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## RULES OF CONSTRUCTION

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**Rule 51.                    *Title and Citation of Rules.***

All rules adopted by the Court of Common Pleas of Lackawanna County pertaining to Civil Procedures shall be known as the Lackawanna County Court of Common Pleas Rules of Civil Procedure and may be cited as “Lacka.Co.R.C.P. \_\_\_\_\_.”

**Rule 52.                    *Effective Date of Rules.***

Each rule adopted by the Court of Common Pleas of Lackawanna County, whether civil, criminal, orphans’, or governing district justices, shall become effective upon the date specified by the court in promulgating the rule; but, no rule shall be effective until notice of its promulgation is published in the “Lackawanna Jurist.” The content of each rule promulgated shall be made available through the Lackawanna County Bar Association and as mandated by law or rule of the Pennsylvania Supreme Court.

**Rule 76.                    *Definitions.***

Unless the context clearly indicates otherwise, each word or phrase when used in any rule promulgated by the Court of Common Pleas of Lackawanna County shall have the same meaning as that word or phrase is given in the Pennsylvania Rules of Civil Procedure, with the exception of the following:

- (a) “court” or “the court” shall mean the Court of Common Pleas of Lackawanna County;
- (b) “rule” shall mean any rule of civil procedure promulgated by the Court of Common Pleas of Lackawanna County
- (c) “party” or “parties” shall mean the party or parties appearing in a civil action pro se, or the attorney or attorneys of record for such party or parties, where appropriate.

**Rule 101.                    *Principles of Interpretation.***

In the construction of any rule, the principles set forth in the chapter of the Pennsylvania Rules of Civil Procedure designated “Rules of Construction” shall be observed unless the application of such principles would result in a construction inconsistent with the manifest intent of court.

**Rule 127.                    *Construction of Rules.***

- (a) The object of all interpretation and construction of the Rules of Civil Procedure of the Court of Common Pleas of Lackawanna County is to ascertain and effectuate the intention of this court.
- (b) Each rule shall be construed, if possible, to give effect to all its provisions. When the words of a rule are clear and free from all ambiguity, the letter of the rule is not to be disregarded under the pretext of pursuing its spirit.
- (c) When the words of a rule are not explicit, the intention of the Court of Common Pleas of Lackawanna County may be ascertained by considering, among other matters:
  - (1) the occasion and necessity for rule;
  - (2) the circumstances under which the rule was promulgated;
  - (3) the purpose for the rule was promulgated and the object to be attained;
  - (4) the prior practice, if any, upon the same or similar subjects;
  - (5) the consequences of a particular interpretation;
  - (6) the history of the rule; and
  - (7) the practice followed under the rule.

**Rule 128.                    *Presumptions and Ascertaining the Intent of the Court of Common Pleas of Lackawanna County.***

In ascertaining the intention of the Court of Common Pleas of Lackawanna County in the Promulgation of a rule of civil procedure, all seeking to interpret the rule should be guided by the following presumptions:

- (a) that the Court of Common Pleas of Lackawanna County does not intend a result that is absurd, impossible of execution, or unreasonable;
- (b) that the Court of Common Pleas of Lackawanna County intends that the entire rule or chapter of rules is to be effective and certain;
- (c) that the Court of Common Pleas of Lackawanna County does not intend to violate the Constitution of the United States or of this Commonwealth or any rule promulgated by the Supreme Court of Pennsylvania;

- (d) that the Court of Common Pleas of Lackawanna County intends to favor the public interest as against any private interest; and,
- (e) that no rule shall be construed to confer a right to trial by jury where such right does not otherwise exist.

**Rule 130.                    *Construction of Rules and Derogation of the Common Law.***

The principle that laws in derogation of the common law are to be strictly construed shall have no application to any rule of civil procedure promulgated by the Court of Common Pleas of Lackawanna County.

**Rule 151.                    *Effective Date of Amendments.***

An amendment to a rule of procedure, whether civil, criminal, orphans', or governing district justices, shall be effective upon the date specified by the court in promulgating the amendment; but, no amendment shall be effective until notice of its promulgation is published in the "Lackawanna Jurist." The content of each amendment promulgated shall be made available through the Lackawanna County Bar Association and as mandated by law or rule of the Pennsylvania Supreme Court.

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**THE BUSINESS OF THE COURT**

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**Rule 171.                    *Sessions of Court.***

The court shall annually, by order, prescribe the official Judicial Calendar of the Court of Common Pleas of Lackawanna County for the next calendar year following said annual order, and shall in said order prescribe the sessions of court to be held during the year and designate the time for each. Such order shall be published in the "Lackawanna Jurist."

**Rule 172.                    *Holidays.***

The Court of Common Pleas of Lackawanna County shall not be in session on any day designated by the laws of Pennsylvania or by

any proper authority as a legal holiday within the Commonwealth of Pennsylvania. Whenever the initial day of any sessions of court or any return day shall fall on any legal holiday, the next succeeding secular weekday shall be considered the initial day of said session or the return day as the case may be. Motion court due to be held on a legal holiday will be postponed to the next regular day of hearing motions.

**Rule 175.                    *Use of Advanced Communication  
Technology (ACT).***

- (a) ACT includes any communication equipment that is used as a link between the court and others in physically separate locations, such as any system providing for two-way simultaneous communication of both video and sound, or telephone or internet-based audio communication in which all parties can hear and be heard.
- (b) Consistent with past practice, the court has the discretion to schedule and conduct certain court proceedings by Advanced Communication Technology (“ACT”), subject to any limitation imposed under the Pennsylvania Rules of Civil Procedure, Pennsylvania law, or these rules.
- (c) ACT shall not be used to conduct jury selection, jury trials, final pre-trial conferences, settlement conferences, or any type of proceeding involving the presentation of documentary or testimonial evidence, except as otherwise provided below.
- (d) The court has the discretion to utilize ACT to conduct initial status conferences, scheduling conferences, the presentation of uncontested motions or petitions, oral arguments on contested motions or petitions, or uncontested hearings involving court approval of settlements.
- (e) Any party may request to participate in any proceeding under Rule 175(d) in person or by ACT, and shall state in the request whether each party opposes or concurs with that request. The presiding judge has the discretion to grant or deny the request.
- (f) The court shall provide counsel and self-represented litigants with notice of the date and time of the proceeding and shall furnish them with the log-in or call-in information and access codes for the ACT proceeding.
- (g) The public shall be permitted access to court proceedings conducted via ACT, unless such access is prohibited or limited by statute of rule, or the presiding judge has closed the proceeding to the public in conformity with the applicable law.

**Editor's Note:** Adopted January 12, 2023, effective 30 days after publication in the *Pennsylvania Bulletin*.

**Rule 188.                    *Professional Conduct.***

The Code of Professional Responsibility, as adopted by the Supreme Court of Pennsylvania, is hereby adopted as the standard of conduct for members of the bar of this court.

Any attorney of this court who shall be found to have violated any of the standards of conduct established for attorneys of this court or to have been disbarred from practice or disciplined in any court of record of this Commonwealth, of the United States, or of any other state, territory or insular possession of the United States may be suspended or disbarred from practice in this court or otherwise disciplined as the court shall determine.

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**PRACTICE AND PROCEDURE GENERALLY**

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**Rule 200.                    *Attorneys Practicing Before This Court.***

- (a) Any person of good moral and professional character who is learned in the law and has been formally admitted to the bar of this court or of the bar of the Supreme Court of Pennsylvania may practice law in this court.
- (b) Attorneys of record of other counties of Pennsylvania, who have yet to be admitted to the bar of the Supreme Court of Pennsylvania but who are eligible for admission on motion to said bar, and attorneys of record from other states, who have been admitted to the general practice of law in such other states, may be admitted to practice pro hac vice in this court for a particular case or proceeding on oral motion of an associate attorney of record appearing in the case or proceeding who is a member of the bar of this court.
- (c) Any attorney admitted to the bar of this court under this rule shall file with the Clerk of Judicial Records of Lackawanna County an address for the service or receipt of all pleadings, motions, notices and other papers served or sent in pursuance of the rules of this court. Any changes of address shall be reported promptly to the Clerk of Judicial Records.

**Rule 200.1.           *Appearances and Withdrawals.***

- (a) The signing of a pleading or motion by an attorney shall be deemed an entry of appearance. Appearance by an attorney or a party not signing pleadings or motions shall be by praecipe filed with the Clerk of Judicial Records.
- (b) Appearance of counsel shall not be withdrawn except by leave of court or by written consent of the party. If at the time that withdrawal is sought, the case has been assigned to a judge for trial or has been tried, a motion to withdraw shall be presented to the trial judge for determination. Otherwise, such motion shall be presented at motion court and a rule to show cause shall issue to the client represented by the movant and to all other parties in the litigation.

**Rule 201.               *Agreements of Attorneys.***

All agreements of attorneys pertaining to the business of the Court of Common Pleas of Lackawanna County shall be in writing signed by all parties to the agreement or shall be entered on the record made in the course of a court proceeding; otherwise, such agreements shall have no validity if disputed by any party to the alleged agreement.

**Rule 205.2(a).       *Pleading Requirements.***

All new civil actions are to be filed on 8 1/2" x 11" paper in the Office of the Clerk of Judicial Records, Lackawanna County Courthouse, 200 N. Washington Avenue, Scranton, PA 18503.

**Rule 205.2(b).       *Civil Cover Sheet.***

No summons, complaint, pleading or other document used to commence a new civil action will be accepted for filing by the Clerk of Judicial Records unless it is accompanied by a duly completed Civil Cover Sheet in the format set forth in Form 1 of the Appendix. In all residential mortgage foreclosure actions bearing the case code designation "RP/MF/RES" on the Civil Cover Sheet, no summons, complaint, pleading or other document used to commence a new residential mortgage foreclosure civil action will be accepted for filing by the Clerk of Judicial Records unless it is accompanied by a Notice of Residential Mortgage Foreclosure Diversion Program form in the format set forth in Form 8 of the Appendix.

**Rule 206.1(a).     *Definition of Petition.***

In addition to an application to strike and/or open a default judgment or a judgment of non pros, a party seeking relief from the court shall proceed by petition and rule when the party is seeking an order which is not otherwise covered by any statute or rule of civil procedure governing motions, including an order:

- (1) imposing sanctions for failure to obey a discovery order;
- (2) holding a party or witness in contempt;
- (3) granting relief from any other judgment, including judgments entered by confession; or
- (4) granting a preliminary injunction.

Any party presenting a petition seeking the issuance of a rule to show cause must follow the procedures set forth in Lacka.Co.R.C.P. 206.4(c).

**Rule 206.4(c).     *Issuance of Rule to Show Cause.***

Any petition presented pursuant to Lacka.Co.R.C.P. 206.1(a) shall proceed upon a rule to show cause. The procedure following the issuance of the rule to show cause shall be in accordance with Pa.R.Civ.P. 206.7. In conformity with Pa.R.Civ.P. 206.6, a rule to show cause shall be issued as of course upon the filing and presentment of the petition. To secure a rule to show cause, the petition shall be presented to the Motions Court judge under Lacka.Co.R.C.P. 208.3(a) and shall be accompanied by a proposed order in the format prescribed by Pa.R.Civ.P. 206.6(c) and the Official Note thereto. The court may grant a stay of execution or stay of the proceedings only upon request by the petitioner and for cause shown. Following presentment of the petition to the Motions Court judge, the petitioner shall proceed pursuant to Lacka.Co.R.C.P. 211 and secure a rule returnable date and a hearing date, if necessary, from the Court Administrator and shall thereafter file the original petition and rule to show cause with the Clerk of Judicial Records, with copies of the same being served upon all counsel and unrepresented parties in accordance with the Pennsylvania Rules of Civil Procedure and Lacka.Co.R.C.P. 440. The petitioner shall file a certificate of service with the Clerk of Judicial Records verifying that the petition and rule have been duly served upon all counsel and unrepresented parties.

**Rule 208.2(c).     *Motion Content.***

In addition to the form and content requirements set forth in Pa.R.Civ.P. 208.2, a motion shall include a brief statement of the applicable authority with citations to the official reporters. If a moving party relied upon an unpublished opinion as authority, a copy of the unpublished opinion must accompany the motion as an attachment.

**Rule 208.2(d).     *Certificate of Concurrence.***

All motions shall contain a certification by counsel for the movant that counsel has sought concurrence in the motion from each party and, when appropriate, that the motion being presented is uncontested.

**Rule 208.2(e).     *Discovery Motion Certification.***

Any Motion relating to discovery shall include a certification signed by counsel for the moving party certifying that counsel has conferred or attempted to confer with all interested parties in a good faith effort to resolve by agreement the issues raised by the motion without court intervention together with a detailed explanation why such agreement could not be reached. If part of the issues raised by the motion have been resolved by agreement, the statement shall specify the issue(s) so resolved and the issues(s) remaining unresolved.

**Rule 208.3(a).     *Motion Procedure.***

A party seeking relief from the court by way of motion shall serve all counsel and unrepresented parties with a copy of the motion, together with notice that the motion will be presented to the court on a date certain, at least (3) business days (excluding Saturdays, Sundays and holidays) prior to the date of presentation. Except for discovery motions which are governed by Lacka.Co.R.C.P. 4000, 4000.1, 4012, 4013 and 4019, any motion defined by Pa.R.Civ.P. 208.a shall be presented in Motions Court which shall be held daily by the designated Motions Court judge. Uncontested or stipulated motions or petitions shall be presented for consideration by emailing the motion or petition, together with a proposed Order for execution by the Motions Court judge, to [CivilMotion@lackawannacounty.org](mailto:CivilMotion@lackawannacounty.org).

The original uncontested or stipulated motion or petition must be filed by the moving or petitioning party with the Clerk of Judicial Records. Contested or opposed motions or petitions shall be presented in-person to the designated Motions Court judge in the assigned



courtroom on Monday through Friday at 9:00 a.m. and by the court en banc on the last Friday of the month at 9:30 a.m. Counsel and pro se litigants who desire to present an opposed or contested motion or petition in Motions Court shall write their names legibly in the motion book maintained for such purposes. Unless otherwise directed by the Motions Court judge, all opposed or contested motions or petitions shall be heard in order in which the names appear in the motion book. Motion court involving domestic relations and orphans' court matters shall be held by judges assigned to the family court division and the orphans' court division. Whenever practicable, emergency motions shall likewise be presented in Motion Court pursuant to Lacka. Co.R.C.P. 208.3(a). In the event that an emergency motion cannot be presented in Motion Court, the party or counsel presenting an emergency motion shall submit the motion to the Court Administrator who will assign the emergency motion to an available judge under Pa.R.Civ.P. 249 for disposition. The Motions Court judge may dispose of the motion at the time of initial consideration or may defer any ruling and, in the interim, either (i) set forth procedures for disposition of the motion pursuant to Pa.R.Civ.P. 208(4)(a)(2) or (b)(1), or (ii) direct the parties to proceed under Lacka.Co.R.C.P. 211.

**Editor's note:** Amended January 12, 2023, effective 30 days after publication in the *Pennsylvania Bulletin*.

### **Rule 210.                      *Submission and Form of Briefs.***

- (a) A copy of any brief which is submitted to the court or to any judge of the court shall be filed to the docket number of the case to which the brief pertains in the office of the Clerk of Judicial Records.
- (b) All briefs shall be typewritten and printed or otherwise duplicated on 8 1/2 by 11 paper and shall be endorsed with the name of the case, the court, the docket number of the case, and the name and address of the attorney filing same. Briefs shall contain an accurate citation to all official authorities relied upon, and shall contain a photo copy of any unofficial authority or any authority not found within the Lackawanna County Law Library. The brief of the moving party shall contain a procedural history of the case, a statement of facts, a statement of questions involved, and an argument. The brief of each party, if more than fifteen pages in length, shall contain an index and table of citations of the cases, statutes

and other authorities referred to within the brief, with references to the pages at which they are cited.

**Rule 210.1.            *Transcription Required for Argument.***

- (a) If in the opinion of counsel for any party a transcription of the testimony or of a prior court proceeding is necessary for the just disposition of a matter to be argued to the court or to an individual judge of the court, that counsel shall serve upon the office of the court reporters and upon all other parties to the action a written notification that such transcription shall be required. Such notice shall be provided as soon as practicable and, in any event, not later than five (5) days after the filing of motion or petition which is to be argued. Said notice shall contain:
- (1) the full caption of the case;
  - (2) the date(s) of the proceeding(s) for which a transcription is deemed necessary;
  - (3) the type of proceeding for which the transcription is deemed necessary; and
  - (4) the date on which the transcription is required, which date should be no later than seven (7) days prior to the scheduled date of argument.
- (b) As soon as can be determined after receipt of the notice required by paragraph (a), the office of the court reporters shall advise all parties and the court of the approximate date on which said transcription shall be available, so that the parties and the court can consider alternative argument dates if such appears necessary or desirable.

**Rule 211.            *Disposition of Motions and Petitions.***

- (a) To assign a motion or petition to a judge for disposition or to schedule a motion or petition for argument where a rule returnable does not set a schedule, a party shall file with the Clerk of Judicial Records and the Court Administrator a Praeceptum for Assignment. See Appendix, Form 2.
- (b) Prior to filing a Praeceptum of Assignment, the moving or petitioning party shall contact counsel for all other parties of record to determine whether an opposing party or lawyer wishes to present oral argument. The moving or petitioning party shall indicate on the Praeceptum for Assignment whether the matter is being submitted

on briefs and without the necessity of oral argument or is to be scheduled for argument by the Court Administrator. No Praecipe for Assignment will be accepted by the Clerk of Judicial Records or the Court Administrator unless the moving or petition party has indicated in writing whether the matter is to be submitted on briefs or scheduled for oral argument.

- (c) The Court Administrator shall assign motions and petitions to the judges of the court on a rotating basis and shall establish a briefing schedule for the parties. The notice of assignment shall state whether the oral argument will be conducted in person or by ACT pursuant to Lacka.Co.R.C.P. 175(c). No oral argument will be transcribed by a court reporter unless a party or counsel specifically requests such transcription at least one week prior to the scheduled argument by contacting the Chief Court Reporter in writing in order to make advance arrangements for the physical or remote presence of an assigned court reporter to transcribe the oral argument.
- (d) The original of a party's brief shall be filed with the Clerk of Judicial Records and copies shall be provided to the assigned judge and all opposing counsel in accordance with the schedule set by the Court Administrator.
- (e) If the moving or petitioning party fails to timely file and serve a brief, or fails to appear at oral argument, if requested, the matter may be dismissed by the court as of course. The judge to whom supplemental briefing by the parties.
- (f) If any party other than the moving or petitioning party fails to timely file and serve a brief, that party may be deemed not to oppose the motion or petition and may not be allowed to present oral argument.
- (g) No case listed for argument will be continued except for good cause shown to the satisfaction of the court.

*Editor's note:* Amended January 12, 2023, effective 30 days after publication in the *Pennsylvania Bulletin*.

**Rule 212.                    *Pre-Trial Procedure and Settlement Conference.***

It is the intent of this rule that, in all civil actions, a pre-trial proceeding may be instituted at various states for specific purposes.

- (a) Prior to Filing of Certificate of Readiness. After a complaint alone has been filed or after a complaint and answer have been filed all parties may request a preliminary pre-trial settlement conference if it is the consensus of the parties that the case may be settled as a result of such a conference, and it is the intention of the parties to avoid ordinary pre-trial procedures leading to the filing of a certificate of readiness. The parties may request such a settlement conference by submitting a written request to the Court Administrator who shall assign it to the Settlement Master for a settlement conference. In addition, any judge may direct the Court Administrator to assign a particular case to the Settlement Master for a pre-trial settlement conference, or may issue an order directing the parties in a case to participate in a pre-trial settlement conference before the Settlement Master. The Settlement Master may require the parties to submit pre-trial settlement conference statements in advance of the pre-trial settlement conference. See Appendix, Form 3.
- (b) After filing Certificate of Readiness. Upon the filing of a Certificate of Readiness, the Court Administrator shall assign a case to an individual judge to conduct a status conference, schedule a pre-trial conference and establish a date for trial.
- (c) If the court determines at the time of the status conference that a party has not fully complied with Lacka.Co.R.C.P. 214(b), the court may strike the original certificate of readiness and remove the case from the judge's individual calendar or may take such other action as it deems appropriate under the circumstances. At the status conference, the court will schedule the pre-trial conference and trial date. In addition, the court may direct the parties to participate in a settlement conference before the Settlement Master. The Settlement Master may require the parties to submit pre-trial settlement conference statements in advance of the settlement conference.
- (d) For the pre-trial conference, each party shall submit to the court and serve on all other parties at least seven (7) days prior to the scheduled time of the conference, a pre-trial statement substantially in the form set forth in Plaintiff/Defendant Pre-Trial Conference Statement or such other form as shall be required by the assigned judge. See Appendix, Form 4. The court may in its discretion require the parties to submit a pre-trial order in the format contained in former Lacka.Co.R.C.P. 212.1. See Appendix, Form 5.

- (e) Except for good cause shown, trial counsel with complete settlement authority must attend the pre-trial conference in person. The designated representative for the plaintiff and defendant, including duly authorized representatives of the primary and excess liability insurers and statutorily created funds, must be available by telephone during the entire course of the pre-trial conference. The court may in its discretion order the designated representatives for the plaintiff and the defendant and the duly authorized representatives of the primary and excess liability insurers and statutorily created funds to attend the pre-trial conference in person. To ensure that full settlement authority has been secured by the date of the pre-trial conference, the primary and excess liability insurers and statutorily created funds are required to have the matter at issue investigated, evaluated and reviewed by all necessary representatives and committees prior to the date of the pre-trial conference.
- (f) At some time prior to the filing of Plaintiff/Defendant Pre-Trial Statement, all parties shall confer to discuss settlement. It shall be the responsibility of the plaintiff to schedule the conference required by this subparagraph. The parties shall certify in writing in their pre-trial statements that such a settlement conference was held and shall identify the date of the conference, the individuals who participated and the results of the conference.
- (g) If a party or counsel fails to attend the pre-trial conference or fails to participate in a settlement conference pursuant to Lacka. Co.R.C.P. 212(f), the court may make such order or impose such sanctions as it deems proper under the circumstances.

**Rule 212.2.            *Miscellaneous Instructions  
Pertaining to Trial.***

(a) In all non-jury trials, the appropriate waiver of a jury trial shall be executed and filed no later than the day trial commences.

(b) In all jury trials, requests for instructions to the jury, together with citations to legal authorities in support thereof, proposed voir dire questions, and jury interrogatories shall be submitted in duplicate at chambers. Such materials shall be filed when the judge may direct but in the absence of any specific direction, not later than the day when trial commences.

(c) Except upon stipulation of affected counsel or by order of the judge, no statement contained in preliminary pre-trial memoranda or the pre-trial order shall be made the subject of comment to the jury by any party at the trial of the case.

(d) Any counsel needing special equipment, device, personnel, or courtroom arrangements shall be responsible for assuring that such items are available at the time they are needed. Personnel assigned to the judge shall not be expected or depended upon to provide service for any party or counsel in the absence of a notation contained in the final pre-trial order.

**Rule 212.6.           *Special Trial Masters.***

A. Appointment and Authority of Special Trial Masters.

1. The Civil Rules Committee of the Lackawanna County Bar Association shall recommend to the President Judge five (5) members of the Association with substantial trial experience to serve as a Screening Committee to review the qualifications and experience of volunteers from the Association to serve, pro bono, as Special Trial Masters.
2. The Screening Committee, upon approval by the President Judge, shall review submission of applications, resumes and other documentation from volunteers willing to serve, pro bono, as Special Trial Masters and make recommendations to the President Judge of persons to serve as Special Trial Masters. Persons recommended shall have been admitted to the practice of law for no less than (10) years.
3. The President Judge shall, from the recommendations, appoint persons to be Special Trial Masters. A list of appointees shall be maintained in computerized form by the Court Administrator from which one, as needed, shall be randomly selected by computer to serve in a case.

B. Consent to Proceed by and Procedure to Finalize Special Trial Master.

1. Where all parties agree to submit a case to a Special Trial Master, each party shall consent to doing so in writing which shall be filed of record and a copy provided to the Court Administrator.
2. When all parties have consented to proceeding with a Special Trial Master and have submitted the consent form to the Court

Administrator, the Administrator shall, by computerized random selection, select a Special Trial Master for that case.

3. The plaintiffs, collectively, and the defendants, collectively, shall each have one (1) peremptory challenge to a selected Trial Master which they may or may not choose to exercise.
4. On notice of selection and being provided with the identity of all parties and counsel in the case, the selected Trial Master shall, within five (5) days, notify the Court Administrator of his/her acceptance of the case or his/her recusal from it. If recusal occurs, the Administrator shall select a different Trial Master until acceptance occurs.
5. Prior to the expiration of the period for the exercise of peremptory challenges, any selected Trial Master and all parties and their counsel shall have a duty to disclose to the Trial Master and all parties and all counsel the facts and circumstances which give rise to any potential conflict.
6. Once a Trial Master accepts a case, the plaintiffs collectively and the defendants collectively shall, within five (5) days of notification of the selection of the Master, notify the Court Administrator of the exercise of a peremptory challenge. After five (5) days and not prior to the expiration of the five (5) day period, the Court Administrator shall notify the parties if any challenge has been made and, if so, the identity of a different randomly selected Trial Master. If both plaintiffs and the defendants have exercised their peremptory challenge, no further challenge is permitted and the next selected Trial Master shall try the case. Once a Trial Master is finally determined, the case shall proceed before that Trial Master.
7. Special Trial Masters shall conduct all pre-trial and trial proceedings in accordance with the Pennsylvania Rules of Civil Procedure and the Practice and Procedure Rules of Lackawanna County.
8. Post-trial Motions. In the event that a trial is conducted before a Special Trial Master, any and all post-trial motions timely filed following such a proceeding shall be ruled upon by the Special Trial Master in the form of a Report and Recommendation to the assigned Trial Judge. The assigned Trial Judge will approve or reject the Report and Recommendation. Rulings on Post-trial Motions shall not be deemed final until acted upon by the assigned Trial Judge.

**Rule 213.**            *Motions for Consolidation or Severance of Actions and Issues.*

A motion to consolidate or sever actions or issues pursuant to Pa.R.Civ.P. 213 shall be made in accordance with Lacka.Co.R.C.P. 208.3.

**Rule 214.**            *Listing Cases for Hearing or Trial.*

- (a) The Court Administrator shall assign a case for hearing or trial upon the filing of a Certificate of Readiness in the form attached to the Appendix of these Local Rules as Form 7. The Certificate of Readiness should identify the judge who has decided any case dispositive motions under Lacka.Co.R.C.P. 1028, 1034, or 1035.2, and whenever practicable, the Court Administrator shall assign the case for hearing or trial to the judge who has decided that case dispositive motion.
- (b) No Certificate of Readiness may be filed until all discovery in the case has been completed and all depositions for use at trial have been scheduled or completed, nor may a Certificate of Readiness be filed if any case dispositive motion is pending for disposition by the court. The filing of a Certificate of Readiness shall constitute a verification that no case dispositive motions are pending nor does any party or attorney contemplate filing such a case dispositive motion.
- (c) No Party or lawyer may file more than one Certificate of Readiness on any single day.
- (d) At least fifteen (15) days prior to the filing of a Certificate of Readiness, the party or lawyer seeking to certify the case for trial must advise all counsel of record and self-represented parties of the intention to file a Certificate of Readiness. If no counsel or party objects to the filing of a Certificate of Readiness within that fifteen (15) day period, the Certificate of Readiness may be filed as provided by paragraphs (b) and (c) above. In the event that an attorney or party objects to the filing of a Certificate of Readiness, and the attorney or party seeking to certify the case for trial believes that the objection is frivolous or being asserted for an improper purpose such as to unnecessarily delay the disposition of the litigation, the attorney or party seeking to certify the case for trial shall present a motion to the Motion Court judge pursuant to Lacka.Co.R.C.P. 208.3(a) requesting leave of court to file a Certificate of Readiness over the objection of the opposing party or counsel.



- (e) Upon the filing of a Certificate of Readiness, the Court Administrator shall promptly schedule a status conference before the assigned judge and forward notice of the conference to all counsel and unrepresented parties. The assigned judge shall determine, and the notice shall state, whether the status conference will be conducted in person or by ACT pursuant to Lacka. Co.R.C.P. 175(c). During the status conference, the assigned judge will schedule dates certain for trial and the final pre-trial conference.

**Editor's note:** Amended January 12, 2023, effective 30 days after publication in the *Pennsylvania Bulletin*.

**Rule 214.1.            *Hearing and Trial Terms.***

- (a) The judicial calendar of the court shall establish hearing and trial terms each year for the conducting of arbitration hearings, equity and non-jury trials, jury trials, and protracted case trials.
- (b) While the composition of the judicial calendar may vary and should therefore be consulted, generally the court schedules terms as follows:
- (1) arbitration hearings—to be scheduled by the Court Administrator's office;
  - (2) equity and non-jury trials—one week each month every month, except July and August;
  - (3) jury trials—three weeks each month every month, except July and August.

**Rule 214.2.            *Assignment of Medical Professional Liability Actions and Protracted Cases.***

- (a) Following the filing of a Complaint by the plaintiff pursuant to Pa.R.C.P. 1042.2 and the entry of appearance by the defendant(s) or defense counsel pursuant to Pa.R.C.P. 1012(a) or Lacka. Co.R.C.P. 200.1(a) in all medical professional liability actions subject to the reporting requirements set forth in Pa.R.C.P. 1042.51(c), the Court Administrator shall assign the case to the judges of the court on a rotating basis and shall promptly schedule a status conference before that judge and forward notice of the conference to all counsel and unrepresented parties. The notice shall state whether the status conference will be conducted in person or by ACT pursuant to Lacka.Co.R.C.P. 175(c). During the status conference, the assigned judge will establish deadlines

for the completion of discovery, the exchange of expert witness reports and the filing of case dispositive motions, and schedule dates certain for trial and the final pre-trial conference. All preliminary objections, motions for judgment on the pleadings, motions for summary judgment, and other case dispositive motions, discovery motions, and other pre-trial motions will be addressed to, served upon and decided by the assigned judge.

- (b) Any other case that will require at least eight (8) days of total trial time, including jury selection, may be designated as a protracted case and assigned to a judge of the court on a rotating basis for pre-trial and trial purposes. A case may be designated as a protracted case upon the filing of a Certification for Protracted Case Designation, subject to the provisions of Pa.R.C.P. 1023.1 to 1023.4, with the concurrence of all counsel of record and unrepresented parties in the form attached to the Appendix of these Local Rules as Form 7A. In the event that all counsel and unrepresented parties do not concur with the designation of a case as a protracted case, the party seeking such designation may present a motion to the Motions Court judge pursuant to Lacka. Co.R.C.P. 208.3(a) requesting the designation of the case as a protracted case. The motion requesting designation as a protracted case must set forth with specificity, and subject to Pa.R.C.P. 1023.1 to 1023.4, the reason(s) why the case warrants designation as a protracted case.
- (c) A Certification for Protracted Case Designation (Form 7A) or a motion requesting the designation of a case as a protracted case may be filed following the filing of a complaint by the plaintiff and the entry of appearance by all defense counsel and unrepresented parties pursuant to Pa.R.C.P. 1012(a) and Lacka. Co.R.C.P. 200.1(a). Once a Certification for Protracted Case Designation or an Order of Court designating a case as a protracted case has been filed, the Court Administrator shall assign the case to a judge of the court on a rotating basis and shall promptly schedule a status conference before the assigned judge and forward notice of that conference to all counsel of record and unrepresented parties. The notice shall state whether the status conference will be conducted in person or by ACT pursuant to Lacka.Co.R.C.P. 175(c). During the status conference, the assigned judge will establish deadlines for the completion of discovery, the exchange of expert witness reports and the filing of case dispositive motions, and schedule dates certain for trial and

the final pre-trial conference. After a case has been designated as a protracted case and assigned to a judge, all case dispositive motions, discovery motions, and other pre-trial motions in a protracted case will be addressed to, served upon and decided by the assigned judge.

**Editor's Note:** Adopted November 6, 2015. Effective 30 days after publication in the *Pennsylvania Bulletin*; amended January 12, 2023, effective 30 days after publication in the *Pennsylvania Bulletin*.

**Rule 214.3.**            *Notice of Hearing or Trial.*

- (a) Notice of trial in a jury case will be provided by the judge to whom the case has been assigned for trial.
- (b) Notice of hearing in arbitration cases will be provided by the Court Administrator by mail to all counsel of record and pro se parties.

**Rule 216.**            *Application for Continuance.*

- (a) An application for continuance of a hearing or trial must be submitted to the assigned judge at least seven (7) days before the first day of the hearing or trial term for which the case is listed.
- (b) The grounds for continuance shall be those set forth in Pa.R.Civ.P. 216.
- (c) The grant or denial of an application for continuance shall be in the discretion of the judge giving due consideration to the timeliness of the application, any prejudice to the opposing party or counsel, the reasons offered for the continuance, and any other factors deemed relevant by the judge.

**Rule 223.**            *Civil Trials.*

- (a) Schedule of Commencement of Trial.

During a trial session, cases shall be called for trial in the order in which they were scheduled for trial by the assigned judge.

- (b) Openings and Closings.

The opening addresses and closing arguments of counsel engaged in trial shall be in accordance with the following principles:

- (1) Unless the trial judge shall otherwise direct, only one attorney may present an opening address or a closing argument for any party;

- (2) Opening remarks shall consist only of a succinct statement, without argument of the positions and contentions of the party represented by the speaker and a brief recital of the evidence intended to be introduced in support of the same;
  - (3) Counsel for the party having the affirmative of the issue on the pleadings shall open the case and shall be followed by opposing counsel, and by third parties, in order in which each appears in the caption of the action;
  - (4) Counsel for the defendant or any third party defendant may elect to make the opening address prior to the taking of any testimony or immediately prior to the presentation of evidence by the defense, unless the trial judge in a particular case required such opening addresses by the defense counsel to be made at a particular time;
  - (5) At the conclusion of the evidence, closing arguments shall be presented by counsel in the reverse order in which counsel was entitled to open under subparagraph (3), so that counsel for the party having the affirmative of the issue shall close last;
  - (6) In actions involving more than one plaintiff, defendant, or third party defendant, not covered under subparagraph (3), if the attorneys are unable to agree, the trial judge shall determine the order of presentation of the opening addresses and closing arguments.
- (c) Conduct of Trial.

The party calling a witness shall, upon motion of another party or when required to do so by the court, state briefly the matter proposed to be established by the testimony of that witness and the legal purpose for presenting such evidence. The entire examination of a witness shall be conducted by only one attorney for each party unless otherwise permitted by the trial judge.

**Rule 223.1.        *Trial Briefs.***

Prior to the commencement of trial, counsel shall furnish the court a trial brief which shall contain a succinct statement of evidence to be presented, the position of the party filing the same with respect to anticipated legal issues to be encountered, and citation of legal authorities relied upon to support the legal positions of the party and to support any requests for rulings which the party anticipates seeking from the court.

**Rule 223.2.            *Additional Submission for Non-Jury Trials.***

In all civil actions tried by a judge without a jury, counsel for the respective parties shall each present to the trial judge requests for findings of fact and conclusions of law. These requests shall be filed with the Clerk of Judicial Records and shall thereby become part of the record of the court in the case.

**Rule 226.                *Points for Charge and Jury Interrogatories.***

Points upon which the trial judge is requested to charge the jury in civil litigation shall not exceed twelve (12) in number without leave of court. Points to be requested shall be framed so that each constitutes a single request which may be completely answered by a single affirmation or negation. Counsel for each party shall furnish that party's requested points for charge to the judge and to opposing counsel at the beginning of the trial unless otherwise allowed or directed by the court. Such requests may be supplemented for matters arising during the trial or directed by the court. Such requests may be supplemented for matters arising during the trial that could not have been reasonably anticipated at the beginning of the party's case in chief.

For each requested point for charge, counsel shall cite the legal authority as the basis for which that particular point is requested which citation shall be made immediately following the particular request to which it applies.

Any special interrogatories which are to be requested shall also be framed so that each constitutes a single request which may be answered by simple affirmation or negation.

**Rule 227.1.            *Post-Trial Motions in Jury Trials.***

- (a) All post-trial motions after trial pursuant to Pa.R.Civ.P. 227.1 shall be filed within ten days after nonsuit or verdict or disagreement of the jury.
- (b) All post-trial motions must be written and the movant and respondent of each post-trial motion shall serve copies of each document which they file with reference to any such motion upon the trial judge and all other parties. Such service shall be made prior to or immediately after the time the document is filed in the office of the Clerk of Judicial Records.

- (c) All motions of the type set forth in paragraph (a) above shall contain specific references to the alleged errors which form the basis of the motion. A post-trial motion will be dismissed as of course as dilatory and in needless expense to the county and to the litigants if the reason set forth are mere conclusions, are captious, or are not supported by the record.
- (d) Whenever a post-trial motion is based upon matters not appearing of record, it shall be made in the form of a petition for rule to show cause and shall be supported by affidavits or depositions upon argument thereof.
- (e) A motion for a new trial on the ground of after-discovered evidence must be made on petition, verified by affidavit, setting forth the names of the witnesses or sources of evidence which have been discovered, a reasonable expectation as to what is to be proved by such evidence, and an assertion that the movant did not know of the evidence before or during the trial. In the event that the rule to show cause is granted, all of the foregoing matters shall be established by deposition or by testimony presented in court at the time that the motion is considered.
- (f) Unless for good cause shown the court orders otherwise, post-trial motions may be decided without the transcript of testimony having been prepared.
- (g) Where it is determined that a transcript or portion thereof is necessary, counsel shall have as a matter of right ten additional days to submit additional allegations of error following receipt of the transcript.

**Rule 229.**                    *Discontinuance.*

Leave of court is required for a plaintiff to discontinue an action as to less than all defendants. Such leave of court shall be sought by petition and rule to show cause.

**Rule 230.2.**                *Termination of Inactive Cases.*

The termination of inactive cases in which there has been no activity of record for two years or more shall be governed by the procedure set forth in Pa.R.Civ.P. 230.2 (effective July 1, 2003).

**Rule 238.**                    *Notice of Settlement Offer.*

Each settlement offer made pursuant to Pa.R.Civ.P. 238(b) and each response given to such offer shall be in writing and dated.

**Rule 240.**            *Proceeding In Forma Pauperis in Civil Cases.*

- (a) Any party who is represented by counsel who certifies on the application or by separate document that the plaintiff is indigent, or any party who is represented by court-appointed counsel or by counsel furnished from the non-profit legal services organizations providing free legal services to the indigent, may apply to the court for leave to proceed in forma pauperis.
- (b) If the party is represented by an attorney, The Clerk of Judicial Records shall allow the party to proceed in forma pauperis upon the filing of a praecipe in the form prescribed by Pa.R.Civ.P. 240(d)(1) and (i). In all other cases, the parties seeking to proceed in forma pauperis shall file a petition and an affidavit in the form prescribed by Pa.R.Civ.P. 240(c) and (h).
- (c) Parties eligible to apply for leave to proceed in forma pauperis, as set forth in subsection (a) above, may also apply to the court for relief from payment of special or unusual expenses, i.e., those costs not related to filing and service of process.
- (d) The right to apply for leave to proceed in forma pauperis shall likewise be available to parties in any civil action commenced before the minor judiciary. Applications in such cases shall be brought to the presiding District Justice for disposition in the manner set forth in subparagraph (a) above.

**Rule 248.**            *Modification of Time.*

The time prescribed by any rule herein for the doing of any act may be extended or shortened by written agreement of the parties or by order of court.

**Rule 250.**            *Scope of Chapter.*

- (a) The rules contained within this chapter entitled “Practice and Procedure Generally” shall apply to all civil actions and proceedings unless otherwise designated in a particular rule and as limited by subsection (b) below.
- (b) The rules contained within this chapter shall apply to class actions only to the extent that they do not conflict with Pa.R.Civ.P. 1701—1716, Lacka.Co.R.C.P. 1703—1713, and such other rules as may be promulgated by the court with respect to class actions.

**Rule 250.1.           *Suspension of Rules.***

The court may suspend one or more of these rules in individual cases by written order. When a judge of this court issues any order in specific case which is not consistent with these rules, such order shall constitute a suspension of these rules for such case only and only to the extent that it is inconsistent.

**Rule 261.           *Court Records.***

- (a) The Clerk of Judicial Records shall endorse upon all papers filed the date and time of filing the same. No parol evidence shall be received to contradict such endorsement, unless upon an allegation, verified by affidavit, of fraud or mistake.
- (b) No person other than the Clerk of Judicial Records or his or her deputy or designee shall make any entry upon the docket or records of the court.
- (c) The Clerk of Judicial Records shall allow no papers to be taken from his or her office, except when specially allowed by the court or one of the judges thereof, unless the same be called for trial or a hearing before a referee, board of arbitrators, auditor, or master, and then only upon receipt of the person or persons authorized to take such records.
- (d) In cases where tax or municipal liens shall be divested without having been paid in full, by reasons of any order of this court or of the United States Court in Bankruptcy, either by compromising said liens or directing the sale of the liened premises free and clear of such liens which filed the lien, enter upon the records of each lien thus divested in the municipal lien docket and judgment index an annotation to the effect that the lien has been divested under order of court, making specific reference to the number of term of this court or to the number and bankruptcy court under which the lien was divested.

**Rule 262.           *Court Records (Transcripts).***

In order to implement Supreme Court Order No. 35 and subject to Lacka.Co.R.C.P. 261, counsel shall not be permitted to take any court records out of the office of the Clerk of Judicial Records, by order of court or otherwise, for the purpose of photocopying transcripts.



Only in an emergency situation may counsel be permitted to photocopy a transcript, but the court reporter still must be paid the copy rate since counsel is not entitled to a free transcript indirectly off the court reporter's services and since counsel cannot receive a free transcript directly from the reporter.

**Rule 263.            *Ordering of Transcripts.***

Counsel for the moving party shall serve a formal request for transcript on the court stenographer. The court stenographer will then provide counsel for the moving party with an estimate of the transcript fee for an original and one copy. Upon receipt of at least one half of said transcript fee, transcription will commence. However, filing of the original transcript deliver of a copy to counsel shall not be made until full payment is made.

Delivery of copies ordered by opposing counsel will be made only after the moving party has made full payment for the original and one copy and payment in full is made by opposing counsel for any copies so ordered.

**Rule 275.            *Costs.***

(a) *Taxation of Bill of Costs.*

A bill of costs, accompanied by an affidavit of their correctness and the necessity for the number of witnesses in attendance, shall be taxed by the Clerk of Judicial Records.

(b) *Notice.*

Any party requesting taxation of costs by the Clerk of Judicial Records shall give the Clerk and all other parties ten (10) days written notice of such request. The Clerk shall fix the time for taxation and notify the parties or their counsel.

(c) *Exceptions.*

Any party desiring to challenge the correctness of a bill of costs may do so by filing with the Clerk of Judicial Records within ten (10) days after service of the bill of costs written exceptions thereto, accompanied by an affidavit attesting to the truth of the facts asserted within the exceptions. Exceptions to a bill of costs shall particularize the items objected to in detail unless the exceptions are to the whole bill for any particular reason.

(d) *Clerk's taxation.*

The clerk of Judicial Records shall tax the costs upon consideration of the bill of costs and any exceptions presented thereto, which taxation shall be subject to appeal to the court.

(e) *Appeal.*

An appeal taken to the court from the Clerk of Judicial Records' taxation of a bill of costs must be taken within thirty (30) days from the date of filing of the Clerk's taxation.

(f) *Security for Costs.*

The defendant in any case, upon entering an appearance or upon filing a responsive pleading, may petition for a rule on plaintiff to give security for costs. Such petition and rule shall be in accordance with Lacka.Co.R.C.P. 206.1(a) and/or Lacka.Co.R.C.P. 206.4(c).

### **Rule 290.                    *Appellate Court Filing Fees.***

When an appeal is brought by filing a notice of appeal in the office of the Clerk of Judicial Records and for which a filing fee is required by the Court of Common Pleas of Lackawanna County and an additional filing fee is required by the appellate court to be collected by the Clerk of Judicial Records of Lackawanna County, such appellate court filing fee shall be paid a separate check or money order made payable to the prothonotary of the appellate court involved. It shall be the obligation of the Clerk of Judicial Records to forward said filing fee to the appellate court, consistent with the Pennsylvania Rules of Appellate Procedure.

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## **SERVICE OF ORIGINAL PROCESS AND OTHER LEGAL PAPERS**

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### **Rule 400.1.                *Notice to Serve.***

- (a) Any document or process issued out of the office of the Clerk of Judicial Records, other than a complaint, shall contain a notice to serve directed to the sheriff of the appropriate county to serve the process on or before a day certain, which shall be not less than five days in advance of any return date set with respect to the process, or to otherwise return the process marked "Not Found."
- (b) The form of such notice to serve will read:

*See Forms Index*

**Rule 430.**            *Service by Publication in Actions in Ejectment.*

- (a) Service upon a defendant by publication in an action in ejectment shall be made by publishing once in the “Lackawanna Jurist” and once in a daily newspaper of general circulation within Lackawanna County, a notice which shall be substantially in the following form:

*See Forms Index*

- (b) When service is to be made by the publication in accordance with subsection (a) above, if an affidavit is filed that the heirs and assigns of the named former owner of the property are unknown, the publication shall be directed for the former owner and his heirs and assigns generally.

**Rule 430.2.**        *Service by Publication in Actions in Replevin.*

- (a) Service upon a defendant by publication in an action in replevin shall be made by publishing once in the “Lackawanna Jurist” and once in a daily newspaper of general circulation in Lackawanna County a notice which shall be substantial in the following form:

*See Forms Index*

- (b) When service is to be made by publication in accordance with subsection (a) above, if an affidavit is filed that the heirs and assigns of a named former owner of the property are unknown, the publication shall be directed to the former owner and his heirs and assigns generally.

**Rule 430.3.**            *Service by Publication in Action Requesting Equitable Relief.*

- (a) Service upon a defendant by publication in an action seeking equitable relief shall be made by publishing once in the “Lackawanna Jurist” and once in a daily newspaper of general circulation within Lackawanna County a notice which shall be substantially in the following form.

*See Forms Index*

- (b) When service is made by publication upon the heirs and assigns of a named former owner or party in interest and said heirs and assigns are unknown, the publication shall be directed to the heirs and assigns generally if within the complaint or by separate affidavit it is stated that the heirs and assigns are unknown.

**Rule 430.4.**            *Service by Publication for the Enforcement of Judgments for Payment of Money.*

When service by publication may be had under Pa.R.Civ.P. 3112(c), the plaintiff may cause service to be made by publication once in the “Lackawanna Jurist” and once in a daily newspaper of general circulation in Lackawanna County a notice which shall be in substantially the following form:

*See Forms Index*

**Rule 430.5.**            *Service by Publication of Actions Pursuant to 41 P.S. Section 407.*

Service upon a defendant by publication of actions commenced in accordance with the requirements of Section 407 of Act. No. 6 of 1974, 41 P.S. Section 407, when authorized pursuant to Pa.R.Civ.P. 430, shall be made by publishing once in the “Lackawanna Jurist” and once in a daily newspaper of general circulation within Lackawanna County a notice which shall be substantially in the following form:

*See Forms Index*

**Rule 440.**            *Service of Legal Papers Other Than Original Process.*

(a) *Service.* Unless otherwise provided by statute or by rule of the Supreme Court of Pennsylvania or of this court, a copy of all pleadings, petitions, motions, rules, answers to rules to show cause, notices, or other papers required to be serviced on another party shall be served

in the manner provided by Pa.R.Civ.P. 440 or 441 or as otherwise directed by order of this court within five (5) days from the filing thereof. If timely service is not effective in accordance with this rule, the legal paper shall be considered void and of no effect. Upon affidavit filed setting forth such failure of timely service, the party upon whom the paper should have been served may proceed as though said legal paper had never been filed.

(b) *Certificate of Service.* The party serving the paper(s) shall file in the office of the Clerk of Judicial Records a certificate or affidavit of showing the date, manner of service, and person upon whom service was made. Such certificate or affidavit of service shall be filed immediately upon effecting service, and a copy of same shall be served on all parties.

(c) *Service by Publication.* Unless otherwise specifically provided by statute, court rule, or order of court, whenever service by publication may be made pursuant to Pa.R.Civ.P. 430, said service shall be accomplished by publication once in the "Lackawanna Jurist" and once in a daily newspaper of general circulation within Lackawanna County. Such publication is to be made in such a manner that the person so served thereby shall have at least five (5) days after publication to answer the legal paper which is served in that fashion.

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## ACTIONS AT LAW

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### **Rule 1018.1.**      *Notice to Defend.*

The agencies to be designated on the notice to defendant which is required by Pa.R.Civ.P. 1018.1 to appear in every complaint filed in the Court of Common Pleas of Lackawanna County by a plaintiff or by a defendant against an additional defendant shall be as follows:

Northeastern Pennsylvania Legal Services  
33 N. Main Street, Suite 200  
Pittston, PA 18640  
Telephone (570) 299-4100

**Rule 1019.**            *Contents of Pleadings, General and Specific Averments.*

Whenever any right, claim, or defense is asserted to be founded upon a specific statute of this or another jurisdiction or upon an ordinance, governmental regulation, Pennsylvania Rule of Civil Procedure, or rule herein, the first pleading in which such right, claim, or defense is asserted shall cite for the information of the court the statute, ordinance, regulations, or rule so relied upon.

**Rule 1021.**            *Claims for Relief-Accounting.*

(a) *Time for filing Account.* When a judgment has been entered directing the defendant to account to the plaintiff, the defendant shall, within thirty (30) days, unless the court shall for cause shown allow a longer time, state the account and file the statement thereof in the office of the Clerk of Judicial Records, and shall at the same time serve a copy of said account upon all adverse parties to whom the defendant has been ordered to account.

(b) *Exceptions.* Within thirty (30) days after such notification, any adverse party who has received the accounting, if dissatisfied with the statement of account filed by the defendant, shall file exceptions thereto and move for the appointment of an auditor to hear and report upon the questions of fact and law raised by the exceptions.

(c) *Failure to File Account.* If the defendant shall for any reason fail to file a statement of account within (30) days or such longer period as the court may fix, the court shall, on motion of an adverse party to whom the defendant has been ordered to account, appoint an auditor to state the account between the parties upon the basis of such evidence as may be submitted to the auditor.

(d) *Auditor's Report Exceptions.* The auditor shall give two weeks notice in writing to the parties on their attorneys of record of the time and place fixed for the hearing on the matter. When the auditor has prepared his report, notice that it is ready for filing shall be given to the parties or their attorneys. Exceptions thereto must be filed with the auditor within ten (10) days after such notice has been received. If exceptions are filed, the auditor shall, with his report as originally prepared, report supplementally on the exceptions. When the auditor's report has been filed, the court, after hearing argument on the exceptions thereto, will enter such order for judgment as the case may require.

**Rule 1021.1.      *Claim for Relief.***

In actions for injury to persons or property where some or all of the damages are not liquidated, the claims for relief in the complaint, in specifying the amounts of damages to which the party deems himself entitled, shall state only that said damages are in excess of, or not in excess of the amount below which cases are required to be presented to arbitration.

**Rule 1028(c).      *Preliminary Objections.***

A party filing preliminary objections shall file the original preliminary objections with the Clerk of Judicial Records and shall deliver a copy of the same to the Court Administrator together with a praecipe for assignment in accordance with Lacka.Co.R.C.P. 211. The party filing a praecipe for assignment shall comply with the requirements of Lacka.Co.R.C.P. 211(b) prior to filing the praecipe for assignment. The filing of briefs, assignment of preliminary objections, and scheduling of oral argument, if necessary, shall be governed by Lacka.Co.R.C.P. 175(c) and 211(c)—(g).

*Editor's note:* Amended January 12, 2023, effective 30 days after publication in the *Pennsylvania Bulletin*.

**Rule 1033.      *Amendments to Pleadings.***

When an amendment to a pleading is allowed or is made prior to trial, the whole pleadings, as amended, shall be executed, verified, and filed, provided that, exhibits attached to prior pleadings need not be recopied into the amended pleadings.

Amendments to pleadings allowed at the trial need not be executed, verified, and filed if the amendment is made a part of the trial record.

**Rule 1034.      *Motion for Judgment on the Pleadings.***

(a) A party filing a motion for judgment on the pleadings shall file the original motion for judgment on the pleadings with the Clerk of Judicial Records and shall deliver a copy of the same to the Court Administrator together with a praecipe for assignment in accordance with Lacka.Co.R.C.P. 211. The party filing a praecipe for assignment shall comply with the requirements of Lacka.Co.R.C.P. 211(b) prior to filing the praecipe for assignment. The filing of briefs, assignment of motion for judgment on the pleadings, and scheduling of oral argument, if necessary, shall be governed by Lacka.Co.R.C.P. 175(c) and 211(c)—(g).

(b) As a condition precedent to the filing of a motion for judgment on the pleadings in a residential mortgage foreclosure action involving a residential property which serves as the primary residence of the defendant/borrower, the plaintiff/lender must serve upon the defendant/borrower a “Notice of Residential Mortgage Foreclosure Diversion Program” in the format set forth in Form 11 of the Appendix, unless such a Notice has already been served pursuant to Lacka. Co.R.C.P. 1143. Following the service of the “Notice of Residential Mortgage Foreclosure Diversion Program” in the format prescribed in Form 11 of the Appendix, all proceedings shall be stayed for a period of sixty (60) days in order to afford the defendant/borrower an opportunity to qualify for participation in a court-supervised conciliation conference under Lacka.Co.R.C.P. 1143.1. Upon the expiration of that stay period, the plaintiff/lender in such a residential mortgage foreclosure action may proceed to file a motion for judgment on the pleadings in compliance with Lacka.Co.R.C.P. 1034(a).

(c) If the defendant/borrower in a residential mortgage foreclosure action has taken the affirmative steps identified in the “Notice of Residential Mortgage Foreclosure Diversion Program” to be eligible to participate in a court-supervised conciliation conference under this Rule, the defendant/borrower shall file a Request for Conciliation Conference in the format set forth in Form 9 of the Appendix. The Request for Conciliation Conference shall be filed with the Clerk of Judicial Records within sixty (60) days of service of the Notice of Residential Mortgage Foreclosure Diversion Program and shall be served upon counsel for the plaintiff/lender. A copy of the Request for Conciliation Conference shall also be served upon the Court Administrator.

(d) Upon receipt of the Request for Conciliation Conference, the Court Administrator shall issue a Case Management Order (Form 10) as required by Lacka.Co.R.C.P. 1143.1(c). Conciliation conferences shall be scheduled and conducted in conformity with Lacka.Co.R.C.P. 1143.1(c)—(f).

**Editor’s note:** Amended January 12, 2023, effective 30 days after publication in the *Pennsylvania Bulletin*.

### **Rule 1035.2.           *Motion for Summary Judgment.***

(a) A party filing a motion for summary judgment shall file the original motion for summary judgment with the Clerk of Judicial Records and shall deliver a copy of the same to the Court Administrator



together with a praecipe for assignment in accordance with Lacka. Co.R.C.P. 211. The party filing a praecipe for assignment shall comply with the requirements of Lacka.Co.R.C.P. 211(b) prior to filing the praecipe for assignment. The filing of briefs, assignment of motion for summary judgment, and scheduling of oral argument, if necessary, shall be governed by Lacka.Co.R.C.P. 175(c) and 211(c)—(g).

(b) As a condition precedent to the filing of a motion for summary judgment in a residential mortgage foreclosure action involving a residential property which serves as the primary residence of the defendant/borrower, the plaintiff/lender must serve upon the defendant/borrower a “Notice of Residential Mortgage Foreclosure Diversion Program” in the format set forth in Form 11 of the Appendix, unless such a Notice has already been served pursuant to Lacka.Co.R.C.P. 1143. Following the service of the “Notice of Residential Mortgage Foreclosure Diversion Program” in the format prescribed in Form 11 of the Appendix, all proceedings shall be stayed for a period of sixty (60) days in order to afford the defendant/borrower an opportunity to qualify for participation in a court-supervised conciliation conference under Lacka.Co.R.C.P. 1143.1. Upon the expiration of that stay period, the plaintiff/lender in such a residential mortgage foreclosure action may proceed to file a motion for summary judgment in compliance with Lacka.Co.R.C.P. 1035.2(a).

(c) If the defendant/borrower in a residential mortgage foreclosure action has taken the affirmative steps identified in the “Notice of Residential Mortgage Foreclosure Diversion Program” to be eligible to participate in a court-supervised conciliation conference under this Rule, the defendant/borrower shall file a Request for Conciliation Conference in the format set forth in Form 9 of the Appendix. The Request for Conciliation Conference shall be filed with the Clerk of Judicial Records within sixty (60) days of service of the Notice of Residential Mortgage Foreclosure Diversion Program and shall be served upon counsel for the plaintiff/lender. A copy of the Request for Conciliation Conference shall also be served upon the Court Administrator.

(d) Upon receipt of the Request for Conciliation Conference, the Court Administrator shall issue a Case Management Order (Form 10) as required by Lacka.Co.R.C.P. 1143.1(c). Conciliation conferences shall be scheduled and conducted in conformity with Lacka.Co.R.C.P. 1143.1(c)—(f).

**Editor’s note:** Amended January 12, 2023, effective 30 days after publication in the *Pennsylvania Bulletin*.

**Rule 1037.           *Judgment Upon Default for Repair of Property.***

- (a) In all actions in which the only damages to be assessed are the cost of repairs heretofore made to property, the plaintiff may seek judgment upon default assessing damages for the cost of repairs by filing, with a praecipe waiving any other damages under such judgment, the affidavits required by subsection (b) of this rule and, by sending to the defendant by registered mail directed to his or her last known address, a copy of the repair bill and the affidavit of the person who performed the repairs required by subsection (b) of this rule, together with a notice setting forth the date of the intended assessment of damages, which date shall be not less than ten (10) days from the date of mailing of the notice. Said notice shall contain a statement that damages will be assessed in the amount of the repair bill unless, prior to the date of intended assessment, the defendant files a written praecipe with the Clerk of Judicial Records requesting trial on the issue of such damages.
- (b) Together with the praecipe waiving any damages other than the cost of repairs, the plaintiff shall file an affidavit indicating the date of the mailing to defendant of the notice of the intended assessment of damages and an affidavit of the person who performed the repairs containing an itemized repair bill setting forth the charges for labor and material used in the repair of the property and a statement indicating the qualifications of the person who made or supervised the repairs, that the repairs were necessary, and that the prices for labor and material were fair and reasonable and those customarily charged.
- (c) If the defendant fails to file with the Clerk of Judicial Records prior to the date of intended assessment of damages a praecipe requesting a trial on the issue of such damages, the plaintiff on or after the date of intended assessment of damages may file a praecipe directing the Clerk of Judicial Records to enter judgment in plaintiff's favor in the amount of the repair bill which the Clerk of Judicial Records shall promptly do.
- (d) In the event that the defendant does file a praecipe requesting a trial on the issue of such damages, the case shall proceed as any civil action and shall be subject to arbitration if the amount in controversy is an amount requiring arbitration.

**Rule 1054.           *Abstracts of Title.***

Abstracts of title shall contain a specification of all facts or equitable matter on which the party relies, a reference to all records, an abstract thereof, and, as to deeds, mortgages, or contracts, shall give their date, the date of acknowledgement, and if recorded, when and where recorded.

**Rule 1075.           *Seizure of Property Before Judgment in Actions in Replevin.***

- (a) A return of service required by Pa.R.Civ.P. 1075.1(d) or Pa.R.Civ.P. 1075.2(c), pertaining to service of motions for writ of seizure and notice of hearings made by one other than the sheriff, shall indicate the manner in which service was made and, if service was accomplished in a manner other than those provided in Pa.R.Civ.P. 402, the affidavit shall indicate why service could not be made in a manner indicated in that rule.
- (b) A petition to vacate a writ of seizure as provided in Pa.R.Civ.P. 1075.1(g) shall be accompanied by a rule to show cause and shall follow the procedure set out in Lacka.Co.R.C.P. 206.

**Rule 1098.           *Peremptory Judgment in Actions in Mandamus.***

- (a) A plaintiff in an action in mandamus seeking a peremptory judgment shall do so by motion and in compliance with the notice provision of Lacka.Co.R.C.P. 206.1(c), unless the urgency of the case is such as to require action before notice can reasonably be given.
- (b) The court at the time such motion is presented shall determine whether the motion can be acted upon forthwith or whether it requires additional consideration. If additional consideration is required, the court shall schedule presentation of any documentary or testimonial evidence which it desires as soon as practicable and shall thereafter rule on said motion and either grant or deny peremptory judgment.
- (c) The pendency of a motion for peremptory judgment in a mandamus action does not excuse or relax the defendant's responsibility to timely file a responsive pleading to the plaintiff's complaint.

**Rule 1143.      *Commencement of Mortgage Foreclosure Action.***

- (a) In all residential mortgage foreclosure actions involving a residential property which serves as the primary residence of the defendant/borrower, the complaint must include a Civil Cover Sheet bearing the case code designation “RP/MF/RES” as required by Lacka.Co.R.C.P. 205.2(b). In addition to the Civil Cover Sheet bearing the case code designation “RP/MF/RES,” the complaint shall include a “Notice of Residential Mortgage Foreclosure Diversion Program” in the format set forth in Form 8 of the Appendix. Service of the complaint in such a residential mortgage foreclosure action shall include the “Notice of Residential Mortgage Foreclosure Diversion Program” advising the defendant/borrower of the action to be taken by the defendant/borrower within sixty (60) days of service of the complaint in order to participate in a court-supervised conciliation conference pursuant to Lacka.Co.R.C.P. 1143.1.
- (b) If the defendant/borrower in a residential mortgage foreclosure action has taken the affirmative steps identified in the “Notice of Residential Mortgage Foreclosure Diversion Program” to be eligible to participate in a court-supervised conciliation conference under Lacka.Co.R.C.P. 1143.1, the defendant/borrower shall file a Request for Conciliation Conference in the format set forth in Form 9 of the Appendix. The Request for Conciliation Conference shall be filed with the Clerk of Judicial Records within sixty (60) days of service of the complaint and Notice of Residential Mortgage Foreclosure Diversion Program and shall be served upon counsel for the plaintiff/lender. A copy of the Request for Conciliation Conference shall also be served upon the Court Administrator.
- (c) Upon receipt of the Request for Conciliation Conference, the Court Administrator shall issue a Case Management Order (Form 10) as required by Lacka.Co.R.C.P. 1143.1(c). Conciliation Conferences shall be scheduled and conducted in conformity with Lacka.Co.R.C.P. 1143.1(c)—(f).
- (d) Following the service of the “Notice of Residential Mortgage Foreclosure Diversion Program” (Form 8) in a residential mortgage foreclosure action bearing the case code designation “RP/MF/RES,” all proceedings shall be stayed for a period of sixty (60) days in order to afford the defendant/borrower an

opportunity to qualify for participation in a court-supervised conciliation conference.

**Rule 1143.1.     *Conciliation Conference in Residential Mortgage Foreclosure Actions.***

- (a) The defendant/borrower shall be entitled to participate in a court-supervised conciliation conference with the plaintiff/borrower in all residential mortgage foreclosure actions in which the defendant/borrower: (i) has been served with a Notice of Residential Mortgage Foreclosure Diversion Program pursuant to Lacka. Co.R.C.P. 205.2(b), 1034(b), 1035.2(b), 1143(a) or 3129.1(c); (ii) has completed a financial worksheet in the format set forth in Form 14 of the Appendix in advance of the Conciliation Conference; and (iii) has filed and served a Request for Conciliation Conference. If the defendant/borrower in a residential mortgage foreclosure action has already participated in a conciliation conference, the plaintiff/lender or the defendant/borrower may request an additional conciliation conference for good cause shown by presenting a motion seeking the scheduling of a conciliation conference in accordance with Lacka.Co.R.C.P. 208.3(a).
- (b) To be eligible to participate in a Conciliation Conference, a self-represented defendant/borrower who has been served with a Notice of Residential Mortgage Foreclosure Diversion Program under Lacka.Co.R.C.P. 205.2(b), 1034(b), 1035.2(b), 1143(a) or 3129.1(c) must contact and meet with one of the housing counselors identified in the Notice, complete a financial worksheet (Form 14), and file the Request for Conciliation Conference form within the time deadlines set forth in the applicable Notice. If the defendant/borrower is represented by counsel, the defendant/borrower need not contact and meet with one of the identified housing counselors as a condition precedent to requesting a Conciliation Conference, provided that counsel for the defendant/borrower completes the prescribed financial worksheet (Form 14), and files the Request for Conciliation Conference form within the time deadlines set forth in the applicable Notice. In the event that the defendant/borrower has not been served with a Notice of Residential Mortgage Foreclosure Diversion Program pursuant to Lacka. Co.R.C.P. 205.2(b), 1034(b), 1035.2(b), 1143(a) or 3129.1(c), the defendant/borrower in a residential mortgage foreclosure action shall have the right to participate in a court-supervised conciliation conference provided that the defendant/borrower completes a

financial worksheet (Form 14), files a Request for Conciliation Conference form with the Clerk of Judicial Records and delivers a time-stamped copy to the Court Administrator.

- (c) Upon receipt of a duly-filed Request for Conciliation Conference form, the Court Administrator shall issue a Case Management Order (Form 10) scheduling the matter for the next available Conciliation Conference list. The Case Management Order shall specify the date, time and place of the Conciliation Conference and shall be forwarded by the Court Administrator via ordinary mail to counsel for the parties and to any self-represented parties. At least fourteen (14) days prior to the date of the Conciliation Conference, the defendant/borrower must serve upon the plaintiff/lender or its counsel a copy of the “Lackawanna County Residential Mortgage Foreclosure Diversion Program Financial Worksheet” (Form 14) which has been completed by the defendant/borrower in compliance with Lacka.Co.R.C.P. 1143.1. The failure to do so will result in the removal of the case from the Conciliation Conference schedule and the termination of the temporary stay of proceedings under Lacka.Co.R.C.P. 1034(b), 1035.2(b), 1143(d) or 3129.1(e).
- (d) Conciliation Conferences in residential mortgage foreclosure actions will be conducted in the Jury Orientation Lounge, 1st Floor, Lackawanna County Court House at 10:00 AM on the last Friday of each month. In the event that the last Friday of a month falls on a holiday, the Conciliation Conference will be conducted on the preceding Friday unless another date is fixed by the Case Management Order.
- (e) Conciliation Conferences will be conducted by the presiding judge unless a Special Master or Judge Pro Tempore is appointed by the Court to conduct the Conciliation Conference. The defendant/borrower and counsel for the parties must attend the Conciliation Conference in person and an authorized representative of the plaintiff/lender must either attend the Conciliation Conference in person or be available by telephone during the course of the Conciliation Conference. The representative of the plaintiff/lender who participates in the Conciliation Conference must possess the actual authority to reach a mutually acceptable resolution, and counsel for the plaintiff/lender must discuss resolution proposals with that authorized representative in advance of the Conciliation Conference. The Court in its discretion may

require the personal attendance of the authorized representative of the plaintiff/lender at the Conciliation Conference.

- (f) At the Conciliation Conference, the parties and their counsel shall be prepared to discuss and explore all available resolution options which include: bringing the mortgage current through a reinstatement; paying off the mortgage; proposing a forbearance agreement or repayment plan to bring the account current over time; agreeing to vacate in the near future in exchange for not contesting the matter and a monetary payment; offering the lender a deed in lieu of foreclosure; entering into a loan modification or a reverse mortgage; paying the mortgage default over sixty months; and the institution of bankruptcy proceedings.

**Rule 1301.            *Arbitration.***

- (a) All civil actions brought in the Court of Common Pleas of Lackawanna County in which the amount in controversy is \$50,000.00 or less shall first be submitted to arbitration and heard by a panel of three arbitrators selected from members of the bar of this court in accordance with the provisions of this rule, with the exception of:
- (1) cases involving title to real estate; and
  - (2) cases which have been consolidated for trial with cases in which the amount in controversy exceeds \$50,000.00.

Once a case has been certified for Compulsory Arbitration or otherwise directed by the court for same, the Court Administrator shall notify the Parties or their Legal Representatives of the date and time of the Arbitration. This matter will be heard by a Board of Arbitrators 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 Trial De Novo on appeal from a decision entered by a Judge.

- (b) The list of available arbitrators shall consist of all members of the bar of this court unless excused by the court. Each attorney engaged in active practice in this court shall file with the court Administrator information indicating whether he or she is practicing alone, is associated with one or more attorneys, or is a member of a firm, and further indicating the length of time he or she has actively engaged in the practice of law. Upon any change in his or her status of practicing or being associated with any other lawyer,

he or she shall immediately notify the Court Administrator of such change.

- (c) The Court Administrator shall appoint arbitration panels consisting of three attorneys each, taken from the list of eligible attorneys which the Court Administrator shall maintain on the basis of the information provided pursuant to subsection (b) of this rule. No more than one member of a family, firm, or association shall serve on an arbitration panel. The members of each arbitration panel shall have a cumulative experience of, at least, ten (10) years, dating from their admission to practice in Pennsylvania.
- (e) Each arbitration panel shall sit in session one day during the calendar year and on that day shall hear as many arbitration cases as the Court Administrator has scheduled for that panel. More than one action or controversy may be scheduled for a single arbitration panel if, in the judgment of the Court Administrator, such panel can conveniently dispose of more than one case during its day of arbitration. In the event that a scheduled case cannot be heard, it shall be reassigned to the next available arbitration panel by the Court Administrator.
- (f) The Court Administrator shall notify all arbitrators of the day on which they serve, which notification shall be made as soon as the arbitration panel is selected. For each arbitration panel, the member with the earliest admission to practice in Pennsylvania shall serve as chairperson. Arbitrators so appointed to a specific panel may be excused or transferred to another panel by the Court Administrator, but only for good cause shown, in which instance the Court Administrator shall designate a successor to that arbitrator as soon as practical.
- (g) The arbitration panel shall file its findings and award, if any, as well as any written opinion as in its discretion it may choose to submit, within seven days from the conclusion of the hearing in each case. If a member of the panel dissents from the majority's findings or award, that arbitrator shall so state on the award form and may, in his or her discretion, submit an opinion indicating the reason(s) for such dissent.
- (h) Except as provided in Sub-Section (a), any party may appeal from the findings or award of the arbitration panel to the Court of Common Pleas of Lackawanna County in the same manner as appeals de novo are commenced before the court.



- (i) In any instance where all parties in an arbitration case agree to a settlement prior to the taking of any testimony at the arbitration hearing the parties shall sign a stipulation stating the exact form of any desired arbitration award, which stipulation shall be furnished to the Court Administrator or to the arbitration panel.
- (j) If a stenographic record of an arbitration hearing is desired by any party, such party shall provide the Court Administrator with a written request for same no later than five (5) days prior to date fixed for the hearing and shall at the time of submission of such request pay a fee in the amount set by the court, which fee shall be considered the stenographer's appearance fee. The Court Administrator shall arrange for stenographic service and shall forward aforesaid appearance fee to the stenographer. All parties requesting a transcript of the record shall compensate the stenographer at the rate prescribed by the court.
- (k) Each member of an arbitration panel who actually hear testimony in one or more arbitration cases on the day of the panel's service shall receive a fee in an amount set by the court. Arbitrators may petition the court for additional compensation in protracted or complex arbitration cases. The court in its discretion shall determine the amount of additional compensation, if any, that the arbitrators shall receive.

The Court Administrator's Notice of the Arbitration forwarded to the Parties or their Legal Representatives shall contain the following language:

THIS MATTER WILL BE HEARD BY A BOARD OF ARBITRATORS 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 TRIAL DE NOVO ON APPEAL FROM A DECISION ENTERED BY A JUDGE. (PA.R.CIV.P. 1303(A)(2); LACKA.CO.R.C.P. 1301(A)).

**Editor's note:** Adopted June 26, 2012, effective 30 days after publication in the *Pennsylvania Bulletin*.