

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

**Proposed Recommendation No. 239**

**Proposed Amendment of Rule 212.3 Governing Pre-Trial Conferences and  
Promulgation of New Rules 212.5 and 212.6 Governing Settlement Conferences**

The Civil Procedural Rules Committee proposes that Rule of Civil Procedure 212.3 governing pre-trial conferences be amended and that new Rules of Civil Procedure 212.5 and 212.6 governing settlement conferences be promulgated as set forth herein. The proposed recommendation is being submitted to the bench and bar for comments and suggestions prior to its submission to the Supreme Court of Pennsylvania.

All communications in reference to the proposed recommendation should be sent no later than **October 2, 2009** to:

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**or E-Mail to  
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The Explanatory Comment which appears in connection with the proposed recommendation has been inserted by the Committee for the convenience of the bench and bar. It will not constitute part of the rules of civil procedure or be officially adopted or promulgated by the Supreme Court.

### **Rule 212.3. Pre-Trial Conference**

(a) In any action at any time the court, [of its own motion] sua sponte or on motion of any party, may direct the attorneys for the parties or any unrepresented party to appear for a conference to consider:

- (1) The simplification of the issues;
- (2) [The necessity or desirability of amendments to the pleadings] The entry of a scheduling order;
- (3) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;
- (4) The limitation of the number of expert witnesses;
- (5) [The advisability of a preliminary reference of issues to a master for findings to be used as evidence when the trial is to be by jury] Settlement and/or mediation of the case;

Note: See Rule 212.5 for procedures governing a settlement conference.

(6) Such other matters as may aid in the disposition of the action.

(b) A court may require, pursuant to a court order, various parties to be present, including an insurance or similar representative, who has complete authority to negotiate and settle the case, to attend the pre-trial conference.

(c) In the absence of a court order, at any pre-trial conference held after the filing of the pre-trial statements and that will involve settlement discussions:

- (1) prior to the conference date, the attorneys for the parties, or the parties if unrepresented, shall engage in good faith efforts to resolve the case;
- (2) an attorney who will be trying the case, or another attorney who has sufficient knowledge of the claims asserted, defenses presented, relief sought and

legal issues raised, and has the authority to act on behalf of the client shall attend the pre-trial conference; and

(3) an insurance or similar representative, who has complete authority to negotiate and settle the case, must either attend the pre-trial conference or be promptly available by telephone.

[(b)] (d) The court may make an order reciting the action taken at the conference, [the amendments allowed to the pleadings, and] the agreements made by the parties as to any of the matters considered and limiting the issues for trial to those not disposed of by admissions or agreements of the attorneys. Such order when entered shall control the subsequent course of the action unless modified at the trial to prevent manifest injustice.

[(c)] (e) The court may establish by rule a pre-trial list on which actions may be placed for consideration as above provided, and may either confine the list to jury actions or to non-jury actions, or extend it to all actions.

## **212.5. Settlement Conference (NEW)**

(a) At any time, the court, sua sponte or on motion of any party, may enter an order in the form provided in Rule 212.6 scheduling a settlement conference, the purpose of which is to resolve the litigation. Prior to the conference date, the attorneys for the parties, or the parties if unrepresented, shall engage in good faith efforts to resolve the case.

(b) At a settlement conference scheduled pursuant to this rule,

(1) an attorney who will be trying the case, or another attorney who has sufficient knowledge of the claims asserted, defenses presented, relief sought and legal issues raised, and has the authority to act on behalf of the client shall attend the settlement conference;

(2) an insurance or similar representative, who has complete authority to negotiate and settle the case must be present at the conference, unless the court permits the representative to ensure that he or she will be available by telephone; and

(3) the court shall have discretion to order the attendance of other individuals as reasonably necessary to accomplish resolution of the case.

Note: Rule 212.3 governs a pre-trial conference which includes consideration of matters relating to the trial of a case. A settlement conference pursuant to this rule considers only the settlement of litigation.

**Rule 212.6 Settlement Conference. Form of Order (NEW)**

An order scheduling a settlement conference pursuant to Rule 212.5 shall be substantially in the following form:

(Caption)

**Scheduling Order for Rule 212.5 Settlement Conference**

For the above-captioned case, a settlement conference pursuant to Rule 212.5 has been scheduled before \_\_\_\_\_ at \_\_\_\_\_  
(name of judge)  
Courtroom at \_\_\_\_\_ o'clock. All parties shall be in compliance with the requirements of Rule 212.5(b).

\_\_\_\_\_  
J.

### **Explanatory Comment**

The success, or the lack thereof, of settlement negotiations often hinges on the preparation of the parties for such negotiations. To facilitate the settlement of cases, the Civil Procedural Rules Committee is proposing the amendment of Rule 212.3 governing pre-trial conferences to provide guidance to the parties when a court schedules a pre-trial conference for the purpose of settlement negotiations. Proposed new Rule 212.5 is intended to provide guidance to the parties for a conference scheduled specifically to settle litigation.

By the Civil Procedural  
Rules Committee

Stewart L. Kurtz  
Chair