

IN RE: ADOPTION OF
LACKA. CO. R.C.P. 175 AND
AMENDMENTS TO LACKA. CO.
R.C.P. 208.3(a), 211(c), 214(e), 214.2(a)
and (c), 1028(c), 1034(a), 1035.2(a), and
4000.1(a) GOVERNING THE USE OF
ADVANCED COMMUNICATION
TECHNOLOGY (ACT) IN CIVIL
PROCEEDINGS

: IN THE COURT OF COMMON PLEAS
: OF LACKAWANNA COUNTY

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: NO. 23 CV 1
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MAURI B. KELLY
LACKAWANNA COUNTY
2023 JAN 12 P 2:36
CLERK OF JUDICIAL
RECORDS CIVIL DIVISION

ORDER

AND NOW, this 12th day of January, 2023, in accordance with Pa.R.Civ.P. 239 and Pa.R.J.A. 103(d), and inasmuch as (1) Pa.R.J.A. 103(d)(4) requires all proposed local rules to “be submitted in writing to the appropriate Rules Committee for review,” and provides that the adopting court may “not proceed with the proposed local rule until it receives written notification from the appropriate Rules Committee that the proposed local rule is not inconsistent with any general rule of the Supreme Court,” (2) the attached local rules were submitted by the Court of Common Pleas of Lackawanna County to the Supreme Court of Pennsylvania Civil Procedural Rules Committee for its review and approval, and (3) on January 11, 2023, the Court of Common Pleas of Lackawanna County received written notification from the Supreme Court of Pennsylvania Civil Procedural Rules Committee that the attached “local rules are not inconsistent with the statewide rules and are approved for publication pursuant to Pa.R.J.A. 103(d)(5)”, it is hereby ORDERED and DECREED that the attached Lackawanna County Rules of Civil Procedure are adopted and amended as follows:

1. New Lacka. Co. R.C.P. 175 is adopted as reflected in the attached Rule 175 which appears in bold type and italics for ease of reference;

2. Lacka. Co. R.C.P. 208.3(a), 211(c), 214(e), 214.2(a) and (c), 1028(c), 1034(a), 1035.2(a), and 4000.1(a) are amended as reflected in the attached Rules with the amended language appearing in bold type and italics for ease for reference;

3. Pursuant to Pa.R.J.A. 103(d)(5) and (6), the attached Local Rules shall be disseminated and published in the following manner:

(a) One (1) copy of the attached Local Rules shall be filed with the Administrative Office of the Pennsylvania Courts;

(b) Two (2) paper copies of the attached Local Rules shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*;

(c) The Legislative Reference Bureau shall also be provided with a copy of the attached Local Rules on a computer diskette, CD-ROM, or other agreed upon alternative format that complies with the requirements of 1 Pa. Code § 13.11(b);

(d) A copy of the attached Local Rules shall be published on the website of the Court of Common Pleas of Lackawanna County which is maintained by the County of Lackawanna;

(e) The attached Local Rules shall be kept continuously available for public inspection and copying in the Office of the Clerk of Judicial Records, Civil Division, and upon request and payment of reasonable costs of reproduction and mailing, the Clerk of Judicial Records shall furnish any requesting person with a copy of attached Local Rules; and

(f) A copy of the attached Local Rules shall be distributed to the Lackawanna Bar Association for publication in the *Lackawanna Jurist* and on the website of the Lackawanna Bar Association.

4. The adoption of Lacka. Co. R.C.P. 175 and the amendments to Lacka. Co. R.C.P. 208.3(a), 211(c), 214(e), 214.2(a) and (c), 1028(c), 1034(a), 1035.2(a), and 4000.1(a) shall become effective thirty (30) days after the date of their publication in the *Pennsylvania Bulletin* in compliance with Pa.R.J.A. 103(d)(5)(iii); and

5. Pursuant to Pa.R.J.A. 103(d)(6)(iii), the Court of Common Pleas of Lackawanna County shall incorporate the attached Local Rules in the complete set of the Lackawanna County Rules of Civil Procedure no later than thirty (30) days following their publication in the *Pennsylvania Bulletin*.

BY THE COURT:


P.J.
President Judge Trish Corbett

THE BUSINESS OF THE COURT

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.**

PRACTICE AND PROCEDURE GENERALLY

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 . 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. [at the times and on the days designated by the Court Administrator]. 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.

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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 praecipe for assignment. See Appendix, Form 2.

(b) Prior to filing a praecipe 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 praecipe 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.

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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(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.

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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.Civ.P. 1042.2 and the entry of appearance by the defendant(s) or defense counsel pursuant to Pa.R.Civ.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.Civ.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 motion, 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 designed 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 designed as a protracted case upon the filing of a Certification of Protracted Case Designation, subject to the provisions of Pa.R.Civ.P. 1023.1 and 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.Civ.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 entry of appearance by all defense counsel and unrepresented parties pursuant to Pa.R.Civ.P. 1012(a) and Lacka. Co. R.C.P. 200.1(a). Once a Certification for Protracted Case Designation or an Order of the Court designating a case as a protracted case has been filed, the Court Administrator shall assign the case for 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 a 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.

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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. 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).***

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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 the 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)**.

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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)**.

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Rule 4000.1 Discovery Motion Court

(a) Except for medical professional liability actions and protracted cases governed by Lacka. R.C.P. 214.2, all discovery motions shall be presented to the Discovery Motions Court judge. ***Uncontested or stipulated discovery motions or petitions shall be presented for consideration by emailing the motion or petition, together with a proposed Order for execution by the Discovery Motions Court judge, to DiscoveryMotion@lackawannacounty.org. The original uncontested or stipulated discovery motion or petition must be filed by the moving or petitioning party with the Clerk of Judicial Records. Contested or opposed discovery motions or petitions shall be presented in-person*** to the Discovery Motions Court judge who shall hear motions in the Lackawanna County Courthouse on Monday and Thursday at 9:30 AM in the courtroom designated by the Court Administrator, unless otherwise agreed by counsel or the Discovery Motions Court judge or by order of the Discovery Motions Court judge.

(b) In the event that the Discovery Motions Court Judge is unavailable on Monday or Thursday at 9:30 AM, and unless otherwise agreed by counsel for the Discovery Motions Court judge, discovery motions shall be presented to the Motions Court judge in compliance with Lacka. Co. R.C.P. 208.3(a).