

THE COURTS

Title 225—RULES OF EVIDENCE

[225 PA. CODE ART. I AND VII—IX]

Order Adopting Amendments to Rules 103, 701, 803 and 902; and Approving the Revision of Comment to Rule 404; No. 283, Supreme Court Rules; Doc. No. 1

The Committee on Rules of Evidence has prepared a Final Report explaining the November 2, 2001 amendments to Rules of Evidence 103 (Rulings on Evidence), 701 (Opinion Testimony by Lay Witness), 803 (Hearsay Exceptions; Availability of Declarant Immaterial) and 902 (Self-Authentication), and approve the revision of the Comment to Rule 404 (Character Evidence Not Admissible to Prove Conduct; Exceptions; Other Crimes). These changes correspond to the recent amendments to the federal rules of evidence. The Final Report follows the Court's Order.

Order

Per Curiam:

Now, this 2nd day of November, 2001, upon the recommendation of the Committee on Rules of Evidence; this Recommendation having been published before adoption at 31 Pa.B. 405 (January 20, 2001), with a Final Report to be published with this *Order*:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that the amendments to Pa.Rs.E. 103, 701, 803 and 902, are hereby adopted and the revision of the Comment to Pa.R.E. 404 is hereby approved, in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective January 1, 2002.

Annex A

TITLE 225. RULES OF EVIDENCE

ARTICLE I. GENERAL PROVISIONS

Rule 103. Rulings on Evidence.

(a) *Effect of Erroneous Ruling.* Error may not be predicated upon a ruling [**which**] that admits or excludes evidence unless

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Once the court makes a definitive ruling on the record admitting or excluding evidence, either at or before trial, a party need not renew an objection or offer of proof to preserve a claim of error for appeal.

* * * * *

Comment

Paragraph 103(a) differs from F.R.E. 103(a) in that the Federal [**Rule**] rule says, "Error may not be predicated upon a ruling which admits or excludes evidence unless a *substantial right of the party is affected, and*" (emphasis added). The italicized words have been deleted because they are inconsistent with **prior Pennsylvania case law** in criminal cases. In criminal cases, the accused is entitled to relief for an erroneous ruling unless the court is convinced beyond a reasonable doubt that the error is

harmless. See *Commonwealth v. Story*, 476 Pa. 391, 383 A.2d 155 (1978). Civil cases are governed by Pa.R.C.P. 126 which permits the court to disregard an erroneous ruling "which does not affect the substantial rights of the parties." Pa.R.E. 103(a) does not change the existing rule.

Paragraphs [**103**] (a)(1) and (a)(2) are consistent with **prior Pennsylvania case law**. See *Dilliplaine v. Lehigh Valley Trust Co.*, 457 Pa. 255, 322 A.2d 114 (1974); *Commonwealth v. Clair*, 458 Pa. 418, 326 A.2d 272 (1974). Paragraphs [**103**] (a)(1) and (a)(2) are similar to F.R.E. 103(a)(1) and (a)(2). The term "motion in limine" has been added and the last three words have been changed. Motions in limine permit the trial court to make rulings on evidence prior to trial or at trial but before the evidence is offered. Such motions can expedite the trial and assist in producing just determinations. A ruling on a motion in limine on the record is sufficient to preserve the issue for appeal, without renewal of the objection or offer at trial. The change in language is intended to make clear that the requirement that offers of proof be made is applicable to testimonial and other types of evidence.

Pa.R.E. 103(a) was amended in 2001 by adding the second paragraph. The amendment, which is identical to the amendment to F.R.E. 103(a) that became effective December 1, 2000, is consistent with prior Pennsylvania case law. See *Bell v. City of Philadelphia*, 491 A.2d 1396 (Pa. Super 1985). It is also consistent with the second paragraph of this Comment.

Paragraphs [**103**] (b) and (c) are identical to F.R.E. 103(b) and (c) and are consistent with Pennsylvania practice.

F.R.E. 103(d) permits a court to grant relief for "plain errors affecting substantial rights although they were not brought to the attention of the court." This paragraph has been deleted because it is inconsistent with paragraphs (a)(1) and (a)(2) and with **prior Pennsylvania case law** as established in *Dilliplaine* and *Clair*. [**In some capital cases, the Supreme Court has relaxed traditional waiver concepts. See *Commonwealth v. Zettlemoyer*, 500 Pa. 16, 454 A.2d 937 (1982).**]

Official Note: Adopted May 8, 1998, effective October 1, 1998; amended November 2, 2001; effective January 1, 2002.

Committee Explanatory Reports:

Final Report explaining the November 2, 2001, amendments to paragraph (a) published with the Court's Order at 31 Pa.B. 6384 (November 24, 2001).

ARTICLE IV. RELEVANCY AND ITS LIMITS

Rule 404. Character Evidence Not Admissible to Prove Conduct; Exceptions; Other Crimes.

(a) *Character Evidence Generally.* Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except as follows:

* * * * *

(3) *Character of [**witness**] Witness.* * * *

(b) *Other Crimes, Wrongs, or Acts.*

* * * * *

(2) Evidence of other crimes, wrongs, or acts may be admitted for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

* * * * *

Comment

The basic principle of Pa.R.E. 404 is consistent with F.R.E. 404 and **prior Pennsylvania case law**. Pa.R.E. 404, with certain enumerated exceptions, provides that character evidence cannot be used to prove conduct. Under this rule, evidence that an employee had a character trait of absent-mindedness would not be admissible to prove that on a particular occasion he or she failed to fasten the safety latch on a piece of equipment. The rule does not preclude the use of character evidence for other purposes, including where character is an element of a claim or defense. See, e.g., *Dempsey v. Walso Bureau, Inc.*, 431 Pa. 562, 246 A.2d 418 (1968) (negligent employment); *Commonwealth ex rel. Grimes v. Grimes*, 281 Pa. Super. 484, 422 A.2d 572 (1980) (parental fitness).

The exceptions to the [**Rule**] rule differ from F.R.E. 404 as indicated below.

Subsection (a). Subsection (a) of the rule differs from F.R.E. 404(a).

Paragraph (a)(1) has not been amended to conform with the December 1, 2000 amendments to F.R.E. 404(a)(1), which provide that the prosecution may respond to the accused's offer of evidence of the character of the alleged victim of a crime by offering evidence of the same trait of character of the defendant.

Subsection (a)(2) is consistent with **prior Pennsylvania case law**. See, e.g., *Commonwealth v. Dillon*, 528 Pa. 417, 598 A.2d 963 (1991); *Commonwealth v. Amos*, 445 Pa. 297, 284 A.2d 748 (1971); see also Pa.R.E. 405 (regarding means of proof of the complainant's character for violence).

The exception provided at Pa.R.E. 404(a)(2)(iii) does not appear in the federal rule. It is consistent with Pennsylvania decisional law. See *Bell v. Philadelphia*, 341 Pa. Super. 534, 491 A.2d 1386 (1985).

Subsection (b). This [**rule**] paragraph is similar to F.R.E. 404(b) in recognizing legitimate evidentiary purposes for the introduction of evidence of other crimes, wrongs, or bad acts. Unlike the [**federal**] Federal rule, however, Pennsylvania law provides a distinct standard for balancing the inherent prejudice of such evidence against its probative value. Under federal law, if evidence of other crimes, wrongs, or bad acts is offered for a legitimate evidentiary purpose, the evidence is admissible if it meets the general standard of F.R.E. 403. F.R.E. 403 provides that relevant evidence is admissible unless its probative value is substantially outweighed by prejudicial danger. Under Pennsylvania law, evidence of other crimes, wrongs, or bad acts offered for a legitimate evidentiary purpose is admissible only if its probative value outweighs the potential for prejudice. See *Commonwealth v. Morris*, 493 Pa. 164, 425 A.2d 715 (1981). Pa.R.E. 404(b)(3) codifies Pennsylvania decisional law and is an exception to the general rule defined by Pa.R.E. 403.

Official Note: Adopted May 8, 1998, effective October 1, 1998; Comment revised November 2, 2001; effective January 1, 2002.

Committee Explanatory Reports:

Final Report explaining the November 2, 2001, revision of Subsection (a) of the Comment published with the Court's Order at 31 Pa.B. 6384 (November 24, 2001).

ARTICLE VII. OPINIONS AND EXPERT TESTIMONY

Rule 701. Opinion Testimony by Lay Witnesses.

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are rationally based on the perception of the witness, [**and**] helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, **and not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.**

Comment

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F.R.E. 701 was amended, effective December 1, 2000, to clarify that testimony based on scientific, technical, or specialized knowledge is governed by F.R.E. 702, and not F.R.E. 701. The 2001 amendment to Pa.R.E. 701 is likewise aimed at clarifying that testimony based on scientific, technical, and specialized knowledge is governed by Pa.R.E. 702.

Pa.R.E. 701 is consistent with **prior Pennsylvania case law**. See *Lewis v. Mellor*, 259 Pa. Super. 509, 393 A.2d 941 (1978) (adopting F.R.E. 701). Under *Lewis*, lay opinion may embrace the ultimate issue. See Pa.R.E. 704. The trial judge may exclude the opinion if the trial judge decides that it would not be helpful, or would confuse, mislead, or prejudice the jury, or would waste time. *Lewis*, 259 Pa. Super. at 523-24, 393 A.2d at 949.

Official Note: Adopted May 8, 1998, effective October 1, 1998; amended November 2, 2001; effective January 2, 2002.

Committee Explanatory Reports:

Final Report explaining the November 2, 2001, amendments published with the Court's Order at 31 Pa.B. 6384 (November 24, 2001).

ARTICLE VIII. HEARSAY

Rule 803. Hearsay Exceptions; Availability of Declarant Immaterial.

The following statements, as hereinafter defined, are not excluded by the hearsay rule, even though the declarant is available as a witness:

* * * * *

(6) *Records of Regularly Conducted Activity*. A memorandum, report, record, or data compilation, in any form, of acts, events, or conditions, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, **or by certification that complies with Rule 902(11), Rule 902(12), or a statute permitting certification**, unless the sources of information or other circumstances indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

Comment

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Pa.R.E. 803(6) is similar to F.R.E. 803(6), but with two differences. One difference is that Pa.R.E. 803(6) does not include opinions and diagnoses. This is consistent with prior Pennsylvania case law. See *Williams v. McClain*, 513 Pa. 300, 520 A.2d 1374 (1987); *Commonwealth v. DiGiacomo*, 463 Pa. 449, 345 A.2d 605 (1975). The second difference is that Pa.R.E. 803(6) allows the court to exclude business records that would otherwise qualify for exception to the hearsay rule if the "sources of information or other circumstances indicate lack of trustworthiness." The [federal] Federal rule allows the court to do so only if "the source of information or the method or circumstances of preparation indicate lack of trustworthiness."

Rule 803(6) was amended in 2001 consistent with the December 1, 2000 amendments to F.R.E. 803(6) that permit records of regularly conducted activity to be authenticated by certification. This amendment is designed to save the expense and time consumption caused by calling needless foundation witnesses. The notice requirements provided in Pa.R.E. 902(11) and (12) will give other parties a full opportunity to test the adequacy of the foundation.

If offered against a defendant in a criminal case, an entry in a business record may be excluded if its admission would violate the defendant's constitutional right to confront the witnesses against him or her. See *Commonwealth v. McCloud*, 457 Pa. 310, 322 A.2d 653 (1974).

Pa.R.E. 803(6) differs only slightly from 42 Pa.C.S. [A.] § 6108, which provides:

* * * * *

Pa.R.E. 803(6) places the burden on an opposing party to show that the sources of information or other circumstances indicate that a business record is untrustworthy, and thus does not qualify for exception to the hearsay rule. The statute places the burden on the proponent of the evidence to show circumstantial trustworthiness.

Pa.R.E. 803(6) permits records of regularly conducted activity to be authenticated by certification.

Official Note: Adopted May 8, 1998, effective October 1, 1998; Comment revised March 23, 1999, effective immediately; Comment revised March 10, 2000, effective immediately[.]; **amended November 2, 2001; effective January 1, 2002.**

Committee Explanatory Reports:

Final Report explaining the March 23, 1999 technical revisions to the Comment for paragraph 25 published with the Court's Order at 29 Pa.B. 1714 (April 3, 1999).

Final Report explaining the March 10, 2000 revision of the Comment for paragraph 25 published with the Court's Order at 30 Pa.B. 1641 (March 25, 2000).

Final Report explaining the November 2, 2001, amendments to paragraph 6 published with the Court's Order at 31 Pa.B. 6384 (November 24, 2001).

ARTICLE IX. AUTHENTICATION AND IDENTIFICATION

Rule 902. Self-Authentication.

Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

(11) Certified domestic records of regularly conducted activity. The original or a duplicate of a domestic record of regularly conducted activity that would be admissible under Rule 803(6) if accompanied by a written declaration of its custodian or other qualified person, verified as provided in Pa.R.C.P. 76, certifying that the record—

(A) was made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters;

(B) was kept in the course of the regularly conducted activity; and

(C) was made by the regularly conducted activity as a regular practice.

A party intending to offer a record into evidence under this paragraph must provide written notice of that intention to all adverse parties, and must make the record and declaration available for inspection sufficiently in advance of their offer into evidence to provide an adverse party with a fair opportunity to challenge them.

(12) Certified foreign records of regularly conducted activity. In a civil case, the original or a duplicate of a foreign record of regularly conducted activity that would be admissible under Rule 803(6) if accompanied by a written declaration by its custodian or other qualified person certifying that the record—

(A) was made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters;

(B) was kept in the course of the regularly conducted activity; and

(C) was made by the regularly conducted activity as a regular practice.

The declaration must be signed in a manner that, if falsely made, would subject the maker to criminal penalty under the laws of the country where the declaration is signed. A party intending to offer a record into evidence under this paragraph must provide written notice of that intention to all adverse parties, and must make the record and declaration available for inspection sufficiently in advance of their offer into evidence to provide an adverse party with a fair opportunity to challenge them.

Comment

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Paragraphs (11) and (12), which were added in 2001, permit the authentication of domestic and foreign records of regularly conducted activity by certification. This is new to Pennsylvania law for records of regularly conducted activity, but is consistent with Pa.R.E. 902(2), (3), and (4) which permit authentication of various kinds of public documents and records by certification. These paragraphs are similar to F.R.E. 902(11) and (12) that were adopted effective December 1, 2000. The language of Pa.R.E. 902(11) differs from F.R.E. 902(11) in that it refers to Pa.R.C.P. 76 rather than to federal law. The amendment is intended to implement the amendment to Pa.R.E. 803(6).

Official Note: Adopted May 8, 1998, effective October 1, 1998; amended November 2, 2001; effective January 1, 2002.

Committee Explanatory Reports:

Final Report explaining the November 2, 2001, amendments adding paragraphs (11) and (12) published with Court's Order at 31 Pa.B. 6384 (November 24, 2001).

Final Report

Amendments of Pa.Rs.E. 103, 701, 803, and 902; and Revision of Comment to Pa.R.E. 404

CHANGES CORRESPONDING TO RECENT AMENDMENTS TO FEDERAL RULES OF EVIDENCE

On November 2, 2001, upon the recommendation of the Committee on Rules of Evidence, the Supreme Court amended Pa.Rs.E. 103, 701, 803, and 902; and approved the revision of Comment to Pa.R.E. 404, effective January 1, 2002.

I. *Introduction*

Beginning in May 2000, aware of the proposed changes to the Federal Rules of Evidence,¹ the Committee undertook an extensive review of the proposed federal rule changes and Pennsylvania's Rules of Evidence. Although the federal rules have no direct impact on Pennsylvania's Rules of Evidence, and in many cases Pennsylvania's rules go their own way, the rules usually refer to the federal rules in the Comments. In view of this, the Committee noted that, at a minimum, some of the Comments to Pennsylvania's rules would need to be updated. As we reviewed the rules, the Committee agreed that some of the changes to the federal rules merited consideration for inclusion in Pennsylvania's rules, while other changes were inconsistent with Pennsylvania practice.

II. *Discussion*

A. *Pa.R.E. 103 (Rulings on Evidence)*

Federal Rule of Evidence 103 (Rulings On Evidence) has been amended by the addition of the following to paragraph (a)(2):²

(a)(2) Offer of proof. In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked.

ONCE THE COURT MAKES A DEFINITIVE RULING ON THE RECORD ADMITTING OR EXCLUDING EVIDENCE, EITHER AT OR BEFORE TRIAL, A PARTY NEED NOT RENEW AN OBJECTION OR OFFER OF PROOF TO PRESERVE A CLAIM OF ERROR FOR APPEAL.

This new language is consistent with Pennsylvania law, see *Bell v. City of Philadelphia*, 491 A.2d 1386 at 1391 (Pa.Super. 1985), and appears to clarify an issue that might not have been entirely clear to the bench and bar.³ In view of these considerations, the Committee agreed that a comparable provision should be added to Rule 103(a). This will avoid the possible confusion the bench and bar might have if the two rules were different in this regard. The Comment would be revised by the addition of a paragraph explaining the new rule provision and cross-referencing *Bell, supra*.

¹ The federal rule changes were adopted in December 2000.

² The Federal rule amendments are shown in small caps.

³ A similar but more limited idea is expressed in the second paragraph of the Pa.R.E. 103 Comment.

B. *Pa.R.E. 404 (Character Evidence Not Admissible to Prove Character; Exceptions; Other Crimes)*

Federal Rule of Evidence 404 (Character Evidence Not Admissible To Prove Conduct; Exceptions; Other Crimes) has been amended by the addition of new language in paragraph (a)(1) and "alleged" before "victim" in paragraph (a)(2), as follows:

(a)(1) Character of accused. Evidence of a pertinent trait of character offered by an accused, or by the prosecution to rebut the same, OR IF EVIDENCE OF A TRAIT OF CHARACTER OF THE ALLEGED VICTIM OF THE CRIME IS OFFERED BY AN ACCUSED AND ADMITTED UNDER RULE 404(a)(2), EVIDENCE OF THE SAME TRAIT OF CHARACTER OF THE ACCUSED OFFERED BY PROSECUTION.

(a)(2) Character of ALLEGED victim. Evidence of a pertinent trait of character of the ALLEGED victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the ALLEGED victim offered by the prosecution in a homicide case to rebut evidence that the ALLEGED victim was the first aggressor.

This amendment to F.R.E. 404(a)(1) adds a new concept to the federal rules that does not presently exist in Pennsylvania law. The rationale for the Federal rule amendment is that when a defendant offers evidence of a character trait of the victim, such as the trait of violence in assault cases, the prosecution should be able to respond by showing evidence of a corresponding trait of the defendant.

The Committee considered proposing the inclusion of this new concept in the Pennsylvania rules, but declined to do so. However, we agreed that the *Comment* should be revised to explain this.

Federal Rule of Evidence 404(a)(2) has been amended by adding the adjective "alleged" to modify "victim." Pa.R.E. 404(a)(2) uses the term "complainant," which was adopted after lengthy consideration. After reviewing the rule history and the federal rule change, the Committee agreed there is no reason to revert to "victim," and not to add the adjective "alleged."

C. *Pa.R.E. 701 (Opinion Testimony by Lay Witness)*

Federal Rule of Evidence 701 (Opinion Testimony By Lay Witnesses) has been amended as follows:

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness, (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, AND (c) NOT BASED ON SCIENTIFIC, TECHNICAL, OR OTHER SPECIALIZED KNOWLEDGE WITHIN THE SCOPE OF RULE 702.

This amendment is intended to prevent parties from offering expert testimony without the need for qualifying the witness as an expert and without the need for establishing that the witness' testimony is based on reliable scientific, technical, or other specialized knowledge. See F.R.E. 702. It also is intended to prevent parties from avoiding the discovery rules.

The Committee agreed that this same reasoning makes sense for Pennsylvania. By adding a comparable provision to Pa.R.E. 701, the relationship between Pa.Rs.E. 701 and 702 will be clarified, and, as with the federal rule, the change will prevent parties from trying to avoid the requirements of Pa.R.E. 702 and the discovery rules, see,

e.g., Pa.R.C.P. 4003.5 and Pa.R.Crim.P. 573(B)(1)(e), by offering expert testimony under the guise of lay testimony.

D. Pa.Rs.E. 803 (Hearsay Exceptions; Availability of Declarant Immaterial) and 902 (Self-Authentication)

Federal Rule of Evidence 803 (Hearsay Exceptions; Availability Of Declarant Immaterial) has been amended as follows:

(6) Records of regularly conducted activity. A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, OR BY CERTIFICATION THAT COMPLIES WITH RULE 902(11), RULE 902(12), OR A STATUTE PERMITTING CERTIFICATION, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

In a correlative change, Federal Rule of Evidence 902 (Self-Authentication) has been amended as follows:

Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

* * * * *

(11) CERTIFIED DOMESTIC RECORDS OF REGULARLY CONDUCTED ACTIVITY. THE ORIGINAL OR A DUPLICATE OF A DOMESTIC RECORD OF REGULARLY CONDUCTED ACTIVITY THAT WOULD BE ADMISSIBLE UNDER RULE 803(6) IF ACCOMPANIED BY A WRITTEN DECLARATION OF ITS CUSTODIAN OR OTHER QUALIFIED PERSON, IN A MANNER COMPLYING WITH ANY ACT OF CONGRESS OR RULE PRESCRIBED BY THE SUPREME COURT PURSUANT TO STATUTORY AUTHORITY, CERTIFYING THAT THE RECORD—

(A) WAS MADE AT OR NEAR THE TIME OF THE OCCURRENCE OF THE MATTERS SET FORTH BY, OR FROM INFORMATION TRANSMITTED BY, A PERSON WITH KNOWLEDGE OF THOSE MATTERS;

(B) WAS KEPT IN THE COURSE OF THE REGULARLY CONDUCTED ACTIVITY; AND

(C) WAS MADE BY THE REGULARLY CONDUCTED ACTIVITY AS A REGULAR PRACTICE.

A PARTY INTENDING TO OFFER A RECORD INTO EVIDENCE UNDER THIS PARAGRAPH MUST PROVIDE WRITTEN NOTICE OF THAT INTENTION TO ALL ADVERSE PARTIES, AND MUST MAKE THE RECORD AND DECLARATION AVAILABLE FOR INSPECTION SUFFICIENTLY IN ADVANCE OF THEIR OFFER INTO EVIDENCE TO PROVIDE AN ADVERSE PARTY WITH A FAIR OPPORTUNITY TO CHALLENGE THEM.

(12) CERTIFIED FOREIGN RECORDS OF REGULARLY CONDUCTED ACTIVITY. IN A CIVIL CASE, THE ORIGINAL OR A DUPLICATE OF A FOREIGN RECORD OF REGULARLY CONDUCTED ACTIVITY THAT WOULD BE ADMISSIBLE UNDER RULE 803(6) IF ACCOMPANIED BY A WRITTEN DECLARATION BY ITS CUSTODIAN OR OTHER QUALIFIED PERSON CERTIFYING THAT THE RECORD—

(A) WAS MADE AT OR NEAR THE TIME OF THE OCCURRENCE OF THE MATTERS SET FORTH BY, OR FROM INFORMATION TRANSMITTED BY, A PERSON WITH KNOWLEDGE OF THOSE MATTERS;

(B) WAS KEPT IN THE COURSE OF THE REGULARLY CONDUCTED ACTIVITY; AND

(C) WAS MADE BY THE REGULARLY CONDUCTED ACTIVITY AS A REGULAR PRACTICE.

THE DECLARATION MUST BE SIGNED IN A MANNER THAT, IF FALSELY MADE, WOULD SUBJECT THE MAKER TO CRIMINAL PENALTY UNDER THE LAWS OF THE COUNTRY WHERE THE DECLARATION IS SIGNED. A PARTY INTENDING TO OFFER A RECORD INTO EVIDENCE UNDER THIS PARAGRAPH MUST PROVIDE WRITTEN NOTICE OF THAT INTENTION TO ALL ADVERSE PARTIES, AND MUST MAKE THE RECORD AND DECLARATION AVAILABLE FOR INSPECTION SUFFICIENTLY IN ADVANCE OF THEIR OFFER INTO EVIDENCE TO PROVIDE AN ADVERSE PARTY WITH A FAIR OPPORTUNITY TO CHALLENGE THEM.

These amendments are aimed at eliminating the time and expense involved in presenting foundation witnesses in situations in which there is really no question about the authenticity of the records. This concept is new for records of regularly conducted activity, but it is consistent with the self-authentication provisions of F.R.E. 902(2)—(4) for governmental records and other kinds of documents.

The Committee, in reviewing these changes, noted that there are similar provisions in Pennsylvania law provided by statute for authenticating governmental records, 42 Pa.C.S. §§ 5328 and 6103, and medical records, 42 Pa.C.S. §§ 6151—6159. We agreed that the reasons for the federal rule changes apply equally well in Pennsylvania, and therefore comparable changes have been made to Pa.Rs.E. 803 and 902.

[Pa.B. Doc. No. 01-2097. Filed for public inspection November 21, 2001, 9:00 a.m.]

Title 246—MINOR COURT CIVIL RULES

PART I. GENERAL

[246 PA. CODE CH. 1200]

Order Amending Rules 1201—1211 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices; No. 130; Magisterial Doc. No. 1; Book No. 2

The Minor Court Rules Committee has prepared a Final Report explaining the amendments to Rules 1201, 1202, 1203, 1204, 1205, 1206, 1207, 1208, 1209, 1210, and 1211 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices, effective February 1, 2002. These changes make substantive amendments and clarifications as well as related technical or "housekeeping" changes to the rules relating to emergency relief under the Protection From Abuse Act. The Final Report follows the Court's Order.

Order

Per Curiam:

Now, this 2nd day of November, 2001, upon the recommendation of the Minor Court Rules Committee; the

proposal having been published before adoption at 29 Pa.B. 6331 (December 18, 1999), and a Final Report to be published with this *Order*.

It Is Ordered, pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rules 1201, 1202, 1203, 1204, 1205, 1206, 1207, 1208, 1209, 1210, and 1211 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices are amended in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective February 1, 2002.

Annex A

TITLE 246. MINOR COURT CIVIL RULES

PART I. GENERAL

CHAPTER 1200. EMERGENCY RELIEF UNDER THE PROTECTION FROM ABUSE ACT

Rule 1201. Applicability.

The rules in this chapter* apply to the exercise by a hearing officer of jurisdiction under Section 6110 [, Title 23] of the Protection From Abuse Act, 23 Pa.C.S. § 6110, to grant emergency relief from abuse.

* Rules in the 1200 series.

Official Note: See the Protection From Abuse Act set forth in the Domestic Relations Code, 23 Pa.C.S.[A., Section] § 6101 et seq.

Adopted effective March 24, 1977. Amended June 30, 1982, effective 30 days after July 17, 1982; amended effective March 27, 1992; **amended November 2, 2001, effective February 1, 2002.**

**[Explanatory Comment—1992]
(DELETE ENTIRELY)**

Rule 1202. Definitions.

As used in these rules:

(1) *Abuse, adults and family or household members* shall have the meanings given to those words in Section 6102[, Title 23] of the Protection From Abuse Act, 23 Pa.C.S. § 6102.

(2) *Court* means the court of common pleas of the judicial district in which the office of the [**district justice**] **hearing officer** taking action under these rules is located.

* * * * *

[Official Note: The definition of “court” varies somewhat from the definition in Section 6102, Title 23 of the Protection From Abuse Act, which merely defines “court” as “the court of common pleas”, since under 6110(c), orders issued by the hearing officer must be certified to “the court” and it was thought necessary to define more particularly the court of common pleas to which the order will be certified.]

Adopted effective March 24, 1977. Amended June 30, 1982, effective 30 days after July 17, 1982; amended effective March 27, 1992; **amended and Note deleted November 2, 2001, effective February 1, 2002.**

Rule 1203. Limitation on jurisdiction.

The hearing officer may grant relief under these rules only when the court is unavailable to do so pursuant to

the provisions of Section 6110[, Title 23] of the Protection From Abuse Act, 23 Pa.C.S. § 6110, or local rule of court.

Official Note: The limitation in this rule is taken from Section 6110[, Title 23] of the Protection From Abuse Act, 23 Pa.C.S. § 6110.

* * * * *

Adopted effective March 24, 1977. Amended June 30, 1982, effective 30 days after July 17, 1982; amended effective March 27, 1992; **amended November 2, 2001, effective February 1, 2002.**

Rule 1204. Venue.

A. [A] Except as provided in subdivision B, a proceeding for emergency relief [shall] may be brought in [the] a magisterial district within the county in which [the abuse for which relief is requested occurred]

- (1) the plaintiff resides, either temporarily or permanently, or**
- (2) the abuse occurred.**

B. If the relief sought includes possession of the residence or household to the exclusion of the defendant, the action may be brought only in a magisterial district within the county in which the residence or household is located.

Official Note: [In view of the nature of the proceedings and the type of relief that may be granted, it was thought best to limit venue to the magisterial district in which the abuse occurred.] This rule is consistent with Pa.R.C.P. No. 1901.1 and provides the necessary flexibility to a plaintiff who may have to flee the county of permanent residence to escape further abuse. This rule is intended to provide maximum flexibility to a plaintiff to use a convenient forum to seek an emergency protective order. However, where practicable, plaintiffs should give preference to filing in the magisterial district in which the plaintiff resides, either temporarily or permanently, or in the magisterial district in which the abuse occurred. A proceeding is considered to have been brought in a magisterial district even if it is before a hearing officer serving temporarily in that district, or before a hearing officer who has been invested by local rule with temporary county-wide jurisdiction.

Adopted effective March 24, 1977. Amended June 30, 1982, effective 30 days after July 17, 1982; amended effective March 27, 1992; **amended November 2, 2001, effective February 1, 2002.**

Rule 1205. Persons who may seek emergency relief.

[A person] An adult or an emancipated minor may seek emergency relief from abuse for himself or herself. Also, any parent, [or] adult household member or guardian ad litem may seek emergency relief from abuse on behalf of minor children. In addition, a guardian of the person of an [incompetent adult] incapacitated person as defined in 20 Pa.C.S. § 5501 may seek emergency relief on behalf of the [incompetent adult] incapacitated person.

Official Note: This rule [was taken] is derived from Section 6106[, Title 23] of the Protection From Abuse Act, 23 Pa.C.S. § 6106.

Adopted effective March 24, 1977. Amended effective March 27, 1992; amended November 2, 2001, effective February 1, 2002.

Rule 1206. Commencement of proceedings.

* * * * *

B. Upon [the filing of a petition] issuance of an emergency order, the hearing officer shall [advise] provide the plaintiff with instructions regarding the commencement of proceedings in the court of common pleas and regarding the procedures for initiating a contempt charge should the defendant violate the emergency order. The hearing officer shall also advise the plaintiff of the existence of programs for victims of domestic violence in the county or in nearby counties and inform the plaintiff of the availability of legal assistance without cost if the plaintiff is unable to pay therefor.

C. The petition shall be filed and service shall be made without prepayment of costs.

Official Note: It was thought desirable to require the petition to be on a simple, prescribed form since this is an emergency proceeding and the plaintiff is apt to be in an excited state at the time of the filing. Subdivision B is added to assure compliance with the requirement of Section 6110(d)[, Title 23] of the Protection From Abuse Act, 23 Pa.C.S. § 6110(d). Practice varies among the judicial districts as to what procedures the plaintiff must follow to continue in effect a protection order in the court of common pleas upon the certification of an emergency protection order to the court of common pleas. The hearing officer should provide clear instructions to the plaintiff as to what must be done to continue in effect the protection order in the court of common pleas. See Rule 1210 and Note and Rule 1211 and Note. Subdivision C is derived from Section 6106(b) of the Act, 23 Pa.C.S. § 6106(b) and reflects the practice when a temporary order is issued at the common pleas level.

Adopted effective March 24, 1977. Amended June 30, 1982, effective 30 days after July 17, 1982; amended effective March 27, 1992; amended November 2, 2001, effective February 1, 2002.

Rule 1207. Hearing.

* * * * *

Official Note: Under Section 6110(a)[, Title 23] of the Protection From Abuse Act, 23 Pa.C.S. § 6110(a), the hearing is ex parte, and under Section 6110(b)[, Title 23] of the Act, 23 Pa.C.S. § 6110(b), the emergency orders issued by the hearing officer as a result of the hearing are of short duration. Accordingly, there are no provisions in these rules for notice to the defendant prior to hearing. The hearing need not be held at the office of the hearing officer. The last phrase was added to insure compliance with Section 6112[, Title 23] of the Act, 23 Pa.C.S. § 6112.

Adopted effective March 24, 1977. Amended June 30, 1982, effective 30 days after July 17, 1982; amended effective March 27, 1992; amended November 2, 2001, effective February 1, 2002.

Rule 1208. Findings and protection orders.

A. If the hearing officer, upon good cause shown, finds it necessary to protect the plaintiff or minor children from

abuse, he may grant relief in accordance with Section [6108(a)] 6110(a)[, Title 23] of the Protection From Abuse Act, 23 Pa.C.S. § 6110(a), and make any protection orders necessary to effectuate that relief. Immediate and present danger of abuse to the plaintiff or minor children shall constitute good cause.

* * * * *

Official Note: Subdivision A of this rule is [taken] derived from Section 6110(a)[, Title 23] of the Protection From Abuse Act, 23 Pa.C.S. § 6110(a), which permits the hearing officer to grant limited relief in accordance with Section 6108(a)(1), (2) and (6) or (1) and (6) of the Act (relating to relief).

Adopted effective March 24, 1977. Amended June 30, 1982, effective 30 days after July 17, 1982; amended effective March 27, 1992; amended November 2, 2001, effective February 1, 2002.

Rule 1209. [Execution] Service and execution of emergency protection orders.

The hearing officer shall provide to the plaintiff a copy of a protection order made under Rule 1208. The hearing officer or, when necessary, the plaintiff shall immediately deliver a service copy of any protection order made under Rule 1208 to a police officer, police department, sheriff or certified constable for service upon the defendant and execution. [If the defendant is present at the time the protection order is executed, the executing officer shall serve a copy of the petition form containing the order upon the defendant. Otherwise,] After making reasonable effort, if the executing officer is unable to serve the protection order upon the defendant in a timely fashion, the executing officer shall leave [the] a service copy of the petition form containing the order with the [plaintiff] police department with jurisdiction over the area in which the plaintiff resides for service upon the defendant, and shall advise such police department that the order could not be served.

Official Note: The hearing officer should provide the plaintiff with at least one copy of a protection order, but more than one copy may be needed. For example, the plaintiff may wish to serve the order upon multiple police departments when the plaintiff lives and works in different police jurisdictions, etc. If it is necessary for the plaintiff to deliver the protection order to the executing officer, the hearing officer should make sure that the plaintiff fully understands the process and what must be done to have the order served upon the defendant. The hearing officer should make every effort to have the protection order served by a law enforcement officer in a timely fashion. The Rule requires that if the executing officer is unable to serve the protection order in a timely fashion, the executing officer shall leave a service copy of the order with the police department with jurisdiction over the area in which the plaintiff resides. This was thought advisable so that the local police would have a service copy in case they would be called to the plaintiff's residence should the defendant return there. Due to the emergency nature of these protection orders and the fact that to be meaningful they must be served and executed at night or on a weekend, the hearing officer should have the authority to use police officers as well as sheriffs and certified constables to

serve and execute these orders. [See] *See* Section 6109(a)[, Title 23] of the Protection From Abuse Act, 23 Pa.C.S. § 6109(a).

Service shall be made without prepayment of costs. See Rule 1206(C).

Service of protection orders upon the defendant at the time of execution may not be possible under some circumstances.

Adopted effective March 24, 1977. Amended June 30, 1982, effective 30 days after July 17, 1982; amended effective March 27, 1992; **amended November 2, 2001, effective February 1, 2002.**

Rule 1210. Duration of **emergency** protection orders.

Protection orders issued under Rule 1208 shall expire **[as of the resumption of business of the court at the beginning of the next business day] at the end of the next business day the court deems itself available.**

Official Note: This rule is **[taken]** derived from Section 6110(b)[, Title 23] of the Protection From Abuse Act, 23 Pa.C.S. § 6110(b). **Practice varies among the judicial districts as to what procedures the plaintiff must follow to continue in effect a protection order in the court of common pleas upon the certification of an emergency protection order to the court of common pleas. The hearing officer should provide clear instructions to the plaintiff as to what must be done to continue in effect the protection order in the court of common pleas. See Rule 1206 and Note and Rule 1211 and Note.**

Adopted effective March 24, 1977. Amended effective March 27, 1992; **amended November 2, 2001, effective February 1, 2002.**

Rule 1211. Certification to court **of common pleas.**

A. Any protection order issued under Rule 1208, together with any documentation in support thereof, shall immediately be certified to the court **of common pleas** by the hearing officer.

B. Certification under subdivision A of this Rule shall be accomplished by sending to the prothonotary of the court by first class mail or messenger a certified **[true]** copy of the petition form containing the order, with any supporting documentation attached.

Official Note: Certification under subdivision A of this rule is required by Section 6110(c)[, Title 23] of the Protection From Abuse Act, 23 Pa.C.S. § 6110(c). **This rule is also consistent with Pa.R.C.P. No. 1901.3(b) which permits commencement of an action by filing with the prothonotary a certified copy of an emergency protection order. However, practice varies among the judicial districts as to how the protection order is continued in effect after it is certified to the court of common pleas. For example, some judicial districts may require that the plaintiff appear in person to continue the action in the court of common pleas. Others may automatically commence an action in the court of common pleas upon receipt of a certified copy of the emergency order from the hearing officer. See Rule 1206 and Note and Rule 1210 and Note.**

[At the request of the plaintiff, the hearing officer may appoint] Depending on local practice, the plaintiff or the plaintiff's representative **[to]** may act as a messenger under subdivision B of this rule.

Adopted effective March 24, 1977. Amended June 30, 1982, effective 30 days after July 17, 1982; amended effective March 27, 1992; **amended November 2, 2001, effective February 1, 2002.**

FINAL REPORT¹

Amendments to Rules 1201 through 1211 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices

EMERGENCY RELIEF UNDER THE PROTECTION FROM ABUSE ACT

On November 2, 2001, effective February 1, 2002, upon the recommendation of the Minor Court Rules Committee, the Supreme Court of Pennsylvania amended Rules 1201 through 1211 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices.

I. Background

In response to an inquiry regarding an inconsistency between the Protection From Abuse Act, 23 Pa.C.S. § 6101 et seq., and the Rules of Civil Procedure Governing Actions and Proceedings Before District Justices, the Minor Court Rules Committee undertook a review of Chapter 1200 of the Rules, relating to Emergency Relief Under the Protection From Abuse Act. The Committee recommended amendments to these rules to make both substantive changes and clarifications and related technical or "housekeeping" amendments to bring the rules into conformity with the Protection From Abuse Act and the correlative Rules of Civil Procedure.

II. Discussion Of Rule Changes

A. *Substantive Changes—Rules 1204, 1206, 1208, 1209, 1210, and 1211*

1. Rule 1204—Venue

After review of the Act and the Rules of Civil Procedure, the Committee recommended that Rule 1204 relating to venue be amended to make it more closely conform with Pa.R.C.P. No. 1901.1. Specifically, the Committee determined that the options for appropriate venue in emergency PFA actions should be expanded to provide the necessary flexibility to a plaintiff who may have to flee the county of permanent residence to escape further abuse. As noted in the revised Comment, this rule is intended to provide maximum flexibility to a plaintiff to use a convenient forum to seek an emergency protective order. However, where practicable, the Committee believes that plaintiffs should give preference to filing in the magisterial district in which the plaintiff resides, either temporarily or permanently, or in the magisterial district in which the abuse occurred.

2. Rule 1206—Commencement of Proceedings

After review of the Protection From Abuse Act, the Committee recommended that Rule 1206 be amended to more closely conform with the requirements and language of Section 6110(d) of the Act, 23 Pa.C.S. § 6110(d). Section 6110(d) requires that the hearing officer provide specific information to the plaintiff that formerly was not expressly stated in Rule 1206. Also, with regard to commencement of proceedings in the court of common

¹ The Committee's Final Report should not be confused with the official Committee Notes to the Rules. Also, the Supreme Court of Pennsylvania does not adopt the Committee's Notes or the contents of the Committee's explanatory Final Reports.

pleas, the Committee felt it important to recognize differences in local practice. As such, the Committee recommended that Rule 1206 be amended and its Note revised to make clear that hearing officers should explain the procedures for continuing actions in the court of common pleas. This concern is also reflected in the amendments to Rules 1210 and 1211.

Further, the Committee recommended a new subsection C, to require that petitions for emergency protection orders be filed and service be made without prepayment of costs. This subsection is derived from Section 6106(b) of the Act, 23 Pa.C.S. § 6106(b), and reflects the practice when a temporary order is issued in the court of common pleas. In making this recommendation, the Committee recognized that petitioners for emergency protection orders are often in a crisis situation and are unable or unprepared to pay the associated costs at the time an order is sought. The Committee anticipates that the court of common pleas can make a determination regarding the payment of costs of the emergency order after the order is certified to the court of common pleas pursuant to Rule 1211.

3. Rule 1208—Findings and Protection Orders

After review of the Protection From Abuse Act, the Committee recommended that Rule 1208 be amended to more closely conform with the language of Section 6110(a) of the Act, 23 Pa.C.S. § 6110(a). The Committee noted that the authority for hearing officers to grant emergency relief is actually found in Section 6110(a) of the Act, not Section 6108(a) of the Act as was suggested by the former language of the Rule. The Committee felt that the reference to the specific forms of relief that can be granted by hearing officers (that is, relief under Sections 6108(a)(1), (2), and (6) or (1) and (6)) more appropriately belongs in the Note to Rule 1208.

4. Rule 1209—Service and Execution of Emergency Protection Orders

After review of the Act and considerable discussion, the Committee recommended that substantial changes be made to Rule 1209 related to service. First, the amended rule specifies that certified constables may be used to make service to conform with Section 2942(a) of the Judicial Code, 42 Pa.C.S. § 2942(a), relating to certification of constables.

Secondly, the Committee struggled with the very practical and common problem of the inability of an executing officer to make service upon the defendant. This is common where an incident of abuse occurs, the police are called, and the abuser flees to avoid arrest or service of process. It is also common, however, for an abuser to return later, placing the victim in danger of further abuse. The former language of Rule 1209 required that when an executing officer is unable to make service, the officer should leave the service copy of the order with the plaintiff for service upon the defendant. The Committee felt that a plaintiff making service upon an abusive defendant was at best ill advised and at worst extremely dangerous. The Committee desired to remove from the Rule any suggestion that a plaintiff should be required to make service upon a defendant. Accordingly, the amended Rule requires that the executing officer, after making reasonable effort to serve the order, leave a service copy of the order with the police department having jurisdiction over the area in which the plaintiff resides. Further, the executing officer is required to advise the police department that the order could not be served. By requiring this, the Committee hopes that in cases where

the defendant could not be served by the executing officer and the defendant returns to the plaintiff's residence, the plaintiff could call the police who would respond and serve the order upon the defendant.

Also, the Committee felt it necessary to revise the Note to Rule 1209 to make clear that a plaintiff may need more than one copy of a protection order where a plaintiff may want to provide copies of the order to more than one police department. This is common, for example, where a plaintiff lives and works in different police jurisdictions.

Finally, the Committee recommended that a statement be added to the Note to Rule 1209 as a cross reference to Rule 1206 making it absolutely clear that service is to be made without prepayment of costs.

5. Rule 1210—Duration of Emergency Protection Orders

After review of the Protection From Abuse Act, the Committee recognized the need for a simple yet important change to Rule 1210 to bring the Rule into conformity with Section 6110(b) of the Act, 23 Pa.C.S. § 6110(b). Specifically, the amended Rule makes clear that emergency protection orders expire at the end of the next business day that the court of common pleas deems itself available. Also, the Committee recommended that the Note to Rule 1210 be amended to include an important cross reference to Rules 1206 and 1211 relating to commencement of actions in the court of common pleas.

6. Rule 1211—Certification to Court of Common Pleas

After considerable discussion, it became clear to the Committee that practice varies greatly among the judicial districts as to how emergency protection orders are certified to the court of common pleas and how proceedings in the court of common pleas are commenced upon expiration of emergency protection orders. For example, some judicial districts may require that the plaintiff appear in person to continue an action in the court of common pleas. Others may automatically commence an action in the court of common pleas upon receipt of the certified copy of the emergency order from the hearing officer. The Committee felt it important, therefore, to revise the Note to Rule 1211 to address these differences in local procedure with regard to commencement of actions in the court of common pleas. The Committee would anticipate that the courts of common pleas would provide clear instructions to the district justices or hearing officers in the judicial district as to the local procedures for continuing an action in the court of common pleas.

B. Technical or "Housekeeping" Amendments—Rules 1201, 1202, 1203, 1205, and 1207

The Committee felt it necessary to propose minor technical or "housekeeping" amendments to Rules 1201, 1202, 1203, 1205, and 1207 to use consistent and proper citation form and to correct minor references to statutory provisions, including the Protection From Abuse Act. The Committee also felt it appropriate to delete the outdated and unnecessary "Explanatory Comment—1992" following Rule 1201 and the outdated and unnecessary Note to Rule 1202.

[Pa.B. Doc. No. 01-2098. Filed for public inspection November 21, 2001, 9:00 a.m.]

Title 252—ALLEGHENY COUNTY RULES

ALLEGHENY COUNTY

Civil Procedure Rules A502—A504; No. 5 of 2001,
Rules Doc.

Order of Court

And Now, to-wit, the 7th day of November, 2001, pursuant to action of the Board of Judges, the within new local Rules A502, A503 and A504 affecting the Civil Division of the Court of Common Pleas are adopted, effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

By the Court

ROBERT A. KELLY,
President Judge

Local Rule A502. Appeals From Decisions of the Board of Property Assessment, Appeals and Review.

(a) Tax assessment appeals from decisions of the Board of Property Assessment, Appeals and Review shall be governed by Local Rule A503.

(b) Tax exemption appeals from decisions of the Board of Property Assessment, Appeals and Review shall be governed by Local Rule A504.

ACBA Court Rules Committee Note: Under the former Local Rule 502, there was some confusion regarding whether Local Rule 502 applied both to tax assessment appeals and to tax exemption appeals from the Board of Property Assessment, Appeals and Review. New Local Rules A503 and A504 have been adopted to address the different procedures that apply to tax assessment and tax exemption appeals. New Local Rule A502 incorporates Local Rules A503 and A504 and sets forth the procedures that apply when both a tax assessment appeal and a tax exemption appeal will be or have been filed with respect to the same subject property.

(c) When the Board of Property Assessment, Appeals and Review has decided both the tax exempt status and the assessed value of the subject property, a party or parties may appeal both of these decisions to the Court of Common Pleas by filing two separate appeals. The tax assessment appeal shall refer to the separately filed tax exemption appeal and shall be governed by Local Rule A503. The tax exemption appeal shall refer to the separately filed tax assessment appeal and shall be governed by Local Rule A504. The tax assessment appeal shall be stayed until such time as the Court has entered a final order with respect to the tax exemption appeal.

Local Rule A503. Appeals From Real Estate Tax Assessment.

The following provisions shall govern all tax assessment appeals from decisions of the Board of Property Assessment, Appeals and Review:

ACBA Court Rules Committee Note: Under the former Local Rule 502, there was some confusion regarding whether Local Rule 502 applied both to tax assessment appeals and to tax exemption appeals from the Board of Property Assessment, Appeals and Review. New Local Rule A503 applies only to tax assessment appeals. For

procedure governing tax exemption appeals, see Local Rule A504.

(a) Parties.

(1) The following parties must be listed in the caption of the appeal:

(i) owner(s) of the real estate and/or taxable property;

(ii) the municipality in which the property is located;

(iii) the school district in which the property is located; and

(iv) the County of Allegheny.

(2) Any entity other than those set forth in subsection (a)(1) of this Rule must file a Petition to Intervene with the Real Estate Tax Appeal Judge in accordance with the Pennsylvania Rules of Civil Procedure to become a party.

(b) Caption.

(1) The party filing the appeal shall be designated as the appellant. All other parties shall be designated as appellees or interested parties.

(2) The caption and cover sheet shall clearly state whether the appeal involves commercial or residential property.

(c) Time For and Content of Appeals.

(1) An appeal from the decision of the Board of Property Assessment, Appeals and Review must be verified pursuant to Pennsylvania Rule of Civil Procedure 206.3 and filed with the Allegheny County Prothonotary within thirty days of the date of mailing of the notice by the Board.

(2) An appeal shall be in substantially similar form as set forth in Form _____ and shall contain the following:

(i) names of the parties;

(ii) identification of the property by address, deed book volume and page, lot and block number and whether the property is residential or commercial;

(iii) a concise statement of the reasons for the appeal; and

(iv) a copy of the decision of the Board of Property Assessment, Appeals and Review.

(3) No Order of Court is required to file an appeal.

(d) Notice.

Appellant shall give notice of the appeal by first class mail, postage prepaid, to all parties and the Board of Property Assessment, Appeals and Review, within seven days of the filing of the appeal and shall file proof of service thereof.

(e) Filing of Appeals.

The filing of an appeal by any party shall act as an appeal by all parties.

(f) Withdrawal of Appeals.

No appeal may be withdrawn without the consent of all other parties or leave of court. Any party who fails to appear at the conciliation without prior notice to the Board of Viewers shall be deemed to have consented to the withdrawal of the appeal.

(g) Motions.

All motions in real estate tax assessment appeals shall be presented to the Real Estate Tax Appeal Judge.

(h) *Board of Viewers.*

All tax assessment appeals from decisions of the Board of Property Assessment, Appeals and Review shall be assigned to a Board of Viewers appointed by the Administrative Judge of the Civil Division pursuant to 72 P. S. 5020-518.1.

(i) *Discovery.*

(1) In all cases involving non-residential property, the taxing bodies may serve a copy of "Tax Assessment Appeal Discovery Requests," which are set forth in Form _____ hereto, on the taxpayer. The taxpayer shall furnish the information sought in the Discovery Requests within forty-five days after receipt thereof.

(2) No party may seek additional discovery through Interrogatories, Request for Production of Documents or otherwise until discovery has been sought through the "Tax Assessment Appeal Discovery Requests." Parties seeking additional discovery or any discovery in cases involving residential property must petition the Real Estate Tax Appeal Judge for discovery, who may refer the petition to the Administrative Chairman of the Board of Viewers for recommendation.

(3) Any discovery disputes, including without limitation any Motion(s) for Protective Order or Motion(s) to Compel, shall be presented upon proper notice to the Real Estate Tax Appeal Judge.

(4) Discovery shall conclude sixty-five days prior to the date scheduled for conciliation.

(j) *Conciliation.*

(1) All appeals shall be conciliated before a hearing by a panel of the Board of Viewers assigned thereto.

(2) At the time of conciliation, all parties or their counsel shall be present with full authority to effectuate a settlement of the appeal.

ACBA Court Rules Committee Note: The Committee advises parties and counsel to pay particular attention to the notice of conciliation. In appropriate cases, the conciliation and hearing may be scheduled on the same day. In such instances, the parties must appear at the conciliation ready to move directly into a hearing if the conciliation does not result in settlement.

(3) If any party fails to comply with the provisions of this Rule, the Board of Viewers may include in their report a recommendation for the imposition of appropriate sanctions, including, but not limited to, attorneys' fees and costs against the party or parties failing to comply.

(4) At the time of conciliation, if the Board of Viewers determines that the interests of justice will not be served by continuing the proceedings before the Board of Viewers, the Board of Viewers may recommend to the Administrative Judge that the real estate tax assessment appeal be placed on a non-jury trial list. In the event that the Administrative Judge places the real estate tax assessment appeal on a non-jury trial list, the following shall apply:

(i) Sections (l), (m), (n), (o), (p), (q) and (r) of this Rule shall no longer apply.

(ii) All further proceedings shall be in accordance with the Pennsylvania Rules of Civil Procedure and Local Rule 249 III (Calendar Control Judge).

(k) *Pre-Trial Statement in Non-Residential Tax Assessment Appeal.*

(1) Sixty days prior to the date scheduled for conciliation of a non-residential tax assessment appeal, the appellant shall distribute to all counsel of record, or if counsel have not entered an appearance on the party(ies), and to the panel of the Board of Viewers assigned to the case a pre-trial statement. The pre-trial statement shall incorporate the following information or documents:

(i) a description of the use of the real estate and the nature of the real estate;

(ii) a list of all persons who will give testimony in the trial of this appeal;

(iii) a list of all exhibits which the party intends to use at trial;

(iv) any report, including without limitation an expert report or appraisal, of any person or entity who has been retained, employed, or consulted by the parties, who will give testimony in the trial of this appeal.

ACBA Court Rules Committee Note: Former Local Rule 502 required only the owner of non-residential property to file a conciliation statement. Local Rule A503 has been redrafted to require, in an appeal of non-residential property, both the taxpayer and the taxing bodies to file pre-trial statements. In conjunction with the change from a "conciliation" statement to a "pre-trial" statement, new Local Rule A503 shifts the focus to the parties' anticipated evidence at trial and eliminates the need to list information that will not be part of the party's case at trial. Local Rule A503 also requires parties to include in the pre-trial statement any expert reports and/or appraisals. By its terms, section (k) does not apply to residential tax assessment appeals.

(2) Twenty days prior to the date scheduled for conciliation of a non-residential tax assessment appeal, the appellee(s) shall distribute to all counsel of record, or if counsel have not entered an appearance on the party(ies), and to the panel of the Board of Viewers assigned to the case a pre-trial statement. The pre-trial statement shall incorporate the following information or documents:

(i) a description of the use of the real estate and the nature of the real estate;

(ii) a list of all persons who will give testimony in the trial of this appeal;

(iii) a list of all exhibits which the party intends to use at trial;

(iv) any report, including without limitation an expert report or appraisal, of any person or entity who has been retained, employed, or consulted by the parties, who will give testimony in the trial of this appeal.

(3) All interested parties whose interests are aligned with the appellant shall distribute their Pre-Trial Statement in accordance with subsection (k)(1) of this Rule. All interested parties whose interests are aligned with the appellee(s) shall distribute their Pre-Trial Statement in accordance with subsection (k)(2) of this Rule.

(4) The failure to comply with subsections (k)(1), (k)(2) and (k)(3) of this Rule shall result in appropriate relief, which may include the exclusion or limitation at trial of testimony or evidence which was not provided in the pre-trial statement or a recommendation for the imposition of attorneys' fees and costs against the party or parties failing to comply.

(l) *Hearing.*

(1) The Board of Viewers shall schedule a hearing and shall provide notice of the hearing to all parties and/or counsel of record.

ACBA Rules Committee Note: The Committee advises parties and counsel to pay particular attention to the notice of hearing. In appropriate cases, the conciliation and hearing may be scheduled on the same day. In such instances, the parties must appear at the conciliation ready to move directly into a hearing if the conciliation does not result in settlement.

(2) The hearing shall be recorded by a court reporter.

(3) The Board of Viewers, at its discretion, may continue the hearing.

(m) *Report.*

Following the hearing, the Board of Viewers shall file its written Report and Recommendation with the Court. The Court, after review, may accept the Report by filing an Interim Order, or reject the Report and remand for further proceedings.

(n) *Objections.*

If the Court accepts the Board of Viewers' Report and Recommendation, the parties may file objections to the Report and Recommendation within ten days of receipt of the Court's Interim Order. Objections must be accompanied by a certification of counsel that the trial transcript, or necessary portions thereof, have been ordered from the court reporter. Copies of the objections and certification shall be served on all counsel of record or if counsel have not entered their appearance on the party(ies), the Board of Viewers and the Court.

(o) *Briefs on Objections.*

Within twenty days of the date on which the transcript is filed of record, the moving party shall file a Brief in Support of Objections and shall serve a copy on all counsel of record or if counsel have not entered their appearance on the party(ies), and the Court. The Brief in Support of Objections shall refer to transcript page numbers where possible. The moving party's failure to file a Brief in Support of Objections shall constitute a waiver of all issues which could have been raised therein.

(p) *Opposing Briefs.*

Within twenty days after the moving party has filed its Brief in Support of Objections, responding parties shall file their Briefs in Opposition to Objections and serve a copy on all counsel of record or if counsel have not entered their appearance on the party(ies), and the Court.

(q) *Oral Argument.*

After the date set for Briefs in Opposition to Objections has passed, the moving party shall notify the Court that the matter is ripe for argument by filing a Notice That Matter is Ripe for Oral Argument in the same form as that set forth in Form _____. The moving party shall serve a copy of this Notice on all counsel of record or if counsel have not entered their appearance on the party(ies). Upon the filing of this Notice, the Court shall schedule oral argument.

(r) *Final Order.*

In the event that none of the parties file Objections as described above, the Report and Recommendation shall become the final Order of the Court.

FORM _____

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

(Name), CIVIL DIVISION

Appellant, No. B.V. _____

v.

(Name or Names), COMMERCIAL/
RESIDENTIAL (choose
one) REAL ESTATE
INVOLVED

Appellees.

INTERESTED PARTIES (if applicable):

(Names)

PETITION FOR ASSESSMENT APPEAL FROM
ADJUDICATION OF THE BOARD OF PROPERTY
ASSESSMENT, APPEALS AND REVIEW

AND NOW, comes (name) and files the within Petition for Assessment Appeal from Adjudication of the Board of Property Assessment, Appeal and Review, and in support thereof states as follows:

1. Appellant is the owner of commercial/residential real estate and/or taxable property known as (name of business and address) (the "Property"). The Property is recorded at (deed book volume and page) and has been assigned lot and block number (fill in).

2. The County of Allegheny, the (town) and the (school district) are the taxing bodies interested in the taxable status of the Property.

3.—6. (see below)

or

1. Appellant is a political subdivision of the Commonwealth of Pennsylvania and is a taxing body having a cognizable interest in the taxable status of the property which is the subject of this appeal. (Other taxing bodies) also have a cognizable interest in the taxable status of the property which is the subject of this appeal.

2. (Name) is the owner of the commercial/residential real estate and/or taxable property which is the subject of this appeal (the "Property"). The Property is located at (address). The Property is recorded at (deed book volume and page) and has been assigned lot and block number (fill in).

3. The Board of Property Assessment, Appeals and Review of Allegheny County (the "Board") is authorized to assess and value real property for the purpose of taxation and to hear appeals from these assessments by aggrieved parties.

4. The Board made an assessment of the Property. (Name) appealed from this assessment to the Board asking that the assessment be reduced/raised.

5. Following a hearing, the Board disposed of the appeal by not changing/reducing/raising the assessment. A copy of the Board's adjudication notice is attached hereto and incorporated herein as Exhibit A.

6. Appellant is aggrieved by the Board's adjudication. Specifically, Appellant avers, on information and belief, that the assessment is unfair, unreasonable and excessive/too low. Appellant further avers as follows (list all that apply):

a. The assessment is not equal or uniform with other properties similarly located in the County of Allegheny.

b. The ratio between the market value and the assessment value of the Property is substantially higher than numerous other similar properties located in the County of Allegheny.

c. There is a complete lack of uniformity in the assessment of real estate within the County of Allegheny which makes the Property assessment unjust, unreasonable and discriminatory.

d. (Any other now known reason.)

e. Other such reasons as will be developed at the time of hearing.

WHEREFORE, Appellant requests this Honorable Court to increase/decrease the assessment to such amount as may be right and proper.

(date) (signature)

FORM _____

NOTICE THAT MATTER IS RIPE FOR ORAL ARGUMENT AND

AND NOW, comes (name) and notifies this Honorable Court pursuant to Local Rule A503(q) that this matter is ripe for oral argument and requests that this Honorable Court schedule oral argument at its convenience.

(date) (signature)

FORM _____

TAX ASSESSMENT APPEAL DISCOVERY REQUESTS

AND NOW, comes (name) and serves the within Tax Assessment Appeal Discovery Requests upon (name). Pursuant to Local Rule A503(i), all applicable responses to these Requests must be furnished within forty-five days after the receipt of these Requests.

REQUESTS FOR DOCUMENTS

Please produce a copy of the following:

1. Any and all surveys (land, structural, environmental, etc.), building plans and site plans showing design construction and location of the subject property.

2. Any and all mortgages, promissory notes, deeds, and agreements of sale made or assumed on the subject property within the last three years and the corresponding closing statements.

3. Any and all appraisals or evaluations on the subject property which have been made during the last three years.

4. Any and all loan applications of any kind involving or relating to the subject property which have been signed or submitted within the past three years.

5. Any and all leases, land leases, agreements, licenses, occupancy schedules, rent schedules (or rolls) relating to the subject property for the last three years.

6. Any and all written listing agreements, offers to purchase or offers to sell the subject property made within the last three years.

7. Any and all soil tests or mineral evaluations, permit requests, permits, requests relative to zoning or a zoning variance, or similar applications or requests to any governmental body within the past three years concerning the subject property and the result of any such applications or requests.

8. Any and all federal and state Income Tax Returns and audited financial statements with respect to the subject property within the last three years.

9. Any and all corporate or partnership prospectus or private placement memorandum that contain any reference to the value of the subject property within the last three years.

10. Any and all insurance policies and/or binders covering the subject property, its building contents, buildings or any business located thereon from the last three years.

11. Any and all documents which describe in whole or in part any physical improvements to the subject property (whether by the owner or by a tenant) within the last three years.

12. Any and all documents listing or describing capital improvement(s) made to the subject property over the past three years including the costs of the capital improvements and the completion date(s).

13. Any and all documents relating to leasing commissions paid with respect to the subject property over the last three years including the corresponding tenant space, the commission paid, and the date.

INTERROGATORIES

Please provide the following information:

1. The name, address and telephone number of the person to contact regarding conducting an inspection of the subject property.

(Date) (Signature)

Local Rule A504. Appeals From Real Estate Tax Exemption.

The following provisions shall govern all tax exemption appeals from decisions of the Board of Property Assessment, Appeals and Review:

ACBA Court Rules Committee Note: Under the former Local Rule 502, there was some confusion regarding whether Local Rule 502 applied both to tax assessment appeals and to tax exemption appeals from the Board of Property Assessment, Appeals and Review. Local Rule A504 has been added to specifically address procedures governing tax exemption appeals. For procedure governing tax assessment appeals, see Local Rule A503.

(a) *Parties.*

(1) The following parties must be listed in the caption of the appeal:

- (i) owner(s) of the real estate and/or taxable property;
- (ii) the municipality in which the property is located;
- (iii) the school district in which the property is located; and
- (iv) the County of Allegheny.

(2) Any entity other than those set forth in subsection (a)(1) of this Rule must file a Petition to Intervene with the Real Estate Tax Appeal Judge in accordance with the Pennsylvania Rules of Civil Procedure to become a party.

(b) *Caption.*

(1) The party filing the appeal shall be designated as the appellant. All other parties shall be designated as appellees or interested parties.

(2) The caption and cover sheet shall clearly state that it is a tax exemption appeal.

(c) *Time For and Content of Appeals.*

(1) An appeal from the decision of the Board of Property Assessment, Appeals and Review must be verified pursuant to Pennsylvania Rule of Civil Procedure 206.3

and filed as a General Docket case with the Allegheny County Prothonotary within thirty days of the date of mailing of the notice by the Board.

(2) An appeal shall contain the following:

- (i) names of the parties;
- (ii) identification of the property by address, deed book volume and page, and lot and block number;
- (iii) a concise statement of the reasons for the appeal; and
- (iv) a copy of the decision of the Board of Property Assessment, Appeals and Review.

(3) No Order of Court is required to file an appeal.

(d) *Notice.*

Appellant shall give notice of the appeal by first class mail, postage prepaid, to all parties and the Board of Property Assessment, Appeals and Review, within seven days of the filing of the appeal and shall file proof of service thereof.

(e) *Filing of Appeals.*

The filing of an appeal by any party shall act as an appeal by all parties.

(f) *Withdrawal of Appeals.*

No appeal may be withdrawn without the consent of all other parties or leave of court.

(g) In all other respects, tax exemption appeals from decisions of the Board of Property Assessment, Appeals and Review shall be governed by the Pennsylvania Rules of Civil Procedure and the Allegheny County Local Rules governing civil actions assigned to an individual judge.

[Pa.B. Doc. No. 01-2099. Filed for public inspection November 21, 2001, 9:00 a.m.]

Title 255—LOCAL COURT RULES

SCHUYLKILL COUNTY

Rules of Civil Procedure; S-2191-01

Order of Court

And Now, this 2nd day of November 2001, at 1:00 p.m., the Court hereby adopts Schuylkill County Civil Rule of Procedure No. 1303(f) for use in the Court of Common Pleas of Schuylkill County, Pennsylvania (21st Judicial District). This rule shall be effective thirty days after publication in the *Pennsylvania Bulletin*.

The Prothonotary of Schuylkill County is *Ordered and Directed* to do the following:

- 1) File ten (10) certified copies of this Order and Rule with the Administrative Office of Pennsylvania Courts.
- 2) File two (2) certified copies of this Order and Rule with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin* together with a diskette reflecting the text in the hard copy version.
- 3) File one (1) certified copy of this Order and Rule with the Pennsylvania Civil Procedural Rules Committee.
- 4) Forward one (1) copy to the Schuylkill County Law Library for publication in the *Schuylkill Legal Record*.
- 5) Keep continuously available for public inspection copies of this Order and Rule.

By the Court

WILLIAM E. BALDWIN,
President Judge

Rule 1303(f).

The Court may assess a late settlement fee for arbitration cases which are settled within three days of the scheduled arbitration hearing.

[Pa.B. Doc. No. 01-2100. Filed for public inspection November 21, 2001, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Transfer to Inactive Status

Notice is hereby given that by Order of the Supreme Court of Pennsylvania dated November 8, 2001, David Allen Curcio, is immediately transferred to inactive status pursuant to Rule 301(c), Pa.R.D.E. (relating to disabled attorneys) for an indefinite period and until further order of the Court. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

ELAINE M. BIXLER,
*Executive Director and Secretary
The Disciplinary Board of the
Supreme Court of Pennsylvania*

[Pa.B. Doc. No. 01-2101. Filed for public inspection November 21, 2001, 9:00 a.m.]