

PRACTICE UPDATE

Changes to Post-Trial Rules Give Clients Powerful Tool

The new rule permits counsel to move cases forward in post-trial limbo.

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A recent change to Pennsylvania's procedural rules has given trial lawyers a powerful tool to move post-trial proceedings forward.

Under 1995 amendments to Pa.R.Civ.P., Rule 227.4(1)(b), effective January 1, 1996, a party may now file a praecipe to enter judgment if a trial judge does not enter an order disposing of all post-trial motions in a case within 120 days after the filing of the first post-trial motion.

Any party, whether or not it has filed post-trial motions, may praecipe to enter judgment as a matter of right. The new rule permits counsel to move forward cases in post-trial limbo.

Previously, once parties filed post-trial motions, the trial judge determined when to decide the motions. With no deadline for the resolution of the motions, a prevailing party could be left waiting for months or even years, unable to execute on a judgment because the post-trial motions had not been decided.

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The one limitation to new Rule 227.4(1)(b) concerns delay damages. If the court has failed to dispose of post-trial motions within 120 days as set forth in Rule 227.1, a party may not enter judgment if two events have occurred.

First, a party must have filed a motion for delay damages. Second, the non-movant to the motion for delay damages must have opposed the motion. If both of these events take place, then no judgment can be entered. See Rule 238(c)(3)(1).

The explanatory comment to Rule 238 outlines the reasoning for this limitation. According to the comment to Rule 238, this provision guarantees that there will be only one appeal which includes both the merits of the case and the delay damages motion.

If post-trial relief is filed and a motion for delay damages is opposed, judgments may not be entered until all motions have been decided.

It is not entirely clear from the rule and comments what happens if a motion for delay damages is unopposed and the post-trial motions are still pending after one

hundred and twenty days. An argument can be made, however, based on Rule 238, that the trial judge "shall" grant the motion, and that a judgment for delay damages may be entered separate from the judgment on the jury's verdict.

See Rules 238;227.1-227.4 and the accompanying Rules Committee Explanatory Comments.

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Although this new rule is contained in Rule 227.4, the explanatory comments that outline the reasoning for this new rule are contained in the "Explanatory Comments 1995" to Rule 227.1.

As the comments indicate, prior to this change in law, the parties could do nothing if motions for post-trial relief were pending and undecided. Obviously, a party may not wish to utilize this new rule if settlement negotiations between the parties are such that a settlement appears likely.

Also, and as pointed out in the explanatory comments, a party may have little incentive to file the praecipe to enter judgment if time is not of the essence.

However, a party interested in appealing the judgment can use this new rule as

a means of expediting the appeal process. If a judgment is entered pursuant to Rule 227.4, the judgment is effective as to all parties so that the case is ready for appeal.

It taxes the best client relationship to explain that after four years to bring a case to trial and thousands of dollars to litigate the case — the ultimate resolution of the matter (i.e. the appeal) is being held up for an indefinite period of time because the judge still needs to issue an order (when he or she has time). This new rule allows such cases to be resolved more quickly.

The new amendment to Rule 227.4 enables a party to speed along the often lengthy process of litigation and post-trial inertia. This certainly will appeal to the clients who often complain about the extremely slow pace of litigation.

Although the rule does not impose a fixed time limit upon judges for deciding post-trial motions, the rule does provide judges with a certain time standard after which matters may be taken out of their control.

Under this new rule, counsel will now only have to wait a maximum of four months from the date of the first post-trial motions before entering judgment.

While clients may still gripe about the glacial speed with which the litigation moves, the case will move forward much quicker when trial counsel utilizes the tool provided under new Rule 227.4(1)(b). ■

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