

# THE COURTS

## Title 225—RULES OF EVIDENCE

[ 225 PA. CODE ART. IX ]

### Order Approving the Amendment of Pennsylvania Rule of Evidence 901; No. 841 Supreme Court Rules Doc.

#### Order

#### *Per Curiam*

And Now, this 20th day of May, 2020, upon the recommendation of the Committee on Rules of Evidence; the proposal having been published for public comment at 49 Pa.B. 3876 (July 27, 2019):

It is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Pennsylvania Rule of Evidence 901 is amended in the following form.

This Order shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective October 1, 2020.

Justice Donohue and Justice Wecht dissent.

#### Annex A

#### TITLE 225. RULES OF EVIDENCE

#### ARTICLE IX. AUTHENTICATION AND IDENTIFICATION

#### Rule 901. Authenticating or Identifying Evidence.

(a) *In General.* Unless stipulated, to satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.

(b) *Examples.* The following are examples only—not a complete list—of evidence that satisfies the requirement:

(1) *Testimony of a Witness with Knowledge.* Testimony that an item is what it is claimed to be.

(2) *Nonexpert Opinion about Handwriting.* A non-expert's opinion that handwriting is genuine, based on a familiarity with it that was not acquired for the current litigation.

(3) *Comparison by an Expert Witness or the Trier of Fact.* A comparison with an authenticated specimen by an expert witness or the trier of fact.

(4) *Distinctive Characteristics and the Like.* The appearance, contents, substance, internal patterns, or other distinctive characteristics of the item, taken together with all the circumstances.

(5) *Opinion About a Voice.* An opinion identifying a person's voice—whether heard firsthand or through mechanical or electronic transmission or recording—based on hearing the voice at any time under circumstances that connect it with the alleged speaker.

(6) *Evidence About a Telephone Conversation.* For a telephone conversation, evidence that a call was made to the number assigned at the time to:

(A) a particular person, if circumstances, including self-identification, show that the person answering was the one called; or

(B) a particular business, if the call was made to a business and the call related to business reasonably transacted over the telephone.

(7) *Evidence About Public Records.* Evidence that:

(A) a document was recorded or filed in a public office as authorized by law; or

(B) a purported public record or statement is from the office where items of this kind are kept.

(8) *Evidence About Ancient Documents or Data Compilations.* For a document or data compilation, evidence that it:

(A) is in a condition that creates no suspicion about its authenticity;

(B) was in a place where, if authentic, it would likely be; and

(C) is at least 30 years old when offered.

(9) *Evidence About a Process or System.* Evidence describing a process or system and showing that it produces an accurate result.

(10) *Methods Provided by a Statute or a Rule.* Any method of authentication or identification allowed by a statute or a rule prescribed by the Supreme Court.

#### **(11) Digital Evidence. To connect digital evidence with a person or entity:**

**(A) direct evidence such as testimony of a person with personal knowledge; or**

**(B) circumstantial evidence such as:**

**(i) identifying content; or**

**(ii) proof of ownership, possession, control, or access to a device or account at the relevant time when corroborated by circumstances indicating authorship.**

#### Comment

Pa.R.E. 901(a) is substantively identical to F.R.E. 901(a) and consistent with Pennsylvania law. The authentication or identification requirement may be expressed as follows: When a party offers evidence contending either expressly or impliedly that the evidence is connected with a person, place, thing, or event, the party must provide evidence sufficient to support a finding of the contended connection. *See Commonwealth v. Hudson*, 414 A.2d 1381 (Pa. 1980); *Commonwealth v. Pollock*, 606 A.2d 500 (Pa. Super. 1992). The proponent may be relieved of this burden when all parties have stipulated the authenticity or identification of the evidence. *See, e.g.*, Pa.R.C.P. No. 212.3(a)(3) (Pre-Trial Conference); Pa.R.C.P. No. 4014 (Request for Admission); Pa.R.Crim.P. 570(A)(2) & (3) (Pre-Trial Conference).

In some cases, real evidence may not be relevant unless its condition at the time of trial is similar to its condition at the time of the incident in question. In such cases, the party offering the evidence must also introduce evidence sufficient to support a finding that the condition is similar. Pennsylvania law treats this requirement as an aspect of authentication. *See Commonwealth v. Hudson*, 414 A.2d 1381 (Pa. 1980).

Demonstrative evidence such as photographs, motion pictures, diagrams and models must be authenticated by evidence sufficient to support a finding that the demonstrative evidence fairly and accurately represents that which it purports to depict. *See Nyce v. Muffley*, 119 A.2d 530 (Pa. 1956).

Pa.R.E. 901(b) is identical to F.R.E. 901(b).

Pa.R.E. 901(b)(1) is identical to F.R.E. 901(b)(1). It is consistent with Pennsylvania law in that the testimony of a witness with personal knowledge may be sufficient to authenticate or identify the evidence. *See Commonwealth v. Hudson*, 414 A.2d 1381 (Pa. 1980).

Pa.R.E. 901(b)(2) is identical to F.R.E. 901(b)(2). It is consistent with 42 Pa.C.S. § 6111, which also deals with the admissibility of handwriting.

Pa.R.E. 901(b)(3) is identical to F.R.E. 901(b)(3). It is consistent with Pennsylvania law. When there is a question as to the authenticity of an exhibit, the trier of fact will have to resolve the issue. This may be done by comparing the exhibit to authenticated specimens. *See Commonwealth v. Gipe*, 84 A.2d 366 (Pa. Super. 1951) (comparison of typewritten document with authenticated specimen). Under this rule, the court must decide whether the specimen used for comparison to the exhibit is authentic. If the court determines that there is sufficient evidence to support a finding that the specimen is authentic, the trier of fact is then permitted to compare the exhibit to the authenticated specimen. Under Pennsylvania law, lay or expert testimony is admissible to assist the jury in resolving the question. *See, e.g.*, 42 Pa.C.S. § 6111.

Pa.R.E. 901(b)(4) is identical to F.R.E. 901(b)(4). Pennsylvania law has permitted evidence to be authenticated by circumstantial evidence similar to that discussed in this illustration. The evidence may take a variety of forms including: evidence establishing chain of custody, *see Commonwealth v. Melendez*, 474 A.2d 617 (Pa. Super. 1984); evidence that a letter is in reply to an earlier communication, *see Roe v. Dwelling House Ins. Co. of Boston*, 23 A. 718 (Pa. 1892); testimony that an item of evidence was found in a place connected to a party, *see Commonwealth v. Bassi*, 130 A. 311 (Pa. 1925); a phone call authenticated by evidence of party's conduct after the call, *see Commonwealth v. Gold*, 186 A. 208 (Pa. Super. 1936); and the identity of a speaker established by the content and circumstances of a conversation, *see Bonavitacola v. Cluver*, 619 A.2d 1363 (Pa. Super. 1993).

Pa.R.E. 901(b)(5) is identical to F.R.E. 901(b)(5). Pennsylvania law has permitted the identification of a voice to be made by a person familiar with the alleged speaker's voice. *See Commonwealth v. Carpenter*, 372 A.2d 806 (Pa. 1977).

Pa.R.E. 901(b)(6) is identical to F.R.E. 901(b)(6). This paragraph appears to be consistent with Pennsylvania law. *See Smithers v. Light*, 157 A. 489 (Pa. 1931); *Wahl v. State Workmen's Ins. Fund*, 11 A.2d 496 (Pa. Super. 1940).

Pa.R.E. 901(b)(7) is identical to F.R.E. 901(b)(7). This paragraph illustrates that public records and reports may be authenticated in the same manner as other writings. In addition, public records and reports may be self-authenticating as provided in Pa.R.E. 902. Public records and reports may also be authenticated as otherwise provided by statute. *See Pa.R.E. 901(b)(10)* and its Comment.

Pa.R.E. 901(b)(8) differs from F.R.E. 901(b)(8), in that the Pennsylvania Rule requires thirty years, while the Federal Rule requires twenty years. This change makes the rule consistent with Pennsylvania law. *See Commonwealth ex rel. Ferguson v. Ball*, 121 A. 191 (Pa. 1923).

Pa.R.E. 901(b)(9) is identical to F.R.E. 901(b)(9). There is very little authority in Pennsylvania discussing authentication of evidence as provided in this illustration. The

paragraph is consistent with the authority that exists. For example, in *Commonwealth v. Visconto*, 448 A.2d 41 (Pa. Super. 1982), a computer print-out was held to be admissible. In *Appeal of Chartiers Valley School District*, 447 A.2d 317 (Pa. Cmwlth. 1982), computer studies were not admitted as business records, in part, because it was not established that the mode of preparing the evidence was reliable. The court used a similar approach in *Commonwealth v. Westwood*, 188 A. 304 (Pa. 1936) (test for gun powder residue) and in other cases to admit various kinds of scientific evidence. *See Commonwealth v. Middleton*, 550 A.2d 561 (Pa. Super. 1988) (electrophoretic analysis of dried blood); *Commonwealth v. Rodgers*, 605 A.2d 1228 (Pa. Super. 1992) (results of DNA/RFLP testing).

Pa.R.E. 901(b)(10) differs from F.R.E. 901(b)(10) to eliminate the reference to Federal law and to make the paragraph conform to Pennsylvania law.

**Pa.R.E. 901(b)(11) has no counterpart in the Federal Rules of Evidence. "Digital evidence," as used in this rule, is intended to include a communication, statement, or image existing in an electronic medium. This includes emails, text messages, social media postings, and images. The rule illustrates the manner in which digital evidence may be attributed to the author.**

**The proponent of digital evidence is not required to prove that no one else could be the author. Rather, the proponent must produce sufficient evidence to support a finding that a particular person or entity was the author. See Pa.R.E. 901(a).**

**Direct evidence under Pa.R.E. 901(b)(11)(A) may also include an admission by a party-opponent.**

**Circumstantial evidence of identifying content under Pa.R.E. 901(b)(11)(B)(i) may include self-identification or other distinctive characteristics, including a display of knowledge only possessed by the author. Circumstantial evidence of content may be sufficient to connect the digital evidence to its author.**

**Circumstantial evidence of ownership, possession, control, or access to a device or account alone is insufficient for authentication of authorship of digital evidence under Pa.R.E. 901(b)(11)(B)(ii). See, e.g., Commonwealth v. Mangel, 181 A.3d 1154, 1163 (Pa. Super. 2018) (social media account bearing defendant's name, hometown, and high school was insufficient to authenticate the online and mobile device chat messages as having been authored by defendant). However, this evidence is probative in combination with other evidence of the author's identity.**

**Expert testimony may also be used for authentication purposes. See, e.g., Commonwealth v. Manivannan, 186 A.3d 472 (Pa. Super. 2018).**

There are a number of statutes that provide for authentication or identification of various types of evidence. *See, e.g.*, 42 Pa.C.S. § 6103 (official records within the Commonwealth); 42 Pa.C.S. § 5328 (domestic records outside the Commonwealth and foreign records); 35 P.S. § 450.810 (vital statistics); 42 Pa.C.S. § 6106 (documents filed in a public office); 42 Pa.C.S. § 6110 (certain registers of marriages, births and burials records); 75 Pa.C.S. § 1547(c) (chemical tests for alcohol and controlled substances); 75 Pa.C.S. § 3368 (speed timing devices); 75 Pa.C.S. § 1106(c) (certificates of title); 42 Pa.C.S. § 6151 (certified copies of medical records);

23 Pa.C.S. § 5104 (blood tests to determine paternity);  
23 Pa.C.S. § 4343 (genetic tests to determine paternity).

**Official Note:** Adopted May 8, 1998, effective October 1, 1998; rescinded and replaced January 17, 2013, effective March 18, 2013; amended November 4, 2019, effective January 1, 2020; **amended May 20, 2020, effective October 1, 2020.**

*Committee Explanatory Reports:*

Final Report explaining the January 17, 2013 rescission and replacement published with the Court's Order at 43 Pa.B. 651 (February 2, 2013).

Final Report explaining the November 4, 2019 amendment of paragraph (1) published with the Court's Order at 49 Pa.B. 6946 (November 23, 2019).

**Final Report explaining the May 20, 2020 adoption of paragraph (b)(11) published with the Court's Order at 50 Pa.B. 2839 (June 6, 2020).**

**FINAL REPORT<sup>1</sup>**

**Amendment of Pa.R.E. 901**

On May 20, 2020, upon recommendation of the Committee on Rules of Evidence, the Court ordered the amendment of Pennsylvania Rule of Evidence 901 to add a new paragraph (b)(11) to provide an example of evidence for the authentication of digital evidence. The recommendation was not intended to alter the quantum of evidence for authentication; rather, it was intended to illustrate the nature of evidence sufficient for a finding of attribution. For further background on the recommendation, see the Committee's Publication Report at 49 Pa.B. 3876 (July 27, 2019).

This amendment becomes effective October 1, 2020.

[Pa.B. Doc. No. 20-733. Filed for public inspection June 5, 2020, 9:00 a.m.]

**Title 246—MINOR COURT  
CIVIL RULES**

**NOTICE OF PROPOSED ORDER**

**Proposed Order Relative to Federal CARES Act  
and Landlord-Tenant Cases**

The Minor Court Rules Committee is considering recommending to the Supreme Court of Pennsylvania that it enter an Order requiring the filing of an Affidavit of Compliance with the federal Coronavirus Aid, Relief, and Economic Security Act, P.L. 116-136 ("CARES Act") in every action by a landlord against a tenant for the recovery of real property filed on or after March 27, 2020 through July 25, 2020 for the reasons set forth in the accompanying Publication Report. The proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any reports, notes, or comments in the proposal have been inserted by the Committee for the convenience of those using the rules. They neither will constitute a part of the rules nor be officially adopted by the Supreme Court.

<sup>1</sup> The Committee's Final Report should not be confused with the official Committee Comments to the rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the Committee's explanatory Final Reports.

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

Pamela S. Walker, Counsel  
Minor Court Rules Committee  
Supreme Court of Pennsylvania  
Pennsylvania Judicial Center  
PO Box 62635  
Harrisburg, PA 17106-2635  
FAX: 717-231-9546  
minorrules@pacourts.us

All communications in reference to the proposal should be received by June 16, 2020. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

*By the Minor Court Rules Committee*

HONORABLE MARGARET A. HUNSICKER,  
*Chair*

**PUBLICATION REPORT**

***Proposed Order Relative to CARES Act and  
Landlord Tenant Cases***

The Minor Court Rules Committee ("Committee") is considering recommending to the Supreme Court of Pennsylvania that it enter an Order requiring the filing of an Affidavit of Compliance with the federal Coronavirus Aid, Relief, and Economic Security Act, P.L. 116-136 ("CARES Act") in every action by a landlord against a tenant for the recovery of real property filed on or after March 27, 2020 through July 25, 2020. The comment window for this proposal is narrow given the need for expedited consideration.

*Background*

The CARES Act was enacted on March 27, 2020. Among other things, it provides a temporary moratorium related to certain eviction actions. During the 120-day period following enactment, *i.e.*, through July 25, 2020, a landlord may not "make, or cause to be made, any filing with the court of jurisdiction to initiate a legal action to recover possession of the covered dwelling from the tenant for nonpayment of rent or other fees or charges." CARES Act, § 4024(b)(1). The moratorium also applies to the charging of "fees, penalties, or other charges to the tenant related to such nonpayment of rent." *Id.* § 4024(b)(2).

A "covered dwelling," as defined by the CARES Act, is a dwelling occupied by a tenant pursuant to a residential lease, or without a lease or with a lease terminable under state law, and that "is on or in a covered property." *See id.* § 4024(a). The definition of "covered property" includes a property that participates in a covered housing program (as defined in section 12491(a) of Title 34), the rural housing voucher program under section 1490r of Title 42, or has a federally backed mortgage loan, or federally backed multifamily mortgage loan. CARES Act, § 4024(a)(2). "Federally backed" mortgages include those that are secured by "a first or subordinate lien on residential real property...including any such secured loan, the proceeds of which are used to prepay or pay off an existing loan secured by the same property" and

is made in whole or in part, or insured, guaranteed, supplemented, or assisted in any way, by any officer or agency of the Federal Government or under or in connection with a housing or urban development program administered by the Secretary of [HUD] or a



housing or related program administered by any such other officer or agency, or is purchased or securitized by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

*Id.* § 4024(a)(4)-(5).

The CARES Act further prohibits evictions or the initiation of eviction actions by landlords who are borrowers under federally backed multifamily mortgage programs and have received forbearance of mortgage payments under the CARES Act. Such a landlord may not, for the duration of the forbearance, evict or initiate the eviction of a tenant from the applicable property solely for nonpayment of rent or other fees or charges. *Id.* § 4023(d).

The CARES Act also provides that the landlord may not require the tenant to vacate the property before a date that is 30 days after the landlord provides the tenant with a “notice to vacate” and that the notice to vacate cannot be given before the expiration of the moratorium, *i.e.*, July 25, 2020. *Id.* § 4024(c).

In summary, the CARES Act does not prohibit all eviction actions, but is generally limited to new landlord-tenant filings for nonpayment of rent in covered dwellings. Cases filed on or prior to March 26, 2020, cases that do not involve covered dwellings, and cases that are not based on nonpayment of rent (*i.e.*, end of rental term or breach of lease conditions) are not subject to specific prohibitions in the CARES Act.

#### Discussion

The Committee was asked to consider a recommendation to require additional pleading requirements in landlord-tenant cases to ensure compliance with the CARES Act. Specifically, the Committee was asked to review the use of an affidavit supported by documentation designed to demonstrate that the property was not subject to CARES Act protections. An area of particular concern was federally backed mortgages, since that information is only available to the landlord; moreover, it raises the issue of mortgage bundling and resale of which the landlord may not even be aware.

The Committee is considering recommending to the Court that it require the filing of an affidavit with the landlord-tenant complaint through the pendency of the CARES Act protections. The proposed affidavit is set forth in this publication. The affidavit would require the landlord to affirm that neither the landlord, tenant, nor the property participates in a number of federal programs, that the property is not subject to a federally backed mortgage or federally backed multifamily mortgage loan, that the landlord has confirmed that there is no unsatisfied mortgage on the property that was purchased or securitized by the Federal Home Loan Mortgage Corporation (“Freddie Mac”) or the Federal National Mortgage Association (“Fannie Mae”), and that if the property is the subject of a federally backed multifamily mortgage loan, that there is no mortgage on the property that has been granted deferral or forbearance status since March 27, 2020 and there is no pending application for mortgage deferral or forbearance. The affidavit would be accompanied by supplemental instructions describing the CARES Act, relevant definitions, and advising that, in addition to filing the affidavit with the landlord-tenant complaint, a landlord shall demonstrate compliance with the CARES Act by presenting testimony and evidence at the time of the hearing for the recovery of real property. A tenant may present testimony and evidence that the landlord is not in compliance with the CARES Act. The Committee

believes that this approach would give the tenant the opportunity to evaluate the landlord’s averments when served with the complaint prior to the hearing and to present evidence at the time of the hearing, if appropriate.

The Committee proposes that the affidavit be filed with all landlord-tenant complaints during the duration of the CARES Act protections. While the landlord-tenant complaint contains an averment as to the basis of the complaint, court staff cannot review all complaints and make a determination as to whether the complaint should or should not contain an affidavit based upon an averment in a given case. The proposal will require some landlords to file an affidavit that might not otherwise be required; however, it is necessitated by the need for efficient administration of the courts at a time when many are just now reopening due to the statewide judicial emergency. The inapplicability of the CARES Act in those situations can be addressed at the hearing.

The supreme courts of six other states (Arkansas, Idaho, Illinois, Iowa, Michigan, and Oklahoma) have adopted orders relating to the eviction moratorium set forth in the CARES Act. These orders require various means of demonstrating compliance with the CARES Act, including affidavits and affirmative pleadings.

The Committee is aware of competing views to this approach. One school of thought is that the issue of whether or not a leased property is not a “covered property” is one that is best left for trial and should not be a required part of the landlord-tenant complaint. Alternatively, there is a view that an affidavit without attachments is insufficient for the tenant and the court to determine compliance with the CARES Act.

All comments, concerns, and suggestions regarding this proposal are welcome.

[CAPTION]

To the Landlord or Authorized Agent: Please see Supplemental Instructions for information about the CARES Act and definitions of terms used in this affidavit.

#### AFFIDAVIT OF COMPLIANCE WITH THE CARES ACT

In order to support my assertion that this filing complies with the federal Coronavirus Aid, Relief, and Economic Security Act, P.L. 116-136, enacted March 27, 2020 (“CARES Act”), I affirm that:

Neither I, the property, nor any tenant of the property participates in or receives subsidies or benefits under any of covered housing programs or rural housing voucher programs listed:

- Public Housing (42 U.S.C. § 1437d)
- Section 8 Housing Choice Voucher (42 U.S.C. § 1437f)
- Section 8 Project-based Housing (42 U.S.C. § 1437f)
- Section 202 Housing for the Elderly (12 U.S.C. § 1701q)
- Section 811 Housing for Persons with Disabilities (42 U.S.C. § 8013)
- Section 236 Multifamily Housing (12 U.S.C. § 1715z-1)
- Below Market Interest Rate (BMIR) Housing (12 U.S.C. § 1715l(d))
- HOME (42 U.S.C. §§ 12741 *et seq.*)

- Housing Opportunities for Persons with AIDS (HOPWA) (42 U.S.C. §§ 12901 *et seq.*)
- Continuum of Care or other McKinney-Vento Act Homelessness Programs (42 U.S.C. §§ 11360 *et seq.*)
- Section 515 Rural Rental Housing (42 U.S.C. § 1485)
- Sections 514 and 516 Farm Labor Housing (42 U.S.C. §§ 1484, 1486)
- Section 533 Housing Preservation Grants (42 U.S.C. § 1490m)
- Section 538 Multifamily Rental Housing (42 U.S.C. § 1490p-2)
- Low-Income Housing Tax Credit (LIHTC) (26 U.S.C. § 42)
- Rural Housing Voucher Program (42 U.S.C. § 1490r)

The property is not subject to a federally backed mortgage loan or a federally backed multifamily mortgage loan. Examples of a federally backed mortgage loan or federally backed multifamily mortgage loan include mortgage loans guaranteed by the Federal Housing Administration, HUD, the Department of Veterans Affairs, or the USDA, and those that were purchased or securitized by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

I have confirmed that there is no unsatisfied mortgage on the property that was purchased or securitized by the Federal Home Loan Mortgage Corporation (“Freddie Mac”) or the Federal National Mortgage Association (“Fannie Mae”) by checking the property via the mortgage lookup tool for Freddie Mac ([www.FreddieMac.com/mymortgage](http://www.FreddieMac.com/mymortgage)) and Fannie Mae ([www.KnowYourOptions.com/loanlookup](http://www.KnowYourOptions.com/loanlookup)).

If the property is the subject of a federally backed multifamily mortgage loan, there is no mortgage on the property that has been granted deferral or forbearance status since March 27, 2020, and there is no pending application for mortgage deferral or forbearance. See CARES Act, § 4023(d)

I, \_\_\_\_\_, verify that the facts set forth in this affidavit are true and correct to the best of my knowledge, information, and belief. This statement is made subject to the penalties of 18 Pa.C.S. § 4904 related to unsworn falsification to authorities.

Date \_\_\_\_\_ Signature of Landlord or Authorized Agent \_\_\_\_\_

**AFFIDAVIT OF COMPLIANCE WITH THE  
CARES ACT  
Supplemental Instructions**

The federal Coronavirus Aid, Relief, and Economic Security Act, P.L. 116-136 (“CARES Act”) was enacted on March 27, 2020. Among other things, the CARES Act provides a temporary moratorium related to certain eviction actions. During the 120-day period following enactment, *i.e.*, through July 25, 2020, a landlord may not “make, or cause to be made, any filing with the court of jurisdiction to initiate a legal action to recover possession of the covered dwelling from the tenant for nonpayment of rent or other fees or charges.” CARES Act, § 4024(b)(1). The moratorium also applies to the charging of “fees, penalties, or other charges to the tenant related to such nonpayment of rent.” CARES Act, § 4024(b)(2).

On \_\_\_\_\_, 2020, the Supreme Court of Pennsylvania ordered that every action by a landlord against a tenant for the recovery of possession of real property filed in a magisterial district court or the Philadelphia Municipal

Court shall be accompanied by an Affidavit of Compliance with the federal Coronavirus Aid, Relief, and Economic Security Act, P.L. 116-136 as available on the website of the Administrative Office of Pennsylvania Courts at <http://www.pacourts.us/forms/for-the-public> (for actions in magisterial district courts) or from the Philadelphia Municipal Court, respectively. The requirement is in effect through July 25, 2020.

In addition to filing the affidavit with the complaint, a landlord shall demonstrate compliance with the CARES Act by presenting testimony and evidence at the time of the hearing for the recovery of possession of real property. A tenant may present testimony and evidence that the landlord is not in compliance with the CARES Act.

Terms used in the affidavit have the following meanings:

“Covered dwelling” means a dwelling that is occupied by a tenant pursuant to a residential lease or without a lease or with a lease terminable under State law, and is on or in a covered property. CARES Act, § 4024(a)(1).

“Covered property” means any property that participates in one of the covered housing programs or the rural housing voucher program listed on the affidavit or has a Federally backed mortgage loan or a Federally backed multifamily mortgage loan. CARES Act, § 4024(a)(2).

“Federally backed mortgage loan” includes any loan (other than temporary financing such as a construction loan) that (A) is secured by a first or subordinate lien on residential real property (including individual units of condominiums and cooperatives) designed principally for the occupancy of from 1 to 4 families, including any such secured loan, the proceeds of which are used to prepay or pay off an existing loan secured by the same property; and (B) is made in whole or in part, or insured, guaranteed, supplemented, or assisted in any way, by any officer or agency of the Federal Government or under or in connection with a housing or urban development program administered by the Secretary of Housing and Urban Development or a housing or related program administered by any other such officer or agency, or is purchased or securitized by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association. CARES Act, § 4024(a)(4).

“Federally backed multifamily mortgage loan” includes any loan (other than temporary financing such as a construction loan) that (A) is secured by a first or subordinate lien on residential multifamily real property designed principally for the occupancy of 5 or more families, including any such secured loan, the proceeds of which are used to prepay or pay off an existing loan secured by the same property; and (B) is made in whole or in part, or insured, guaranteed, supplemented, or assisted in any way, by any officer or agency of the Federal Government or under or in connection with a housing or urban development program administered by the Secretary of Housing and Urban Development or a housing or related program administered by any other such officer or agency, or is purchased or securitized by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association. CARES Act, § 4024(a)(5).

[Pa.B. Doc. No. 20-734. Filed for public inspection June 5, 2020, 9:00 a.m.]

## DISCIPLINARY BOARD OF THE SUPREME COURT

### Notice of Disbarment

Notice is hereby given that Frederick J. Meagher, Jr. (# 25283), having been disbarred in New York, the Supreme Court of Pennsylvania issued an Order on May 22, 2020, disbaring Frederick J. Meagher, Jr. from the Bar of this Commonwealth, effective June 21, 2020. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside of the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

MARCEE D. SLOAN,  
Board Prothonotary

[Pa.B. Doc. No. 20-735. Filed for public inspection June 5, 2020, 9:00 a.m.]

## DISCIPLINARY BOARD OF THE SUPREME COURT

### Notice of Suspension

Notice is hereby given that by Order of the Supreme Court of Pennsylvania dated May 27, 2020, Marko David Maylack (# 90686) is Suspended on Consent from the Bar of this Commonwealth for a period of two years, retroactive to February 5, 2020. 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*.

MARCEE D. SLOAN,  
Board Prothonotary

[Pa.B. Doc. No. 20-736. Filed for public inspection June 5, 2020, 9:00 a.m.]

## SUPREME COURT

### WESTERN DISTRICT

### General Statewide Judicial Emergency; Nos. 531 and 532 Judicial Administration Doc.

#### Cessation of Statewide Judicial Emergency after June 1, 2020

*Per Curiam*

*And Now*, this 27th day of May, 2020, pursuant to the Pennsylvania Supreme Court's constitutionally-conferred general supervisory and administrative authority over all courts and magisterial district judges, *see* PA. CONST. art. V, § 10(a), this Court *Directs* that the general, statewide judicial emergency declared and maintained via this Court's Orders of March 16, March 18, March 24, April 1, and April 28, 2020, *Shall Cease* as of June 1, 2020. The previous Orders in this line *Shall Expire* according to their own terms.

In light of ongoing public-health concerns relating to the COVID-19 pandemic, the intermediate appellate courts have issued various administrative orders, and nearly all local courts have utilized the procedures speci-

fied in Rule of Judicial Administration 1952 and/or this Court's prior Orders to declare local emergencies. Such administrative orders and local emergencies *Remain In Full Force And Effect*, and President Judges in those judicial districts may continue to exercise emergency powers under Rule 1952(B)(2). Extant administrative orders issued by the intermediate courts and local emergency orders and directives, including any provisions of these affecting time calculations or deadlines, *Shall Remain In Full Force And Effect* until they expire or are rescinded by this Court, by an intermediate court, or locally. Self-effectuating extensions of local emergencies may be filed by President Judges of the judicial districts.<sup>1</sup>

Should President Judges in the remaining judicial districts deem it prudent to exercise emergency powers beyond the time of an existing declaration, they may also file a declaration of an emergency in their districts with the Supreme Court Prothonotary in the Eastern, Western, or Middle District Office, as appropriate for the particular local judicial district. Such a declaration generally *Shall Be Self-Effectuating*, subject to any subsequent order by this Court or the local court.

Under any administrative order issued by an intermediate court or local emergency declaration, a President Judge *Is Hereby Specifically Empowered*, subject to state and federal constitutional requirements, to do any or all of the following:

- (1) Limit in-person access and proceedings in order to safeguard the health and safety of court personnel, court users, and members of the public;
- (2) Suspend statewide rules that restrict, directly or indirectly, the use of advanced communication technologies;
- (3) Suspend statewide rules that impede local provision for court filings by means other than in-person delivery;
- (4) Suspend statewide rules pertaining to the rule-based right of criminal defendants to a prompt trial; and
- (5) Suspend jury trials until such time that they can be conducted consistent with prevailing health and safety norms.

The Administrative Office of Pennsylvania Courts remains ready to provide guidance to the appellate and local courts concerning implementation of technological resources and maintenance of appropriate health-and-safety measures to protect court personnel, court users, and members of the public.

#### Guidance to Legal Professionals

In previous orders, this Court authorized and encouraged both courts and legal professionals to use advanced communication technology whenever possible to protect public health and safety. In addition, our April 28, 2020 order specifically referenced guidance by the executive branch providing that while law offices (like most other businesses) remained generally closed, lawyers and staff could access their physical offices under certain circumstances. That executive branch guidance, which then applied statewide, now applies only to those areas of the state designated by the executive branch as being in the "Red Phase." *See Guidance for Businesses Permitted to Operate During the COVID-19 Disaster Emergency to Ensure the Safety and Health of Employees and the*

<sup>1</sup> If a docket number has been assigned to the judicial district for emergency purposes, any further declaration or order concerning extensions, administrative directives, or other matters associated with the local judicial emergency should be captioned so as to indicate that docket number. For convenience, declarations of emergency, extensions, and associated local orders may be transmitted via electronic mail to: Irene.Bizzoso@pacourts.us.



*Public*, <https://www.governor.pa.gov/wp-content/uploads/2020/05/20200504-COVID-19-Business-Guidance.pdf> (last visited May 22, 2020).

As regions of the state reopen, and as courts resume the full range of court business, the need for legal professionals to gain greater physical access to their offices naturally increases as well. Pennsylvania attorneys have an obligation under our Rules of Professional Conduct to promptly, competently, and diligently represent their clients. To that end, attorneys and staff must be able to, and therefore may, access their physical offices at least to the extent the attorneys reasonably believe doing so is necessary to satisfy their professional obligations, provided they take appropriate measures to protect the safety of their employees and the public.

The Court notes that the executive branch has issued guidance concerning business operations in what it has designated the “Yellow Phase” and the “Green Phase.” The executive direction for operations in the Yellow Phase is presently that “all businesses, except [for categories not relevant here], are permitted to conduct in-person operations, so long as they strictly adhere to the requirements of this guidance.” *Id.*

The “Policy” section of the executive guidance further provides:

All businesses, even those that are authorized to maintain in-person operations, must strive to minimize opportunities for personal interaction because

such interactions provide greater opportunities for the transmission of COVID-19. Businesses must employ remote or virtual methods of doing business whenever and wherever possible.

Businesses that must conduct in-person operations and activities, because their employees cannot telework, must adhere strictly to this guidance. In addition, businesses that maintain in-person operations must make their employees and customers aware of the efforts and commitment to protecting their health and safety.

*Id.*<sup>2</sup>

As to what the executive branch has designated the “Green Phase,” the guidance provides that “all businesses (including those restricted or prohibited in the Yellow Phase) are authorized to conduct in-person operations as long as the businesses follow CDC and Department of Health guidelines and other orders or guidance that may be required at that time.” *Id.*

At present, the Court finds the executive branch guidance to be consistent with the level and manner of physical office access that the Court has deemed necessary for attorneys to promptly, competently, and diligently represent their clients.

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<sup>2</sup> The guidance provides further details concerning building, employee, and public safety. *See id.*