

THE COURTS

Title 201—RULES OF JUDICIAL ADMINISTRATION

[201 PA. CODE CH. 17]

Amendment of Rule 1701; No. 254 Judicial Administration; Doc. No. 1

Order

Per Curiam:

And Now, this 2nd day of April, 2003, Rule 1701 of the Rules of Judicial Administration is amended to read as follows.

To the extent that notice of the proposed rulemaking would be required by Rule 103 of the Pennsylvania Rules of Judicial Administration or otherwise, the immediate amendment of Rule 1701 is hereby found to be required in the interest of justice and the efficient administration.

This Order shall be effective immediately and shall be processed in accordance with Rule 103(b) of the Pennsylvania Rules of Judicial Administration.

Annex A

TITLE 201. RULES OF JUDICIAL ADMINISTRATION

CHAPTER 17. JUDGES AS WITNESSES

JUDGES AS WITNESSES

Rule 1701. Appearance of judge or district justice [of the peace] as character witness.

(a) For purposes of this rule, judge or district justice includes those judicial officers in active judicial service or senior status.

[(a)](b) No subpoena to compel a judge or district justice to testify as a character witness shall be issued or enforced unless the issuance of the subpoena shall have been specially allowed by the Supreme Court pursuant to this rule.

[(b)](c) * * *

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[(c)](d) * * *

[(d)](e) No judge or district justice [of the peace] shall testify voluntarily as a character witness. The provisions of this subdivision shall constitute a canon of ethics for the purposes of Section 17 of the Judiciary Article.

[Pa.B. Doc. No. 03-703. Filed for public inspection April 18, 2003, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 1000]

Amendment of Notes to Rules 1023.1 and 1036; No. 386 Civil Procedural Rules; Doc. No. 5

Order

Per Curiam:

And Now, this 2nd day of April, 2003, the Pennsylvania Rules of Civil Procedure are amended as follows:

1. The note following Rule 1023.1(e) is amended to read as follows.

2. The note following Rule 1036(a) is amended to read as follows.

Whereas prior distribution and publication of these amendments would otherwise be required, it has been determined that the amendments are of a perfunctory nature and that immediate promulgation of the amendments is required in the interest of justice and efficient administration.

This Order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective June 1, 2003.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1000. ACTIONS AT LAW

Subchapter A. CIVIL ACTION

PLEADINGS

Rule 1023.1. Scope. Signing of Documents. Representations to the Court. Violation.

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(e) Section 8355 of the Judicial Code, 42 Pa.C.S. § 8355, is suspended absolutely, in accordance with the provisions of the Constitution of 1968, Article V, Section 10(c).

Official Note: Section 8355 of the Judicial Code provides for the certification of pleadings, motions and other papers.

[See also Order of January 17, 1997, Civil Procedural Rules Docket No. 5, No. 269, suspending the following sections of the Health Care Services Malpractice Act, added by Act No. 1996-135; Section 813-A, 40 P. S. § 1301.813-A, providing for the signing and certification of pleadings, motions and other papers and Section 821-A, 40 P. S. § 1301.821-A, providing for the signing and certification of a complaint.]

Rule 1036. Dismissal Upon Affidavit of Noninvolvement.

(a) As used in this rule, "action" means an action subject to an Act of Assembly which provides for dismissal of the action as to a party based upon an affidavit of noninvolvement.

Official Note: Actions pursuant to the following Acts of Assembly are within the scope of this rule: Section 7502 of the Judicial Code, 42 Pa.C.S. § 7502, an action for negligence against a construction design professional and [Section 827-A of the Health Care Services Malpractice Act, 40 P.S. § 1301.827-A] Section 506 of the Medical Care Availability and Reduction of Error (Mcare) Act, 40 P.S. § 1303.506, a medical [malpractice] professional liability action naming a health care provider as a defendant.

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[Pa.B. Doc. No. 03-704. Filed for public inspection April 18, 2003, 9:00 a.m.]

PART I. GENERAL

[231 PA. CODE CH. 2350]

Promulgation of New Rule 2355; No. 387 Civil Procedural Rules; Doc. No. 5

Order

Per Curiam:

And Now, this 2nd day of April, 2003, new Pennsylvania Rule of Civil Procedure 2355 is promulgated to read as follows.

This Order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective June 1, 2003.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 2350. SUBSTITUTION OF PARTIES

Rule 2355. Notice of Death of a Party. Substitution of Personal Representative.

(a) If a named party dies after the commencement of an action, the attorney of record for the deceased party shall file a notice of death with the prothonotary. The procedure to substitute the personal representative of the deceased party shall be in accordance with Rule 2352.

Official Note: Counsel for the deceased party should file the notice of death promptly upon learning of the death of the party and serve a copy upon every other party to the action.

See Section 3375 of the Decedents, Estates and Fiduciaries Code, 20 Pa.C.S. § 3375 which provides that if a plaintiff dies and a personal representative is not appointed within one year after a suggestion of the death, the court, upon petition, shall abate the action if the delay in taking out letters is not reasonably explained.

This rule does not address the case law discussing whether the commencement of an action by or against a deceased person is a nullity and therefore does not toll the running of the statute of limitations.

(b) The notice of death required by subdivision (a) shall be substantially in the following form:

(CAPTION)

NOTICE OF DEATH

The death of _____, a party to the above action, during the pendency of this action is noted upon the record.

Attorney for the Deceased Party

Address

Explanatory Comment

The rules of civil procedure previously made no mention of the death of a party to an action. New Rule 2355 applies when a named party dies after an action has been commenced. The new rule alerts the parties to the necessity of noting the death upon the record and of substituting as a party to the action the personal representative of the deceased party. The rule provides a form of Notice of Death which is to be filed with the prothonotary. The rule also incorporates the procedure of Rule 2352 governing substitution of a successor.

By the Civil Procedural Rules Committee

R. STANTON WETTICK, Jr.,
Chair

[Pa.B. Doc. No. 03-705. Filed for public inspection April 18, 2003, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CH. 7]

Order Approving the Revision of the Comments to Rules 702 and 704; No. 293 Criminal Procedural Rules; Doc. No. 2

The Criminal Procedural Rules Committee has prepared a Final Report explaining the revision of the Comments to Rules of Criminal Procedure 702 (Aids in Imposing Sentence) and 704 (Procedure at Time of Sentencing). These changes alert members of the bench and bar to the statutory requirements concerning consideration of preexisting orders when determining the amount of restitution at the time of sentencing. The Final Report follows the Court's Order.

Order

Per Curiam:

Now, this 27th day of March, 2003, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been submitted without publication pursuant to Pa.R.J.A. 103(a)(3), the changes being perfunctory in nature, 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 the revision of the Comments to Rules of Criminal Procedure 702 and 704 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 July 1, 2003.

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

CHAPTER 7. POST-TRIAL PROCEDURES IN COURT CASES

PART A. Sentencing Procedures

Rule 702. Aids in Imposing Sentence.

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Comment

For purposes of paragraph (A)(2)(c), whether the defendant has a prior juvenile adjudication is immaterial. Paragraph (A)(3) indicates in general terms what the contents of the pre-sentence investigation report must include. With respect to the particularized contents of such reports, see *Commonwealth v. Martin*, 351 A.2d 650 (Pa. 1976). **Concerning other information that would be helpful for the sentencing judge to have in the pre-sentencing investigation report, see 18 Pa.C.S. § 1106(c)(2)(iv) (the judge, when determining the amount of restitution, must consider "any other preexisting orders imposed on the defendant, including, but not limited to, orders imposed under this title or any other title").**

* * * * *

Official Note: Rule 1403 adopted July 23, 1973, effective 90 days hence; amended June 28, 1976, effective January 1, 1977; amended November 1, 1991, effective January 1, 1992; amended March 22, 1993, effective January 1, 1994; Comment revised April 18, 1997, effective immediately; renumbered Rule 702 and amended March 1, 2000, effective April 1, 2001; **Comment revised March 27, 2003; effective July 1, 2003.**

Committee Explanatory Reports:

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Final Report explaining the March 27, 2003 Comment revision adding a cross-reference to 18 Pa.C.S. § 1106 published with the Court's Order at 33 Pa.B. 1928 (April 19, 2003).

Rule 704. Procedure at Time of Sentencing.

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Comment

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SENTENCING PROCEDURES

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It is difficult to set forth all the standards [**which**] that a judge must utilize and consider in imposing sentence. It is recommended that, at a minimum, the judge look to the standards and guidelines as specified by statutory law. See the Judicial Code, 42 Pa.C.S. § 9701 et seq. See also *Commonwealth v. Riggins*, 377 A.2d 140 (Pa. 1977) and *Commonwealth v. Devers*, 546 A.2d 12 (Pa. 1988). **The judge also should consider other preexisting order imposed on the defendant. See 18 Pa.C.S. § 1106(c)(2)(iv). And see 42 Pa.C.S. § 9728.**

* * * * *

Official Note: Previous Rule 1405 approved July 23, 1973, effective 90 days hence; Comment amended June 30, 1975, effective immediately; Comment amended and paragraphs (c) and (d) added June 29, 1977, effective September 1, 1977; amended May 22, 1978, effective as to cases in which sentence is imposed on or after July 1, 1978; Comment amended April 24, 1981, effective July 1, 1981; Comment amended November 1, 1991, effective January 1, 1992; rescinded March 22, 1993, effective as to cases in which the determination of guilt occurs on or after January 1, 1994, and replaced by present Rule 1405. Present Rule 1405 adopted March 22, 1993, effective as to cases in which the determination of guilt occurs on or after January 1, 1994; amended January 3, 1995, effective immediately; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date

extended to April 1, 1996. Comment revised December 22, 1995, effective February 1, 1996. The April 1, 1996 effective date extended to July 1, 1996. Comment revised September 26, 1996, effective January 1, 1997; Comment revised April 18, 1997, effective immediately; Comment revised January 9, 1998, effective immediately; amended July 15, 1999, effective January 1, 2000; renumbered Rule 704 and amended March 1, 2000, effective April 1, 2001; **Comment revised March 27, 2003, effective July 1, 2003.**

Committee Explanatory Reports:

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Final Report explaining the March 27, 2003 Comment revision adding cross-reference to 18 Pa.C.S. § 1106 and 42 Pa.C.S. § 9728 published with the Court's Order at 33 Pa.B. 1928 (April 19, 2003).

FINAL REPORT¹

Proposed Revision of the Comments to Pa.Rs.Crim.P. 702 and 704

CONSIDERATION OF PREEXISTING ORDERS WHEN DETERMINING RESTITUTION

On March 27, 2003, effective July 1, 2003, upon the recommendation of the Criminal Procedural Rules Committee, the Court approved the revision of the Comments to Pa.Rs.Crim.P. 702 (Aids in Imposing Sentence) and 704 (Procedure at Time of Sentencing). These changes alert members of the bench and bar to the statutory requirements concerning consideration of preexisting orders when determining the amount of restitution at the time of sentencing.

The Committee undertook a review of the sentencing rules after receiving correspondence from the Court's Domestic Relations Procedural Rules Committee that requested we consider a change to the Criminal Rules that would require the sentencing courts to take into consideration child support orders when ordering restitution. The Domestic Relations Committee specifically noted that 18 Pa.C.S. § 1106(c)(2)(iv), concerning restitution for injuries to person or property, requires the court, when determining the method and amount of restitution, to "consider any other preexisting orders imposed on the defendant, including, but not limited to, orders imposed under this title or any other title." Relying on this language, the Domestic Relations Committee suggested that "existing support orders should be considered in ordering restitution . . ." and there should be "a standard procedure in place to assure that at least some of the defendant's available income goes to the support of his or her dependents"

The Committee carefully considered the issue raised by the Domestic Relations Committee. We do not think the Criminal Rules specifically should refer to domestic relations orders because there are other types of orders that are governed by 18 Pa.C.S. § 1106(c)(2)(iv), and we concluded it would be (1) confusing to the bench and bar to single out domestic relations orders in the Criminal Rules, and (2) difficult and even mischievous to attempt to list all the types of orders that might fall within the parameters of 18 Pa.C.S. § 1106(c)(2)(iv). However, we agreed it would be helpful to include a cross-reference to Section 1106 in the sentencing rules to alert members of the bench and bar to this statutory provision. To accomplish this, the following language has been added to the Rule 702 Comment:

¹ 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.

Concerning other information that would be helpful for the sentencing judge to have in the pre-sentence investigation report, see 18 Pa.C.S. § 1106(c)(2)(iv) (the judge, when determining the amount of restitution, must consider “any other preexisting orders imposed on the defendant, including, but not limited to, orders imposed under this title or any other title”).

A reference to 18 Pa.C.S. § 1106(c)(2)(iv) also has been included in the Rule 704 Comment.

In addition, as part of our review, the Committee considered the provision of 42 Pa.C.S. § 9728 (Collection of restitution, reparation, fees, costs, fines and penalties) that requires, notwithstanding a defendant’s obligations, at least 50% of all moneys collected must be used to pay restitution to victims. We agreed a citation to 42 Pa.C.S. § 9728(g.1) also should be added in the Rule 704 Comment to highlight this requirement. Accordingly, the following provision has been added to the Rule 704 Comment:

The judge also should consider other preexisting orders imposed on the defendant. See 18 Pa.C.S. § 1106(c)(2)(iv). And see 42 Pa.C.S. § 9728.

[Pa.B. Doc. No. 03-706. Filed for public inspection April 18, 2003, 9:00 a.m.]

Title 25—LOCAL COURT RULES

DAUPHIN COUNTY

Promulgation of Local Rules; No. 1793 S 1989

Order

And Now, this 4th day of April, 2003, Dauphin County Local Rules of Civil Procedure are hereby amended as follows:

Rule 1920.42. Affidavit Under Section 3301(d)(1) of the Divorce Code

The affidavit required under Section 3301(d) of the Divorce Code shall be filed with the Prothonotary before it is served. The opposing party must be served with a certified copy of the Affidavit. Moving party must wait a minimum of twenty (20) days after service of the Affidavit before serving the Notice of Intention to File Praecepto to Transmit Record and Counter Affidavit or filing the Waiver of Notice as provided in Pa.R.C.P. 1920.72(c).

This amendment shall be effective 30 days from date of publication in the *Pennsylvania Bulletin*.

By the Court

JOSEPH H. KLEINFELTER,
President Judge

[Pa.B. Doc. No. 03-707. Filed for public inspection April 18, 2003, 9:00 a.m.]
