
Volume 42
Issue 4 *Dickinson Law Review* - Volume 42,
1937-1938

6-1-1938

Uniform Rules of Court

Robert von Moschzisker

Follow this and additional works at: <https://ideas.dickinsonlaw.psu.edu/dlra>

Recommended Citation

Robert von Moschzisker, *Uniform Rules of Court*, 42 DICK. L. REV. 204 (1938).
Available at: <https://ideas.dickinsonlaw.psu.edu/dlra/vol42/iss4/4>

This Article is brought to you for free and open access by the Law Reviews at Dickinson Law IDEAS. It has been accepted for inclusion in Dickinson Law Review by an authorized editor of Dickinson Law IDEAS. For more information, please contact lja10@psu.edu.

UNIFORM RULES OF COURT

FOREWORD

At the last session of the Legislature, an Act was passed authorizing the Supreme Court to prescribe rules of practice and procedure for courts of record having jurisdiction in civil actions at law or in equity. This Act, No. 392, of June 21, 1937, P. L. 1982, provides in Section 1 that from and after the effective date of any rule promulgated, and so long as such rule shall continue in force, the operation of any Act of Assembly relating to practice or procedure in such courts shall be suspended in so far as such Act may be inconsistent with such rule. (The right of the Legislature to provide for suspending the operation of practice Acts will be found in Section 12 of Article I of the Constitution of Pennsylvania.)

The Act of 1937 conferred power upon the Supreme Court to appoint a "Procedural Rules Committee," to assist it "in preparation, revision, promulgation, publication and administration" of such rules. The Supreme Court accordingly appointed a Committee of jurists and lawyers. The Committee immediately organized and determined to divide the general subject with which it had to deal into two main branches; first, Rules of Court, and second, Rules of Procedure.

The Uniform Rules of Court will be applicable to all courts of first instance covered by the Act of 1937, and will be confined in the main to administrative rules relating to the presentation and disposition of matters coming before those tribunals for determination, and to regulating the course of conduct of judges, attorneys and others vested with the right or charged with the responsibility of instituting and managing litigation, or of executing the mandates of the courts. These uniform rules will supersede largely present rules of court; but in order to meet local needs or local views, any court of first instance may add to the uniform rules of court, or administrative rules, other rules of that character not inconsistent therewith.

The Rules of Procedure are to comprehend a code of practice, pleading and procedure, which will set forth and regulate the procedural rights, privileges, obligations and liabilities of parties to litigation, as distinguished from the afore-said administrative rules governing the course of conduct of those who act in the courts under such procedural rules. These Rules of Procedure will supersede all of the present law of pleading, practice and procedure which may be inconsistent therewith, whether of statutory origin, or derived from judicial pronouncements or founded upon a rule of court.

In drafting both administrative rules and procedural rules, the Committee will always keep in mind the recently promulgated Federal Rules, and will endeavor to follow them as nearly as our Pennsylvania system and tradition permit.

These rules were formulated by a sub-committee of the General Committee, and have twice been passed upon by the Committee as a whole; they are still in a formative stage, and before they are drafted finally for submission to the Supreme Court, we are submitting them in this manner to the lawyers throughout the Commonwealth, so that they may study them and give this Committee at an early date the benefit of any suggestions or constructive criticisms which they may see fit to make.

Interested attorneys are requested to please communicate their views to Albert Smith Faught, Esquire, Secretary, 456 City Hall, Philadelphia, Pa., with the assurance that such views will be given consideration when the rules are put in final form for submission to the Supreme Court.

It is the intention of this Committee, after hearing from the Judges and lawyers of the State, to submit these Rules of Court to the Bar for consideration and criticism.

The Committee is now working upon Rules of Procedure and Practice and, from time to time, later on, the Judges throughout the State and the Bar will be reported to concerning those rules, before they are submitted to the Supreme Court for final approval.

Robert Von Moschzisker, Chairman.

RECOMMENDATION NO. 2 OF THE PROCEDURAL RULES COMMITTEE

RULES OF COURT (GOVERNING THE BUSINESS OF THE COURT)

Note: The following Rules 1 to 29 were tentatively approved by the Procedural Rules Committee on March 12, 1938.

RULE 1. AGREEMENTS OF ATTORNEYS.

Agreements of attorneys relating to the business of the court shall be in writing, except agreements at bar, noted by the Prothonotary or Clerk of Court upon the minutes or by the stenographer on his notes.

RULE 2. AGREEMENTS AS TO CONTINGENT FEES.

Agreements between attorney and client relating to compensation on a contingent basis shall be executed in duplicate, and one executed copy shall be delivered forthwith to the client, and the other shall be preserved by the attorney for at least two years after final judgment or settlement of the case. Such agreements shall be subject to inspection by the Court, by the appropriate com-

mittee of the Bar Association of the County or of the Court, and by the Board of Governance of the Supreme Court.

RULE 3. PAYMENTS BY ATTORNEYS.

Attorneys may divide fees, but no attorney shall promise to pay or shall directly or indirectly make payment, or sanction the payment of compensation, gratuity, or any money or thing of value to any person in consideration of the employment of such attorney.

RULE 4. PAYMENTS TO PERSONS IN CONNECTION WITH LITIGATION.

No attorney shall promise to pay, or shall directly or indirectly make payment or sanction the payment of compensation, gratuity or of any money or thing of value to any person in recognition of his services or connection with any case in addition to the compensation agreed upon or customarily and reasonably charged for services actually rendered by such person. The amount of such compensation shall not depend on or be determined, directly or indirectly by the outcome of the case.

RULE 5. CANONS OF ETHICS.

The canons of ethics of the American Bar Association, as from time to time existing, shall be and become standards of conduct for attorneys of the court. It shall be the duty of the Prothonotary or Clerk of Court at all times to keep a copy of the canons available for inspection.

RULE 6. PETITIONS AND ANSWERS.

Every petition and answer containing allegations of fact which do not appear of record shall be verified by affidavit.

RULE 7. PETITIONS IN PARAGRAPH FORM.

Every petition shall be divided into paragraphs numbered consecutively, each containing as nearly as may be a single allegation of fact.

RULE 8. ANSWERS IN PARAGRAPH FORM.

Every answer to a petition shall be divided into paragraphs, numbered consecutively, corresponding to the numbered paragraphs of the petition.

RULE 9. DUTY OF PETITIONER TO PROCEED AFTER ANSWER FILED.

If, after the filing and service of answer, the moving party does not within fifteen days:

- (a) Proceed by rule or by agreement of counsel to take depositions on disputed issues of fact; or
- (b) Order the cause for argument on petition and answer (in which event all facts responsive to the petition and properly pleaded in the answer shall be deemed admitted for the purpose of the rule);

the respondent may take a rule as of course on the moving party to show cause why he should not proceed as above. If after hearing, such rule shall be made absolute by the court, and the petitioner shall not proceed, as above provided, within fifteen days thereafter, the respondent may order the cause for argument on petition and answer, in which event all facts responsive to the petition and properly pleaded in the answer shall be deemed admitted for the purpose of the rule.

Note: The above rule does not abolish the present practice in counties in which a matter on petition and answer is automatically listed for argument by the Prothonotary or officer in charge of the list without awaiting action by an attorney.

RULE 10. FORM OF BRIEFS.

If briefs are filed they shall be typewritten, printed or otherwise duplicated and endorsed with the name of the case, the court, term and number and name of the attorney.

RULE 11. SERVICE OF BRIEFS.

One copy of every brief shall be furnished prior to commencement of argument (unless the time is extended by special leave of court) to each sitting judge and to each group of attorneys. Except in emergencies or where the attorneys may agree otherwise, it shall be the duty of the attorney for the moving party to serve the adverse attorneys having offices in the county seat with such copy of brief at least five days before the date fixed for argument and the duty of the attorney for the responding party to serve the adverse attorneys having offices in the county seat at least two days before the date fixed for argument.

Note: The provisions in the above rule for the advance service of briefs apply only where adverse attorneys maintain an office in the county seat. It has been left to local rules of court to regulate, if desired, service of briefs upon attorneys not maintaining an office in the county seat.

RULE 12. ORAL ARGUMENTS.

Any party or his attorney shall have the right to argue any motion and the court shall have the right to require oral argument. With the approval of the court oral argument may be dispensed with by agreement of the attorneys and the matter submitted to the court either on the papers filed of record, or on such briefs as may be filed by the parties. The person seeking the order applied for shall argue first; and may argue in reply, such reply being limited to answering new questions raised by the respondent. In matters where there may be more than one party respondent, the order of argument by the parties respondent shall be as may be directed by the court.

RULE 13. PRE-TRIAL CONFERENCE.

In any action the court may in its discretion direct the attorneys for the parties to appear for a conference to consider:

- (a) The simplification of the issues;
- (b) The necessity or desirability of amendments to the pleadings;
- (c) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;
- (d) The limitation of the number of expert witnesses;
- (e) The advisability of a preliminary reference of issues to a master for findings to be used as evidence when the trial is to be by jury;
- (f) Such other matters as may aid in the disposition of the action.

The court shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions or agreements of the attorneys; and such order when entered shall control the subsequent course of the action, unless modified at the trial to prevent manifest injustice.

The court in its discretion may establish by rule a pre-trial list on which actions may be placed for consideration as above provided, and may either confine the list to jury actions or to non-jury actions, or to extend it to all actions.

RULE 14 (a). CONSOLIDATION OF ACTIONS.

When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all of the matters in issue in the actions; it may order all of the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

(b). SEVERANCE OF ACTIONS.

The court in furtherance of convenience or to avoid prejudice may order a separate trial of any claim, crossclaim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues.

RULE 15. PREFERENCES ON TRIAL LISTS.

Preference shall be given in the preparation of trial list to:

- (a) Cases in which the Commonwealth is the real party in interest;
- (b) Suits against defaulting officers of the Commonwealth or any political subdivision thereof, or the sureties of such officers;
- (c) Actions of quo warranto or mandamus involving public officers;

- (d) Cases in which a new trial has been granted, a judgment of non-suit removed, or a venire facias de novo awarded, by either the court of original or appellate jurisdiction;
- (e) Suits to recover wages due for manual labor;
- (f) Cases arising under the laws of this Commonwealth to determine the competency of any person alleged to be weak-minded, insane or an habitual drunkard;
- (g) And such other cases as the court upon cause shown may designate.

RULE 16. ASSIGNING AND SETTING ASIDE PREFERENCES ON TRIAL LIST.

No case shall be assigned a preference on any trial list unless the right to preference is brought to the attention of the officer in charge of the list by praecipe, order or otherwise; and any party in interest may, at least ten days before the case is called for trial, make application to set aside such preference as may have been assigned.

RULE 17. GROUNDS FOR CONTINUANCES.

- (A) The following are grounds for continuance:
 - (1) Agreement of all parties or their attorneys;
 - (2) Illness of counsel of record, a material witness or of a party. If requested a certificate of a physician shall be furnished, stating that such illness will probably be of sufficient duration to prevent the ill person from participating in the trial.
 - (3) Inability to subpoena or to take testimony by deposition, commission, or letters rogatory, of any material witness shown by affidavit which shall state:
 - (a) The facts to which the witness would testify if present or if his deposition should be taken;
 - (b) The grounds for believing that the absent witness would so testify or give his deposition;
 - (c) The efforts made to procure the attendance or deposition of such absent witness; and
 - (d) The reasons for believing that the witness will attend a trial at a subsequent date, or that his deposition can and will be obtained.
 - (4) Such special ground as may be allowed in the discretion of the court.
- (B) Except for cause shown in special cases, no reason above enumerated for the continuance of a case shall be of effect beyond one application made in behalf of one party or group of parties having similar interests, except that all parties in interest or their attorneys may have

a case continued by agreement for a period in the aggregate not exceeding six months.

- (C) No application for a continuance shall be granted if based on a cause existing and known at the time of publication or prior call of the list unless the same is presented to the court at a time fixed by the court, which shall be at least one week before the first day of the trial period. Applications for continuances shall be made to the court, or filed in writing with the officer in charge of the trial list, after serving copies of such application by mail or otherwise to each adverse party or his attorney. Each court may, by local rule, designate the time of publication of the trial list for the purposes of this rule.
- (D) No continuance shall be granted due to the absence from court of a witness duly subpoenaed, unless:
- (1) Such witness' absence is because of facts arising subsequent to the service of the subpoena which would be a proper ground for continuance under the provisions of Rule 17 (A); or
 - (2) On the day when the presence of such witness is required a prompt application is made for the attachment of such absent witness; or
 - (3) The witness, being actually in court when court opened, departs without leave, and an application for attachment is made promptly after the discovery of the absence of such witness, or unless the court is satisfied that the witness has left court for reasons which would be a proper ground for continuance under Rule 17 (A).

Note: The subject of the temporary passing of cases is left for possible inclusion in local rules of court.

RULE 18. COSTS ON CONTINUANCE .

Upon granting any continuance, application for which is made subsequent to the period of the preliminary call of the trial list, 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 been made at or prior to such preliminary call.

Where a continuance has been granted and costs imposed, the party upon whom such costs have been imposed may not, so long as such costs remain unpaid, take any further step in such suit.

If the party upon whom such costs are imposed was at fault in delaying the application for continuance he may not recover such costs, if ultimately successful in the action; otherwise such costs shall follow the judgment in the action.

RULE 19. PARTY NOT READY WHEN CASE IS CALLED FOR TRIAL.

When a case is called for trial, if one party is ready and the other is not ready, without satisfactory excuse being made known to the court, a non-suit may be entered on motion of the defendant, or the plaintiff may proceed to trial. Upon election to proceed to trial the court may require the Prothonotary or Clerk of Court, or may authorize any attorney of the court to participate in the drawing of a jury in behalf of the unready party.

If no party is ready for trial when a case is called, the court shall strike the case from the trial list.

RULE 20. VIEW OF PREMISES.

A party to an action desiring to have the jury view any premises involved in the litigation, may make application therefor either prior to the call of the case for trial, or at bar during the actual trial of the case. In all cases, the allowance of such application shall be within the discretion of the court which may impose upon the applicant such reasonable costs or expenses as may be involved in connection with such view, or may direct that any costs thereby incurred shall follow the judgment ultimately entered in such proceedings as in other cases.

RULE 21. CHALLENGE TO THE ARRAY.

Every challenge to the array of jurors returned for trial of issues of fact shall be made in writing filed on or before the first day of the period at which such issues have been set down for trial.

RULE 22. CHALLENGES.

Each party, or group or class of parties having a common interest shall be entitled to four peremptory challenges, which shall be exercised in turn beginning with the plaintiff and following the order in which they are named or became parties to the proceeding.

RULE 23. ATTORNEYS AS WITNESSES.

Where an attorney acting as trial counsel in the trial of a case is called as a witness in behalf of a party whom he represents, the court shall, in its discretion, determine whether or not such attorney may thereafter continue to act as trial counsel during the remainder of the trial.

RULE 24. CONDUCT OF THE JURY TRIAL.

Subject to the requirements of due process of law and of the constitutional rights of the parties, the court may make and enforce rules and orders covering any of the following matters, *inter alia*:

- (1) Limiting the number of witnesses whose testimony is similar or cumulative;

- (2) Limiting the number of attorneys representing the same party or the same group of parties, who may actively participate in the trial of the case or may examine or cross-examine a witness or witnesses;
- (3) Regulating the number and length of addresses to the jury or to the court;
- (4) Regulating or excluding the public or persons not interested in the proceedings whenever the court deems that such regulation or exclusion to be in the interest of public good, order or morals;
- (5) Excluding the taking of photographs or moving pictures in the court room or the transmission of radio communications in or from the court room.

RULE 25. REGULATION OF ORDER OF PROOF.

In any action the court may compel the plaintiff to produce all of his evidence upon the question of the defendant's liability before he calls any witness to testify solely to the extent of the injury or damages. The defendant's attorney may then move for a non-suit. If the motion is refused, the trial shall proceed. The court may, however, allow witnesses to be called out of order if the court deems it wise so to do.

RULE 26. SUMMING UP.

Attorneys for each party or group of parties shall have the right of making an opening address to the jury and also the right to make an address to the jury after the taking of testimony has closed.

RULE 27. POINTS FOR CHARGE.

Points upon which the trial judge is requested to charge the jury shall be so framed that each may be fully and completely answered by a simple affirmation or negation. Attorneys shall hand copies of requested points for charge to the trial judge and to the opposing attorneys before the closing of addresses to the jury.

RULE 28. EXCEPTIONS TO THE CHARGE.

Unless specially allowed by the court, all exceptions to the charge shall be taken before the jury retires.

RULE 29. TESTIMONY AS TO MISCONDUCT OF A JUROR.

Whenever in the course of a trial testimony is taken of a juror or other person as to alleged misconduct of a juror, or as to tampering with or an attempt to tamper with a juror, such testimony shall become a part of the record of the case. Such testimony shall be taken out of the hearing of the jury. Jurors may be interrogated in regard to such alleged misconduct or attempted tampering.