the rules of statutory construction.] In the construction of Pennsylvania Rules of Juvenile Court Procedure, the principles set forth in Pa.R.J.A. 104 to 115 shall be observed.**

Pennsylvania Rules of Appellate Procedure

Rule 107. [Rules of] Construction of Rules.

[Chapter 19 of Title 1 of the *Pennsylvania Consolidated Statutes* (rules of construction) so far as not inconsistent with any express provision of these rules, shall be applicable to the interpretation of these rules and all amendments hereto to the same extent as if these rules were enactments of the General Assembly.] In the construction of the Pennsylvania Rules of Appellate Procedure, the principles set forth in Pa.R.J.A. 104 to 115 shall be observed.

[Official Note: The effect of this rule is substantially the same as Pa. R.Civ.P. 76 to 153, which were in turn patterned after the Statutory Construction Act. See also former Commonwealth Court Rules 120 and 121.]

Rule 903. Time for Appeal.

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Official Note:

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Rule of Appellate Procedure 107 incorporates by reference the rules of construction [of the Statutory Construction Act of 1972, 1 Pa.C.S. §§ 1901-1991] in the Pennsylvania Rules of Judicial Administration, Pa.R.J.A. 104-115. See [1 Pa.C.S. § 1908] Pa.R.J.A. 107(a)-(b) relating to computation of time for the rule of construction relating to (1) the exclusion of the first day and inclusion of the last day of a time period and (2) the omission of the last day of a time period which falls on Saturday, Sunday or legal holiday.

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**Pennsylvania Rules of Civil Procedure Governing Actions and Proceedings
Before Magisterial District Judges**

Rule 204. Purpose and [Intent of Rules] Construction.

- (A)** The purpose and intent of these rules is to provide a complete and exclusive procedure for every action or proceeding to which they are applicable.
- (B)** **In the construction of the Pennsylvania Rules of Civil Procedure Governing Actions and Proceedings Before Magisterial District Judges, the principles set forth in Pa.R.J.A. 104 to 115 shall be observed.**

[Official Note] Comment: This rule sets forth the general purpose and intent to make mandatory the use of the procedures prescribed in these rules.

Pennsylvania Rules of Evidence

Rule 101. Scope; Adoption and Citation; Construction.

- (a) **Scope.** These rules of evidence govern proceedings in all courts of the Commonwealth of Pennsylvania's [u]Unified [j]Judicial [s]System, except as otherwise provided by law.
- (b) **Adoption and Citation.** These rules of evidence are adopted by the Supreme Court of Pennsylvania under the authority of Article V § 10(c) of the Constitution of Pennsylvania, adopted April 23, 1968. They shall be known as the Pennsylvania Rules of Evidence and shall be cited as "Pa.R.E."
- (c) **Construction.** In the construction of the Pennsylvania Rules of Evidence, the principles set forth in Pa.R.J.A. 104 to 115 shall be observed.

Comment

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RULES COMMITTEES

PUBLICATION REPORT

Proposed New Pa.R.J.A. 104-115; Rescission of Pa.R.Civ.P. 101-104, 106-108, & 127-153; Amendment of Pa.R.Civ.P. 126, Pa.R.O.C.P. 1.2, Pa.R.Crim.P. 101, Pa.R.J.C.P. 101 & 1101, Pa.R.A.P. 107 & 903, Pa.R.Civ.P.M.D.J. 204, Pa.R.E. 101

A proposal is being considered for the proposed adoption of Pennsylvania Rules of Judicial Administration 104-115, rescission of Pennsylvania Rules of Civil Procedure 101-104, 106-108, and 127-153, and amendment of Pennsylvania Rule of Civil Procedure 126, Pennsylvania Rule of Orphans' Court Procedure 1.2, Pennsylvania Rule of Criminal Procedure 101, Pennsylvania Rules of Juvenile Court Procedure 101 and 1101, Pennsylvania Rules of Appellate Procedure 107 and 903, Pennsylvania Rule of Civil Procedure before Magisterial District Judges 204, and Pennsylvania Rule of Evidence 101 to establish and reference rules of construction for the Court's procedural and evidentiary bodies of rules.

This proposal was prompted by a suggestion for a uniform set of rules of construction placed either in the Rules of Judicial Administration or in each body of procedural rules. In general, this proposal involves the extracting the rules of construction from the Pennsylvania Rules of Civil Procedure and placing them in the Pennsylvania Rules of Judicial Administration. The proposal also includes corollary amendments to the various bodies of rules to reference the newly placed rules of construction.

Background

Procedural rules adopted by the Supreme Court have the force of statute. See, e.g., *Dombrowski v. City of Philadelphia*, 245 A.2d 238, 241 n. 4 (Pa. 1968). Procedural rules, like statutes, may be subject to interpretation based upon their language and the circumstances in which they apply. To guide the interpretation of rules, courts have relied upon rules of construction used for interpretation of statutes, see 1 Pa.C.S. §§ 1901-1957, to interpret procedural rules. See, e.g., *Commonwealth v. McClelland*, 233 A.3d 717 (Pa. 2020) (interpreting Pa.R.Crim.P.); *Commonwealth v. Wardlaw*, 249 A.3d 937 (Pa. 2021) (interpreting Pa.R.A.P.).

In 1939, rules of construction were added to the Pennsylvania Rules of Civil Procedure based largely on language contained in sections of the Statutory Construction Act of May 28, 1937, P.L. 1019, with modification to reflect their intended application to rules of court. Over time, the Statutory Construction Act, as well as the procedural rules of construction, have been amended to their present form. These rules of construction have guided the interpretation of the Rules of Civil Procedure. See, e.g.,

Bruno v. Erie Ins. Co., 106 A.3d 48 (Pa. 2014); *Terra Technical Services, LLC v. River Station Land, L.P.*, 124 A.3d 289 (Pa. 2015).

Many of the other bodies of rules have rules of construction of varying degree. The Rules of Criminal Procedure, Rules of Juvenile Court Procedure, and Rules of Appellate Procedure simply reference the “rules of statutory construction” and address the consequence of procedural defect. See Pa.R.Crim.P. 101; Pa.R.J.C.P. 101(D), 1101(D); Pa.R.A.P. 107. The Rules of Orphans’ Court Procedure incorporate by reference Pa.R.Civ.P. 102-153, but exclude Pa.R.Civ.P. 126. See Pa.R.O.C.P. 1.2. The Rules of Civil Procedure before Magisterial District Judges do not reference rules of construction, but do contain rules based upon Pa.R.Civ.P. 106 and 108 for the computation of time. See Pa.R.Civ.P.M.D.J. 203, Note. The Rules of Evidence do not reference rules of construction.

Proposal

In order to provide for uniform rules of construction for all procedural and evidentiary bodies of rules, it is proposed that the detailed rules of construction be removed from the Rules of Civil Procedure, revised if merited, and relocated to the Rules of Judicial Administration to logically follow the rules governing the rulemaking process. Having one set of rules of construction for all bodies of rules would permit readers to understand their application across all rules rather than a particular body of rules. Further, replicating the same rules of construction within each body of rules seemed unnecessarily duplicative and invited inconsistency in the application of identically worded rules. Therefore, it is further proposed that any rules of construction organic to a body of rules be removed with each body of rules thereafter containing a reference to the Rules of Judicial Administration concerning the rules of construction. Additionally, insofar as practicable, the title to the referral rule within each body of rules to the Rules of Judicial Administration would be retitled “Purpose and Construction.”

Not every rule of construction found in the Rules of Civil Procedure would be relocated to the Rules of Judicial Administration. Pa.R.Civ.P. 104 concerning Roman numerals and Arabic numerals being deemed parts of the English language would be omitted from the proposed rules of construction. Such an anachronistic provision appears unnecessary for the modern construction of judicial rules. There is a dearth of Pennsylvania cases litigating the meaning of numerals within the rules based simply on the fact that they are expressed as numbers rather than stated in English, e.g., “VII” v. “7” v. “seven.” While that may owe to the existence of Pa.R.Civ.P. 104 and 1 Pa.C.S. § 1904, it is submitted that any ambiguity may be resolved by the context in which the numerals are used and not whether numerals are or are not part of the English language. For example, “1/2” can be an expression of a mathematical operation or a date, which may be an ambiguity resolved by examining its context, but its existence cannot be ignored because Arabic numbers were used. The rejected need for such a

rule is exemplified by the discontinued use of the numero sign, *i.e.*, “No.,” in the citation of the rules.

Pa.R.Civ.P. 105 concerning bonds would remain in the Pennsylvania Rules of Civil Procedure because that rule is specific to civil proceedings. Application of that guidance to other bodies of rules may unintendedly conflict with existing provisions. See, *e.g.*, Pa.R.Crim.P. 525 (bail bond).

Consideration was given to whether the rules of construction should be further modified to improve readability and applicability to rules, as opposed to statutes. As observed, the Rules of Civil Procedure’s rules of construction were largely based on the rules of statutory construction. Therefore, there is merit in preserving the operative text to the extent feasible. This approach would allow the application of the statutory rules of construction to inform the application of the judicial rules of construction given that both are similarly worded. Further, this would maintain consistency with prior Court interpretations of rules citing the statutory rules of construction. Additionally, this consistency would reduce the complexity for the reader to understand and employ two different rules of construction.

Notwithstanding the goal of maintaining existing language, there were some aspects of the rules of construction that were revised to clarify their application. Any proposed revision to the existing language is described below with reference to the new Rule of Judicial Administration and the former Rule of Civil Procedure.

Pa.R.J.A. 104. Principles of Interpretation - Formerly Pa.R.Civ.P. 101

The title has been revised from “Principles of Interpretation” to “Principles of Construction” to reflect existing rule text. Additionally, “any rule” has been revised to specify that the rules of construction are only intended to apply to procedural or evidentiary rules adopted by the Court. Other rules adopted by the Court and rules adopted by other authorities may be subject to construction, but these rules are not mandated in that construction.

Pa.R.J.A. 105. Number. Tense. - Formerly Pa.R.Civ.P. 102

No revisions were made to the existing language. This rule differs from 1 Pa.C.S. § 1902 insofar as the provision regarding gender was removed from Pa.R.Civ.P. 102 in rulemaking dated April 12, 1999.

Pa.R.J.A. 106. Words and Phrases. - Formerly Pa.R.Civ.P. 103

A Comment has been added to the rule.

Pa.R.J.A. 107. Computation of Time. - Formerly Pa.R.Civ.P. 106, 107, and 108

This rule is a consolidation of Pa.R.Civ.P. 106-108 and reflects the Court's prior use of 1 Pa.C.S. § 1908 for the computation of time. *See, e.g., City of Philadelphia v. F.A. Realty Investors Corp*, 15 EAL 2021 (filed June 9, 2021) (granting petition for allowance of appeal, vacating the intermediate appellate court's order, and remanding for further proceeding after concluding petitioners filed a timely Pa.R.A.P. 1925(b) statement, citing 1 Pa.C.S. § 1908). The text of Pa.R.Civ.P.M.D.J. 203, which is largely reiterative of Pa.R.J.A. 107(a)-(b), (d), was retained in that body of rules so that unrepresented parties are not required to consult another body of rules for the computation of time.

Pa.R.J.A. 108. Construction of Rules. Intent of Supreme Court Controls. - Formerly Pa.R.Civ.P. 127

The factors that may be considered in determining the intention of the Supreme Court have been revised to include specific sources of information germane to rulemaking. A Comment has also been added to assist the reader and reference limits placed on certain sources.

Rule 109. Presumptions in Ascertaining the Intent of the Supreme Court. - Formerly Pa.R.Civ.P. 128

Stylistic revisions have been made, but the substance of Pa.R.Civ.P. 128 is preserved.

Rule 110. Titles, Conditions, Exceptions, and Headings. - Formerly Pa.R.Civ.P. 129

The term "provisos" has been replaced with "conditions" to reflect current rulemaking terminology. Additionally, reference to "use of notes and explanatory comments" has been removed from the title and rule. That reference can now be found at Pa.R.J.A. 107(c)(2).

Rule 111. Rules in Derogation of the Common Law. - Formerly Pa.R.Civ.P. 130

No revisions were made to the existing language.

Rule 112. Rules *In Pari Materia*. - Formerly Pa.R.Civ.P. 131

No revisions were made to the existing language.

Rule 113. Particular Controls General. - Formerly Pa.R.Civ.P. 132

No revisions were made to the existing language.

Rule 114. Construction of Rule Amendments - Formerly Pa.R.Civ.P. 152 & 153

This rule consolidates former Pa.R.Civ.P. 152 (Construction of Amendatory Rules) and 153 (Merger of Subsequent Amendments) as separate subdivisions. Subdivision (a) was added to describe the significance of textual indicators when reading amended rule text.

Rule 115. Procedures Inconsistent with Rules. - Formerly Pa.R.Civ.P. 133

This rule differs substantially from Pa.R.Civ.P. 133, which stated: “All laws shall be suspended to the extent they are inconsistent with rules prescribed under the Constitution of 1968.” As proposed, Pa.R.J.A. 114 is intended to assist the reader in the interpretation and application of the statewide procedural rules when there may be conflicting statutory procedures or local rules of procedure. The rule is not intended to serve as a separate and additional basis for the suspension of statutory procedures or local rules of procedure. Such authority exists independent of this rule. Notably, this rule references “procedures,” which is intended to exclude substantive rules of evidence that may be enacted by statute. See *Commonwealth v. Olivo*, 127 A.3d 769, 780 (Pa. 2015) (concluding the statutory rule of evidence does not violate the Court’s authority over procedural rules).

* * *

Also included are the proposed amendments of the procedural and evidentiary bodies of rules to reference the new Rules of Judicial Administration. All comments, concerns, and suggestions regarding this proposal are welcome.