

# MCKEAN COUNTY RULES OF CIVIL PROCEDURE

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# THE BUSINESS OF THE COURTS

## **Rule L205.2(a). Filing of Legal Papers**

In addition to the requirements forth in Pa.R.C.P. No. 204.1:

(1) All papers filed with the prothonotary shall be without folds to facilitate scanning and flat filing.

(2) All papers having multiple pages shall be numbered consecutively. The number shall appear at the bottom center position of each page.

(3) All papers having multiple pages shall be bound at the top with a binding clip or single staple in the middle, not the side.

(4) No tape, headers or backers shall be used without prior approval of the prothonotary.

(5) Attachments to any paper filed with the prothonotary shall be clearly legible. Copies shall faithfully represent the original in every respect.

## **Rule L205.2(b). Cover Sheet**

(1) Pursuant to Pa.R.C.P. No. 205.5 the initial pleading in any civil action, including actions, actions for support, actions for custody and visitation of minor children, actions for divorce, actions in domestic relations generally, and actions in the Orphan's Court, shall be accompanied by the cover sheet published by the court administrator of Pennsylvania available on the website of the Administrative Office of Pennsylvania Courts and from the prothonotary. The party filing the initial pleading in any other type of case not listed on the cover sheet or for which there is not an applicable header (*e.g.* TORT) under which the case type can be added on the line "Other:" shall mark in the lower right hand corner of the cover sheet under the heading "MISCELLANEOUS" sub-heading "Other:" Family Law, Orphan's Court and attach the supplement set forth in subdivision (3) of this rule.

The following are a list of case types that should be used when completing the Rule 205.5 Cover Sheet where not identified.

TORT: Assault, Wrongful Death/Survival, Minor's or Incapacitated Person's Compromise

CONTRACT: Mechanic's Lien, Insurance, Negotiable Instrument, Warranty

CIVIL APPEALS: Award of Viewers, Local Agency, Board of Elections

MISCELLANEOUS: Equitable Relief (Injunction), Labor Dispute, Confirm/Vacate Arbitration Award and any other case not specifically addressed in this rule.

(2) All pleadings including the initial pleading and entries of appearance filed in any matter shall be accompanied by the local cover sheet set forth in subdivision (3) of this rule .

(3) The court administrator shall design and publish the supplement referred to in subparagraph (1) of this rule and the local cover sheet referred to in subsection (2) of this rule. The latest version of these forms shall be available from the prothonotary and on the court's website at [www.mckeancountypa.org/Departments/Court\\_Of\\_Common\\_Pleas](http://www.mckeancountypa.org/Departments/Court_Of_Common_Pleas). The prothonotary shall assist a party appearing *pro se* in the completion of these forms.

### **Note**

A “complex case” is an action that requires exceptional judicial management to avoid placing unnecessary burdens on the court or the litigants and to expedite the case, keep costs reasonable, and promote effective decision making by the court, the parties, and counsel. The factors to be used in determining if a case is “complex” are among other things, whether the action is likely to involve numerous pretrial motions raising difficult or novel legal issues that will be time consuming to resolve, management of a large number of witnesses or a substantial amount of documentary evidence, management of a large number of separately represented parties, or the trial of the case will take more than 2 days. An action is presumptively a complex case if it involves one or more of the following types of claims: medical malpractice, construction defect claims involving many parties; claims for wrongful death; or, insurance coverage claims arising out of any of the claims listed above. Complex cases will customarily be assigned to a Senior Judge.

Plaintiff/Defendant shall furnish the prothonotary with a copy of the cover sheet(s) and supplement, if any, for the court administrator.

### **Rule L206.4(c). Petition Procedure: Issuance of a Rule to Show Cause**

(1) Filing:

(a) All petitions shall be filed with the prothonotary in the form prescribed in Pa.R.C.P. Nos. 204.1, 206.1 and Rule L205.2(a).

(b) Scope: As used in this rule, “petition” means any application to open a default judgment or a judgment of *non pros*.

(c) The issuance of a Rule to Show Cause upon presentation of a petition shall be discretionary. A petitioner seeking the issuance of a Rule to Show Cause shall attach to the petition a proposed order in the form prescribed in Pa.R.C.P. No. 206.5(d). The court in its discretion may delete paragraphs (4) and (5) of the form order (regarding discovery and argument) and provide instead that the matter will proceed before the court on an evidentiary hearing to resolve disputed issues of fact. The court may also enter an order to require the filing of briefs or to authorize discovery to proceed other than by deposition.

(d) Petitions should not be filed with the court administrator. All petitions shall be filed with the prothonotary. Courtesy copies for the court are not required. Petitions should not be filed in duplicate or by facsimile transmission, except in emergency circumstances.

(e) The court will take no action until a petition has been filed of record, except in unusual circumstances.

(f) In the event a Rule to Show Cause is not issued, the court shall issue an appropriate order directing the respondent to file an answer to the petition and the petition will be decided under Pa.R.C.P. No. 206.7.

(2) The petition seeking the issuance of a Rule to Show Cause shall be supported with an appropriate statement of authority citing a statute, rule of court, or case law in support of the requested relief. The statement may be in the form of a brief or memorandum of law filed contemporaneously with the petition; or, in a routine petition that does not raise complex legal or factual issues, in the body of the petition itself.

(3) Any request for stay of execution pending disposition of a petition to open judgment shall be filed by separate motion.

(4) The petition and any motion seeking a stay of execution shall be scheduled for argument or hearing by the court administrator and it is not necessary for the moving party to request hearing or argument.

#### **Note**

*See* Pa.R.C.P. No. 210 and L210 for the form of a brief or memorandum of law. *See also* Rule L303.1 and the Explanatory Comment that follows.

A petition for relief from a judgment by confession is governed by Pa.R.C.P. No. 2959.

A petition to open or strike a judgment is governed by Rule L315.

A petition to compromise, settle, or discontinue an action in which a minor has an interest under Pa.R.C.P. No. 2039 is governed by Rule L2039.1.

A petition to compromise, settle, or discontinue an action in which an incapacitated person has an interest under Pa.R.C.P. No. 2064 is governed by Rule L2064.1.

A petition to compromise, settle, or discontinue a wrongful death or survival action in which a minor or incapacitated person has an interest under Pa.R.C.P. No. 2206 is governed by Rule L2206.1.

Except as otherwise provided by the Pennsylvania Rules of Civil Procedure or by statute, all other applications for relief shall be in the form of a motion and shall be governed by Rule L208(3)(a).

### **Rule L208.2(c). Statement of Authority**

All motions shall be supported by a statement of authority citing a statute, rule of court or case law in support of the requested relief. The statement may be in the form of a brief or memorandum of law filed contemporaneously with the motion; or, in routine motions that do not raise complex legal or factual issues, in the body of the motion itself.

#### **Note**

*See* Pa.R.C.P. No. 210 and Rule L210 for the form of a brief or memorandum of law. *See also* Rule L303.1 and the Explanatory Comment that follows.

### **Rule L208.2(d). Uncontested Motions**

A motion that is represented to be uncontested shall contain a certification by counsel for the moving party that counsel has conferred with all interested parties and that the requested relief is uncontested.

### **Rule L208.2(e). Discovery Motions**

A motion relating to discovery shall contain a certification by counsel for the moving party that counsel has conferred, or attempted to confer, with all interested parties in an attempt to resolve the matter without court action and has been unable to reach a satisfactory resolution of the issues presented.

### **Rule L208.3(a). Motion Procedure: Scheduling and Argument**

#### (1) Filing and Scheduling:

(a) All motions shall be filed with the prothonotary in the form prescribed in Pa.R.C.P. Nos. 204.1, 208.2 and Rule L205.2(a) and shall be accompanied by a proposed order.

(b) Scope: As used in this rule, “motion” means any application to the court made in any civil action or proceeding except as provided by subdivision (b)(1) and (2) of Pa.R.C.P. No. 208.1.

(c) Motions should not be filed with the court administrator. All motions shall be filed with the prothonotary. Courtesy copies for the court are not required. Motions should not be filed in duplicate or by facsimile transmission, except in emergency circumstances. The prothonotary shall immediately forward emergency and continuance motions to the court

administrator. Continuances will be granted only in accordance with the court's continuance policy (*See* memorandum of November 16, 1993) available on the court's website at [www.mckeancountypa.org/Departments/Court\\_Of\\_Common\\_Pleas](http://www.mckeancountypa.org/Departments/Court_Of_Common_Pleas). *See also* Pa.R.C.P. No. 216. No such request will be granted unless good cause is shown. Prior to submitting any motion, the movant or his/her counsel shall confer with all counsel of record and any unrepresented parties to determine their position with respect to the motion, and shall indicate their position in the motion and if the motion is uncontested the certification required by Rule L208.2(d).

(d) The court will take no action until a motion has been filed of record, except in unusual circumstances.

(e) Unless the motion is certified as uncontested, the court shall provide the opportunity for argument either by written briefs or orally in open court. If oral argument is held, the court, in its discretion, may decide the matter at argument or take the matter under advisement. The court may deny the moving party's request for relief, without argument, when the motion is procedurally defective, is untimely filed or fails to set forth adequate grounds for relief. If an order is entered without oral argument, the court shall hear oral argument on an application by any party for reconsideration of such order. The application for reconsideration shall be filed within 10 days after the filing of the decision.

(f) Argument shall be limited to 15 minutes on each side including questions from the court: provided, however, if there are multiple plaintiffs or defendants, argument shall be limited to a total of 30 minutes for each side to be divided between or among counsel for the parties of the same side as they may decide unless the time allowed for argument is modified by court order. The court may allow additional time for argument if the court determines on a case-by-case basis that additional time would materially assist in the determination of the proceedings or in the effective management or resolution of the particular case. No oral testimony shall be heard at the time of argument except by direction of the court.

(g) In the event there are disputed issues of fact, the court will schedule the matter for hearing. Generally, 1 hour will be allotted for the hearing including questions from the court to be divided among counsel for the parties as the court shall direct in its scheduling order. The court may allow additional time for hearing if the court determines on a case-by-case basis that additional time would materially assist in the determination of the proceedings or in the effective management or resolution of the particular case.

(2)(a) Appearance by Advanced Communication Technology: The court, in its discretion, may permit any party to appear by telephone or by a system providing two-way simultaneous audio-visual communication. Any party wanting to participate in any argument or hearing utilizing advanced communication technology shall file a motion not later than the 10th day preceding the argument or hearing unless good cause can be shown for the late filing of the motion. The party or parties appearing utilizing advanced communication technology shall bear the cost thereof, unless the court provides otherwise. Notwithstanding, any Judge of this court may adopt an alternate procedure governing appearances utilizing advanced communication technology.



(b) If a party choosing to appear utilizing advanced communication technology fails to call the court or is unavailable when called to participate in the call with the court, the court may pass the matter or may treat the failure to call or participate as a failure to appear.

(3) The Official Court Reporter does not attend arguments unless directed by the court, or unless counsel has made a timely request.

(4) Transcripts: The moving party in all post-trial or post-hearing motions or petitions shall, if the argument relates to the testimony presented, arrange for the transcription of so much of the testimony as may be required to resolve the issues presented.

### **Note**

All motions, upon filing, must be supported by a statement of authority citing a statute, rule of court or case law in support of the requested relief. *See* Rules L208.2(c) and L303.1. A motion decided on the papers filed of record or on such briefs or memorandums of law as may be filed by the parties will normally be decided within 30 days of the date on which the response to the motion is filed. Motions certified as uncontested will normally be decided within a few days after the motion is filed. *See* Rule L208.2(d). A motion on which oral argument is held will normally not be decided for 90 -120 days after the motion is filed. Notwithstanding, any party or a party's attorney has the right to appear before a Judge of this court and argue any motion. *See* Pa.R.C.P. No. 211.

EXCEPT FOR THE ACTIONS OR PROCEEDINGS DESCRIBED IN PA.R.C.P. NO. 208.1(b)(1) AND THE MATTERS DESCRIBED IN PA.R.C.P. NO. 208.1(b)(2) EVERY APPLICATION REQUESTING A JUDGE TO ENTER AN ORDER OF COURT IS GOVERNED BY THE MOTION RULES PA.R.C.P. NOS. 208.1- 208.4 AND L208.2(c) – L208.3(a). IT DOES NOT MATTER WHETHER THE MOVING PARTY REFERS TO THE APPLICATION AS A “PETITION,” AS A “MOTION,” OR EVEN AS AN “APPLICATION.” THE MOTION RULES 208.1-208.4 APPLY.

For example, Pa.R.C.P. No. 3279(a), governing deficiency judgments, provides that the proceeding shall be commenced “by filing a petition” and Pa.R.C.P. Nos. 2301 *et seq.*, governing interpleader by defendants, permit the commencement of the proceeding upon “petition” of a defendant and sets forth what the “petition for interpleader” shall allege. These proceedings are not governed by the rules governing petitions (General and Local Rules 206.1 *et seq.*) because the term *petition*, as used in these rules, is defined to cover only an application to open a default judgment or judgment of non pros. Every other application, even if described as a petition in other rules comes within Rule 208.1(a)'s definition of motion.

### **Rule 208.3(b). Motion Procedure: When Response Required**

A response along with a supporting brief or memorandum of law shall be filed by any party opposing a motion governed by Rule L208.3(a) within 20 days after service of the motion unless the time for filing the response is modified by court order. If a response is not filed as provided

above, the court may treat the motion as uncontested.

### **Note**

A response shall be filed by any party opposing a motion governed by Rule 208.3(a) even if there are no disputed facts because the response is the opposing party's method of indicating opposition.

Rules L210 and L303.1 govern the form of briefs and memorandums of law.

### **Rule L210. Form of Briefs and Memorandums of Law**

(a) Briefs and Memorandums of Law shall be typewritten using a 12 pt font or greater, double spaced (except for quotations) on paper 8-1/2 inches by 11 inches in size, shall be bound at the top, not at the side, and shall contain:

(1) A history of the case.

(2) A statement of the question or questions involved.

(3) A copy of, or reference to, the pertinent parts of any relevant document, report, recommendation, or order.

(4) An argument with citation of the authority relied upon.

(5) A short conclusion stating the precise relief sought.

(b) The argument shall be divided into as many parts as there are questions involved

(c) Memorandums of Law need not contain a history of the case.

(d) The brief of the responding party need only contain the argument and conclusion, but the responding party may add a counter history of the case.

(e) Briefs shall not exceed 20 pages in length without prior court approval. Memorandums of Law shall not exceed 10 pages.

(f) All briefs and memorandums of law shall be filed with the prothonotary. A courtesy copy of the brief or memorandum of law is not required.

### **Note**

Please see the Explanatory Comment following Rule L303.1 regarding the court's request that counsel provide copies etc. of cases, etc. that come from jurisdictions other than Pennsylvania and other not readily available source material.

## **Rule L212.1. Pre-Trial Procedure**

(a) The parties shall complete discovery within 240 days from the filing of the complaint. Discovery will not be permitted after the 240 day period except by order of court upon good cause shown.

(b) In those cases where it is apparent that extensive discovery will be required or when the pleadings have not closed within 60 days from the filing of the complaint, counsel may request a case management conference with the court to establish an alternative discovery timetable.

(c) All parties shall file with the court administrator on or before the 180<sup>th</sup> day from the filing of the complaint a status report showing:

(1) (i) whether or not discovery has been completed;

(ii) if discovery has not been completed, why discovery has not been completed;

(iii) the date by which the party reasonably believes discovery will be complete;

(iv) whether or not experts have been engaged;

(v) if experts have been engaged whether or not the case can proceed in the manner proscribed in subparagraphs (4) and (5) of this rule and, if not, the date by which the parties reasonably believe the exchange of expert reports will be complete;

(vi) what unusual questions of law are anticipated with respect to issues in the case supported with a statement of authority supporting the position taken with respect to such unusual questions of law; and

(vii) the settlement status of the case.

(2) No fee shall be charged for the filing of the report required by this rule.

(3) If a party shall fail to file the report required by this rule the court administrator shall schedule a status conference.

(4) The court administrator shall design and publish the status report. The latest version of the form shall be available from the court administrator and on the court's website at [www.mckeancountypa.org/Departments/Court\\_Of\\_Common\\_Pleas](http://www.mckeancountypa.org/Departments/Court_Of_Common_Pleas).

(d) The Plaintiff's expert report(s) shall be served on the defendant within 60 days from the close of discovery except medical reports which shall be provided to opposing counsel within 30 days of the examination. *See* Rule L4010.

(e) The Defendant's expert report(s) shall be served on the Plaintiff within 30 days of service of Plaintiff's expert's report(s) except medical report(s) which shall be provided to opposing counsel within 30 days of the examination. *See* Rule L4010.

(f) The parties shall file all dispositive motions within 120 days of the close of discovery.

(g) All motions will be decided under Rule L208.3(a) and the case listed for trial pursuant to Rule L308.1 or arbitration pursuant to Rule L1303.1(a)(1).

(h)(1) If the case is not listed for trial by one or more of the parties within 30 days of the court's final ruling on all dispositive motions the court administrator may place the case on the trial list, notify the parties of the earliest date on which the case may be tried and schedule a pre-trial conference. The filing fee shall be charged to the Plaintiff.

(2) If the case is arbitrable under Rule L1301.1 and not listed for arbitration by one or more of the parties within 30 days of the court's final ruling on all dispositive motions the court may list the case for arbitration pursuant to Rule L1303.1(a)(2)(i). The filing fee shall be charged to the Plaintiff.

(i) If before the close of discovery counsel agree on a schedule for disposition of the case which substantially meets the requirements contained in this rule, and submit the agreement to the court as a proposed order the court shall adopt the proposed order as an order of court or direct the parties to attend a case management conference.

(j) If matters arise at any time during the discovery period or thereafter which counsel reasonably believes has or will prejudice their case or has or will cause counsel to fall out of compliance with this rule, counsel shall request a status conference.

(k) At any time, the court may, in its discretion, direct the parties to attend a status conference, attend a case management conference, modify the above timetable, refer the case to mediation, list a case for arbitration, direct a case be listed for trial, or otherwise intervene to expedite the litigation.

(l) If at any time the case is referred to mediation under Rule L1341 the above timetable shall be stayed pending the conclusion of the mediation.

(m) This rule shall apply to all civil actions, both jury and non-jury, with the exception of cases covered by Rule L1301.2, appeals from compulsory arbitration and actions in divorce under 23 Pa. C.S.A. § 3301, subsections (a),(b) and (d) of the Divorce Code, actions of annulment, and other issues permitted by law relating to the termination or validity of marriages.

### **Explanatory Comment**

It is the intention of this rule to have a case trial ready and listed for pre-trial conference within 12 months from the filing of the complaint. The time standards for general civil matters is: all non-jury cases should be tried or otherwise disposed of within 12 months/360 days after initial filing

and all jury cases should be tried or otherwise disposed of within 18 months/540 days after initial filing. It is contemplated that there will be instances when a shorter or longer timetable will be indicated. In these instances the court will enter an appropriate order pursuant to subsection (11) of this rule.

### **Rule L212.2. Pre-Trial Statement**

(a) Three days prior to the date scheduled for the pre-trial conference each party shall submit to the court and to other counsel of record a pre-trial statement containing those items set forth in Pa.R.C.P. No. 212.2.

(b) If a party, in the exercise of reasonable diligence, first becomes aware after the pre-trial conference of the necessity or desirability of using a witness, an exhibit, a hypothetical question, plot or plan, he shall forthwith provide the court and other counsel with the same information with respect to such witness, exhibit, hypothetical question, plot or plan as is required on the pre-trial statement set forth in Pa.R.C.P. No. 212.2. Failure to provide such information shall not be compliance with this subsection, and may, in the discretion of the court, justify refusal by the court to permit the use of such witness, exhibit, hypothetical question, plot or plan at trial.

### **Rule L212.3. Pre-Trial Conference**

(a) For purposes of this rule, "pre-trial" shall mean a type of conference described in Pa.R.C.P. No. 212.3.

(b) Except as otherwise ordered by the court, pre-trial conferences shall be held at times directed by the court. Pre-trial conferences are extended to all actions not subject to arbitration under Rule L1301.

(c) Any application for continuance of the conference shall be by motion addressed to the court.

(d) Counsel attending the pre-trial conference must have complete authority to stipulate on items of evidence and admissions and must have full settlement authority. If counsel does not have such authority then the person or corporation having the actual interest in the case, whether as a party, as an insurance carrier or otherwise, shall be personally present at the pre-trial conference.

### **Rule L225. Addresses and Summing Up**

(a) Opening addresses may be made by all parties or groups of parties at the commencement of the trial in the order of their appearing in the pleadings. Any party may reserve his opening address until immediately before presenting his evidence.

(b) After the close of the testimony, each party or group of parties shall have the right of final address or argument in inverse order to the order of opening addresses, unless otherwise ordered by the court.

(c) Counsel shall not consume more than thirty minutes in either the opening address or the summing up address, except by special allowance.

### **Rule L226. Pre-Trial Matters, Points for Charge**

(a) Before the beginning of any jury trial counsel shall present to the court a concise memorandum of the applicable law and requested points for charge. Requested points for charge shall be exchanged by counsel at the close of evidence.

(b) All requested points for charge shall contain a citation of authority.

(c) In so far as possible, all exhibits shall be marked for identification before the beginning of trial.

### **Rule L227.1. Post-Trial Conferences**

In every case in which a Motion for Post-Trial Relief has been filed, the court may schedule a post-trial conference to be held as soon as the business of the court permits. The purpose of such conference shall be to determine the precise issue or issues that will be before the court on said motion and the extent of the trial record which will need to be transcribed.

## **MISCELLANEOUS COURT MATTERS**

The Pennsylvania Rules of Civil Procedure do not specifically deal with the matters covered by Rules L300 through L507 and, therefore, there are no Pennsylvania Rules of Civil Procedure corresponding to Rules L300 through L507.

### **Rule L300. Service Requirements of All Papers**

Unless otherwise provided by an Act of Assembly or Rule of court, a copy of each paper filed in any case, other than the writ, complaint, or other process by which an action is commenced, shall be served by the party filing it promptly upon all other parties to the litigation or their attorneys of record. The manner of service shall be in conformity with Pa.R.C.P. No. 440. No matter shall be considered by the court unless there has been filed either a proof of service, acceptance of service or certificate of service.

### **Rule L301. Copies of Writings**

Whenever a copy of a writing is attached to a pleading, brief or other paper submitted to the court, such copy shall be clearly legible and faithfully represent the original in every respect, and unless the original itself is not legible the court may require a substitute copy to be made and filed

before the pleading, brief or other paper will be considered by the court.

## **Rule L302. Reserved**

## **Rule L303. Matters for Argument**

(a) Upon the filing of any motion, petition, exceptions, or the like, requiring legal argument or a hearing, not otherwise covered by these Rules, an administrative order or a rule of Pennsylvania civil procedure, the court shall enter an appropriate order that sets forth the procedures the court will use for deciding the motion, petition or exceptions which may include, *inter alia*, one or more of the following: the filing of an answer, the filing of briefs, the conduct of discovery, and the issuance of a Rule to Show Cause.

(b) The court may provide in the order for disposition upon briefs rather than oral argument.

(c) Notice of the entry of the order shall be provided to all parties by the moving party.

### **Rule L303.1. Supporting Brief or Memorandum of Law**

All motions, responses, exceptions, preliminary objections, and petitions, upon filing, must be supported by a brief or memorandum of law in support thereof. If not so supported, then the motion, responses, exceptions, objections or petition shall be summarily disposed of, unless counsel promptly requests permission for good cause to file the required brief or memorandum of law at a later date.

This rule shall not apply to exceptions taken to the recommendation of the Family Law Master or Permanent Hearing Officer.

#### **Explanatory Comment**

It is not the intention of this rule to require "full blown" briefs on simple or routine issues. The extent of briefs or memorandums of law submitted in support of the pleading should be in proportion to the complexity of the issue which the pleading raises.

Consequently, a complicated motion, such as a motion for summary judgment, should be supported by a brief or memorandum of law which fully discusses the facts and the applicable law. *See* Pa.R.C.P. No. 210 and Rule L210 for the form of briefs or memorandums of law.

A routine motion or a motion presenting uncomplicated issues may be supported by a recitation of fact or authority in the motion itself or in a cover letter. In those situations, all that is required is a citation to the appropriate rule, statute or case law which establishes that the movant is entitled to the relief requested and that the court has the power to grant it. A clean copy of the case or cases that **clearly** support the proposition and which the court is being asked to rely on in making its decision may be attached to the motion itself. Examples: A motion for a continuance shall cite Pa.R.C.P. No. 216. A motion for sanctions for failure to serve answers to written interrogatories under Pa.R.C.P. No.

4005 shall cite Pa. R.C.P.C.P. No.4019 (a)(1)(i) and Pa. R.C.P. No. 4019(c) .

Counsel are requested to include with their brief or memorandum of law a separate appendix that contains a clean copy of any source material that the court is being asked to rely on in making its decision that comes from a jurisdiction other than Pennsylvania (cases, rulings, etc.) or to which the court does not have convenient access (treatises, law review articles, etc.) The appendix will not be made part of the record. Do not make reference to the appendix in your brief or memorandum of law. To avoid undue burden the court will annually provide a list of source material to which it has access to enable counsel to comply with this request.

### **Rule L304. Motions and Petitions**

(a) Motions and petitions shall be filed with the prothonotary or clerk of the Orphans Court for presentation to the court.

(b ) Except for emergency matters and routine matters that are not contested, no motion or petition requesting *ex parte* action shall be heard by the court unless prior notice of its presentation has been given to opposing counsel of record.

### **Rule L305. Motions: Post-Trial and Post-Hearing**

The moving party in all post-trial and post-hearing motions or petitions shall, if argument thereon is to be with reference to the testimony, include a request for a transcript of the testimony, or such part thereof as the moving party desires to have transcribed for the purposes of such motion.

### **Rule L306. Notice**

(a) All notices shall be in writing.

(b) Except as otherwise provided by Act of Assembly, rule or special order of court, whenever any process, paper or notice is required to be served upon a party, such service shall be made in accordance with the procedure set forth in Pa.R.C.P. Nos. 400 - 441; if service is to be made by publication, then service shall be made as provided by Rule L430.

### **Rule L307. Prothonotary**

(a) The prothonotary shall immediately endorse all papers filed with the date of such filing, and shall enter into an appropriate docket all pleadings, rules, orders of court and other papers filed in every case.

(b) The prothonotary shall be responsible for the safe keeping of all records and papers belonging in her office. No paper may be taken from the files of the prothonotary without the consent of the prothonotary or one authorized by the prothonotary to give such consent. A record shall be made of any paper removed from the prothonotary's office and the person who receipts for such paper shall be responsible for return of the same and for any financial loss occasioned by



failure to return the paper.

(c) Only the prothonotary, his/her clerks, attorneys registered in McKean County and such other persons as the prothonotary shall specially authorize shall be permitted direct access to the prothonotary's files.

(d) No entries shall be made in any prothonotary's docket except at the direction of the prothonotary or by order of court.

### **Rule L308. Listing Cases for Trial**

(a) Jury and non-jury trials: Trials will be held at such times and on such dates as shall be established by the court.

(b) To place a case on the trial list, one or more of the parties in the case or their counsel shall proceed as herein provided.

(1) File a Praeipce to List for Trial that shall substantially conform to the form shown below and serve the praecipec on all other parties and if they be represented by counsel on their counsel. The praecipec shall contain a certification by the listing party or counsel that: the pleadings are closed; there are no outstanding motions; all pretrial discovery is completed; if a jury trial has or has not been demanded; an estimate of time required for the trial; all counsel of record and self represented litigants agree that the matter is presently ready for trial and that they do not object to its listing.

(2) By motion that shall substantially conform to the form shown below showing that all counsel and unrepresented parties do not agree that the case is presently ready for trial, and requesting that the court order the case to trial. The court shall then promptly schedule a hearing to consider the matter.

(c) The prothonotary shall upon receipt of the praecipec or court order place the case upon the prothonotary's Active Trial List and shall not less frequently than monthly forward to the court administrator an updated trial list reflecting all new cases listed for trial, settlements, continuances, discontinuances or other dispositions of cases.

(d) In no event shall any matter proceed to jury selection or shall trial dates be reserved unless the pleadings are closed, discovery is completed, and there is no other impediment to the immediate trial of the case, unless the court orders otherwise for good cause.

(e) Pre-Trial Conference: The court administrator shall schedule a pre-trial conference on every case added to the trial list since the date of the last update. Said conference shall be held in the manner provided by Rule L212.3. At the pre-trial conference a date will be reserved for the trial and jury selection if there is to be a jury trial.

(f) Continuances: Once a case has been given a trial date continuances will not be granted

except for extraordinary reasons. When a continuance is granted the court may impose on the party making the application the reasonable costs actually incurred by the opposing party which would not have been incurred if the application had not been made.

		Plaintiff	: IN THE COURT OF COMMON PLEAS OF : McKEAN COUNTY, PENNSYLVANIA
vs.			: CIVIL DIVISION - _____ : ___Medical Professional Liability Action
		Defendant	: NO. _____

**PRAECIPE TO LIST FOR TRIAL**

To the Prothonotary:

As listing counsel, pursuant to Rule 308, I hereby certify:

1. The pleadings are closed.
2. There are no outstanding motions.
3. All discovery is completed.
4. A jury trial \_\_\_ has \_\_\_has not been demanded.
5. Preliminary estimate of time required for trial. \_\_\_ days \_\_\_ hours \_\_\_ minutes
5. All counsel of record and unrepresented parties have been contacted and agree that this matter is presently ready for trial and that they do not object to its listing.
6. A copy of this praecipe has been served on all counsel of record and unrepresented parties in the following manner:

Respectfully Submitted,

\_\_\_\_\_  
[Print Name]  
\_\_\_\_\_

Date: \_\_\_\_\_

Counsel for \_\_\_\_\_  
[Strike if not Applicable]

_____		: IN THE COURT OF COMMON PLEAS OF
Plaintiff		: McKEAN COUNTY, PENNSYLVANIA
vs.		
		: CIVIL DIVISION - _____
		: ___Medical Professional Liability Action
_____		: NO. _____
Defendant		

**MOTION TO PLACE CASE ON TRIAL LIST**

COMES NOW, \_\_\_\_\_ plaintiff/defendant (circle one) or  
\_\_\_\_\_ counsel for \_\_\_\_\_, and requests that the court place  
the above captioned matter on the trial list, pursuant to Rule L308(b)(2).

The undersigned has contacted all counsel of record and unrepresented parties and all parties do not agree that the matter is presently ready for trial.

Proof of Service is attached.

Respectfully Submitted,

\_\_\_\_\_  
[Print Name]

Date: \_\_\_\_\_

Counsel for \_\_\_\_\_  
[Strike if not Applicable]

### **Rule L309. Manner of Scheduling Equity Cases**

Any party to an equity proceeding who desires that the case be advanced for early trial listing may request by motion that the case be given priority trial status (1) after the pleadings are closed (2) after 60 days from the filing of the complaint or (3) at any time with the consent of all other parties to the action. Upon receipt of such request the prothonotary shall forthwith transmit the record papers to the court administrator who shall then schedule the case for pretrial conference and trial as soon as the business of the court permits.

### **Rule L310. Court Calendar**

At the beginning of each calendar year, the court shall prepare a court calendar for the current year which shall have the effect of a rule of court establishing the times that the matters set forth in the court calendar shall be heard.

### **Rule L311. Security For Costs**

(a) The defendant or any interested party may petition the court to require the plaintiff who resides out of state, or who is in bankruptcy, or has insolvency proceedings pending against him, to file security for costs.

(b) The court, by special order upon cause shown, may require a plaintiff or a defendant who seeks affirmative relief to enter security for costs.

(c) The claimant in a sheriff's interpleader issue shall be construed to be a plaintiff within the meaning of this rule.

(d) In default of security entered at the time fixed by the court, judgment of default or other appropriate court order may be made in favor of the party obtaining the order.

### **Rule L312. Bills of Costs**

(a) Bills of costs must contain the names of the witnesses, the dates of their attendance, the number of miles actually traveled by them, and the place from which mileage is claimed. The bill shall be verified by the affidavit of the party filing it or his agent or attorney that the witnesses named were actually present in court, and that, in his opinion, they were material witnesses. A copy of the bill shall be served on opposing counsel.

(b) The party upon whom a bill of costs has been served may, within 10 days after such service, file exception thereto, and the issue shall be determined by the court. Failure to file exception within 10 days shall be deemed a waiver of all objections.

## **RULE L313. Default Judgments**

(a) Whenever a judgment for money is taken by default and the party in whose favor the judgment is entered has filed an instrument or copy thereof, upon which the amount of the judgment is based and a calculation of the judgment is submitted, the prothonotary shall enter the judgment for the amount shown to be due upon the face of the instrument.

(b) If a default judgment cannot be made certain by computation, Pa.R.C.P. No. 1037 shall apply.

(c) In all cases in which a party to an action has appeared but subsequently defaults, before any decree or judgment shall be entered, the opposing party shall file an affidavit stating that the defaulting party is not in military service of the United States, or if the information is not available, the affidavit shall state what efforts have been made to obtain facts.

### **Note**

Subparagraph (c) of this rule is mandated by the “Service Members Civil Relief Act,” Title 50 App. U.S.C. Section 501 *et seq.*

## **Rule L314. Judgment on Verdict**

Judgment shall not be entered on a verdict within the time allowed for motions for judgment *n.o.v.*, for new trial, or for arrest of judgment, nor until the party obtaining the verdict shall have paid the prothonotary the required jury fee as provided by law.

## **Rule L315. Striking or Opening Judgments Other Than Confessed Judgments Covered by Pa.R.C.P. 2959**

The pleadings and procedure for relief from judgments, other than confessed judgments, shall be the same as the pleadings and procedure for relief set forth in Pa.R.C.P. No. 2959 and Pa.R.C.P. No. 2960 for confessed judgments.

## **Rule L316. Judgment by Agreement**

Except in actions to which a minor or an incompetent is a party and in actions for wrongful death in which a minor or incompetent has an interest, verdicts and nonsuits, and judgments by agreement may be entered at any time but only upon written stipulation signed by the parties or by their counsel of record and filed in the case.

## **Rule L317. Judgments: Re-Indexing**

Judgments entered on confession may be subsequently re-indexed against any defendant under any alias name upon the plaintiff's attorney filing a praecipe therefore supported by an affidavit

that such alias defendant is the same person against whom the judgment was originally entered and indexed. The subsequent re-indexing shall be noted on the docket of the original number and term and shall be re-indexed on a separate line in the judgment index, clearly showing the date of such re-indexing.

### **Rule L318. General Pleading Form**

Except as otherwise provided by statute, or rule of court, pleadings in all actions shall, as nearly as possible, conform to the rules relating to civil actions law.

### **Rule L319. Reserved**

### **Rule L320. Court Reporter: Retention of Notes and Digital Recordings**

(a) In all cases other than criminal cases, the court administrator is authorized to direct the destruction of notes and digital recordings made by a court reporter at any time after 7 years from the date when such notes were taken or digital recordings made.

(b) In any case in which the court reporter has transcribed from notes taken or digital recordings made and such transcription has been approved by the court and filed. The court reporter may destroy any such notes or digital recordings any time 90 days from the date of filing of the transcription.

(c) Any party may petition the court for an order directing the retention of particular notes or digital recordings of the court reporter for a period of time beyond that required herein.

### **Rule L430. Service, Petitions, Rules, Orders and Notices – Publication**

(a) If a defendant is dead or his identity or whereabouts is unknown and the plaintiff moves the court pursuant to Pa.R.C.P. No. 430 for a special order directing service on the defendant by publication, the plaintiff shall attach to his/her motion an affidavit that shall state:

(1) that at least four (4) of the following have been attempted: (i) sheriff service to all known addresses; (ii) inquiry of relatives, neighbors, friends and employers of defendants (3 of 4); (iii) examination of local phone directories, local tax records and voter registration records (2 of 3); (iv) inquiry of postal authority including inquiry pursuant to the Freedom of Information Act, 39 C.F.R. Part 265; (v) an internet search utilizing not less than 2 recognized search engines; (vi) examination of motor vehicle records (PENN DOT Form DL-503); (vii) any other method that would reasonably lead to service on the defendant.

(2) In an action involving title to, interest in, or possession of real property:

(i) that he/she has caused to be examined the records in the offices of the Register and Recorder to ascertain the date of death of the defendant, whether he or she died testate or intestate,

the names and addresses of all the defendant's heirs, legatees or devisees, and whether or not there has been any adverse conveyance of the real estate that is the subject of the suit.

(ii) that in the case of a corporation that has been dissolved, he/she has caused the records in the offices of the Register and Recorder to be examined to ascertain whether or not there has been adverse conveyance or distribution of the real estate that is the subject of the suit.

(b) Whenever service by publication is authorized by law or rule of court and the manner of publication is not otherwise specified, such service shall be made by publication for two consecutive weeks in a newspaper of general circulation within McKean County. No further action can be taken until 20 days after the last publication. Proof of publication shall be filed in the prothonotary's office.

### **Note**

*See Pa.R.C.P. No. 430(b)(1) for the form of the notice.*

### **Rule L500. Auditors and Auditor's Reports**

(a) Auditors shall be members of the bar.

(b) Auditors' hearings shall be held at the courthouse and testimony taken either by a court stenographer or by a stenographer to be agreed upon by the parties in interest.

(c) Auditors shall give public notice of the time and place of hearings before them, by advertisement once a week for 2 successive weeks in a newspaper of general circulation of McKean County, stating therein that all persons must prove their claims before them or be debarred from coming upon the fund. In addition thereto, auditors shall obtain from the assignors or debtors, a list of their creditors, and, if the proceeds of the sale of real estate are to be distributed, searches for liens and encumbrances, and award distribution accordingly, unless objections be made, in which event those whose claims are objected to shall be notified to prove their claims or be debarred from coming in upon the fund.

(d) Any person desiring an issue to be granted shall present his petition to the auditor within 48 hours after the testimony in relation to the matter in dispute is closed, setting forth under oath or affirmation that material facts are in dispute and the nature and character thereof; and it shall be the duty of the auditor forthwith to make report thereof to the court for its action.

(e) The auditor shall not file his report until 10 days after he has notified all the parties who appeared before him that it is subject to their inspection, and that it will be filed on a given date, unless written exceptions are filed with him before that time. If exceptions are filed, he shall re-examine the subject and amend his report, if, in his opinion, the exceptions are in whole or in part, well founded.



(f) The argument before the court shall be confined to the exceptions filed with the auditor; the court will, however, recommit the report if of the opinion that justice requires it.

(g) If no exceptions are filed with the auditor, the report, on motion, will be confirmed by the court.

(h) When facts are controverted before the auditor, he shall report the same as proved, in a concise or digested form and shall also state concisely the questions of law raised before him and his decisions thereon, with his reasons therefore, and when distribution is made, a distinct account or schedule of the liens on the funds, paid and unpaid, in a form convenient for review shall be made out and presented with the report showing precisely the disposition made of the funds. The testimony, documentary or otherwise shall be returned separately and filed with the report.

(i) The auditor shall file his completed report with the prothonotary, who shall mark it confirmed nisi, which confirmation shall become absolute, without further order, if no objection thereto is made within 10 days. If objection to the report is made, it shall be treated as renewal of the exceptions filed by the party with the auditor; and in this case or if exceptions are filed with the prothonotary within this ten day period, the prothonotary shall enter the case on the argument list to be taken up in due course.

(j) Upon motion made by a party interested, of misconduct or unreasonable delay on the part of any auditor, the court may either vacate his appointment or grant a rule on him to show cause why he should not proceed forthwith in the duties of his appointment; and in case of contempt, may punish him by fine or attachment.

### **Rule L501. Distribution**

(a) Whenever the aid of the court is desired in the distribution of money in court or in the hands of any collecting officer of the court, the party asking its interposition shall present to the court a written statement of the facts, showing its necessity or propriety, and thereupon the court may appoint an auditor to report the facts and make distribution or make such other order as may seem best calculated to bring the matter to a speedy close.

(b) The court may, on motion and upon satisfactory evidence, decree distribution of any portion of the fund in court, not included in any controversy, before or during the pendency of the audit, and order such portions of the fund that is being audited to be deposited or invested during the controversy.

(c) Duplicate receipts shall be given for all moneys paid in pursuance of such distribution, one of which shall be filed in the case and the other upon the original lien docket.

### **Rule L502. Receivers and Assignees for Creditors**

(a) Assignees for the benefit of creditors and receivers shall, after they have entered security,

give notice of their appointment, to every creditor and party in interest of whom they have knowledge, and shall also publish notice thereon once a week for two successive weeks in a newspaper of general circulation published in McKean County.

(b) The assignee shall file with the account a petition for distribution in form similar to that of petitions for distribution required by the Orphans' Court Division of this county and all such accounts and petitions for distribution shall be filed in the office of the prothonotary.

(c) The assignee shall give written notice of the filing of the account, the petition for distribution and of the call for the audit or confirmation thereof to all parties interested. Such notice shall be given by mailing the same to the last known address of the one entitled to receive the same, at least three weeks before the presentation of the account to the court, and shall also be published by the prothonotary for two successive weeks in one newspaper of general circulation published in McKean County.

(d) Any such account filed for audit and confirmation shall be audited preliminarily by the prothonotary and then presented to the court, together with the proofs of publication and proof of the giving of the required notice to interested parties at the time fixed for the audit or confirmation thereof; and if no exceptions have been filed, the account may be confirmed absolutely.

### **Rule L503. Sheriff**

It shall be the duty of the sheriff, or his deputy, to always be present in the courthouse when the court is in session and to promptly execute all orders of the court and process issued by it.

### **Rule L504. Limitations on Bail and Security**

Neither the prothonotary, nor his deputy, nor the sheriff or sheriff's deputy or clerk, shall be admitted as bail or surety in any action, civil or criminal unless by leave of the court for special reasons shown.

### **Rule L506. Money Paid Into Court**

(a) A party to an action may, upon motion and such notice to the adverse party as the court may direct, pay into court the amount admitted to be due, together with costs, if any. The party entitled to the money may accept the money and settle and discontinue the action or may refuse the money and proceed with the action. If the adverse party shall not recover more than the amount paid into court, all additional costs shall be deducted from the money. This tender into court shall in no way alter the rights of the parties as to legal tender made before suit.

(b) Parties wishing to extinguish liens upon real estate in which they have an interest may, on motion and such notice to the creditor as the court may direct, pay into court the amount due and have satisfaction entered upon the lien.

(c) Upon payment of money into court the same shall be deposited by the prothonotary in an account in the name of the prothonotary kept for such purposes or into an account agreed to by the parties in writing, and shall be payable only by a check signed by the prothonotary pursuant to order of court. Such interest as accrues shall enure to the benefit of those entitled to the principal. In creating any account hereunder, the prothonotary shall use the social security number or employer identification number of the person or entity entitled to such interest.

**Note**

When money is paid into court the prothonotary is required to collect poundage for the handling of the money. *See* 42 P.S. § 21071.

**Rule L507. Deputy Constables**

Petitions for approval of the appointment or revocation of the appointment of deputy constables shall set forth the following facts:

- (a) The act of assembly authorizing the appointment.
- (b) Name and address of the petitioner.
- (c) The name of the municipality or district in which petitioner was elected.
- (d) The date of commencement and expiration of the term of office of the petitioner.
- (e) The name and full address of the surety on petitioner's bond and an averment that the surety has had notice of the petition, to be evidenced by the written joinder of the surety in the prayer of the petitioner.
- (f) The name and full address of the person to be appointed deputy constable, or whose appointment is to be revoked, and an averment that the person to be appointed is of good repute and has not been convicted of a felony or misdemeanor.
- (g) A full statement of the necessity, facts and reasons for making or revoking the appointment.
- (h) If any security of any kind is given or to be given by the petitioner or his surety, then the nature, character, and extent shall be fully set forth or, in lieu thereof, an averment that no security is being given.

## CIVIL ACTION -LAW

### **Rule L1012. Entry of Written Appearance**

All appearances shall be entered in writing by praecipe filed and where there are several plaintiffs or defendants, an appearance will be deemed for all unless expressly restricted.

#### **Explanatory Comment**

While the Pennsylvania Rules of Civil Procedure do not require an attorney to enter a written appearance, please be advised that it is the custom and practice in McKean County that an attorney do so and that failure to do so may result in notices of scheduled events being sent to your clients instead of you. Notwithstanding, the first pleading filed by an attorney on behalf of a party shall constitute the attorney's entry of appearance for that party. Further, if you have not entered a written appearance or have not filed a pleading and appear on behalf of any party in any proceeding the court will deem that you have entered your appearance generally in the case unless you inform the court otherwise at the commencement of the proceeding.

Withdrawal of appearances shall be made in accordance with Pa.R.C.P. No.1012 and the procedure outlined in the court's memorandum of May 1, 2007 available on the court's website at [www.mckeancountypa.org/Departments/Court\\_Of\\_Common\\_Pleas](http://www.mckeancountypa.org/Departments/Court_Of_Common_Pleas).

### **Rule L1018.1. Notice to Defend**

The party, to be named in the notice to defend, from whom legal help can be obtained is:

Northwestern Legal Services  
100 Main Street  
Bradford, PA 16701  
Telephone: 814-362-6596

The notice shall substantially conform to the form shown below.

\_\_\_\_\_  
Plaintiff

vs.

\_\_\_\_\_  
Defendant

: IN THE COURT OF COMMON PLEAS OF  
: McKEAN COUNTY, PENNSYLVANIA

: CIVIL DIVISION - \_\_\_\_\_  
: \_\_\_Medical Professional Liability Action

: NO. \_\_\_\_\_

**NOTICE**

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

**YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.**

Northwestern Legal Services  
100 Main Street  
Bradford, Pennsylvania 16701  
Telephone: 1-814-362-6596

## **Rule L1028(c). Preliminary Objections**

(1) Filing. All preliminary objections shall be filed with the prothonotary in the form prescribed in Pa.R.C.P. No. 204.1 and Rule L205.2(a). Preliminary Objections should not be filed with the court administrator. Courtesy copies for the court are not required. Preliminary Objections should not be filed in duplicate or by facsimile transmission, except in emergency circumstances. Preliminary Objections which assert facts not otherwise of record, including but not limited to an objection under Pa.R.C.P. No. 1028(a)(1), (5) or (6) shall be endorsed with a notice to plead pursuant to Pa.R.C.P. No. 1361.

(2) The court will take no action until the preliminary objections have been filed of record, except in unusual circumstances.

(3) Statement of applicable authority: All preliminary objections shall be supported by a statement of authority citing a statute, rule of court, or case law in support of the requested relief. The statement may be in the form of a brief or memorandum of law filed contemporaneously with the preliminary objections; or, if the preliminary objections do not raise complex legal or factual issues, in the body of the preliminary objections itself. If not so supported, then the preliminary objections shall be summarily disposed of unless counsel promptly requests permission for good cause to file the required brief or memorandum of law at a later date.

(4) Amended Complaint, Answer or Reply brief: The opposing party shall file an amended complaint, answer or reply brief to the preliminary objections within 20 days after service of them unless the time for filing the response is modified by court order. If an amended complaint, answer or reply brief is not timely filed, then the preliminary objections shall be sustained unless counsel promptly requests permission for good cause to file the required amended complaint, answer or reply brief at a later date.

(5) The court shall provide the opportunity for argument either by written briefs or orally in open court. If oral argument is held, the court, in its discretion, may decide the matter at argument or take the matter under advisement. If an order is entered without oral argument, the court shall hear oral argument on an application by any party for reconsideration of such order. The application for reconsideration shall be filed within 10 days after the filing of the decision.

(6) Arguments shall be limited to 15 minutes on each side including questions from the court: provided, however, if there are multiple plaintiffs or defendants, argument shall be limited to a total of 30 minutes for each side to be divided between or among counsel for the parties of the same side as they may decide. The court may allow additional time for argument if the court determines on a case-by-case basis that additional time would materially assist in the determination of the proceedings or in the effective management or resolution of the particular case. No oral testimony shall be heard at the time of argument except by direction of the court.

(7) In the event there are disputed issues of fact, the court will schedule the matter for hearing.

Generally, 1 hour will be allotted for the hearing including questions from the court to be divided among counsel for the parties as the court shall direct in its scheduling order. The court may allow additional time for hearing if the court determines on a case-by-case basis that additional time would materially assist in the determination of the proceedings or in the effective management or resolution of the particular case.

(8)(a) Appearance by Advanced Communication Technology: The court, in its discretion, may permit any party to appear by telephone or by a system providing two-way simultaneous audio-visual communication. Any party wanting to participate in any argument or hearing utilizing advanced communication technology shall file a motion not later than the 10th day preceding the argument or hearing unless good cause can be shown for the late filing of the motion. The party or parties appearing utilizing advanced communication technology shall bear the cost thereof, unless the court provides otherwise. Notwithstanding, any Judge of this court may adopt an alternate procedure governing appearances utilizing advanced communication technology.

(b) If a party choosing to appear utilizing advanced communication technology fails to call the court or is unavailable when called to participate in the call with the court, the court may pass the matter or may treat the failure to call or participate as a failure to appear. .

(9) The Official Court Reporter does not attend arguments unless directed by the court, or upon timely request of counsel.

#### **Note**

All Preliminary Objections, upon filing, must be supported by a statement of authority citing a statute, rule of court, or case law in support of the requested relief. The statement may be in the form of a brief or memorandum of law filed contemporaneously with the preliminary objections; or, if the preliminary objections do not raise complex legal or factual issues, in the body of the preliminary objections itself. *See* Pa.R.C.P. No. 210, Rules L210 and L303.1 and the Explanatory Comment that follows. Preliminary Objections decided on the papers filed of record or on such briefs or memorandums of law as may be filed by the parties will normally be decided within 30 days of the date on which the answer or reply brief is filed. Preliminary Objections on which oral argument is held will normally not be decided for 90 -120 days after the Preliminary Objections are filed. Notwithstanding, any party or a party's attorney has the right to appear before a Judge of this court and argue any motion. *See* Pa.R.C.P. No. 211.

Failure to answer preliminary objections raising questions of fact and endorsed with a notice to plead constitutes an admission of the facts pleaded.

#### **RULE L1033. Amended Pleading**

Whenever an amended pleading is filed, such pleading shall be a complete pleading and not merely set forth the amendments to the former pleading. The amended pleading shall clearly indicate that it is an amended pleading, the paragraphs shall be renumbered, and the new portion shall be underlined.

## **Rule L1034(a). Motion for Judgment on the Pleadings**

(1) Filing. A motion for judgment on the pleadings shall be filed with the prothonotary in the form prescribed in Pa.R.C.P. No. 204.1 and Rule L205.2(a). It should not be filed with the court administrator. Courtesy copies for the court are not required. It should not be filed in duplicate or by facsimile transmission, except in emergency circumstances.

(2) The court will take no action until the motion has been filed of record, except in unusual circumstances.

(3) Statement of applicable authority. All Motions for Judgment on the Pleadings shall be supported by a brief or memorandum of law filed contemporaneously with the motion.

(4) Reply brief: The opposing party shall file an answer or reply brief to the motion within 20 days after service of the motion unless the time for filing the response is modified by court order. If a response is not filed as provided above, the court may treat the motion as uncontested.

(5) The court shall provide the opportunity for argument either by written briefs or orally in open court. If oral argument is held, the court, in its discretion, may decide the matter at argument or take the matter under advisement. If an order is entered without oral argument, the court shall hear oral argument on an application by any party for reconsideration of such order. The application for reconsideration shall be filed within 10 days after the filing of the decision.

(6) Arguments shall be limited to 15 minutes on each side including questions from the court: provided, however, if there are multiple plaintiffs or defendants, argument shall be limited to a total of 30 minutes for each side to be divided between or among counsel for the parties of the same side as they may decide unless the time allowed for argument is modified by court order. The court may allow additional time for argument if the court determines on a case-by-case basis that additional time would materially assist in the determination of the proceedings or in the effective management or resolution of the particular case. No oral testimony shall be heard at the time of argument except by direction of the court.

(7)(a) Appearance by Advanced Communication Technology: The court, in its discretion, may permit any party to appear by telephone or by a system providing two-way simultaneous audio-visual communication. Any party wanting to participate in any argument utilizing advanced communication technology shall file a motion not later than the 10th day preceding the argument unless good cause can be shown for the late filing of the motion. The party or parties appearing utilizing advanced communication technology shall bear the cost thereof, unless the court provides otherwise. Notwithstanding, any Judge of this court may adopt an alternate procedure governing appearances utilizing advanced communication technology.

(b) If a party choosing to appear utilizing advanced communication technology fails to call the court or is unavailable when called to participate in the call with the court, the court may pass



the matter or may treat the failure to call or participate as a failure to appear.

(8) The Official Court Reporter does not attend arguments unless directed by the court, or upon timely request of counsel.

### **Note**

All Motions for Judgment on the Pleadings, upon filing, must be supported by a brief or memorandum of law filed contemporaneously with the motion. *See* Pa.R.C.P. No. 210, Rules L210 and L303.1 and the Explanatory Comment that follows. A Motion for Judgment on the Pleadings decided on the papers filed of record or on such briefs or memorandums of law as may be filed by the parties will normally be decided within 30 days of the date on which the reply brief is filed. A Motion for Judgment on the Pleadings on which oral argument is held will normally not be decided for 90 -120 days after the motion is filed. Notwithstanding, any party or a party's attorney has the right to appear before a Judge of this court and argue any motion. *See* Pa.R.C.P. No. 211.

### **Rule L1035.2(a). Motion for Summary Judgment**

The procedures for the disposition of a Motion for Summary Judgment are identical to the procedures for the disposition of a Motion for Judgment on the Pleadings described in Rule L1034(a) except that a Response in Opposition to the Motion for Summary Judgment shall be filed as provided in Pa.R.C.P. No. 1035.3.

### **Rule L1038 (a). Proposed Findings of Fact, Conclusions of Law and Memorandum in Support**

At any non-jury trial, except by leave of court, no party shall be permitted to present evidence either in support of or in opposition to any claim or cause of action unless the party has first presented proposed findings of fact, conclusions of law and a memorandum in support thereof unless the presentation of same are postponed by court order.

The court, in its discretion, may grant a continuance to allow the non-filing party to prepare the required findings, conclusions of law and memorandum, except the costs of litigation thereby caused to the other party or parties to the action may be imposed as a sanction on the non-filing party.

### **Rule L1038(b). Trial without Jury**

Parties who elect to have their case tried without a jury after demand for jury trial has been filed shall enter into and file the following stipulation:

“The undersigned parties in the above captioned case hereby agree that it shall be tried by a Judge without a jury in accordance with Pa.R.C.P. No. 1038.”

## ACTION TO QUIET TITLE

### **Rule L1066. Form of Judgments or Order**

Any order entered under Pa.R.C.P. No. 1066(b)(1) shall include a description of the property. If notice of the entry of such an order is given by publication, it shall be given as provided by Rule L1064.

## ARBITRATION

### **Rule 1301.1. Scope**

(a) All cases which are at issue, where the amount in controversy (exclusive of interest and costs) shall be \$50,000 or less, except those involving title to real estate, equity actions, mortgage foreclosure, and other actions which do not involve the recovery of money damages, including divorce, mandamus and quo warranto, shall be submitted to and heard and decided by a Board of Arbitration.

(b) This rule shall apply to cases involving more than one claim, including counter claims, if none of such claims exceed \$50,000 exclusive of interest and costs.

(c) Cases which are not at issue, and whether or not suit has been filed, may be submitted to a Board of Arbitration by agreement of reference signed by all parties or their counsel. The agreement of reference shall define the issues to be submitted to the Board, and, when agreeable to the parties, shall also contain stipulations with respect to facts agreed or defenses waived. When a case is submitted to the Board by agreement of reference, the agreement shall take the place of pleadings and shall be filed of record in the office of the prothonotary and shall be assigned a number and term.

(d) Any case not arbitrable under this rule may be submitted to arbitration according to the procedure herein provided, by stipulations of all parties thereto or their counsel.

(e) The court may, at any time, in its discretion, enter an order allowing any case, arbitrable under this rule to be listed for trial pursuant to Rule L308.1. A dismissal or judgment which results from this rule will be treated as any other final judgment in a civil action subject to Pa.R.C.P. No. 227.1.

(f) The court may, at any time, in its discretion, enter an order transferring a case to arbitration even though the original demand may have exceeded \$50,000.

## Note

While a Board of Arbitration may hear a lawsuit in which any party claims an amount in excess of \$50,000, the award of the Board of Arbitration to any party may not exceed \$50,000 (exclusive of interest and costs). However, with the agreement of all parties, a Board of Arbitration may award up to the amount agreed upon in excess of \$50,000 if all parties also agree that the arbitration award is final and cannot be appealed to court.

### **Rule 1301.2. Pleading, Discovery and Dispositive Motions – Small Claims**

(a) This rule shall cover all arbitrable cases that:

(1) arise from an appeal to the decision of a Magisterial District Judge even if the Plaintiff's claim is for an amount in excess of \$12,000;

(2) are commenced with the filing of a simple complaint wherein the amount in controversy is \$12,000 or less; or

(3) are commenced with a complaint prepared in conformity with Pa.R.C.P. No. 204.1 and Pa.R.C.P. Nos. 1019 *et seq.* wherein the amount in controversy is \$12,000 or less.

(b) In all cases covered by this rule, a simplified complaint and a simplified answer shall be permitted and encouraged. The simplified complaint and the simplified answer shall be available from the prothonotary and online at [www.mckeancountypa.org/Departments/Court\\_Of\\_Common\\_Pleas](http://www.mckeancountypa.org/Departments/Court_Of_Common_Pleas).

(c) Discovery in cases covered by this rule, including a Request for Admission under Pa. R.C.P. No. 4014, is discouraged and shall be permitted only by order of court. A party wanting to conduct discovery shall file a motion pursuant to Rule L208.3(a). The requirement that a statement of applicable authority accompany the motion is waived. The motion shall, *inter alia*, contain the reason or reasons why discovery is needed and what information, documents etc. are being sought.

(d) Preliminary Objections may be filed to any pleading. No objection shall be made based on the failure of the pleading to conform to a rule of court.

(e) Motions for Judgment on the Pleadings and for Summary Judgment shall not be permitted in cases covered by this rule.

(f) The failure of a self represented litigant to raise a defense or objection in his or her simplified answer or by preliminary objection shall not constitute a waiver of such defense or objection under Pa.R.C.P. No.1032 and may be heard at the time of the hearing at the discretion of the Board of Arbitration.

(g) A self represented litigant may file a simplified answer to a complaint nonetheless filed in conformity with the Pa.R.C.P. No. 204.1 and Pa.R.C.P. Nos. 1019 *et seq.* The self represented litigant when replying to such a complaint should reply using separate numbered paragraphs corresponding to the numbered paragraphs of the complaint. Any matter not covered in the self represented litigant's replies to the separate paragraphs of the complaint should be set forth in separately numbered paragraphs under the caption "New Matter, Counterclaim or Cross-Claim".

(h) Self represented litigants who appeal from a decision of a Magisterial District Judge in matters covered by this rule shall be furnished with a copy of the simplified complaint or simplified answer, ancillary forms and printed instructions for their use.

### **Explanatory Comment**

This rule is intended to afford represented and self represented litigants reasonable access to the court and to provide a timely and affordable means to resolve small claims not involving complex issues or needing extensive discovery. Certain rules of pleading and evidence have been established to enable fair and prompt resolution of claims.

This rule does not affect for compulsory arbitration cases which are appealed pursuant to Pa.R.C.P. Nos. 1308 – 1311 the right to discovery provided by Pa.R.C.P. Nos. 4001 – 4020, the right to file a motion for judgment on the pleadings provided by Pa.R.C.P. No. 1034 and L1034(a) or, the right to file a motion for summary judgment provided by Pa.R.C.P. No. 1035.2 and L1035.2(a).

### **Note**

A party wanting to conduct discovery after an appeal is taken is required to obtain court approval pursuant to Rule L1308(b).

### **Rule 1301.3. Discovery (Except Small Claims) – Personal Injury**

(a) For any personal injury claim filed, the plaintiff may serve arbitration discovery requests that conform substantially to the form available from the court administrator and on the court's website at [www.mckeancountypa.org/Departments/Court\\_Of\\_Common\\_Pleas](http://www.mckeancountypa.org/Departments/Court_Of_Common_Pleas). They may be served together with the copy of the Complaint or on the defendant thereafter.

(b) The defendant shall furnish the information sought in the discovery requests within 30 days of receipt of the discovery requests.

(c) For any personal injury claim filed, any defendant may serve arbitration discovery requests that substantially conform to the form available from the court administrator and on the court's website at [www.mckeancountypa.org/Departments/Court\\_Of\\_Common\\_Pleas](http://www.mckeancountypa.org/Departments/Court_Of_Common_Pleas). They may be served together with the copy of the Answer or on the plaintiff thereafter.

(d) The plaintiff shall furnish the information sought in the discovery requests within 30 days of receipt of the discovery requests.

(e)(1) A party may not seek additional discovery through interrogatories or requests for production of documents until that party has sought discovery through the arbitration discovery requests described herein.

(2) A party may not include any additional interrogatories or requests for production of documents in the arbitration discovery requests provided for in this rule.

(f) This rule applies to additional defendants.

(g) This rule does not apply to claims that do not exceed the sum of \$12,000 (exclusive of interest and costs) wherein the parties' right to discovery for Small Claims shall be governed by Rule L1301.2(c).

### **Note**

While this rule does not bar additional discovery in arbitration proceedings, it is anticipated that depositions, additional interrogatories or additional requests for the production of documents will be unreasonably burdensome in most arbitration proceedings involving personal injury claims.

This rule does not affect the right to discovery provided by Pa.R.C.P. Nos. 4001 - 4020 for compulsory arbitration cases which are appealed pursuant to Pa.R.C.P. Nos. 1308 – 1311.

### **Rule L1302. Arbitrators**

(a) The Board of Arbitration shall be composed of 3 attorneys. The prothonotary shall maintain a list of available arbitrators who shall all be members of the Bar actively engaged in the practice of law primarily in McKean County. The Board of Arbitration shall be chaired by a member of the bar admitted to the practice of law for at least 3 years.

(b) After an arbitration panel has been selected and all parties notified thereof, any party or their counsel may request that an arbitrator disqualify themselves if their impartiality might reasonably be questioned including but not limited to instances where: they have a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding, or they have served as a lawyer in the matter in controversy or they have a substantial financial interest in the matter in controversy.

(c) Before entering upon their duties the members of the Board of Arbitration shall subscribe to an oath to perform their duties and decide the case submitted to them justly and equitably, and with due diligence, which oath shall be filed with their award. In all cases, a decision by majority of the members of the Board of Arbitration shall be conclusive.

(d) Each member of a Board of Arbitration who has signed the award shall receive as

compensation for his/her services in each case or if several cases are heard on the same day by the same Board of Arbitration for each half day session a fee of \$250. In cases requiring hearings of unusual duration or involving questions of unusual complexity, the court, on petition of the members of the Board and for cause shown, may allow additional compensation. The members of a Board shall not be entitled to receive their fees until after filing an award with the prothonotary. When the same is filed, the prothonotary shall issue an order for payment of such fees which shall be immediately paid from County funds as in the case of all other County debts. Fees paid to Arbitrators shall not be taxed as costs or follow the award as other costs.

### **Rule 1303.1. Hearing**

(a)(1) After the pleadings have been closed for 30 days cases may be listed for arbitration by one or more of the parties in the case or their counsel filing a Praeceptum for Arbitration that shall include, to the extent possible, an estimate of the number of hours, or portion thereof, anticipated to be needed for the hearing, together with a listing fee in the amount of \$100. The praecipe shall substantially conform to the form shown below. The party or counsel filing the Praeceptum for Arbitration shall deliver a copy to the court administrator and shall forthwith serve a copy of the praecipe upon all other counsel of record and any unrepresented parties, who, if for any reason oppose such listing, shall within 10 days thereafter file their objection(s). Ten days after the case has been praeciped onto the list, if no objections thereto have been filed, the prothonotary shall promptly appoint a panel of 3 arbitrators one of whom to be appointed chairperson to hear and decide the case, and shall forward copies of all pleadings and other documents filed in the case to all arbitrators. The chairperson so appointed shall forthwith establish the time, date and place of the hearing and notify all counsel of record, unrepresented parties, and members of the arbitration panel thereof at least 30 days in advance unless a shorter time is stipulated to. All hearings shall be held within 60 days of the date the chairperson is appointed by the prothonotary. In the event the case is settled prior to hearing but after the chairperson has scheduled a hearing, \$50 of the filing fee shall be paid to the chairperson as reimbursement for office expenses. In the event the case has been settled prior to hearing and before the chairperson has scheduled a hearing, \$50 of the filing fee shall be refunded to the party who paid it. In either event the remaining \$50 shall be retained by the prothonotary to reimburse expenses. The filing fee shall be charged to the party first listing the case for hearing, and only be assessed one time per case.

(a)(2)(i) The court may at any time, in its discretion, enter an order listing any case, arbitrable under this rule, for arbitration and may also set the time, date and place for the hearing. The court administrator shall forthwith notify all counsel of record and unrepresented parties that the case has been listed for arbitration and if a hearing date has been set, the time, date and place of the hearing. Counsel or any party who for any reason oppose such listing, shall within 10 days thereafter file their objection(s). Ten days after the case has been listed, if no objection thereto has been filed or no praecipe has been filed marking the case "settled and discontinued", the prothonotary shall promptly appoint a panel of 3 arbitrators one of whom to be appointed chairperson to hear and decide the case, and shall forward copies of all pleadings and other documents filed in the case to all arbitrators. In the event the case is settled before the Board of Arbitration is appointed no fee shall be assessed. In the event the case is settled after the Board of Arbitration has been appointed and before the hearing a fee in the amount of \$50 shall be collected by the prothonotary from the

Plaintiff to reimburse the prothonotary for expenses. A party who demonstrates a financial inability to pay all or a part of the aforesaid fee may request the court waive all or part of the fee.

(a)(2)(ii) If the court has entered an order listing the case for arbitration and did not in its order set the time, date and place for the hearing of the case and the Board of Arbitration has been appointed by the prothonotary, the chairperson shall forthwith establish the time, date and place of the hearing and notify all counsel of record, unrepresented parties, and members of the arbitration panel thereof at least 30 days in advance unless a shorter time is stipulated to. All hearings shall be held within 60 days of the date the Board of Arbitration is appointed by the prothonotary. In the event the case is settled before the Board of Arbitration is appointed no filing fee shall be assessed. In the event the case is settled after the Board of Arbitration has been appointed and before the chairperson has scheduled the hearing a fee in the amount of \$50 shall be collected by the prothonotary from the Plaintiff as reimbursement to the prothonotary for expenses. In the event the case is settled after the chairperson has scheduled the hearing and before the hearing a fee in the amount of \$100 shall be collected by the prothonotary from the Plaintiff, \$50 of the fee shall be paid to the chairperson as reimbursement for his or her office expenses and the remaining \$50 shall be retained by the prothonotary. A party who demonstrates a financial inability to pay all or a part of the aforesaid fee may request the court waive all or part of it.

#### **Note**

In the event the matter is settled prior to hearing but after the Board of Arbitration has been appointed, counsel, or if there is no counsel involved, the parties, **shall** notify the chairperson of the Board of Arbitration of the terms of the settlement. *See* Rule L1306.

_____ Plaintiff	: IN THE COURT OF COMMON PLEAS OF : McKEAN COUNTY, PENNSYLVANIA
vs.	: CIVIL DIVISION – _____
_____ Defendant	: NO. _____

**PRAECIPE TO LIST FOR ARBITRATION**

To the Prothonotary:

Please list the above captioned matter for arbitration pursuant to L1301.3(a)(1).

1. Are the pleadings closed? \_\_\_ yes \_\_\_ no (if no, explain below):

\_\_\_\_\_  
\_\_\_\_\_

2. Are there any outstanding motions? \_\_\_ yes \_\_\_ no (if no, explain below):

\_\_\_\_\_  
\_\_\_\_\_

3. Is discovery completed? \_\_\_ yes \_\_\_ no (If no, explain below):

\_\_\_\_\_  
\_\_\_\_\_

4. The number of hours estimated to be needed for the hearing are: \_\_\_hour(s).

5. A copy of this praecipe has been served on all counsel of record and unrepresented parties in the following manner:

Respectfully Submitted,

\_\_\_\_\_  
[Print Name]  
\_\_\_\_\_

Date: \_\_\_\_\_

Counsel for \_\_\_\_\_  
[Strike if not Applicable]



**Rule 1303.2. Notice**

The notice required to be given of the hearing pursuant to Pa.R.C.P. No. 1303(a)(1) shall be as follows:

Form – Arbitration Hearing Notice

			: IN THE COURT OF COMMON PLEAS OF
Plaintiff			: McKEAN COUNTY, PENNSYLVANIA
vs.			
			: CIVIL DIVISION - _____
Defendant			: : NO. _____

**ARBITRATION HEARING NOTICE**

Your case will be heard before a Board of Arbitration at the McKean County Courthouse, 500 Main Street, Smethport, Pennsylvania, on \_\_\_\_\_, \_\_\_\_\_, 201\_\_\_\_ at \_\_\_\_ A.M. \_\_\_\_ P.M. Requests for continuances shall be made as soon as possible after receipt of this notice. The attached Motion for Continuance shall be used. Last minute requests for continuances ordinarily will not be granted.

**DUTY TO APPEAR AT THE HEARING**

**THIS MATTER WILL BE HEARD BY A BOARD OF ARBITRATION AT THE TIME, DATE AND PLACE SPECIFIED BUT, IF ONE OR MORE OF THE PARTIES IS NOT PRESENT AT THE HEARING, THE MATTER MAY BE HEARD AT THE SAME TIME AND DATE BEFORE A JUDGE OF THE COURT WITHOUT THE ABSENT PARTY OR PARTIES. THERE IS NO RIGHT TO A TRAIL DE NOVO ON APPEAL FROM A DECISION ENTERED BY A JUDGE.**

**YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.**

Northwestern Legal Services  
100 Main Street  
Bradford, Pennsylvania 16701  
Telephone: 1-814-362-6596

### **Rule 1303.3. Failure to Appear for Hearing**

If a party fails to appear for a scheduled arbitration hearing, the matter may, if all present parties agree, be transferred immediately to a Judge of the Court of Common Pleas for an *ex parte* hearing on the merits and entry of a non-jury verdict, from which there shall be no right to a trial *de novo* on appeal.

#### **Note**

This rule results in the loss of a right to a trial *de novo* on appeal. A dismissal or judgment which results from this rule will be treated as any other final judgment in a civil action subject to Pa.R.C.P. No. 227.1.

### **Rule 1304.2. Conduct of Hearing**

(a) The Board of Arbitration, or a majority of the members thereof, shall conduct the hearing before them with due regard to the law and according to the established rules of evidence, and shall have the general powers of a court including, but not limited to, the following powers:

(1) To issue subpoenas to witnesses to appear before the Board as in other civil actions, and to issue an attachment upon allowance by the court for failure to comply therewith.

(2) To compel the production of all books, papers and documents which they shall deem material to the case.

(3) To administer oaths or affirmations to witnesses, to determine the admissibility of evidence, to permit testimony to be offered by deposition, and to decide the law and facts of the case submitted to them.

(4) To adjourn their meetings from time to time.

(i) If, after the appointment of a Board of Arbitration, but before hearing, one of the members thereof shall die or become incapable of acting, or shall refuse to attend the hearing, or shall remove or depart from the county, the remaining members of the Board shall, upon agreement of the parties, proceed to hear the matter at issue.

(ii) If a member of the Board dies or becomes incapable of acting, or shall fail or refuse to perform his duties, after hearing but before an award shall be made, the case shall be decided and the award signed by the remaining members of the Board. If they cannot agree, the matters shall be heard *de novo* by a new Board, to consist of the remaining members plus a third to be appointed by the prothonotary.

(b)(1) The Board shall have the right to proceed *ex parte* in a proper case if, after due notice, one of the parties fails to appear at the hearing and does not request a continuance for

good cause, or

(2) If a party fails to appear at the hearing the case may be transferred immediately to a Judge of the court of common pleas for an *ex parte* hearing on the merits and entry of a non-jury verdict, from which there shall be no right to a trial *de novo* on appeal. A non-jury verdict entered at a hearing held pursuant to this rule shall not exceed \$50,000(exclusive of interest and costs) to any party.

(c) In all cases the filing of proposed findings of fact, conclusions of law and a memorandum of support shall be permitted and encouraged. The findings of fact, conclusions of law and memorandum shall be filed with the prothonotary in advance of the arbitration hearing and a copy served on each party and each arbitrator.

(d) At least 7 days before the date of the hearing, the case may be continued 1 time by agreement of all counsel and unrepresented parties. The counsel or party requesting the continuance shall give written notice of such continuance to the arbitrators. The chairperson of the Board of Arbitration shall reschedule the case to be heard within 30 days, with notice of hearing to be provided to all arbitrators, counsel and unrepresented parties. In the event that the parties cannot agree to a continuance more than 7 days prior to the scheduled hearing date a motion for continuance must be made to and ruled upon by the court. If the case is continued by the court, the chairperson shall reschedule the hearing following the procedure set forth above.

### **Rule 1306. Award**

(a) In the event the matter is settled prior to hearing but after the Board of Arbitration is appointed counsel or, if there is no counsel involved, the parties shall notify the chairperson of the Board of Arbitration of the terms of the settlement and the Board of Arbitration shall enter an award consistent with the terms of settlement and file the same with the prothonotary.

(b) The Board of Arbitration shall make their decision promptly and shall file their award with the prothonotary within 7 days after the making of their decision. The award shall be signed by all or a majority of the members of the Board. The award shall dispose of all claims for relief and shall comply with Pa.R.C.P. No.1312. The prothonotary shall file the award and enter the same in the proper dockets and transmit a copy thereof by mail to the parties or their counsel. The prothonotary shall record any award in the judgment index as verdicts are now recorded.

(c) Any party seeking damages under Pa.R.C.P. 238 (relating to award of damages for delay in an action for bodily injury, death or property damage) shall at the conclusion of the hearing submit to the Board of Arbitration, in a sealed envelope, a statement substantially in the form shown below. If no settlement offer has been made by any one or more defendants the Board of Arbitration shall reconvene the hearing for the purpose of assessing delay damages. The arbitrators shall not open said envelope until they have reached their basic award. The envelope and the writing contained therein shall be filed with the papers in the case.

\_\_\_\_\_ : IN THE COURT OF COMMON PLEAS OF  
 Plaintiff : McKEAN COUNTY, PENNSYLVANIA  
 vs. : CIVIL DIVISION - \_\_\_\_\_  
 \_\_\_\_\_ : NO. \_\_\_\_\_  
 Defendant

**DELAY DAMAGES**

To the Board of Arbitration:

(1) On what date did the cause of action accrue? \_\_\_\_\_

(2) On what date was the Complaint filed? \_\_\_\_\_

(3) Was a written offer of settlement made by the Defendant, or additional Defendant?

\_\_\_ Yes

If yes, by whom? \_\_\_\_\_ and state:

(a) The date of the written offer \_\_\_\_\_;

(b) Was it in effect at the time of commencement of the hearing? \_\_\_ Yes \_\_\_ No;

(c) The amount of the offer of settlement was \_\_\_\_\_;  
 Attach a copy of the written offer of settlement.

\_\_\_ No

Respectfully submitted,

Attorney for Plaintiff(s)

\_\_\_\_\_

Attorney for Defendant(s)

\_\_\_\_\_

## **Rule 1308. Appeal**

(a) The award, if any, unless appealed from as herein provided, shall be final and shall have all the attributes and legal effect of a judgment entered by a court of competent jurisdiction. If no appeal is taken within the time allotted therefore, execution process may be issued on the award as in the case of other judgments.

(b) An appeal from an award by the Board of Arbitration shall be taken pursuant to Pa.R.C.P. Nos. 1308 – 1311. Appellant shall furnish the prothonotary with a copy of the appeal from the award of the Board of Arbitration for the court administrator. Discovery shall be permitted only by order of court upon good cause shown.

(c) The appealing party shall pay to the prothonotary the sum of \$750.00 but not more than 50% of the amount in controversy, as compensation for the Arbitrators, which shall not be taxed as costs or be recoverable in any proceeding. A party who demonstrates a financial inability to pay all or a part of the aforesaid fee may request the court waive all or part of it.

(d) All appeals shall be *de novo* except when the case is transferred to and decided by a Judge of the Court of Common Pleas pursuant to Rule L1304.2(b)(2). Despite any costs which a successful appellant may recover from the adverse party, he shall nevertheless not be entitled to recover the arbitrators' fees paid by him as a condition of taking his appeal.

(e) Any party may file exceptions with the court from the decision of the Board of Arbitration within 20 days from the filing of the award for either or both of the following reasons and for no other:

(1) That the arbitrators misbehaved themselves in the conduct of the case;

(2) That the actions of the Board were procured by corruption or other undue means. If such exceptions shall be sustained, the award of the Board shall be vacated by the court.

### **Note**

An appeal from an award of a Board of Arbitration is governed by Pa.R.C.P. Nos. 1308, *et seq.*

## MEDIATION

The Pennsylvania Rules of Civil Procedure contain 3 rules that relate to mediation. They are Pa.R.C.P. No. 1042.21 (Medical Professional Liability Actions), Pa.R.C.P. No. 4011(d) (Limitation of Discovery and Deposition) and Pa.R.C.P. No.1940.1 *et seq.* (Mediation in Custody Actions) *See also* L1940.1. There is no Pennsylvania Rule of Civil Procedure that corresponds to Rule L1341.

### **Rule L1341. Mediation**

(a) Appropriate civil cases including medical professional liability actions that have progressed beyond the exchange of expert reports and family law cases that include among other claims a claim for custody may be referred to mediation by order of the court, on the motion of any party which shall include a certification that it believes there is a realistic possibility of settlement, following a stipulation by all parties, or on the court's initiative.

(b)(1) The parties shall within 30 days after the date of the court order referring the case to mediation choose a mediator who is available during the appropriate period and has no apparent conflict of interest. If the parties are unable to choose a mutually acceptable mediator the court will appoint a mediator.

(2) Except by agreement of all the parties or as otherwise ordered by the court, one-half the cost of the mediator's services must be borne by the plaintiff(s) and one-half by the defendant(s). In a case with third-party defendants, the cost must be divided into three equal shares. Compensation must be paid directly to the mediator upon the conclusion of the mediation, or as otherwise agreed to by the parties and the mediator. Failure to pay the mediator shall be brought to the court's attention.

(3) A party who demonstrates a financial inability to pay all or a part of that party's *pro rata* share of the mediator's fee may request the court waive all or part of that party's share of the fee. Other parties to the case who are able to pay the fee must bear their *pro rata* portions of the fee.

(c) Promptly after being chosen to mediate a case, the mediator shall, after consulting with all parties, fix the date, time and place of the mediation. All mediations shall be held within 90 days of the court's order referring the case to mediation.

(d) At least 10 days before the date of the mediation, the mediation may be continued 1 time by agreement of all counsel. The counsel or party requesting the continuance shall give written notice of such continuance to the mediator. The mediator shall reschedule the case to be heard within 60 days, with notice of hearing to be provided to all counsel. In the event that the parties cannot agree to a continuance more than 10 days prior to the scheduled mediation date a motion for continuance must be made to and ruled upon by the court. If the case is continued by the court, the mediator shall reschedule the mediation in accordance with the court's order granting the continuance.

(e)(1) All named parties and their counsel are required to attend the mediation unless excused under subparagraph (d) below. A party other than a natural person (*e.g.* a corporation or an association) satisfies this attendance requirement if represented by a decision maker(s) (other than outside counsel) who has **full** settlement authority and is knowledgeable about the facts of the case. A unit or agency of government satisfies this attendance requirement if represented by a person who has, to the greatest extent feasible, **full** settlement authority, and is knowledgeable about the facts of the case, the government unit's position, and the procedures and policies under which the government unit decides whether to accept proposed settlements. If the action is brought by the government on behalf of one or more individuals, at least one such individual also must attend. Any party who fails to have physically in attendance the necessary decision maker(s) will be subject to sanctions.

(2) Each represented party must be accompanied at the mediation by the lawyer who will be primarily responsible for handling the trial of the matter. If a party is proceeding *pro se* and if any other party is being represented by a lawyer at the mediation, the court will appoint an attorney to assist the *pro se* party at the mediation. The appointed attorney shall receive as compensation for his/her services a fee of \$250.00 that shall be paid by the *pro se* party. In mediations of unusual duration (more than 1 day) the court, on petition of the attorney and for cause shown, may allow additional compensation. The court may waive all or part of the attorney's fee if the *pro se* party demonstrates a financial inability to pay.

(3) Insurer representatives are required to attend in person unless excused under subparagraph (4) below, if their agreement would be necessary to achieve a settlement.

(4) A person who is required to attend mediation may be excused from attending in person only after a showing that personal attendance would impose an extraordinary or otherwise unjustifiable hardship. A person seeking to be excused must file a motion with the court no fewer than 10 days before the date set for the mediation, simultaneously copying all counsel and the mediator.

(5) A person excused from appearing in person at mediation must be available to participate by telephone.

(f) The mediation must be informal and must employ a facilitative method. The mediator may hold separate, private caucuses with each side or each lawyer or, if the parties agree, with the parties only. The mediator may not disclose communications made during the caucus to another party or counsel without the consent of the party who made the communication.

(g) Within 5 days of the conclusion of the mediation, the mediator shall file a written report with the court that includes the caption and case number, the date of the mediation, whether any follow up is scheduled, whether the case settled in whole or in part, and any stipulations the parties agree may be disclosed.

### **Explanatory Comment**

Mediation is a flexible, non-binding, **confidential** process (*See* 42 Pa.C.S. § 5949) in which a neutral person (the mediator), selected by the parties, facilitates settlement negotiations. The mediator improves communication across party lines, helps parties articulate their interests and understand those of their opponent, identifies issues and helps generate options for a mutually agreeable resolution to the dispute. A hallmark of mediation is its capacity to expand traditional settlement discussion and broaden resolution options, often by exploring litigant needs and interests that may be formally independent of the legal issues in controversy.

### **Note**

All named parties and their counsel are required to attend the mediation. This requirement reflects the court's view that the principal values of mediation include affording litigants opportunities to articulate directly to the other parties their positions and interests and to hear, first hand, their opponent's version of the matters in dispute. Mediation also enables parties to search directly with their opponent for mutually agreeable solutions.

## **MINORS AS PARTIES**

### **Rule L2039.1. Minors - Compromise, Settlement, Discontinuance and Distribution**

(a) A petition for settlement of a case in which a minor has an interest shall be filed with the prothonotary.

(b) The petition shall:

- (1) Set forth the factual circumstances of the case;
- (2) State the reasons why the settlement is a proper one; and
- (3) Be accompanied by the following:
  - (i) A proposed Order of Distribution;
  - (ii) A written report of a physician;
  - (iii) In property damage claims, a statement by the party who made the repairs or appraised the loss;
  - (iv) A statement under oath by the guardian certifying (1) the present physical or



mental condition of the minor, and (2) approval of the proposed settlement and distribution thereof;

(v) A statement of the professional opinion of counsel as to the reasonableness of the proposed settlement and the basis for such opinion; and,

(vi) In the event that the minor is 16 years of age or over, his or her written approval of the proposed settlement and distribution thereof.

(c) The Order of Distribution shall include an award of counsel fees. The standard for the award of counsel fees in the representation of minors is that the fees be reasonable in accordance with the guidelines set forth in Rule 1.5 of the Rules of Professional Conduct. Under normal circumstances a counsel fee in the amount of 1/3 of the net fund recovered shall be considered reasonable, subject to the approval of the court. The attorney fee determined shall be reduced by the amount of collateral payments received as counsel fees for representation involving the same matter from third parties such as BlueCross/Blue Shield.

(d) The court, may in its discretion , require the personal appearance of the minor, his or her guardian(s), his or her doctor, or any other relevant party, as well as the production of any evidence deemed necessary for approval of the Petition.

## INCAPACITATED PERSONS AS PARTIES

### **Rule L2064.1. Incapacitated Persons Compromise, Settlement, Discontinuance and Distribution**

(a) A petition for settlement of a case in which an incapacitated person has an interest shall be filed with the prothonotary.

(b) The petition shall:

(1) Set forth the factual circumstances of the case;

(2) State the reasons why the settlement is a proper one; and

(3) Be accompanied by the following:

(i) A proposed Order of Distribution;

(ii) A written report of a physician;

(iii) In property damage claims, a statement by the party who made the repairs or

appraised the loss;

(iv) A statement under oath by the guardian certifying (1) the present physical or mental condition of the incompetent person, and (2) approval of the proposed settlement and distribution thereof;

(v) A statement of the professional opinion of counsel as to the reasonableness of the proposed settlement and the basis for such opinion; and,

(c) The Order of Distribution shall include an award of counsel fees. The standard for the award of counsel fees is that the fees be reasonable in accordance with the guidelines set forth in Rule 1.5 of the Rules of Professional Conduct. Under normal circumstances a counsel fee in the amount of one-third of the net fund recovered shall be considered reasonable, subject to the approval of the court. The attorney fee determined shall be reduced by the amount of collateral payments received as counsel fees for representation involving the same matter from third parties such as BlueCross/Blue Shield.

(d) The court, may in its discretion , require the personal appearance of the incompetent person, his or her guardian, his or her doctor, or any other relevant party, as well as the production of any evidence deemed necessary for approval of the Petition.

## UNINCORPORATED ASSOCIATIONS AS PARTIES

### **Rule L2152. Actions by Associations**

The Plaintiff's initial pleading in an action prosecuted by an association shall set forth the names and addresses of the officers thereof or of all persons known to be holding themselves out as such. In case the said officers do not constitute the trustees *ad litem*, or have not consented to the prosecution of the action by consent in writing attached to the initial pleading, the plaintiffs shall serve notice, in the manner provided in Pa.R.C.P. No.440 of the bringing of the action upon said officers within 10 days thereafter and file proof thereof in the action; otherwise, the action shall be automatically stayed until such proof is filed.

## ACTIONS FOR WRONGFUL DEATH

### **Rule L2205. Notice to Persons Entitled to Damages**

Notice shall in all cases be given personally or by registered or certified mail to each person entitled by law to recover damages in the action, unless the plaintiff shall file an affidavit that the identity or whereabouts of any such person is unknown to him after diligent search therefore, in which case the plaintiff shall cause the notice to be advertised one time in a newspaper of general circulation published in McKean County. Proof of such publication shall be filed in the prothonotary's office

### **Rule L2206.1. Minors and Incapacitated Persons Actions for Wrongful Death Compromise, Settlement, Discontinuance and Judgment**

The procedures for compromise, settlement, discontinuance and distribution in wrongful death and survival actions in which a minor or an incapacitated person has an interest shall be identical to the procedures for the approval of settlements described in Rules L2039.1 or L2064.1.

### **Rule L2232. Service of Notice to Persons Required to be Joined**

Service under this rule shall be made by personal service by any competent adult as provided in Pa.R.C.P. No. 402 or by registered mail pursuant to Pa.R.C.P. No. 403.

## SUBSTITUTION OF PARTIES

### **Rule L2353. Service of Rule**

When a party seeks to serve a successor by publication, he shall advertise a notice of the Rule one time in a newspaper of general circulation published in McKean County. Proof of such publication shall be filed in the prothonotary's office.

### **Rule L2952. Confessed Judgments**

When a judgment is entered upon any instrument containing a warrant of attorney, which instrument accompanies a mortgage, a statement shall be placed in the complaint showing the book and the page where said mortgage is recorded. If the instrument is entered without a complaint, a statement shall be placed upon the instrument itself.

## ENFORCEMENT OF JUDGMENTS

### **Rule L3110. Execution Against Contents of Safe Deposit Box**

When the Plaintiff seeks to serve a party by publication as provided in Pa.R.C.P. No. 3110 (c) it shall be sufficient service to publish said notice one time in a newspaper of general circulation in McKean County. Proof of such publication shall be filed in the prothonotary's office.

### **Rule L3112. Service upon Garnishee Real Property of Defendant in Name of Third Party**

Whenever a party seeks to serve a garnishee by publication as provided in Pa.R.C.P. No. 3112(c) it shall be sufficient service to publish said notice one time in a newspaper of general circulation in McKean County. Proofs of publication shall be filed in the prothonotary's office.

### **Rule L3123. Debtor's Exemption**

The sheriff following an appraisal or designation shall immediately thereafter and before sale give notice thereof by first class United States mail to all interested parties of the appraisal or designation, which notice shall set forth the right of appeal to the Court of Common Pleas within 48 hours thereof.

### **Rule L3128. Notice of Sale of Personal Property**

One copy of the handbill shall be mailed, by certified United States mail, to the defendant by the sheriff.

## DEPOSITIONS AND DISCOVERY

### **Rule L4010. Exchange of Medical Reports**

When a mental or physical examination has been made pursuant to Pa.R.C.P. No. 4010, counsel shall be prepared to exchange medical reports, as provided therein, not more than 30 days after the examination has been made.