

# THE COURTS

## Title 231—RULES OF CIVIL PROCEDURE

### PART I. GENERAL

[231 PA. CODE CH. 1500]

#### Proposed Amendments Relating to Joinder of Causes of Action at Law in Actions in Equity; Proposed Recommendation No. 165

The Civil Procedural Rules Committee proposes that Rules of Civil Procedure 1508 and 1510 governing actions in equity be amended as set forth herein. The proposed recommendation is being submitted to the bench and bar for comments and suggestions prior to its submission to the Supreme Court.

All communications in reference to the proposed recommendation should be sent not later than December 29, 2000 to:

Harold K. Don, Jr., Esquire,  
Counsel,  
Civil Procedural Rules Committee,  
5035 Ritter Road, Suite 700,  
Mechanicsburg, Pennsylvania 17055  
or E-Mail to  
civil.rules@supreme.court.state.pa.us.

The Explanatory Comment which appears in connection with the proposed recommendation has been inserted by the Committee for the convenience of the bench and bar. It will not constitute part of the rules of civil procedure nor will it be officially adopted or promulgated by the Court.

#### Annex A

### TITLE 231. RULES OF CIVIL PROCEDURE

#### PART I. GENERAL

#### CHAPTER 1500. ACTION IN EQUITY

#### Subchapter A. RULES

#### Rule 1508. Pleading More Than One Cause of Action.

(a) The plaintiff may state in the complaint two or more causes of action cognizable in equity.

**Official Note:** If more than one cause of action is asserted by or against two or more plaintiffs or defendants, the causes of action must arise from the same transaction, occurrence, or series of transactions or occurrences and a common question of law or fact affecting the rights or liabilities of all the parties must arise in the action. Rule 2229(a), (b).

**(b) If a transaction or occurrence gives rise to more than one cause of action against the same person, including causes of action in the alternative and causes of action equitable or legal, they may be joined in separate counts in the action against any such person.**

#### Rule 1510. Counterclaim.

(a) A defendant may plead as a counterclaim only a cause of action, whether equitable or legal, which arises

from the same transaction or occurrence or series of transactions or occurrences from which the plaintiff's cause of action arose. **[ A counterclaim shall not be subject to the objection provided in Rule 1509(c). ]**

(b) **[ A counterclaim shall be pleaded and tried as an action in equity. ]** Rescinded.

#### *Explanatory Comment*

#### *Joinder of Causes of Action at Law and in Equity*

The proposed addition of subdivision (b) to Rule 1508 is not so much a change in equity practice as a change in the rule to accommodate the reality of modern equity practice. A litigant should be able to join in one action related causes of action, i.e., causes of action arising out of the same transaction or occurrence or series of transactions or occurrences. This is already true of multiple causes of action all arising in equity under current Equity Rule 1508 and also causes of action all arising at law under Civil Action Rule 1020(d). It is proposed that a similar rule apply where a plaintiff brings an action in equity and wishes to join related causes of action at law in the equity action. When causes of action are related, litigants should not be required to commence separate actions at law and in equity with separate pleading and separate service of process and eventually consolidate those actions for trial.

The joinder of actions at law and in equity under proposed Rule 1508(b) is permissive. A cause of action is not waived by failure to join even though related to other causes of action asserted in an action.

#### *Preliminary Objections*

Rule 1509 governs preliminary objections in an action in equity. Subdivision (c) provides for pleading "the existence of a full, complete and adequate non-statutory remedy at law". This objection is equally applicable to causes of action in equity whether brought alone or joined with a cause of action at law as provided in proposed Rule 1508(b). Equity jurisdiction should not be exercised if the non-statutory remedy at law is "full, complete and adequate."

Equity Rule 1510(a) governing counterclaims currently provides that a related cause of action, whether equitable or legal, may be pleaded as a counterclaim. The second sentence of the rule further provides that a "counterclaim shall not be subject to the objection provided in Rule 1509(c)." However, there appears to be no reason to apply a rule to a counterclaim which differs from that applicable to the plaintiff's causes of action. Consequently, it is proposed that Rule 1510(a) be amended by deleting the exemption of a counterclaim from the objection in Rule 1509(c).

#### *Pleading and Trial*

An action at law and an action in equity do not lose their characteristics by their joinder in one action. Yet, current Rule 1510(b) provides that a counterclaim shall be pleaded and tried as an action in equity, making no distinction between counterclaims at law and in equity.

There appears to be no reason why the rule should mandate that causes of action at law joined in an action in equity should be pleaded and tried as an action in equity. It is therefore proposed that Rule 1510(b) be rescinded. However, there is no corresponding statement added that an action at law so joined should be pleaded

and tried as an action at law. The pleading and trial of causes of action at law and in equity joined in one action will frequently follow the respective practices and procedures governing the particular actions joined. However, if a variation in procedure is appropriate to a particular case, such a determination would appear to be better left to case law to develop as the courts strive for "the just, speedy and inexpensive determination of every action" envisioned by Rule 126.

By the Civil Procedural Rules Committee  
REA BOYLAN THOMAS,  
Chair

[Pa.B. Doc. No. 00-1929. Filed for public inspection November 10, 2000, 9:00 a.m.]

PART I. GENERAL

[231 PA. CODE CHS. 1900, 1910 AND 1940]

Amendments to the rules relating to domestic relations matters; No. 337; Civil Procedure Rules Doc. No. 5

Order

Per Curiam:

And Now, this 27th day of October, 2000, Rules 1905, 1910.10, 1910.16-1, 1910.16-2, 1910.16-3, 1910.16-4 and 1910.16-6 of the Pennsylvania Rules of Civil Procedure are amended as follows. New Rule 1940.9 of the Pennsylvania Rules of Civil Procedure is promulgated as follows.

This order shall be processed in accordance with Pa. R.J.A. 103(b) and shall be effective immediately.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1900. ACTIONS PURSUANT TO THE PROTECTION FROM ABUSE ACT

Rule 1905. Forms for Use IN PFA Actions. Notice and Hearing. Petition. Temporary Protection Order. Final Protection Order.

\* \* \* \* \*

(c) The Temporary Order of Court entered pursuant to the Act shall be substantially in the following form:

\* \* \* \* \*

[ ] 2. Defendant is evicted and excluded from the residence at (NONCONFIDENTIAL ADDRESS FROM WHICH DEFENDANT IS EXCLUDED) or any other permanent or temporary residence where Plaintiff or any other person protected under this Order may live. Plaintiff is granted exclusive possession of the residence. Defendant shall have no right or privilege to enter or be present on the premises of Plaintiff or any other person protected under this Order.

\* \* \* \* \*

(e) The Final Order of Court entered pursuant to the Act shall be substantially in the following form:

\* \* \* \* \*

[ ] 2. Defendant is completely evicted and excluded from the residence at [NONCONFIDENTIAL ADDRESS FROM WHICH DEFENDANT IS EX-

CLUDED ] or any other residence where Plaintiff or any other person protected under this Order may live. Exclusive possession of the residence is granted to Plaintiff. Defendant shall have no right or privilege to enter or be present on the premises of Plaintiff or any other person protected under this Order.

\* \* \* \* \*

CHAPTER 1910. ACTIONS FOR SUPPORT

Rule 1910.10. Alternative Hearing Procedures.

\* \* \* \* \*

Explanatory Comment—1995

\* \* \* \* \*

Armstrong [ 1910.11 ] 1910.12

\* \* \* \* \*

Indiana [ 1910.11 ] 1910.12

\* \* \* \* \*

Rule 1910.16-1. Amount of Support. Support Guidelines.

\* \* \* \* \*

(b) The amount of support (child support, spousal support or alimony pendente lite) to be awarded pursuant to the procedures under Rules 1910.11 and 1910.12 shall be determined in accordance with the support guidelines which consist of the guidelines expressed as the child support schedule [ and the chart of proportional expenditures ] set forth in Rule 1910.16-3, the formula set forth in Rule 1910.16-4 and the operation of the guidelines as set forth in these rules.

\* \* \* \* \*

Explanatory Comment—1998

\* \* \* \* \*

A. Income Shares.

\* \* \* \* \*

The basic support amounts reflected in the [ chart of proportional expenditures and ] child support schedule in Rule 1910.16-3 represent average marginal expenditures on children for food, housing, transportation, clothing and other miscellaneous items that are needed by children and provided by their parents, including the first \$250 of unreimbursed medical expenses incurred annually per child.

\* \* \* \* \*

C. Four-Year Review.

\* \* \* \* \*

2. Calculation of Basic Child Support. The amount of basic support was previously determined from either the grids or the chart of proportional expenditures in conjunction with the income shares formula. The grids and the chart of proportional expenditures have been eliminated. The Committee has chosen to [ retain the chart and to ] use a basic child support schedule, which numerically reflects the amounts spent on children in intact families by combined income and number of children. The [ chart and the ] schedule appears in Rule 1910.6-3 and [ either one may be ] shall be used to find the parties' combined basic child support obligation. In turn, the obligor's share of this obligation is calculated using the income shares formula in Rule 1910.16-4. [ In

**cases where the obligor's monthly net income is \$550 or less, however, the schedule must be used to determine his or her basic support obligation. ]**

The amounts of child support set forth in [ **the chart and** ] the schedule have been updated to reflect recent economic estimates of child-related spending in intact households. . . .

\* \* \* \* \*

3. *Computed Minimum Allowance in Low-Income Cases* . . . . Since the schedule reflects amounts of child support only, Rule 1910.16-2(e)(1)(B) provides for a similar adjustment in spousal support and APL cases so that the obligor retains at least \$550 per month in these cases as well.

\* \* \* \* \*

7. *Health Insurance Premiums*. Under the prior rules, the portion of the cost of health insurance premiums which benefit the other party or the children was deducted from the party's net income. This provided little incentive for either party to obtain or maintain health insurance coverage for the benefit of the other family members. If the obligor was paying the premium, it reduced the basic support award only marginally. If the obligee was paying the premium, he or she received virtually no financial credit at all in terms of a higher support award.

To maximize the value for the party carrying the health insurance **in most cases**, new Rule 1910.16-6(b), **in general**, treats the cost of the premium as an additional expense subject to allocation between the parties in proportion to their net incomes. **In the majority of cases, [ This ]** this more accurately reflects the costs of carrying such insurance and also ensures that the obligee receives some financial credit for carrying the insurance. **However, in cases in which the obligee has no income or minimal income, and the obligor would otherwise bear the entire burden of paying the health insurance premiums with no other adjustment to his or her support obligation, the trier of fact may deduct part or all of the cost of the premium from the obligor's income for support purposes.** The new Rule also permits allocation of the entire premium, including the party's portion of the premium, when the insurance benefits the other party or the children. This change provides further incentive for parties to obtain health insurance for the benefit of the other party and the children.

8. *Unreimbursed Medical Expenses*. There are three changes to the treatment of unreimbursed medical expenses. First, since the first \$250 per year per child of these expenses is already built into the basic child support obligation reflected in [ **the chart and** ] the schedule, only medical expenses which exceed this amount are subject to allocation between the parties as an additional expense to be added to the basic support obligation. Rule 1910.16-6(c) reflects this distinction. The Committee has also chosen to draw this same distinction with respect to spousal support so that the obligee-spouse is expected to meet the first \$250 per year of his or her own unreimbursed expenses before seeking contribution from the obligor for any additional expenses.

\* \* \* \* \*

**Rule 1910.16-2. Support Guidelines. Calculation of Net Income.**

\* \* \* \* \*

**(b) Treatment of Public Assistance, [ and ] SSI Benefits and Social Security Payments to a Child Due to a Parent's Disability or Retirement.**

(1) Neither public assistance nor Supplemental Security Income (SSI) benefits shall be counted as income for purposes of determining support.

(2) **If a child for whom support is sought is receiving social security retirement or disability derivative benefits as a result of a parent's age or disability, the benefits the child receives shall be added to the combined monthly net incomes of the obligor and obligee to calculate the income available for support on the vertical axis of the basic child support schedule set forth in Rule 1910.16-3. The presumptive amount of support as set forth on the schedule at the combined income of obligee, obligor and child's benefits shall then be reduced by the amount of the child's social security or disability derivative benefits before apportioning the remaining support obligation between the parties pursuant to Rule 1910.16-4.**

**Example. If the obligor has net monthly income of \$1200 per month; the obligee has net monthly income of \$800; and the child receives social security derivative benefits of \$300 per month as a result of either the obligor's or obligee's retirement or disability, then the total combined monthly net income is \$2,300. Using the schedule at Rule 1910.16-3 for one child, the amount of support is \$539 per month. From that amount, subtract the amount the child is receiving in social security derivative benefits (\$539 minus \$300 equals \$239). Then, apply the formula at Rule 1910.16-4 to apportion the remaining child support amount of \$239 between the obligor and the obligee in proportion to their respective incomes. Obligor's \$1200 net income per month is 60% of the total of obligor's and obligee's combined net monthly income. Thus, obligor's support obligation would be 60% of \$239, or \$143.40, per month.**

\* \* \* \* \*

**(c) Monthly Net Income.**

(1) Unless otherwise provided in [ **this Rule** ] **these rules**, the court shall deduct only the following items from monthly gross income to arrive at net income:

\* \* \* \* \*

**(e) Net Income Affecting Application of the Child Support Guidelines.**

\* \* \* \* \*

(2) *High Income Child Support Cases*. When the parties' combined net income exceeds \$15,000 per month, child support shall be calculated pursuant to *Melzer v. Witsberger*, 505 Pa. 462, 480 A.2d 991 (1984). The presumptive minimum amount of child support shall be obligor's percentage share of the highest amount of support which can be derived from the schedule [ **or the chart** ] for the appropriate number of children and using the parties' actual combined income to determine obligor's percentage share of this amount. The court may award an additional amount of child support based on the [ **remaining** ] **parties'** combined income and the factors set forth in *Melzer*. **The Melzer analysis in high income child support cases shall be applied to all of the parties' income, not just to the amount of income**

**exceeding \$15,000 per month. In a Melzer analysis case, the presumptive minimum remains applicable.**

For example, where obligor and obligee have monthly net incomes of \$17,000 and \$4,000 respectively, the presumptive minimum amount of child support for three children is calculated as follows: using the formula in Rule 1910.16-4, determine the parties' percentage shares of income based on their actual combined income—81% and 19% respectively of \$21,000. Using the schedule [ or chart ] in Rule 1910.16-3, find the highest possible combined child support obligation for three children—\$3,480. Obligor's percentage share of the combined obligation is 81% of \$3,480, or \$2,818. This is the presumptive minimum amount of child support that he or she must pay for three children. Since this amount is derived from the schedule [ or chart ] in Rule 1910.16-3, [ both of ] which [ are ] is limited to combined household income of \$15,000, the court may award an additional amount of support based on [ the parties' remaining income of \$6,000 and ] the factors set forth in Melzer.

\* \* \* \* \*

**Explanatory Comment—1998**

\* \* \* \* \*

Subdivision (c) sets forth the exclusive list of the deductions that may be taken from gross income in arriving at a party's net income. [ Since ] When the cost of health insurance premiums is [ now ] treated as an additional expense subject to allocation between the parties under Rule 1910.16-6, it is no longer deductible from gross income. **However, part or all of the cost of health insurance premiums may be deducted from the obligor's gross income pursuant to Rule 1910.16-6(b) in cases in which the obligor is paying the premiums and the obligee has no income or minimal income.** Subdivision (c) also incorporates former Rule 1910.16-5(o) relating to awards of spousal support or APL when there are multiple families. In these cases, a party's net income must be reduced further to account for his or her child support obligations as well as any pre-existing spousal support, APL or alimony obligations being paid to former spouses who are not the subject of the support action.

\* \* \* \* \*

Subdivision (e) also reflects the limited application of *Melzer v. Witsberger*, 505 Pa. 462, 480 A.2d 991 (1984), to cases in which the guidelines cannot be used to establish the child support obligation because the parties' combined income exceeds \$15,000 per month. The court must establish a presumptive minimum amount of child support using the guidelines to arrive at that amount. The formula for calculating the presumptive minimum amount has been modified slightly to clarify that the parties' percentage shares should be calculated using their actual combined income rather than theoretical combined income of only \$15,000. This change eliminates many of the inequities and inconsistencies that arose under the previous formula for determining this amount. In considering whether to award an additional amount of child support, [ the parties' remaining income, ] the court must use the factors set forth in Melzer. It would be improper to apply the formula in Rule 1910.16-4 to [ this ] the amount of the parties' combined income which exceeds \$15,000 per month and award the obligor's percentage share as additional support. Additional support, if any, may be more or less than the

percentage share and must be determined, therefore, in accordance with the factors set forth in Melzer.

**Explanatory Comment to Rule 1910.16-2—2000**

**This rule has been amended to reflect the fact that the chart of proportional expenditures formerly set forth at Rule 1910.16-3(b) has been rescinded. In addition, the rule and Explanatory Comment have been revised to clarify that the factors set forth in *Melzer v. Witsberger*, 505 Pa. 462, 480 A.2d 991 (1984), must be applied by considering all of the parties' combined income, not just the amount over \$15,000 per month. The presumptive minimum shall apply even if the Melzer analysis results in a figure lower than the presumptive minimum.**

**Rule 1910.16-3. Support Guidelines. Basic Child Support Schedule. [ and Chart of Proportional Expenditures ]**

[ (a) Basic Child Support Schedule. ] The following schedule sets forth the amounts spent on children in intact families by combined income and number of children. Combined income is on the vertical axis of the schedule and number of children is on the horizontal axis of the schedule. This schedule is used to find the basic child support obligation. Unless otherwise provided in these Rules, the obligor's share of the basic support obligation shall be computed using the formula set forth in Part I of Rule 1910.16-4.

\* \* \* \* \*

*(Editor's Note: Rule 1910.16-3(b) is being deleted. For the text of this section, see 231 Pa. Code pages 1910-38—1910-40, serial pages (251746)—(251748).)*

**Explanatory Comment—2000**

**The chart of proportional expenditures, formerly Rule 1910.16-3(b), was duplicative and is rescinded. The basic child support schedule, formerly Rule 1910.16-3(a), is now Rule 1910.16-3.**

**Rule 1910.16-4. Support Guidelines. Calculation of Support Obligation. Formula.**

(a) The following formula shall be used to calculate the obligor's share of the basic guideline child support, spousal support and/or alimony pendente lite obligation:

*PART I. BASIC CHILD SUPPORT.*

\* \* \* \* \*

6. BASIC CHILD SUPPORT OBLIGATION (Determine [ either ] from Schedule based on number of children and line 5 combined monthly net income) [ OR from Chart by finding proportion of combined income spent on the children ]

\* \* \* \* \*

*(c) Substantial or Shared Physical Custody.*

\* \* \* \* \*

(3) This subdivision shall not apply when the obligor's income falls within the shaded area of the schedule in Rule 1910.16-3 [ (a) ] or when the obligee's income is 10% or less of the parties' combined income.

*(d) Divided or Split Physical Custody.*

(1) When calculating a child support obligation, and one or more children reside with each party, the court shall offset the parties' respective child support obligations and award the net difference to the obligee as child

support. For example, if the parties have three children, one of whom resides with Husband and two of whom reside with Wife, and their net monthly incomes are \$1,500 and \$800 respectively, Husband's child support obligation is calculated as follows. Using the formula with [either] the schedule [or the chart] in Rule 1910.16-3 for two children, Husband's support obligation for the two children living with Wife is \$508. Using the formula with the schedule [or chart] in Rule 1910.16-3 for one child, Wife's support obligation for the child living with Husband is \$188. Subtracting \$188 from \$508 produces a net support amount of \$320 payable to Wife as child support.

\* \* \* \* \*

**Explanatory Comment—1998**

\* \* \* \* \*

Subdivision (b) incorporates former Rule 1910.16-5(e) relating to orders for more than four children. It has been changed only to reflect the expansion of the guidelines from four to six children and the use of the [chart and] schedule in lieu of the grids.

\* \* \* \* \*

Subdivision (d) is derived from previous Rule 1910.16-5(h) relating to divided or split custody cases. The new provision has been rewritten to update the examples in conformity with the new levels of child support reflected in the [chart and] schedule. It retains the existing method for offsetting the parties' respective support obligations when one or more of the children reside with each party, but eliminates the exception which previously existed in cases where one party's income was minimal and the other party's income was significantly greater. This exception was confusing as well as erroneous in its suggestion that offsetting should not be used because it would result in less than the full guideline amount of child support being paid to the party with minimal income. To the contrary, the offset method actually works to protect against this result and therefore should be used in these cases.

\* \* \* \* \*

**Rule 1910.16-6. Support Guidelines. Adjustments to the Basic Support Obligation.**

\* \* \* \* \*

*(b) Health Insurance Premiums.*

\* \* \* \* \*

**(4) In cases in which the obligor is paying the cost of health insurance coverage and the obligee has no income or minimal income such that the obligor will bear 90% or more of the proportional share of the cost of the health insurance premiums, the trier of fact may, as fairness requires, deduct part or all of the cost of the premiums actually paid by the obligor to provide coverage for the other party or the children from the obligor's gross income to determine net income for support purposes. If such a deduction is taken from the obligor's gross income, then the allocation of premium costs as set forth in (b)(1) above shall not be applied.**

**Official Note:** Subdivision (b) of this Rule does not apply to Medical Assistance. See 23 Pa.C.S. § 4326(l).

\* \* \* \* \*

*(e) Mortgage Payment.* The guidelines assume that the spouse occupying the marital residence will be solely responsible for the mortgage payment, real estate taxes, and homeowners' insurance. Similarly, the court will assume that the party occupying the marital residence will be paying the items listed unless the recommendation specifically provides otherwise. If the obligee is living in the marital residence and the mortgage payment exceeds 25% of the obligee's net income (including amounts of spousal support, APL and child support), the court may direct the obligor to assume up to 50% of the excess amount as part of the total support award. For purposes of this subdivision, the term "mortgage" [include] includes shall first [and subsequent] mortgages, real estate taxes and homeowners' insurance and may include any subsequent mortgages, home equity loans and any other obligations incurred during the marriage which are secured by the marital residence.

**Explanatory Comment—1998**

\* \* \* \* \*

Subdivision (b) reflects a major change in the treatment of health insurance premiums. Under the old rules, the cost of health insurance was deducted from the party's gross income to determine net income. Under the new Rule, this cost is now generally treated as an additional expense to be allocated between the parties in proportion to their net incomes. In addition, subsection (1) of the new Rule permits allocation of the entire premium, including the party's portion of the premium, when the insurance benefits the other party or the children. Subsection (2) provides for proration of the premium when the health insurance covers other persons who are not subject to the support action.

\* \* \* \* \*

**Explanatory Comment to Rule 1910.16-6—2000**

Subdivision (b) has been amended to permit an alternative method for dealing with the cost of health insurance premiums in certain circumstances. In general, the cost of the premiums will be treated as an additional expense to be allocated between the parties in proportion to their net incomes. However, in cases in which the obligee has no income or minimal income, new subsection (4) authorizes the trier of fact to reduce the obligor's gross income for support purposes by some or all of the amount of the health insurance premiums. Under this subdivision (b) as originally promulgated, the entire cost of health insurance would have been borne by the obligor when the obligee had little or no income, with no resulting reduction in the amount of support he or she would otherwise be required to pay under the support guidelines. The goal of the amendment to this subdivision is to encourage and facilitate the maintenance of health insurance coverage for dependents by giving the obligor a financial incentive to maintain health insurance coverage.

Subdivision (e) has been amended to correct a drafting error in the definition of "mortgage". It always was the intention of the Committee to include in the definition the real estate taxes and homeowners' insurance referenced in the first sentence of the rule. In addition, while real estate taxes and homeowners' insurance must now be included if the trier of fact applies the provisions of this subdivision, the inclusion of second mortgages, home equity loans and other obligations secured by

the marital residence is within the discretion of the trier of fact based upon the circumstances of the case.

\* \* \* \* \*

**CHAPTER 1940. VOLUNTARY MEDIATION IN CUSTODY ACTIONS**

**Rule 1940.9. Effective Date.**

These rules shall not affect any existing mediation program established in any judicial district pursuant to local rule prior to October 29, 1999. However, any changes or amendments to any existing program shall be consistent with these rules.

**Explanatory Comment—2000**

**This new rule is consistent with 23 Pa.C.S. § 3904.**

[Pa.B. Doc. No. 00-1930. Filed for public inspection November 10, 2000, 9:00 a.m.]

**Title 234—RULES OF CRIMINAL PROCEDURE**

[234 PA. CODE CH. 1]

**Order Amending Rule 6<sup>1</sup>; No. 265; Criminal Procedural Rules; Doc. No. 2**

The Criminal Procedural Rules Committee has prepared a Final Report explaining the October 24, 2000 amendments to Pa.R.Crim.P. 6 (Local Rules). These amendments, effective January 1, 2001, (1) more clearly define "local rule," (2) emphasize the requirements that must be followed before a local rule is effective and enforceable, and (3) establish procedures for the enforcement of local rules with a limitation on the sanctions for non-compliance. The Final Report follows the Court's Order.

**Order**

*Per Curiam:*

Now, this 24th day of October, 2000, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before adoption at 30 Pa.B. 2573 (May 27, 2000), and in the Atlantic Reporter (Second Series Advance Sheets, Vol. 749), 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 Rule of Criminal Procedure 6 is amended in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective January 1, 2001.

**Annex A**

**Title 234. RULES OF CRIMINAL PROCEDURE  
CHAPTER 1. SCOPE OF RULES, CONSTRUCTION AND DEFINITIONS, LOCAL RULES**

**Rule 6. Local Rules.**

**[ (a) ] (A)** For the purpose of this rule, the term "local rule" shall include every rule, regulation, directive, policy,

<sup>1</sup> Rule 6 will be renumbered Rule 105 as part of the renumbering and reorganization of the Rules of Criminal Procedure the Court adopted on March 1, 2000, effective April 1, 2001.

custom, usage, form or order of general application, however labeled or promulgated, **[ which is ]** adopted or enforced by a court of common pleas to govern criminal practice and procedure, **which requires a party or party's attorney to do or refrain from doing something.**

**[ (b) ] (B) \* \* \***

\* \* \* \* \*

**[ (c) ] (C) [ To be effective and enforceable ] A local rule shall not become effective and enforceable until the adopting court has fully complied with all the following requirements:**

(1) A local rule shall be in writing.

\* \* \* \* \*

(6) A local rule promulgated before the effective date of this rule shall be filed on or before that effective date with the prothonotary or clerk of court and shall be kept by the prothonotary or clerk for inspection, copying, and furnishing as provided in **[ sub ]** paragraph **[ (c) ] (C)(5).**

**[ (d) ] (D)** A local rule shall become effective not less than **[ thirty ] 30** days after the date of publication of the rule in the *Pennsylvania Bulletin*.

**(E) No case shall be dismissed nor request for relief granted or denied because of failure to comply with a local rule. In any case of noncompliance with a local rule, the court shall alert the party to the specific provision at issue and provide a reasonable time for the attorney to comply with the local rule.**

**[ (e) ] (F)** The Criminal Procedural Rules Committee may at any time recommend that the Supreme Court suspend, vacate, or require amendment of a local rule and may suspend that local rule pending action by the Court on that recommendation.

**Comment**

The policy of the Supreme Court as declared in the Order promulgating this rule is "to implement the unified judicial system under the Constitution of 1968, to facilitate the statewide practice of law under this Court's general rules, and to promote the further policy that a general rule of criminal procedure normally preempts the subject covered." In accordance with the Court's policy, it is intended that local rules should not repeat general rules or statutory provisions verbatim or substantially verbatim nor should local rules make it difficult for attorneys to practice law in several counties.

The caption or other words used as a label or designation shall not determine whether something is or establishes a local rule; if the definition in paragraph **[ (a) ] (A)** of this rule is satisfied the matter is a local rule regardless of what it may be called. The provisions of this rule are also intended to apply to any amendments to a "local rule." **Nothing in this rule is intended to apply to case-specific orders.**

To simplify the use of local rules, local criminal rules are required to be given numbers that are keyed to the number of the general criminal rules to which the local rules correspond. This requirement is not intended to apply to local rules that govern the general business of the court and which do not correspond to a general criminal rule.

**Paragraph (C) was amended in 2000 to emphasize that the adopting authority must comply with all the provisions of paragraph (C) before any local rule, or any amendments to local rules, will be effective and enforceable.**

**[It is contemplated under subparagraph (c) ] Paragraph (C)(5) requires** that a separate consolidated set of local rules **[ shall ]** be maintained in the prothonotary's or clerk's office.

Although under paragraph **[ (d) ] (D)** a local rule shall not be effective until at least 30 days after the date of publication in the *Pennsylvania Bulletin*, when a situation arises that requires immediate action, the local court may act by specific orders governing particular cases in the interim before an applicable local rule becomes effective.

**The purpose of paragraph (E) is to prevent the dismissal of cases, or the grant or denial of requested relief, because a party has failed to comply with a local rule. In addition, paragraph (E) requires that the party be alerted to the local rule, and be given a reasonable amount of time to comply with the local rule.**

**After the court has alerted the party to the local rule pursuant to paragraph (E), the court may impose a sanction for subsequent noncompliance either on counsel or the defendant if proceeding pro se, but may not dismiss the case, or grant or deny relief because of non-compliance.**

**Official Note:** Rule 6 adopted January 28, 1983, effective July 1, 1983; amended May 19, 1987, effective July 1, 1987; renumbered Rule 105 and amended March 1, 2000, effective April 1, 2001; **amended October 24, 2000, effective January 1, 2001.**

#### **Committee Explanatory Reports:**

**Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).**

**Final Report explaining the October 24, 2000 amendments published with the Court's Order at 30 Pa.B. 5842 (November 11, 2000).**

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

#### **Proposed amendments to Pa.R.Crim.P. 6<sup>2</sup>**

##### **LOCAL RULE PROCEDURES**

On October 24, 2000, effective January 1, 2001, upon the recommendation of the Criminal Procedural Rules Committee, the Court amended Rule of Criminal Procedure 6 (Local Rules) to (1) more clearly define "local rule," (2) emphasize the requirements that must be followed before a local rule is effective and enforceable, and (3) establish procedures for the enforcement of local rules with a limitation on the sanctions for non-compliance.

#### **I. Background**

Since the 1983 adoption of Pa.R.Crim.P. 6 (Local Rules), the Committee has been monitoring local criminal rules and local practices. Experience has shown Rule 6 is being honored in the breach, and this circumvention of the Rule

6 requirements hampers rather than promotes the statewide practice of law. Some judges continue to implement local practices and procedures that do not comply with Rule 6 by calling them something other than a "local rule," even though they clearly are local rules within the definition of Rule 6. Often these "local rules" are not published or made available to the members of the bar, which only serves to impede the ability of out-of-county practitioners to practice in that judicial district. We also found that some local rules provide for the dismissal of the case as sanctions for non-compliance. Finally, in many cases, these local practices and procedures conflict with the statewide rules.

Over the years, the Committee has attempted to work with the judicial districts on problem local rules, and has been successful in resolving many of the conflicts. However, the Committee continues to be frustrated in its efforts, and counsel are hindered in their representation of defendants, because many local rules continue not to be published or publicly available as required in Rule 6.

Recognizing the Committee has not been completely successful in resolving the problems with local rules, we agreed that some action was necessary, and, as a first step, Rule 6 should be amended to make the definition of "local rule" clearer and the requirements for the effectiveness and enforceability of local rules more emphatic, and to address limitations on the sanctions for non-compliance with local rules.<sup>1</sup> The amendments are discussed below.

#### **II. Discussion**

##### **A. Definition of "Local Rule"**

One of the major problems uncovered as the Committee researched the issue of local rules is that some president judges issue orders that are intended to govern local practice and procedure, but do not call them local rules and do not comply with Rule 6. As noted above, bypassing the Rule 6 requirements impedes the statewide practice of law and violates the spirit, if not the letter, of Rule 6. With this in mind, the Committee agreed that the definition of "local rule" should be strengthened. Paragraph (A) has been amended by the addition of the phrase "which requires a party or party's attorney to do or refrain from doing something," which makes it clear that any locally mandated practice or procedure, no matter what its label or designation, requiring some action or inaction is indeed a local rule.

##### **B. Prerequisites to Effectiveness**

The Committee agreed another step in clarifying the rule would be to underscore the requirements that must be followed before a local rule will be effective and enforceable. To accomplish this, the introductory phrase for paragraph (C) has been reworded to place emphasis on the fact that, unless the requirements of Rule 6 are followed, the local rule is not effective or enforceable.

##### **C. Sanctions**

When the Committee recommended Rule 6 in 1982, we did not include a provision similar to the one included in Civil Rule 239 prohibiting the dismissal of an action for violation of a local rule. The Committee reasoned that in practice such dismissals rarely, if at all, occur in criminal cases, and therefore such a provision was unnecessary. See Committee explanatory Report, 13 Pa.B. 761 (February 19, 1983). Experience with local rules has demon-

<sup>1</sup> The Committee's Final Reports 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.

<sup>2</sup> Rule 6 will be renumbered Rule 105 as part of the renumbering and reorganization of the Rules of Criminal Procedure that the Court adopted on March 1, 2000, effective April 1, 2001.

<sup>3</sup> The Committee is aware that the Supreme Court's Judicial Council has undertaken a study of statewide local rule practices, and we reviewed our proposal with the Judicial Council's local rules subcommittee staff prior to submission to the Court to insure that the proposed changes to Rule 6 were consistent with the Judicial Council's work.

strated the opposite to be true: cases are dismissed, or requests for relief are granted or denied, when a party fails to comply with a local criminal rule, and this is a major concern among practitioners, as well as for the Committee.

Recognizing one of the major problems contributing to non-compliance is that many local rules are not published, and are not easily accessible, the Committee concluded that it was inappropriate to dismiss cases in these circumstances. Considering how best to resolve the problem of lack of notice and address sanctions, the Committee agreed the rule should (1) prohibit the dismissal of a case and the grant or denial of a request for relief because of failure to comply with a local rule, and (2) place with the court the responsibility for alerting a non-complying party to the specific provision of the local rule. The court also would be required to provide the party with a reasonable amount of time to comply. These provisions have been incorporated into new paragraph (E).

Although agreeing with the proposal, some members expressed concern that the "sanction" limitation in new paragraph (E) might be construed as limiting a judge's options when a party in a particular case refuses to comply with procedural orders that apply only to that case. For clarification purposes, the Committee agreed to add a provision to the Comment pointing out the distinction between local rules of general application and orders or directives regulating the procedures in a particular case, i.e., "case-specific" orders.

Finally, the Comment explains that when the party continues to ignore the local rule, the only appropriate sanctions would be against the attorney who is not complying, or the non-complying defendant if proceeding pro se, rather than the case being dismissed or the relief granted or denied.

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