

## **RULE 1041.1\*. ASBESTOS LITIGATION--SPECIAL PROVISIONS**

Asbestos litigation in Montgomery County is governed by the Pennsylvania Rules of Civil Procedure and the Montgomery County Local Rules of Civil Procedure, except as follows:

(1) Local Rule \*262 (relating to trial lists) shall not apply. Settlement conferences are scheduled and cases are listed for trial by Order of Court.

(2) In addition to the requirements of the Pennsylvania Rules of Civil Procedure and Local Rules 205.2(b) through 208.3 inclusive, 1028(c), 1034(a) and 1035.2(a), copies of motions, petitions, responses thereto, and briefs, shall be served upon the appointed judicial officer assigned to asbestos litigation. The filing of an argument praecipe shall have the effect of commencing the briefing schedule but not of listing the case for argument, which shall be done by the Court with the assistance of the appointed judicial officer assigned to asbestos litigation.

(3) Local Rule 4019\* pertaining to discovery masters shall not apply. When a discovery motion is at issue as provided in Local Rule 4019\*, counsel shall notify the appointed judicial officer assigned to asbestos litigation, who shall arrange for disposition of the matter by the Court.

(4) Arguments, hearings, and trials are ordinarily listed only before the Judge assigned to the asbestos litigation.

(5) The following procedure shall be in effect with respect to cases subject, or alleged to be subject to *Simmons v. Pacor, Inc.*, 543 Pa. 664, 674 A.2d 232 (1996):

A. Within four months of the effective date of this subsection with respect to asbestos cases pending on the effective date, and within four months after the filing of each asbestos case filed after the effective date of this Rule, plaintiff in each such case shall either elect to pursue a claim for medical monitoring, or transfer the case to inactive status.

B. A plaintiff desiring to pursue a claim for medical monitoring shall, by letter, notify the appointed judicial officer assigned to asbestos litigation, with copies to all other counsel. The appointed judicial officer assigned to asbestos litigation shall consult with the Court, which will issue appropriate Orders scheduling a conference, and thereafter list the case for arbitration or trial, as appropriate.

C. With respect to cases in which plaintiff does not presently wish to pursue a claim for medical monitoring plaintiff shall file with the Prothonotary, and serve on all other counsel and on the appointed judicial officer assigned to asbestos litigation, a praecipe to transfer to inactive status. The praecipe shall be in the following form:

"[Caption]

PRAECIPE TO TRANSFER INACTIVE STATUS

TO THE PROTHONOTARY:

Transfer the above-captioned matter to inactive status in accordance with Montgomery County Local Rule of Civil Procedure 1041.1\*(5).

---

Attorney for Plaintiff

[Certificate of Service]\*

-----

D. Anytime after the expiration of four months from the effective date of this subsection with respect to asbestos cases pending on that date, and anytime after four months from the commencement of any action commenced after the effective date of this subsection, any defendant who asserts that any case should be transferred to inactive status because it falls within the rule of *Simmons v. Pacor, Inc., supra.*, shall file with the Prothonotary, a Motion to Transfer to Inactive Status. The Motion shall be in accordance with Pa.R.C.P. 208.1, *et seq.*, and Montgomery County Local Rules of Civil Procedure \*208.1, *et seq.*, and 1041.1\*(2). The argument court cover sheet shall request a rule return day in accordance with Montgomery County Local Rule of Civil Procedure 208.3(b)(1). Copies of the motion shall be served on all other counsel in accordance with Montgomery County local rules and practice, and shall also be served on the appointed judicial officer assigned to asbestos litigation. The moving party's proposed order shall be in the following form:

ORDER

AND NOW, this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_, IT IS ORDERED that the above-captioned matter is transferred to inactive status in accordance with Montgomery County Local Rule of Civil Procedure 1041.1\*(5).

BY THE COURT:

---

J.

-----

Responses shall be filed at or before the time the rule is returnable, and shall be served on all counsel and on the appointed judicial officer assigned to asbestos litigation.

E. Upon receipt of any responses, the appointed judicial officer assigned to asbestos litigation shall refer the petition to the Court, which will schedule the matter for argument or hearing as appropriate. If no responses are filed the Court Administrator will forward the Petition to the Signing Judge.

F. After a case has been transferred to inactive status, whether by praecipe or by petition and order, the Prothonotary will maintain the case as an inactive file, the appointed judicial officer assigned to asbestos litigation will remove the case from the list of pending cases eligible for trial listing, and no party may take any action with respect to the case, except for the taking of depositions of an aged or

infirm witness for purposes of preservation of testimony unless and until the Court, by Order shall direct that the case by retransferred to active status, upon petition and rule filed in accordance with the procedure set forth in subparagraph (D) above.

*Comments:*

1. The Honorable William J. Furber, Jr., is the Administrative Judge for Asbestos Litigation.
2. By Orders dated April 12, 1982 and January 27, 2005, the appointed judicial officer assigned to asbestos litigation is: Donald J. Martin, Esq., 22 West Airy St., Norristown, PA 19401-4769, Telephone: (610) 277-6772, Fax: (610) 277-4993.
3. The Orders scheduling cases for trial and settlement conferences ordinarily contain deadlines, including deadlines for the completion of discovery and for filing certain motions. These are completion deadlines. It is not necessary for a scheduling order to issue for counsel to engage in earlier, appropriate, discovery and motion practice.
4. Except as stated in sub-paragraph D below, a discontinuance of an action as to less than all parties may not be entered without notice and an opportunity to respond to all other parties. This may be accomplished as follows:
  - A. If a stipulation is signed by counsel for *all parties to the litigation*, Pa.R.C.P. 229(b) does not require leave of court. The fully executed stipulation may be filed with the Prothonotary.
  - B. A motion for approval of discontinuance may be filed pursuant to Pa.R.C.P. 208.1 *et seq.*, and Montgomery County Local Rules of Civil Procedure 208.2, *et seq.*. A rule to show cause shall be requested on the cover sheet. The cover sheet should be followed by a form of order approving the discontinuance, by a petition, and by the original stipulation executed by counsel for plaintiff and counsel for the party against whom proceedings are being discontinued. Upon receipt of the return day from the Court Administrator counsel should serve all parties, and file with the Prothonotary a separate certification of service indicating service of the petition and the rule to show cause, noting the return day. If no answer is filed at or before the time the rule is made returnable, the petition will be forwarded by the Court Administrator to the Civil Signing Judge in accordance with the practice pertaining to any petition requiring a return day.
  - C. Stipulations for discontinuance signed by counsel for plaintiff and counsel for the party against whom proceedings are being discontinued may be presented to the Court at a scheduled settlement conference for the case in question. If no objection is raised at the conference, the Court normally approves the stipulation and returns it to counsel for filing and for service on all parties.
  - D. If a case has been settled by all parties from whom plaintiff seeks a recovery, a discontinuance may be entered as to any other parties by stipulation signed by counsel for plaintiff, the original of which shall be transmitted to the appointed judicial officer assigned to asbestos litigation, with copies served on all other parties. The appointed judicial officer assigned to asbestos litigation shall transmit the stipulation to the appropriate judge for approval. Since parties who may have claims for contribution or indemnification have not been given the opportunity to object, such a stipulation is subject to being stricken on the petition of an interested party. Counsel may wish to proceed in accordance with subparagraph B, above, to minimize this risk.
5. Certificates of service shall indicate the name and address of counsel or the parties on which service has been made. A certificate of service "on all parties", or "on all counsel of record" without stating who they are, does not establish service on anyone.
6. At the time of the adoption of the addition of subparagraph (5) the Court was aware that litigation was pending in other jurisdictions relating to the manner in which claims for medical monitoring can be pursued, and if such claims can be pursued. The provisions of this subsection (5) creating a procedure to pursue medical monitoring claims does not express the Court's opinion on this issue. This Rule does not preclude any appropriate motion in any case.