

**SUPREME COURT OF PENNSYLVANIA
CIVIL PROCEDURAL RULES COMMITTEE**

NOTICE OF PROPOSED RULEMAKING

Proposed Amendment of Pa.R.Civ.P. 1023.1 and 1023.4

The Civil Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Pa.R.Civ.P. 1023.1 and 1023.4 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 report accompanying this proposal was prepared by the Committee to indicate the rationale for the proposed rulemaking. It will neither constitute a part of the rules nor be adopted by the Supreme Court.

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

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

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All communications in reference to the proposal should be received by **February 29, 2024**. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

By the Civil Procedural Rules Committee,

Maureen Murphy McBride
Chair

Rule 1023.1. Scope. Signing of Documents. Representations to the Court. Violation.

- (a) **Scope.** Rules 1023.1 through 1023.4 do not apply to disclosures and discovery requests, responses, objections, and discovery motions that are subject to the provisions of general rules.
- (b) **Signing of Documents.** Every pleading, written motion, and other paper directed to the court shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. This rule shall not be construed to suspend or modify the provisions of Rule 1024 or Rule 1029(e).
- (c) **Representations to the Court.** The signature of an attorney or **[pro se] self-represented** party constitutes a certificate that the signatory has read the pleading, motion, or other paper. By signing, filing, submitting, or later advocating such a document, the attorney or **[pro se] self-represented** party certifies that, to the best of that person's knowledge, information and belief, formed after an inquiry reasonable under the circumstances,
 - (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation[.];
 - (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification or reversal of existing law, or the establishment of new law[.];
 - (3) the factual allegations have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
 - (4) the denials of factual allegations are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.
- (d) **Violation.** If, after notice and a reasonable opportunity to respond, the court determines that subdivision (c) has been violated, the court **[may] shall**, subject to the conditions stated in Rules 1023.2 through 1023.4, impose an appropriate sanction upon any attorneys, law firms, and parties that have violated subdivision (c) or are responsible for the violation.

[Note: The court in its discretion at any stage of the proceedings may deny a motion for sanctions without hearing or argument.]

The grant or denial of relief (e.g., grant or denial of preliminary objections, motion for summary judgment or discovery application) does not, of itself, ordinarily warrant the imposition of sanctions against the party opposing or seeking the relief.

In most circumstances, a motion for sanctions with respect to factual allegations should be addressing whether there is evidentiary support for claims or defenses rather than whether there is evidentiary support for each specific factual allegation in a pleading or motion.

The inclusion in the rule of a provision for “an appropriate sanction” is designed to prevent the abuse of litigation. The rule is not a fee-shifting rule per se although the award of reasonable attorney’s fees may be an appropriate sanction in a particular case.

The provision requiring that a motion under this rule be filed before the entry of final judgment in the trial court is intended to carry out the objective of expeditious disposition and to eliminate piecemeal appeals. Where appropriate, such motions should be filed as soon as practicable after discovery of the violation.

The following provisions of the Judicial Code, 42 Pa.C.S., provide additional relief from dilatory or frivolous proceedings: (1) Section 2503 relating to the right of participants to receive counsel fees and (2) Section 8351 et seq. relating to wrongful use of civil proceedings.]

- (e) **Suspended Statute.** Section 8355 of the Judicial Code, 42 Pa.C.S. § 8355, is suspended absolutely, in accordance with the provisions of the Constitution of 1968, Article V, Section 10(c).

[Note:] Comment: The court in its discretion at any stage of the proceedings may deny a motion for sanctions without hearing or argument.

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Section 8355 of the Judicial Code provides for the certification of pleadings, motions, and other papers.

Historical Commentary

The following commentary is historical in nature and represents statements of the Committee at the time of rulemaking:

EXPLANATORY COMMENT—2003

I. Obligations under the rule

New Rule 1023.1 requires that a pleading, written motion or other paper directed to the court be signed. The signing, or the filing, submitting or later advocating, a document is a certification as described in the rule. A court may impose sanctions for violation of the certification. Thus the rule imposes the duty on the attorney or, if unrepresented, the party signing the document to satisfy himself or herself that there is a basis in fact and in law for the claim or defense set forth in the document.

Rule 1023.1, therefore, requires some prefiling inquiry into both the facts and the law to satisfy the affirmative duty imposed by the rule. However, this rule is not intended to chill an attorney's enthusiasm or creativity in pursuing factual or legal theories. The standard is one of reasonableness under the circumstances.

A court should avoid using the wisdom of hindsight and should test the signer's conduct by inquiring what was reasonable to believe at the time the pleading, motion, or other paper was submitted. What constitutes a reasonable inquiry depends on factors which may include

- how much time for investigation was available to the signer;
- whether the signer had to rely on a client for information as to the facts underlying the pleading, motion, or other paper;
- whether the pleading, motion, or other paper was based on a plausible view of the law; or
- whether the signer depended on forwarding counsel or another member of the bar.

This rule recognizes that sometimes a litigant may have good reason to believe that a claim or defense is valid but may need discovery, formal or informal, to gather and confirm the evidentiary basis for the claim or defense. If evidentiary support is not obtained after a reasonable opportunity for further investigation or discovery, the party has a duty under the rule not to persist with that contention. Rule 1023.1(c) does not require a formal amendment to pleadings for which evidentiary support is not obtained, but rather calls upon a litigant not thereafter to advocate such claims or defenses.

II. Practice under the rule

The rule leaves for resolution on a case-by-case basis, considering the particular circumstances involved, the question as to when Rule 1023.1 should be invoked. Ordinarily the written notice and demand for withdrawal or correction of the paper should be served promptly after the inappropriate paper is filed, and, if delayed too long, may be viewed as untimely. In other circumstances, it should not be served until the other party has had a reasonable opportunity for discovery. Given the “safe harbor” provisions discussed below, a party cannot delay invoking Rule 1023.1 until conclusion of the case (or judicial rejection of the offending contention).

Rule 1023.1 motions should not be made or threatened for minor, inconsequential violations of the standards prescribed by subdivision (c). They should not be employed as a discovery device or to test the legal sufficiency or efficacy of allegations in the pleadings; other motions are available for those purposes. Nor should Rule 1023.1 motions be prepared to emphasize the merits of a party's position, to exact an unjust settlement, to intimidate an adversary into withdrawing contentions that are fairly debatable, to increase the costs of litigation, to create a conflict of interest between attorney and client, or to seek disclosure of matters otherwise protected by the attorney-client privilege or the work-product doctrine. The court may defer its ruling (or its decision as to the identity of the persons to be sanctioned) until final resolution of the case in order to avoid immediate conflicts of interest and to reduce the disruption created if a disclosure

of attorney-client communications is needed to determine whether a violation occurred or to identify the person responsible for the violation.

The rule provides that requests for sanctions must be made as a separate motion, i.e., not simply included as an additional prayer for relief contained in another motion. The motion for sanctions cannot be filed until at least 28 days after service of a written notice and demand, upon the party whose conduct is claimed to violate the rule, that the offending document or portion of the document be withdrawn or appropriately corrected. If, during this period, the alleged violation is corrected, as by withdrawing (whether formally or informally) some allegation or contention, the motion may not be filed with the court. These provisions are intended to provide a type of “safe harbor” against motions under Rule 1023.1 in that a party will not be subject to sanctions under Rule 1023.1 on the basis of another party's motion unless, after having been served with the written notice and demand, it refuses to withdraw that allegation or contention or to acknowledge that it does not currently have evidence to support it. The timely withdrawal of an allegation or contention will protect a party against a motion for sanctions.

To stress the seriousness of a motion for sanctions and to define precisely the conduct claimed to violate the rule, the “safe harbor” period begins to run only upon service of the written notice and demand. In most cases, however, counsel should give informal notice to the other party, whether in person or by a telephone call or letter, of a potential violation before proceeding to prepare and serve the written notice and demand.

III. Sanctions

The rule does not attempt to enumerate the factors a court should consider in deciding whether to impose a sanction or what sanctions would be appropriate in the circumstances. The factors that a court may consider include the following:

- whether the improper conduct was willful or negligent;
- whether it was part of a pattern of activity or an isolated event;
- whether it infected the entire pleading or only one particular count or defense;
- whether the person has engaged in similar conduct in related litigation;
- whether it was intended to injure;
- what effect it had on the litigation process in time or expense;
- whether the responsible person is trained in the law;
- what amount is needed to deter that person from repetition in the same case; and
- what amount is needed to deter similar activity by other litigants.

The court has significant discretion in determining what sanctions, if any, should be imposed for a violation, subject to the principle that the sanctions should not be more

severe than reasonably necessary to deter repetition of the conduct by the offending person or comparable conduct by similarly situated persons.

There are two provisions for the award of attorney's fees and expenses. The first provision, Rule 1023.2(b), authorizes the court, if requested in a motion and if so warranted, to award to the prevailing party "the reasonable expenses and attorney's fees incurred in presenting or opposing the motion."

The second provision, Rule 1023.4(a)(2)(iii), however, authorizes the court, "if imposed on motion and warranted for effective deterrence", to order payment to the movant of "some or all of the reasonable attorney's fees and other expenses incurred as a direct result of the violation." Any such award to the movant, however, should not exceed the expenses and attorney's fees for the services directly and unavoidably caused by the violation of the certification requirement. If, for example, a wholly unsupported count is included in a multi-count complaint or counterclaim for the purpose of needlessly increasing the cost of litigation, any award of expenses should be limited to those directly caused by inclusion of the improper count, and not those resulting from the filing of the complaint or answer itself. The award should not provide compensation for services that could have been avoided by an earlier disclosure of evidence or an earlier challenge to the groundless claims or defenses. Moreover, partial reimbursement of fees may constitute a sufficient deterrent.

The sanction should be imposed on the persons--whether attorneys, law firms, or parties--who have violated the rule or who may be determined to be responsible for violation. The person signing, filing, submitting, or advocating a document has a nondelegable responsibility to the court and, in most situations, is the person to be sanctioned for a violation. Absent exceptional circumstances, a law firm is to be held also responsible when one of its partners, associates, or employees is determined to have violated the rule. Since such a motion may be filed only if the offending paper is not withdrawn or corrected within 28 days after service of the written notice and demand, it is appropriate that the law firm ordinarily be viewed as jointly responsible under established principles of agency.

Explicit provision is made for litigants to be provided notice of the alleged violation and an opportunity to respond before sanctions are imposed. Whether the matter should be decided solely on the basis of written submissions or should be scheduled for oral argument (or for evidentiary presentation) will depend on the circumstances. If the court imposes a sanction, it must, unless waived, indicate its reasons in a written order or on the record; a court is not required to explain its denial of a motion for sanctions.

Rule 1023.4. Sanctions.

(a) Nature of a Sanction.

(1) A sanction imposed for violation of Rule 1023.1 shall be limited to that which is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated.

[(2) Subject to the limitations in subdivision (b), the sanction may consist of, or include,

(i) directives of a nonmonetary nature, including the striking of the offensive litigation document or portion of the litigation document,

(ii) an order to pay a penalty into court, or,

(iii) if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.]

(2) Subject to the limitations in subdivision (b), a sanction imposed for violation of Rule 1023.1 shall consist of an award of costs and reasonable attorney's fees. The court may impose additional sanctions, which are sufficient to deter the repetition of such conduct or comparable conduct by others similarly situated, and may consist of, or include:

(i) directives of a nonmonetary nature, including the striking of the offending litigation document or portion of the litigation document; or

(ii) an order to pay a penalty into court.

(3) Except in exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

(b) Limitations on Monetary Sanctions.

(1) Monetary sanctions **[may] shall** not be awarded against a represented party for violation of Rule 1023.1(c)(2).

- (2) Monetary sanctions **[may] shall** not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.
- (c) **Requirements for Order.** When imposing sanctions, the court shall describe the conduct determined to be a violation of Rule 1023.1 and explain the basis for the sanction imposed.

Historical Commentary

The following commentary is historical in nature and represents statements of the Committee at the time of rulemaking:

EXPLANATORY COMMENT—2003

See Explanatory Comment following Rule 1023.1.

**SUPREME COURT OF PENNSYLVANIA
CIVIL PROCEDURAL RULES COMMITTEE**

PUBLICATION REPORT

Proposed Amendment of Pa.R.Civ.P. 1023.1 and 1023.4

The Civil Procedural Rules Committee is considering recommending the amendment of Pennsylvania Rules of Civil Procedure 1023.1 and 1023.4 relating to sanctions for violating the certification of pleadings, written motions, or other papers subject to Pa.R.Civ.P. 1023.1.

In *Raynor v. D'Annunzio*, 243 A.3d 41 (Pa. 2020), a majority of the Supreme Court held that a post-trial motion for contempt and sanctions based on a violation of an order *in limine* did not constitute “civil proceedings” actionable under the Dragonetti Act, 42 Pa.C.S. §§ 8351 *et seq.* In a concurring opinion, Justice Wecht suggested that he would explore amending Pa.R.Civ.P. 1023.1 to strengthen it to deter abuse of civil process:

I would be remiss were I to overlook this Court's role in displacing the Dragonetti Act's legislatively designed sanctions. Compared to the now-suspended Section 8355 of the Judicial Code, this Court's equivalent, Pennsylvania Rule of Civil Procedure 1023.1, is a weak sister indeed. Significantly, Section 8355 contained an express penalty for the violation of its provisions. Had this provision stood, it would have been a more robust deterrent to vexatious litigation tactics than Rule 1023.1. But this Court holds exclusive constitutional authority “to prescribe general rules governing ... all officers of the Judicial Branch.” PA. CONST. art. V, § 10(c). Consequently, Section 8355 was displaced by this Court's enactment of Rule 1023.1, which, like its federal analogue, Rule 11 of the Federal Rules of Civil Procedure, leaves the question of sanctions entirely discretionary, rendering it toothless, or at least defanged. I do not question this Court's broad rule-making powers; it is well-established that the General Assembly lacks the plenary rulemaking authority that the United States Congress possesses. Rather, I believe that this Court should revisit Rule 1023.1. We should explore giving the rule the sort of bite that might ensure its deterrent component registers among those who need the inducement not to abuse civil process.

Raynor, 243 A.3d at 57 (footnotes omitted). The Committee undertook review pursuant to Justice Wecht's suggestion.

Current Pa.R.Civ.P. 1023.1(c) requires at least one attorney of record, or a self-represented party, to sign a pleading, motion, or other legal paper directed to the court

certifying that to the best of the signatory's knowledge, information, or belief, formed after an inquiry reasonable under the circumstances, (1) the document is not being presented for any improper purpose; (2) the claims, defenses, and other legal contentions in the document are warranted by existing law or by a nonfrivolous argument for the extension, modification or reversal of existing law or the establishment of new law; (3) the factual allegations have evidentiary support or are likely to have evidentiary support after reasonable opportunity for further investigation or discovery; and (4) the denials of factual allegations are warranted on the evidence or are reasonably based on a lack of information or belief. Pa.R.Civ.P. 1023.1(d) then provides that if a trial court determines there is a violation of subdivision (c), it may, but is not required to, impose an appropriate sanction.

Current Pa.R.Civ.P. 1023.4 provides for the type of sanction that a court may impose. It may consist of directives of a nonmonetary nature, paying a penalty into court, or if warranted for effective deterrence, an order directing payment to the moving party of some or all of the reasonable attorneys' fees and other expenses incurred as a result of the violation.

The Committee reviewed the now-suspended portion of the Dragonetti Act, 42 Pa.C.S. § 8355:

Every pleading, motion and other paper of a party represented by an attorney shall be signed by at least one attorney of record in his individual name and his address shall be stated. A party who is not represented by an attorney shall sign his pleading, motion or other paper and state his address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The signature of an attorney or party constitutes a certification by him that he has read the pleading, motion or other paper; that, to the best of his knowledge, information and belief, it is well-grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification or reversal of existing law; and that it is not interposed in bad faith or for any improper purpose, such as to harass another, to maliciously injure another or to cause unnecessary delay or increase in the cost of litigation. If a pleading, motion or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion or other paper is signed in violation of this section, the court shall award to the successful party costs and reasonable attorney fees and may, in addition, impose a civil penalty which shall not exceed \$10,000. Such costs, fees and civil penalty shall be in addition to any other judgment awarded to the successful party and shall be imposed upon the person who signed the pleading, motion or other paper, or a

represented party, or both. This section is in addition to and shall not be construed to limit any other remedies or sanctions provided by law.

The Committee observed that most of Section 8355 has been incorporated into present Pa.R.Civ.P. 1023.1-1023.4 with the exception of requiring the trial court to award costs and reasonable attorney's fees when sanctions are imposed for effective deterrence.

Following review, the Committee concluded that the best approach to strengthen these rules in order to deter abuse of civil proceedings would be to mandate that sanctions in the form of costs and attorneys' fees be imposed when a violation of Pa.R.Civ.P. 1023.1(c) has been determined. Accordingly, the Committee proposes amendments in two respects. First, Pa.R.Civ.P. 1023.1(d) would be amended to state that "the trial court **shall** impose an appropriate sanction..." for violation of subdivision (c).

Second, Pa.R.Civ.P. 1023.4(a)(2) would be amended to govern how the court would calculate the sanction. Subdivision (a)(2) would be revised to mandate that a sanction imposed for violation of Pa.R.Civ.P. 1023.1 consist of an award of costs and attorney's fees. Other sanctions of a nonmonetary nature or paying a penalty into court currently set forth in the rule would remain within the court's discretion to impose.

* * *

Accordingly, the Committee invites all comments, objections, concerns, and suggestions regarding this proposed rulemaking.