

THE COURTS

Title 225—RULES OF EVIDENCE

ARTICLE VI. WITNESSES

[235 PA. CODE ART. VI]

Order Approving Amendments to Pennsylvania Rule of Evidence 606; No. 424; Supreme Court Rules; Doc. No. 1

Order

Per Curiam:

Now, this 17th day of September 2007, upon the recommendation of the Committee on Rules of Evidence,

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Pa.R.E. 606 is hereby revised in the following form.

This *Order* shall be processed immediately in accordance with Pa.R.J.A. 103(b), and shall be effective October 17, 2007.

Annex

TITLE 225. RULES OF EVIDENCE

PART VI. WITNESSES

Rule 606. Competency of Juror as Witness.

(a) *At the [Trial] trial.* A member of the jury may not testify as a witness before that jury in the trial of the case in which the juror is sitting. If the juror is called so to testify, the opposing party shall be afforded an opportunity to object out of the presence of the jury.

(b) *Inquiry into [Validity of Verdict] validity of verdict.* Upon an inquiry into the validity of a verdict, including a sentencing verdict pursuant to 42 Pa.C.S.A. § 9711 (relating to capital sentencing proceedings), a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon that or any other juror's mind or emotions in reaching a decision upon the verdict or concerning the juror's mental processes in connection therewith, and a juror's affidavit or evidence of any statement by the juror about any of these subjects may not be received. However, a juror may testify concerning whether prejudicial facts not of record, and beyond common knowledge and experience, were improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror.

Comment

* * * * *

Note that section (a) bars a jury member from testifying "before that jury in the trial of the case in which the juror is sitting." The phrase "before that jury" did not appear in the preliminary draft of F.R.E. 606(a); its addition leads to the conclusion that a juror may testify outside the presence of the rest of the jury on matters occurring during the course of the trial. 3 Weinstein & Berger, *Evidence* ¶ 606[02], at 606-18; see also *United States v. Robinson*, 645 F.2d 616 (8th Cir. 1981) (holding

that on motion for mistrial, F.R.E. 606 did not bar juror from testifying, out of presence of other jurors, concerning his observation of accused being escorted from court house under guard); *United States v. Day*, 830 F.2d 1099 (10th Cir. 1987) (stating that during course of trial, juror could have been called to testify regarding whether bias arose from remarks between juror and investigating F.B.I. agent). Current Pennsylvania law is in accord. See *Commonwealth v. Santiago*, 456 Pa. 265, 318 A.2d 737 (1974) (jurors permitted to testify at hearing in chambers during trial on question of whether they received improper prejudicial information).

* * * * *

Pennsylvania cases have also recognized the **first** two exceptions to juror incompetency set forth in the second sentence of Pa.R.E. 606(b). [*Carter v. U.S. Steel Corp.*, 529 Pa. 409, 604 A.2d 1010 (1992).] *Pratt v. St. Christopher's Hospital*, 866 A.2d 313 (Pa. 2005); *Commonwealth v. Williams*, *supra*; *Welshire v. Bruaw*, 331 Pa. 392, 200 A.2d 67 (1938). Note that when jurors are permitted to testify about facts not of record and outside influences, they may not be questioned about the effect upon them of what was improperly brought to their attention. See [*Carter*, *supra*;] 3 Weinstein & Berger, *Evidence* ¶ 606[5] at pp. 606-53—606-55. **Pa.R.E. 606(b) does not recognize the third exception to juror incompetency that appears in F.R.E. 606(b)—permitting juror testimony about whether there was a mistake in entering the verdict onto the verdict form. Pennsylvania law deals with possible mistakes in the verdict form by permitting the polling of the jury prior to the recording of the verdict. If there is no concurrence, the jury is directed to retire for further deliberations. See Pa.R.Crim.P. 648(G); *City of Pittsburgh v. DiNardo*, 410 Pa. 376, 189 A. 2d 886 (1963); *Barefoot v. Penn Central Transportation Co.*, 226 Pa. Super. 558, 323 A.2d 271 (1974).** Pa.R.E. 606(b) does not purport to set forth the substantive grounds for setting aside verdicts because of an irregularity.

FINAL REPORT

Rule 606(b): Competency of Juror as Witness

Revision of Comment

The Committee continues to examine the federal rules of evidence and rules from other states to determine whether our rules of evidence should be changed. Realizing that the profession is aware that our rules are modeled on the federal rules, changes in those rules may mislead some to assume that such changes apply to our rules as well. Hence, when F.R.E. 606(b) was amended recently to permit the Court to hear testimony of a juror regarding a mistake in entering the verdict in the verdict form, the Committee seeks to clarify that our rule contains no such change.

[Pa.B. Doc. No. 07-1785. Filed for public inspection September 28, 2007, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 1000]

Proposed Amendment of Rules 1042.1 et seq. Governing the Certificate of Merit in Professional Liability Actions; Proposed Recommendation No. 227

The Civil Procedural Rules Committee is proposing that Rule of Civil Procedure 1042.1 governing the certificate of merit in professional liability actions be amended as set forth in the attached recommendation. The recommendation is being submitted to the bench and bar for comments and suggestions prior to its submission to the Supreme Court of Pennsylvania.

All communications in reference to the proposed recommendation should be sent not later than November 8, 2007 to:

Harold K. Don, Jr.,
Counsel
Civil Procedural Rules Committee
5035 Ritter Road, Suite 700
Mechanicsburg, Pennsylvania 17055

or E-Mail to
civil.rules@pacourts.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 or be officially adopted or promulgated by the Court.

Annex

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1000. ACTIONS

PROFESSIONAL LIABILITY ACTIONS

Rule 1042.1. Professional Liability Actions. Scope. Definition.

(a) The rules of this chapter govern a civil action in which a professional liability claim is asserted against

- (1) a licensed professional, and
- (2) a partnership, unincorporated association, corporation or similar entity where the entity is responsible for a licensed professional who deviated from an acceptable professional standard.

* * * * *

(c) As used in this chapter, "professional liability claim" when asserted against a licensed professional who is a health care provider under subdivision (b)(1)(i) of this rule includes a claim for lack of informed consent.

Rule 1042.2. Complaint.

* * * * *

(b) A defendant may raise by preliminary objections the failure of the complaint to comply with subdivision (a) of this rule.

Official Note: [The filing of preliminary objections raising failure of a pleading to conform to rule of court is the procedure for bringing before the court the issue whether the complaint is asserting a professional liability claim.] The filing of preliminary objections pursuant to Rule 1042.2(b) is not a prerequisite to the filing of a praecipe for judgment of non pros for failure to file a certificate of merit.

Rule 1042.3. Certificate of Merit

(a) In any action against a licensed professional or an entity responsible for a licensed professional based upon an allegation that [a] the licensed professional deviated from an acceptable professional standard, the attorney for the plaintiff, or the plaintiff if not represented, shall file with the complaint or within sixty days after the filing of the complaint, a certificate of merit signed by the attorney or party that either

* * * * *

(d) The court, upon good cause shown, shall extend the time for filing a certificate of merit for a period not to exceed sixty days. [A] The motion to extend the time for filing a certificate of merit must be filed [on or before the filing date that the plaintiff seeks to extend] by the thirtieth day after the filing of a notice of intention to enter judgment of non pros on a professional liability claim under Rule 1042.6(a) or on or before the expiration of the extended time where a court has granted a motion to extend the time to file a certificate of merit, whichever is greater. The filing of a motion to extend tolls the time period within which a certificate of merit must be filed until the court rules upon the motion.

* * * * *

Rule 1042.6. Notice of Intent to Enter Judgment of Non Pros for Failure to File Certificate of Merit. Motion to Determine Necessity to File Certificate. Form of Notice.

(a) Except as provided by subdivision (b), a defendant seeking to enter a judgment of non pros under Rule 1042.7(a) shall file a written notice of intention to file the praecipe and serve it on the party's attorney of record or on the party if unrepresented, no sooner than the thirty-first day after the filing of the complaint.

(b) A judgment of non pros may be entered as provided by Rule 1042.7(a) without notice if

- (1) the court has granted a motion to extend the time to file the certificate and the plaintiff has failed to file it within the extended time, or
- (2) the court has denied the motion to extend the time.

(c) Upon the filing of a notice under subdivision (a) of this rule, a plaintiff may file a motion seeking a determination by the court as to the necessity of filing of a certificate of merit. The filing of the motion tolls the time period within which a certificate of merit must be filed until the court rules upon the motion.

Official Note: The motion may be filed at any time prior to the entry of a judgment of non pros.

Once the judgment of non pros is entered, a party cannot raise the claim that the filing of a certificate of merit was not required.

(d) The notice required by subdivision (a) of this rule shall be substantially in the following form:

(CAPTION)
NOTICE OF INTENTION TO ENTER
JUDGMENT OF NON PROS
ON PROFESSIONAL LIABILITY CLAIM

To: _____
(Identify Party)

Pursuant to Pennsylvania Rule of Civil Procedure 1042.7, I intend to enter a judgment of non pros against you after thirty (30) days of the date of the filing of this notice if a certificate of merit is not filed as required by Rule 1042.3.

I am serving this notice on behalf of _____
(Name of party)

The judgment of non pros will be entered as to the following claims: _____

(State if a judgment is to be entered as to all claims. Otherwise, identify claims set forth in the complaint as to which a judgment of non pros will be entered.)

(Attorney)

(Address)

(Telephone Number)

Rule [1042.6] 1042.7. Entry of Judgment of Non Pros for Failure to File Certification. **Form of Praecepte.**

(a) The prothonotary, on praecipe of the defendant, shall enter a judgment of non pros against the plaintiff for failure to file a certificate of merit within the required time provided that

(1) there is **no pending motion for determination that the filing of a certificate is not required or no pending timely filed motion seeking to extend the time to file the certificate**[.],

(2) **no certificate of merit has been filed,**

(3) **except as provided by Rule 1042.6(b), the defendant has attached to the praecipe a certificate of service of the notice of intention to enter the judgment of non pros, and**

(4) **the praecipe is filed no less than thirty days after the date of the filing of the notice of intention to enter the judgment of non pros.**

Official Note: The prothonotary may not enter judgment if the certificate of merit has been filed prior to the filing of the praecipe.

Rule 237.1 does not apply to a judgment of non pros entered under this rule.

See Rule 208.2(a)(4) for the content of the certificate of service.

(b) The praecipe for the entry of a judgment of non pros shall be substantially in the following form:

(Caption)

Praecipe for Entry of Judgment of Non Pros

Pursuant to Rule 1042.6

To the Prothonotary:

[Enter judgment of non pros against _____
Plaintiff
in the Professional liability claim against _____
Defendant
in the above captioned matter.]

Enter judgment of non pros in the above captioned matter against _____ as to
Identify Party

(1) all claims against _____
Identify Party

OR

(2) only the following claims against _____:
Identify Party

Identify Claims

[I, the undersigned, certify that the plaintiff named above has asserted a professional liability claim against the defendant named above who is a licensed professional, that no certificate of merit has been filed within the time required by Pa.R.C.P. 1042.3 and that there is no motion to extend the time for filing the certificate pending before the court.]

Date: _____

[Defendant or] Attorney for [Defendant]

(Identify Party)

Official Note: Where applicable, a certificate of service of the notice of intention to enter judgment of non pros shall be attached to the praecipe.

Rule [1042.7] 1042.8. Sanctions.

* * * * *

Rule [1042.8] 1042.9. Certificate of Merit. Form.

* * * * *

Explanatory Comment

Rules of Civil Procedure 1042.1 et seq., governing the certificate of merit in professional liability actions were promulgated in 2003. The Civil Procedural Rules Committee has reviewed the operation of the rules over the past four years and is proposing amendments to supply certain omissions in the present rules and provide additional notice to the parties. The proposed amendments do not alter the requirements of the existing rules governing the certificate of merit or expand the time period for filing the certificate.

It is proposed that Rules 1042.6, 1042.7 and 1042.8 be renumbered as Rules 1042.7, 1042.8 and 1042.9, respectively, and that new Rule 1042.6 be promulgated to govern notice of intent to enter a judgment of non pros for failure to file a certificate of merit.

The highlights of the amendments are as follows:

1. It is proposed that present Rule 1042.1 governing the scope of the rules be amended in two respects. First, subdivision (a) is revised to make clear that present Rule 1042.1 et seq. includes professional liability actions

against a partnership, an unincorporated association, a corporation or a similar entity where the entity "is responsible for a licensed professional who deviated from an acceptable professional standard." A conforming amendment to refer to these entities is to be made to Rule 1042.3(a).

Second, new subdivision (c) is added to Rule 1042.1 to make clear that a professional liability action against a health care provider may include a claim for lack of informed consent.

2. Rule 1042.2(b) provides that "[a] defendant may raise by preliminary objections the failure of the complaint to comply with subdivision (a) of this rule." However, courts have not construed the rule as requiring preliminary objections as a prerequisite to the filing of a praecipe for a judgment of non pros for failure to file a certificate of merit. Therefore, the Committee is proposing that the note to Rule 1042.2(b) be amended to reflect the case law.

3. New Rules 1042.6 and 1042.7 address concerns that the present rules (1) permit the entry of a judgment of non pros where a plaintiff may believe that the rules governing certificates of merit do not apply and (2) provide for the entry of a judgment of non pros where there has been no notice of intent to enter such a judgment.

Several revisions are proposed to remedy this situation. First, new Rule 1042.6(a) requires a defendant to give a thirty-day notice of intention to file a praecipe for a judgment of non pros for failure to file a certificate of merit. Subdivision (d) provides a form of notice. The new rule retains the basic sixty-day period for the filing of a certificate of merit under present practice since the notice may be filed no earlier than the thirty-first day after the filing of the complaint and the judgment may not be filed earlier than thirty days after the filing of the notice.

Subdivision (b) sets forth two exceptions to the notice requirement where the court (1) has granted an extension of time to file a certificate of merit and the plaintiff has failed to do so or (2) has denied a motion to extend the time for filing a certificate.

Second, new Rule 1042.6(c) provides that once a notice of intention to seek a judgment of non pros has been filed, the plaintiff may file a motion to seek "a determination by the court that the filing of a certificate of merit is not required." As in the case of a motion to extend the time for filing a certificate under Rule 1042.3(d), the "filing of the motion tolls the time period within which a certificate of merit must be filed until the court rules upon the motion."

Third, present Rule 1042.6 is to be renumbered as Rule 1042.7 and revised. As revised, subdivision (a) of the rule has been expanded to set forth four conditions for the entry of a judgment of non pros. The form of praecipe to enter the judgment in subdivision (b) has been revised to conform to the new procedure.

By the Civil Procedural Rules Committee

R. STANTON WETTICK, Jr.,
Chair

[Pa.B. Doc. No. 07-1786. Filed for public inspection September 28, 2007, 9:00 a.m.]

PART I. GENERAL

[231 PA. CODE CH. 1311]

Amendment of Rule 1311.1 Governing an Appeal from the Award of Arbitrators in Compulsory Arbitration; Proposed Recommendation No. 229

The Civil Procedural Rules Committee proposes that Rule of Civil Procedure 1311.1 governing the admission of documentary evidence upon an appeal from the award of arbitrators in compulsory arbitration 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 of Pennsylvania.

All communications in reference to the proposed recommendation should be sent not later than November 8, 2007 to:

Harold K. Don, Jr.,
Counsel
Civil Procedural Rules Committee
5035 Ritter Road, Suite 700
Mechanicsburg, Pennsylvania 17055

or E-Mail to
civil.rules@pacourts.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 or be officially adopted or promulgated by the Court.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1311. ARBITRATION

Rule 1311.1. Procedure on Appeal. Admission of Documentary Evidence.

(a) The plaintiff may stipulate to \$25,000.00 as the maximum amount of damages recoverable upon the trial of an appeal from the award of arbitrators. The stipulation shall be filed and served upon every other party [**at least thirty days from the date the appeal is first listed for trial**] within thirty days after the appeal is filed.

* * * * *

Explanatory Comment

Rule of Civil Procedure 1311.1 presently provides that the time period for filing and serving a stipulation as to the maximum amount of damages recoverable upon the trial of an appeal from an award of arbitrators is thirty days from the date after the appeal is first listed for trial. However, this method of calculating the time period has been found to be unclear, resulting in the rule being construed in a variety of ways.

The Civil Procedural Rules Committee is proposing that the time period for filing and serving the stipulation be revised to thirty days after the appeal is filed. This

formulation provides a known event, i.e., the filing of the appeal, from which the thirty-day period may be calculated.

By the Civil Procedural Rules Committee

R. STANTON WETTICK, Jr.,
Chair

[Pa.B. Doc. No. 07-1787. Filed for public inspection September 28, 2007. 9:00 a.m.]

PART I. GENERAL
[231 PA. CODE CH. 1910]

Amendments to the Rules of Civil Procedure Relating to Domestic Relations Matters; Recommendation 90

The Domestic Relations Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend the Rules of Civil Procedure relating to domestic relations matters as set forth as follows. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

Notes and explanatory comments which appear with proposed amendments have been inserted by the committee for the convenience of those using the rules. Reports, notes and comments will not constitute part of the rules and will not be officially adopted or promulgated by the Supreme Court.

The committee solicits and welcomes comments and suggestions from all interested persons prior to submission of this proposal to the Supreme Court of Pennsylvania. Please submit written comments no later than Friday, January 25, 2008 to

Patricia A. Miles, Esquire
Counsel, Domestic Relations Procedural Rules Committee
5035 Ritter Road, Suite 700
Mechanicsburg, Pennsylvania 17055
FAX (717) 795-2175
E-mail: patricia.miles@pacourts.us

*By the Domestic Relations
Procedural Rules Committee*

NANCY P. WALLITSCH, Esq.
Chair

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1910. ACTIONS FOR SUPPORT

Rule 1910.16-6. Support Guidelines. Adjustments to the Basic Support Obligation. Allocation of Additional Expenses.

Additional expenses permitted pursuant to this Rule 1910.16-6 may be allocated between the parties even if the parties' incomes do not justify an order of basic support.

* * * * *

(b) Health Insurance Premiums.

(1) A party's payment of a premium to provide health insurance coverage on behalf of the other party and/or the children shall be allocated between the parties in proportion to their net incomes, including the portion of

the premium attributable to the party who is paying it, as long as a statutory duty of support is owed to the party who is paying the premium. If the obligor is paying the premium, then the obligee's share is deducted from the obligor's basic support obligation. If the obligee is paying the premium, then the obligor's share is added to his or her basic support obligation. **If health insurance coverage for a child who is the subject of the support proceeding is being provided and paid for by the child's stepparent, the trier of fact may, as justice and fairness require, deduct all or a portion of the cost of the child's coverage from the net income of the party whose spouse is providing the coverage.** Employer-paid premiums are not subject to allocation.

* * * * *

(3) Pursuant to 23 Pa.C.S.A. § 4326(a), [the non-custodial parent bears the initial responsibility of providing health care coverage for the children if it is available at a reasonable cost on an employment-related or other group basis.] in every support proceeding, the court must ascertain each parent's ability to provide health care coverage for the parties' children and the support order must "provide health care coverage for each child as appropriate."

(i) The non-custodial parent bears the initial responsibility of providing health care coverage for the children if it is available at a reasonable cost on an employment-related or other group basis. "Reasonable cost" to an obligor shall be defined as an amount that does not exceed 5% of the obligor's net monthly income and, when added to the amount of cash support the obligor is ordered pay, does not exceed 50% of the obligor's net monthly income.

(ii) Unless health care coverage for the parties' children is provided by the obligee or the obligee's spouse, the court shall issue the National Medical Support Notice required by 23 Pa.C.S.A. § 4326(d.1) to the obligor's employer in response to notification that the obligor is employed. The notice shall direct the employer to enroll the children of the obligor who are the subject of the support proceeding if the coverage is available at a reasonable cost to the obligor. Concurrently, the court shall provide notice to the obligor setting forth the process to object to the enrollment based upon unreasonable cost, mistake of fact or availability of alternative health care coverage for the children. If there is more than one employer-provided health care coverage option, the obligor shall select the plan, subject to the obligee's right to seek a court order designating a different option.

(iii) Absent the availability of health care coverage to the obligor for the parties' children at a reasonable cost, the court shall order the obligee to provide health care coverage for the children if it is available at a reasonable cost on an employment-related or other group basis. "Reasonable cost" to the obligee shall be defined as an amount not to exceed 5% of the obligee's net monthly income.

(iv) If health care coverage is not available to either party at a reasonable cost on an employment-related or other group basis, the court shall order either parent or both parents to obtain reasonable cost health insurance for the parties' children. The court also may order the custodial parent to apply for government-sponsored cover-

age, such as the Children’s Health Insurance Program (“CHIP”), with any co-premium or other cost apportioned between the parties in proportion to their respective net monthly incomes.

(v) The court shall give preference to health care coverage that is readily accessible to the child, as defined by geographic coverage area, access to local treatment providers or other relevant factors.

Official Note: The maximum amount of any attachment for child and medical support is set forth by the federal Consumer Credit Protection Act (Public Law 90-321, Section 303(b); 15 U.S.C. 1601 et seq.). Pursuant to Rule 1910.16-7(d), priority of payment under any order for support shall be for cash support followed by medical support, which includes health insurance and related costs, capped at the maximum amount permitted by federal withholding law.

* * * * *

Explanatory Comment—2007

Federal and state statutes require clarification to subdivision (b) to ensure that all court orders for support address the children’s ongoing need for medical care. In those instances where the children’s health care needs are paid by the state’s medical assistance program, and eligibility for the Children’s Health Insurance Program (“CHIP”) is denied due to the minimal income of the custodial parent, the obligor remains required to enroll the parties’ children in health insurance that is, or may become, available on an employment-related or other group basis that is reasonable in cost.

Government-sponsored health care plans represent a viable alternative to the often prohibitive cost of health insurance obtainable by a parent. Except for very low income children, every child is eligible for CHIP, for which the parent with primary physical custody must apply and which is based on that parent’s income. A custodial parent may apply for CHIP by telephone or on the Internet. While co-premiums or co-pays increase as the custodial parent’s income increases, such costs are generally modest and may be apportioned between the parties or assigned to the obligor. Moreover, health care coverage obtained by the custodial parent generally yields more practical results, as the custodial parent resides in the geographic coverage area, enrollment cards are issued directly to the custodial parent, and claims may be submitted directly by the custodial parent.

* * * * *

Rule 1910.16-7 Support Guidelines. Awards of Child Support When There are Multiple Families.

* * * * *

(d) When an obligor is subject to more than one order for child support, spousal support and/or alimony pendente lite, the priority for distribution of payments and/or collections for the obligor, without regard to the source of the funds or method of collection, are as follows unless the court specifically orders a different distribution priority:

- (1) current child support.
- (2) medical, child care or other court-ordered child support-related expenses.

(3) [current spousal support or alimony pendente lite] child support arrears.

(4) [child support arrears] current spousal support or alimony pendente elite.

(5) spousal support or alimony pendente lite arrears.

(6) court costs and fees.

Explanatory Comment—2007

The order of priority of the distribution of payments is revised to reflect changes in federal law which presume that cash and medical-related child support are established and paid in that sequence, and that obligations to children take priority over spousal-only obligations. An unallocated order for child and spousal support has the same priority as a child support order.

* * * * *

Rule 1910.21. Support Order. Enforcement. Withholding of Income.

* * * * *

(g) *Priority of Income Withholding.* If there are multiple support obligations in effect against the income of the obligor, the court shall allocate among the obligees the amount of income available for withholding, giving priority to current child support, **child support-related expenses and child support arrears** to the limit provided by law and stating the priority of payment to the obligee.

* * * * *

[Pa.B. Doc. No. 07-1788. Filed for public inspection September 28, 2007, 9:00 a.m.]

PART I. GENERAL

[231 PA. CODE CH. 400]

Amendment of Rules 4003.1 and 4005 Governing Written Interrogatories to a Party; Proposed Recommendation No. 228

The Civil Procedural Rules Committee is proposing that Rules of Civil Procedure 4003.1 and 4005 governing written interrogatories be amended as set forth in the attached recommendation. The recommendation is being submitted to the bench and bar for comments and suggestions prior to its submission to the Supreme Court of Pennsylvania.

All communications in reference to the proposed recommendation should be sent not later than November 8, 2007 to:

Harold K. Don, Jr.,
Counsel
Civil Procedural Rules Committee
5035 Ritter Road, Suite 700
Mechanicsburg, Pennsylvania 17055

or E-Mail to
civil.rules@pacourts.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 or be officially adopted or promulgated by the Court.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 4000. DEPOSITIONS AND DISCOVERY

Rule 4003.1. Scope of Discovery. Generally. Opinions and Contentions.

* * * * *

(c) Except as otherwise provided by these rules, it is not ground for objection that the information sought involves an opinion or contention that relates to a fact or the application of law to fact.

Official Note: Interrogatories that generally require the responding party to state the basis of particular claims, defenses or contentions made in pleadings or other documents should be used sparingly and, if used, should be designed to target claims, defenses or contentions that the propounding attorney reasonably suspects may be the proper subjects of early dismissal or resolution or, alternatively, to identify and to narrow the scope of claims, defenses and contentions made where the scope is unclear.

* * * * *

Rule 4005. Written Interrogatories to a Party.

(a) Subject to the limitations provided by Rule 4011, any party may serve upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or similar entity or a partnership or association, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories may be served upon any party at the time of service of the original process or at any time thereafter. Interrogatories which are to be served prior to service of the complaint shall be limited to the purpose of preparing a complaint and shall contain a brief statement of the nature of the cause of action. Interrogatories shall be prepared in such fashion that sufficient space is provided immediately after each interrogatory or subsection thereof for insertion of the answer or objection.

Official Note: Rule 440 requires the party serving interrogatories upon any other party to serve a copy upon every party to the action.

Interrogatories that generally require the responding party to state the basis of particular claims, defenses or contentions made in pleadings or other documents should be used sparingly and, if used, should be designed to target claims, defenses or contentions that the propounding attorney reasonably suspects may be the proper subjects of early dismissal or resolution or, alternatively, to identify and to narrow the scope of claims, defenses and contentions made where the scope is unclear.

* * * * *

Explanatory Comment

Civil Discovery Standard No. 8 of the American Bar Association (2004) establishes a guideline for the use of contention interrogatories. The Civil Procedural Rules Committee is proposing that Civil Discovery Standard No. 8 be added as a note to Rule 4003.1(c) governing discovery of contention and opinions and as the second paragraph to the present note to Rule 4005(a) governing written interrogatories to a party.

The rationale for the proposal is succinctly set forth in the Comment to Civil Discovery Standard No. 8:

* * * Contention interrogatories, like all forms of discovery, can be susceptible to abuse. Among other things, they can be used as an attempt to tie up the opposing party rather than to obtain discovery. The legitimate purpose of contention interrogatories is to narrow the issues for trial, not to force the opposing side to marshal all its evidence on paper. * * *

The potential for overreaching is particularly present when interrogatories seeking the detailed underpinnings of the opposing party's allegations are served early in the case. Although, when used with discretion, interrogatories served near the outset of the case can be useful in narrowing the issues to define the scope of necessary discovery, contention interrogatories ordinarily are more appropriate after the bulk of discovery has already taken place. At that point, the party on whom the interrogatories are served should have the information necessary to give specific, useful responses. [Citations omitted.]

By the Civil Procedural Rules Committee

R. STANTON WETTICK, Jr.,
Chair

[Pa.B. Doc. No. 07-1789. Filed for public inspection September 28, 2007, 9:00 a.m.]

Title 255—LOCAL COURT RULES

LEBANON COUNTY

Rule 52-1362: Board of Viewers

A. Composition and Appointment of Board of Viewers Pursuant to Eminent Domain Code

(1) The Board of Viewers shall consist of not less than nine members, all of whom shall be adult residents of Lebanon County. At least one-third of the members of the entire board shall be members of the Bar Association of Lebanon County.

(2) Board members shall be appointed for a term of three years by the President Judge of the Court of Common Pleas of Lebanon County. Sitting board members may be re-appointed for an additional term or terms of three years upon expiration of their term. Vacancies in any unexpired term of a board member shall be filled by the President Judge. The Court retains the authority and power to remove a board member at will.

(3) No member of the Board of View shall, during his/her term, appear as counsel or as a witness in any hearing or proceeding before any Board of Viewers.

B. Proceedings Before the Board of Viewers

(1) Each individual Board of Viewers shall consist of a panel of three members of the County Board of Viewers selected by the Court of Common Pleas, one of whom shall be a member of the Bar Association of Lebanon County.

(2) It shall be the duty of the law member of each Board of Viewers to cause said viewers to proceed without undue delay in the execution of its duties. Any hearing in

connection with the duties of the Board of Viewers shall be held in a place designated by the Court Administrator's Office.

(3) The report of each Board of Viewer shall be filed within 90 days of their appointment unless an extension for the filing of said report is granted by the Court upon cause shown.

C. Compensation of Viewers

(1) Compensation of viewers shall be in an amount fixed by Administrative Order of this Court.

(2) A Petition for Compensation shall be filed with the Court and directed to the President Judge at the time of the filing of the report of the Board of Viewers. A copy of the Petition for Compensation shall be served upon all parties, or their attorneys of record, at the time the Board transmits a copy of its report.

(3) Compensation approved by the President Judge pursuant to a Petition for Compensation shall be paid to the viewers by the County of Lebanon, taxed as costs against the condemnor and recoverable as such by the County of Lebanon at any time after the date of approval by the President Judge.

(4) Prior to the view, the chairman of the Board of Viewers at his/her discretion shall have the authority to require that the condemnor escrow an amount reasonably likely to cover the fees and costs of the Board of Viewers. Any such sum deposited in escrow shall be held by counsel for the condemnor or by the Prothonotary as the chairman shall direct. Failure to deposit said funds may result in imposition of sanctions as the Court deems appropriate.

D. Rules Applicability to Additional Proceedings

(1) In addition to proceedings under the Eminent Domain Code, except as otherwise provided by statute, these rules shall also apply to actions wherein a Board of Viewers is court-appointed and utilized in the disposition of a civil matter.

This rule shall become effective January 1, 2008.

ROBERT J. EBY,
President Judge

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