CIVIL PROCEDURAL RULES COMMITTEE
ADOPTION REPORT

Amendment of Pa.R.Civ.P. 1006, 2130, 2156, and 2179

On August 25, 2022, the Supreme Court of Pennsylvania adopted amendments to Pennsylvania Rules of Civil Procedure 1006, 2130, 2156, and 2179 governing venue in medical professional liability actions. The Civil Procedural Rules Committee has prepared this Adoption Report describing the rulemaking process. An Adoption Report should not be confused with Comments to the rules. *See* Pa.R.J.A. 103, Comment. The statements contained herein are those of the Committee, not the Court.

Pursuant to a request, the Civil Procedural Rules Committee considered an amendment to the Rules of Civil Procedure that would return Pa.R.Civ.P. 1006 to its pre-2003 status when medical malpractice defendants were subject to the same venue rules as all other non-governmental defendants. Pa.R.Civ.P. 1006(a.1) was adopted in 2002 and provided that "a medical professional liability action may be brought against a health care provider for a medical professional liability claim only in a county in which the cause of action arose."

The requester identified three arguments in support of the request. First, while there may have been a need for a change of the venue rules in the early 2000s, along with the legislation enacted pursuant to Act 13 of 2002 (MCARE Act), the Court's own data collection efforts showed that there had been a significant decrease in medical malpractice filings in the past 15 years. Second, the combined cumulative effect had resulted in not only a significant decrease in the number of cases filed, but also a significant decrease in the amount of claim payments resulting in far fewer compensated victims of medical negligence. Third, the current venue rule should be changed because it provides special treatment for a particular class of defendants; procedural rules should provide fairness of process and be agnostic to outcome.

Upon review, the Committee agreed to study whether the rescission of Rule 1006(a.1) was warranted. Preliminarily, the Committee believed that venue was a procedural matter subject to rulemaking. *See Commonwealth v. Bethea*, 828 A.2d 1066, 1074 (Pa. 2003) ("Venue is predominately a procedural matter, generally prescribed by rules of this Court."). While Pa.R.Civ.P. 1006(a.1) incorporated 42 Pa.C.S. § 5101.1(b), this amendment was understood to be a result of the Supreme Court's exercise of rulemaking authority pursuant to Article V, Section 10(c) of the Pennsylvania Constitution upon the Court's independent review of its merit.

The Committee prepared a proposal that would effectively rescind Rule 1006(a.1) for publication. The proposed amendments were intended to solicit feedback to inform

the Committee on whether to recommend to the Court the proposed rescission or the discontinuation of rulemaking, *i.e.*, maintaining the *status quo*.

Following publication, *see* 48 Pa.B. 7744 (December 22, 2018), there was a pronounced response to the proposal. Those respondents who supported the proposal believed that it was a matter of fundamental fairness for all defendants to be subject to the same venue rules as defendants in other causes of action. Those respondents who opposed the proposal believed that the rescission of the venue provisions in the Rules of Civil Procedure would return medical malpractice litigation to the circumstances pre-2003 and would result in an increase in medical malpractice insurance premiums, a reduction in patient access to quality care, and physicians leaving the state.

The Committee received and reviewed a Report of the Legislative Budget and Finance Committee, issued February 4, 2020, evaluating the impact of the proposed changes to venue for medical professional liability actions on physicians, hospital services, medical professional liability insurance in Pennsylvania, and the prompt determination of, and fair compensation for, injuries and death resulting from medical negligence. The findings of the LBFC were inconclusive as to the impact of the proposed amendment for each category. This result was due to a variety of factors including the lack of comprehensive data on access to medical care that was needed as well as the difficulty of separating venue from the other 2003 reforms, such as the requirement of a certificate of merit in medical professional liability actions. *See* Pa.R.Civ.P. 1042.1 *et seq*.

The Committee also received an actuarial review on the proposed amendment to the venue rules that was completed for the Pennsylvania State Senate Judiciary Committee and intended to supplement the information gap left by the LBFC Report. That review was not considered in the Committee's deliberations, and instead was forwarded directly to the Supreme Court for further evaluation.

The Committee considered the merits of the proposal in light of the comments and reports received. The Committee acknowledged the sharp divergence of opinion and rationale among the respondents. The Committee considered the following in evaluation of the proposal:

- whether there was sufficient proof to maintain the current venue rules for medical professional liability actions such that the rules should continue to treat injured parties differently based solely on the type of professional who causes their injuries;

- the downward trend in the filing of medical malpractice claims and that Pennsylvania's health care delivery systems no longer appear to be in crisis as a result of those claims; and

- whether juries in less populous counties may be more inclined than juries in more populous counties to find in favor of defendants in medical malpractice actions.

The Committee acknowledged that the special venue rules were but one of a constellation of changes associated with the MCARE Act. The MCARE Act was intended to address a medical malpractice crisis within Pennsylvania at the time through patient safety, insurance reform, trial conduct, and procedural changes. Those procedural changes, which the Court adopted through rulemaking, included the special venue rule and requirements for a certificate of merit. *See* 33 Pa.B. 751 (February 8, 2003) (amending Pa.R.Civ.P. 1006, 2130, 2156, 2179 governing venue); 33 Pa.B. 748 (February 8, 2003) (adopting Pa.R.Civ.P.1042.1-1042.8 governing professional liability actions); 34 Pa.B. 1926 (April 10, 2004) (adopting Pa.R.Civ.P. 1042.21, 1042.26-1042.32, 1042.36-1042.38, 1042.41, and 1042.51 governing pre-trial procedures in medical professional liability actions); 34 Pa.B. 4880 (September 4, 2004) (adopting Pa.R.Civ.P. 1042.71 governing findings as to damages in medical professional liability actions); 34 Pa.B. 5351 (October 2, 2004) (adopting Rule 1042.72 governing excessive damage awards for noneconomic loss in medical professional liability actions).

Adopted almost 20 years ago, the special venue rules represented a significant change from the *status quo*. Generally, Pa.R.Civ.P. 1006 provided that venue lies in the county in which the cause of action arose or the county where a defendant could be served. When the defendant is a non-person entity, venue typically also exists in a county where the defendant conducts business. *See* Pa.R.Civ.P. 2130, 2156, and 2179. Accordingly, venue was not constrained by the county where the cause of action arose. The rules provided a mechanism for a defendant to seek another forum based upon convenience or when "a fair and impartial trial cannot be held." Pa.R.Civ.P. 1006(d)(1)-(2).

Section 5101.1 of the Judicial Code, 42 Pa.C.S. §5101.1, changed this approach by requiring that venue in medical malpractice actions be limited to the county where the injury occurred. The ostensible purpose of this provision was to save insurers money by reducing either the number of lawsuits and/or the size of awards to injured parties. In contrast, legislation enabling the Interbranch Commission on Venue, which was adopted at the same time as the MCARE Act, s*ee* 40 P.S. § 1303.514, was premised on "recent changes in the health care delivery system" that "unduly expanded the reach and scope of existing venue rules." *Id*. § 1303.514(a). This language suggested that the special venue rules were designed to mitigate the consequences of corporate restructuring and not medical malpractice claims.

In looking at the reduction in case filings as a metric of the effectiveness of the special venue rules, a majority of the Committee concluded that the number of case filings is independent of the issue of venue because presumably an injured patient would proceed with a meritorious medical malpractice action regardless of venue. Frivolous

medical malpractice actions would be eliminated through the use of certificates of merit pursuant to Pa.R.Civ.P. 1042.3.

The rationale for Section 5101.1 venue mandate appears drawn from the premise that juries in less populous counties are either more inclined to find for defendants than juries in more populous counties or award lower damages. If the venue mandate operated in such a manner that jury pools, rather than the merits of individual cases, were determinative of trial outcomes, then the rescission of the special venue rules on the basis of fundamental unfairness would be warranted. *See also* Pa.R.Civ.P. 1006(d)(2) (providing for a change of venue when a fair and impartial trial cannot be held).

As for the latter premise, it represents an omission in the justification for maintaining the Section 5101.1 venue mandate. Any cost savings believed to be obtained from mandating venue is a zero-sum gain resulting in less compensation to the victim. Lost in rhetoric is the perspective of the victim of medical malpractice. There appears to be a misconception that patients harmed by the negligent actions of healthcare providers somehow enjoy a windfall verdict in more populous counties. Many of these patients have endured substantial injuries seriously lessening their quality of life in perpetuity, requiring permanent medical care and assistance in activities of daily living, and causing the patient and their families to endure lifelong pain, suffering, and loss of companionship. These are serious, complicated, and tragic cases. There is no windfall; no one gains. The stark reality is that patients and their family members would forgo all to avoid the injury cause by medical malpractice in the first place. A verdict can never make them whole.

Another misconception has pervaded discussions of the Section 5101.1 venue mandate. A long-fermented belief has been perpetuated in the current discourse that frivolous lawsuits abound and unduly target healthcare professionals for the sole purpose of compelling providers and their insurers to settle meritless claims to avoid a costly trial. Those maintaining this belief can be assured that such a practice has been sharply foreclosed by a salutary provision of the MCARE Act setting forth medical expert qualifications, which has been codified in the Pennsylvania Rules of Civil Procedure to require a certificate of merit by another licensed healthcare professional. *See* 40 P.S. § 1303.512; Pa.R.Civ.P. 1042.3.

It has also been postulated that eliminating the special venue mandate for medical practice actions will cause health care providers, in general, to leave Pennsylvania. Insofar as negligent providers are held accountable in a court of law for their acts and exit Pennsylvania as an uninsurable risk, that outcome is preferred to protect patients within this Commonwealth from further harm. With utmost respect, it is suggested that efforts are better focused on reducing the occurrence of negligence rather than limit liability after the negligence.

In sum, a majority of the Committee did not find justification for the continued disparate treatment of victims of medical malpractice as it pertains to venue. The impact of the restrictive venue rules was such that the savings accruing to defendants represents less-than-full compensation to plaintiffs for their injuries. Instead, a majority concluded that medical malpractice claims should be subject to the same venue rules applicable to other professional liability claims and tort claims in general. Likewise, defendants in medical malpractice actions can avail themselves of procedural mechanisms to seek a change in venue that are available to all other defendants in other types of actions.

The amendments will become effective January 1, 2023.

The following commentary has been removed from the following rules:

Pa.R.Civ.P. 1006

Subdivision (a.1) Note: See Section 5101.1(c) of the Judicial Code, 42 Pa.C.S. § 5101.1(c), for the definitions of ‘‘health care provider,’’ ‘‘medical professional liability action,’’ and ‘‘medical professional liability claim.’’

Subdivision (b) Note: Partnerships, unincorporated associations, and corporations and similar entities are subject to subdivision (a.1) governing venue in medical professional liability actions. *See* Rules 2130, 2156 and 2179.

Subdivision (a.1) is a venue rule and does not create jurisdiction in Pennsylvania over a foreign cause of action where jurisdiction does not otherwise exist.

EXPLANATORY COMMENT—1982

The revision of subdivision (d) of Venue Rule 1006 is made necessary by the repeal by the Judiciary Act Repealer Act (JARA) of a number of Acts of Assembly providing for a change of venue in civil actions for inability to obtain a fair and impartial trial because of interest or prejudice. The acts were repealed by JARA as of June 27, 1978, and they were not re-enacted as part of the Judicial Code. However, they remained in force under the “fail-safe provision” of Section 3(b) of JARA, 42 P.S. § 20003(b), until such time as general rules governing the subject were promulgated.

Among the acts repealed were the following:

1. The Act of March 30, 1875, as amended, 12 P.S. § 111 et seq., provided for change of venue on the general ground that a fair and impartial trial cannot be held in the county. It also contained the following specific grounds: (1) whenever the judge is personally interested in the case, (2) whenever title under which the parties claim has

been derived from or through the judge, (3) whenever a relative of the judge is a party or is interested in the case, unless the judge so interested shall select another judge, not so related, to hear the case, (4) whenever the county or municipality or an official thereof is a party and it shall appear that local prejudice exists so that a fair trial cannot be had in such county, (5) whenever a large number of the inhabitants of the county have an interest in the question adverse to the applicant and it shall appear to the court that he cannot have a fair and impartial trial, (6) whenever it shall appear that any party has undue influence over the minds of the inhabitants or that they are prejudiced against the applicant so that a fair and impartial trial cannot be had, and (7) whenever any plea of land has been tried by two juries which have disagreed and have been discharged without rendering a verdict.

2. The Act of April 14, 1834, 15 P.S. § 4184, provided that in any action by or against a canal or a railroad company, the case shall be removed upon affidavit of the applicant that the removal is not made for the purpose of delay but because he firmly believes a fair and impartial trial cannot be held in a county through which the canal or railroad may pass.

3. The Act of May 22, 1878, § 117, provided that whenever an action to recover the purchase price of realty is brought in a county other than that in which the real estate is located, the defendants may obtain a change of venue upon filing an affidavit that the action involves an adjudication of the title, boundaries, location, condition or value of such real estate.

Rule 1006(d)(2) provides for a change of venue "where, upon petition and hearing thereon, the court finds that a fair and impartial trial cannot be held in the county for the reasons stated of record." This provision follows Rule of Criminal Procedure 312(a), which provides for certification of an order changing venue to the Supreme Court, which shall designate the transferee county.

The disqualification of a judge "in a proceeding in which his impartiality might reasonably be questioned" is governed by Canon 3C of the Code of Judicial Conduct. A note which cross-refers to the Code is added to new subdivision (d)(2).

EXPLANATORY COMMENT--JAN. 27, 2003

Act No. 127 of 2002 amended the Judicial Code by adding new Section 5101.1 providing for venue in medical professional liability actions. Section 5101.1(b) provides

> (b) General rule.--Notwithstanding any other provision to the contrary, a medical professional liability action may be brought against a health care

provider for a medical professional liability claim only in the county in which the cause of action arose.

This provision has been incorporated into Rule of Civil Procedure 1006 governing venue as new subdivision (a.1). The new subdivision uses the terminology of the legislation. "Medical professional liability action," "health care provider" and "medical professional liability claim" are terms defined by Section 5101.1(c) of the Code.

Joint and Several Liability

Under new subdivision (c)(2) of Rule 1006, an action to enforce a joint and several liability against two or more health care providers may be brought in any county in which venue may be laid against at least one of the health care providers under subdivision (a.1). Therefore, an action to enforce a joint and several liability against Health Care Provider A that provided treatment in County 1 and against Health Care Provider B that provided treatment in County 2 may be brought in either County 1 or County 2.

However, subdivision (c)(2) does not allow an action to enforce a joint and several liability to be brought against a health care provider in a county in which venue may be laid against a defendant that is not a health care provider. Therefore, an action to enforce a joint and several liability against Health Care Provider A that provided treatment in County 1 and against a product manufacturer that does business in County 2 may be brought only in County 1.

Multiple Causes of Action

Subdivision (f) of Rule 1006 provides that where more than one cause of action is asserted against the same defendant pursuant to Rule 1020(a), venue as to one cause of action constitutes venue as to all causes of action. In an action in which there are asserted multiple causes of action but only one is a claim for medical professional liability, the application of this provision could frustrate Section 5101.1 and result in an action being brought in a county other than the county in which the cause of action for medical professional liability arose. New subdivision (f)(2) limits venue in such cases to the county required by new subdivision (a.1), e.g., the county in which the cause of action for medical professional liability arose.

The new venue provision for a medical professional liability claim is to be made applicable not only to individual defendants (Rule 1006(a.1)) but also to partnerships (Rule 2130(a)), unincorporated associations (Rule 2156(a)) and corporations and similar entities (Rule 2179(a)).

EXPLANATORY COMMENT--DEC. 16, 2003

See Explanatory Comment preceding Pa.R.C.P. No. 1501.

EXPLANATORY COMMENT—2011

Currently, a lawsuit based on medical treatment furnished in another state cannot be brought in Pennsylvania even if the defendants have substantial contacts with the state whereas Pennsylvania defendants can be sued in any state in which they have at least minimum contacts. The amendment to this rule would eliminate this discrepancy.

EXPLANATORY COMMENT—2016

On January 8, 2014, the Supreme Court rescinded the then-existing provisions of the Code of Judicial Conduct effective July 1, 2014, and adopted new Canons 1 through 4 of the Code of Judicial Conduct of 2014, also effective July 1, 2014. *See* 44 Pa.B. 455 (January 25, 2014). At the direction of the Court, the Civil Procedural Rules Committee has identified and updated references to the Code of Judicial Conduct in the Rules of Civil Procedure to reflect these changes. Technical amendments to the Note to Rule 225 have also been made which do not affect practice and procedure.

Pa.R.Civ.P. 2130

Subdivision (a) Note: Rule 1006(a.1) governs venue in actions for medical professional liability.

EXPLANATORY COMMENT—2003

Act No. 127 of 2002 amended the Judicial Code by adding new Section 5101.1 providing for venue in medical professional liability actions. Section 5101.1(b) provides

> (b) General rule.--Notwithstanding any other provision to the contrary, a medical professional liability action may be brought against a health care provider for a medical professional liability claim only in the county in which the cause of action arose.

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Pa.R.Civ.P. 2156

Subdivision (a) Note: Rule 1006(a.1) governs venue in actions for medical professional liability.

EXPLANATORY COMMENT—2003

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The new venue provision for a medical professional liability claim is to be made applicable not only to individual defendants (Rule 1006(a.1)) but also to partnerships (Rule 2130(a)), unincorporated associations (Rule 2156(a)) and corporations and similar entities (Rule 2179(a)).

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EXPLANATORY COMMENT—2000

The Supreme Court of Pennsylvania has amended the following rules of civil procedure: Rule 76 which contains a definition of the term "political subdivision", Rules 2126, 2151 and 2176 which provide definitions governing associations as parties and Rule 2179(a)(2) which governs venue when a corporation or similar entity is a party to an action.

Political Subdivision

The rules of civil procedure have heretofore made no provision for a municipal authority as a party. The definition of the term "political subdivision" as set forth in Definition Rule 76 has now been amended to include the phrase "municipal or other local authority". The phrase "municipal or other local authority" is derived from Section 102 of the Judicial Code and Section 101 of Title 2 of the Consolidated Statutes relating to Administrative Law and Procedure.

The primary effect of the amendment is to bring a municipal or other local authority within the chapter of rules governing the Commonwealth and Political Subdivisions as Parties and subject an authority to three rules. Under Rule 2102(b) governing the style of action, an action will be brought by or against an authority "in its name." Rule 2103(b) will limit venue to the county in which the political subdivision is located unless the Commonwealth is the plaintiff or an Act of Assembly provides otherwise. Service upon an authority will be made pursuant to subdivision (b) of Rule 422 governing service upon a political subdivision.

It is recognized that a municipal or other local authority may perform a "sovereign or governmental" function, a "business or proprietary" function or a combination of both. It is useful, however, to have a unified practice which applies to all such entities. It is therefore appropriate that municipal or other local authorities be made subject to the rules governing political subdivisions in view of their performance of sovereign or governmental functions.

The characterization of a municipal or other local authority as a political subdivision is a procedural device only. As the note to the definition states, "he definition of the term 'political subdivision' in this rule has no bearing upon whether a particular entity is or is not a political subdivision for substantive matters."

Partnerships as Parties

The amendment to Rule 2176 defining the term “partnership” continues to provide that “partnership means a general or limited partnership” and adds new language: “whether it is also a registered limited liability partnership or electing partnership”. The reference to a registered limited liability partnership and an electing partnership is derived from Section 8311(b) of the Associations Code, “Partnership defined”.

The amendment excludes from the definition “limited liability company, unincorporated association, joint stock company or similar association”. The reference to a limited liability company is new and takes into account Act No. 126 of 1994 which amended Title 15 of the Consolidated Statutes, the Associations Code, by adding Chapter 89 relating to limited liability companies. Although excluded here from the definition of partnership, the limited liability company is included in the revised definition of “corporation or similar entity” found in Rule 2176.

As revised, the exclusionary language of the definition no longer contains the terms “partnership association and registered partnership” which are obsolete.

Unincorporated Associations as Parties

The term “association” as used in Rule 2151 et seq. is not the broad term found in the “Associations Code”. Rather, it has the limited meaning set forth in Rule 2151. The basic definition continues unchanged: “an unincorporated association conducting any business or engaging in any activity of any nature whether for profit or otherwise under a common name....” However, the definition excludes certain types of “associations” as used in the broader sense of that term. Whereas the former rule excluded from the definition the catalog of “an incorporated association, general partnership, limited partnership, registered partnership, partnership association, joint stock company or similar association”, the amended definition simply states that “unincorporated association” does not include “a partnership as defined in Rule 2126 or a corporation or similar entity as defined in Rule 2176.”

Corporations or Similar Entities as Parties

Rule 2176 is revised in two respects. First, the term “executive officer” is put in its rightful place alphabetically in the list of definitions but it is not otherwise changed. Second, the term “corporation or similar entity” is revised to include the terms “limited liability company, professional association and business trust” and to delete as obsolete the terms “registered partnership”, “Massachusetts Trust” and “partnership association limited”.

The addition of "business trust" includes within the definition of corporation or similar entity a "trust subject to Chapter 95 (relating to business trusts)." The addition of "professional association" includes a professional association as defined in Section 9302 of the Associations Code, i.e., "a professional association organized under the Act of August 7, 1961 (P.L. 941, No. 416), known as the Professional Association Act.... "

The addition of a "limited liability company to the definition is in accord with the Source Note to Section 8906 of the Associations Code which states:

> Notwithstanding the policy of Chapter 89 that a limited liability company is a form of partnership entity, for purposes of the Pennsylvania Rules of Civil Procedure a limited liability company will probably be deemed a "corporation or similar entity" under Pa.R.C.P. 2176, rather than a "partnership" under Pa.R.C.P. 2126 or an "association" under Pa.R.C.P. 2151.

The amendment to Rule 2179(a)(2) governing venue when a corporation or similar entity is a party to an action simply deletes a note containing an obsolete cross-reference.

EXPLANATORY COMMENT—2003

Act No. 127 of 2002 amended the Judicial Code by adding new Section 5101.1 providing for venue in medical professional liability actions. Section 5101.1(b) provides

> (b) General rule.--Notwithstanding any other provision to the contrary, a medical professional liability action may be brought against a health care provider for a medical professional liability claim only in the county in which the cause of action arose.

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