

CHAPTER 800. MINORS AND INCOMPETENTS AS PARTIES

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Source

The provisions in this Chapter 800 were adopted June 1, 1971, effective October 1, 1971, unless otherwise noted.

Rule 801. Definitions.

As used in this chapter:

Action—Includes a civil action as defined by Rule 301 and an action by a landlord against a tenant for the recovery of possession of real property pursuant to Rule 501.

Official Note: This chapter applies to all actions, civil in nature, within the jurisdiction of a magisterial district judge.

Minor—An individual under the age of eighteen years.

Incompetent—Anyone who, because of his incompetency, has a guardian appointed by a court of competent jurisdiction.

Guardian—Except as otherwise indicated in Rules 808B and 816B, means—

(a) in the case of a minor, a guardian of the minor appointed by any court of competent jurisdiction or by a probated will, a parent of the minor or, if selected by the minor to represent him as guardian, any adult person.

(b) in the case of incompetents, a guardian or other fiduciary appointed by a court of competent jurisdiction for the person or estate of an incompetent.

Official Note: The definition of “minor” is the same as that set forth in Pa. R.C.P. No. 76 and is in conformity with pertinent statutory provisions. See, for example, Act of December 6, 1972, P. L. 1404, No. 300, § 1, 11 P. S. § 1901; § 102 of the Probate, Estates and Fiduciaries Code, 20 Pa.C.S. § 102. “Incompetent” is defined as one who already has a guardian appointed because of incompetency, the reason for not adopting the rest of the definition in Pa. R.C.P. No. 2051 being principally that a magisterial district judge should not become involved in appointing guardians ad litem. The definition of “guardian” with respect to a minor is necessarily broad in view of the system adopted in Rule 805. The definition of “guardian” with respect to an incompetent follows generally that found in Pa. R.C.P. No. 2051.

Source

The provisions of this Rule 801 amended through January 29, 1976, effective immediately, 6 Pa.B. 361; amended September 18, 1990, effective immediately, 20 Pa.B. 5042. Immediately preceding text appears at serial pages (72997) to (72998).

Rule 802. Minor May Be Party to Action.

Whether or not he is represented by a guardian a minor may be a party to an action before a magisterial district judge.

Official Note: Under this rule, a minor need not be represented by a guardian in a civil action before a magisterial district judge. This is a departure from the procedure in other tribunals prescribed by Pa. R.C.P. Nos. 2027 and 2031. This difference in procedure is due in part to the determination that magisterial district judges should not be required or allowed to appoint guardians ad litem, considering the expedition with which civil actions before magisterial district judges are required to be handled under the general rules of civil procedure applicable to magisterial district judges. Since magisterial district judges will not be permitted to appoint guardians ad litem (see Rule 819), it would be manifestly unfair to allow a minor plaintiff to bring suit by a “next friend” guardian but to require the appointment of a guardian by a court of common pleas before a suit could be brought against a minor defendant. It is considered that ample protection will be afforded the minor party under Rule 805. See also the note to Rule 807.

The rules in this chapter are not, of course, intended to change the law governing the basic legal liability of minors.

Source

The provisions of this Rule 802 amended September 18, 1990, effective immediately, 20 Pa.B. 5042. Immediately preceding text appears at serial pages (72997) and (25107).

Rule 803. Entitlement of Complaint.

The complaint in an action before a magisterial district judge to which a minor is a party shall be entitled in the name of the minor, without reference to his minority or any guardian.

Official Note: The complaint will be entitled in the name of the minor, whether plaintiff or defendant. If a guardian does represent him, this will be reflected by a notice of intent to represent attached to the complaint will be reflected by a notice of intent to represent attached to the complaint form as required by Rule 805B.

Source

The provisions of this Rule 803 amended September 18, 1990, effective immediately, 20 Pa.B. 5042. Immediately preceding text appears at serial page (25107).

Rule 804. Service of the Complaint.

Service of the complaint upon a minor defendant, or of a cross-complaint upon a minor plaintiff, shall be upon the minor in the manner prescribed for service of like process upon an adult party.

Official Note: See Pa. R.C.P. No. 2029(a).

Rule 805. Representation of Minor by Guardian.

A. A guardian may represent a minor party by filing with the magisterial district judge before whom the action is pending a written notice stating his name, address, entitlement to act as guardian under Rule 801(3)(a) and that he intends to represent the minor party as guardian. Such a notice shall be filed on a Guardian's Notice of Intent to Represent Minor Party form.

B. Upon receipt of a notice of intent to act as guardian, the magisterial district judge shall note thereon the time and date of its filing and attach it to the record copy of the complaint form.

C. Only one guardian may represent the minor party. If more than one person files a notice of intent to act as guardian, precedence shall be given in the order indicated in Rule 801(3)(a), and to the one first filing as between those of the same class.

Official Note: Subdivision A sets up a system which is intended to preserve expedition in the processing of civil cases before magisterial district judges in which a minor is a party and at the same time afford sufficient protection to the minor. Under this rule, read in connection with the definition of "guardian" in Rule 801(3)(a), guardians appointed by a court or by will and parents can represent the minor with or without his consent, but others are subject to his selection. Subdivision B requires the notice of intent to be attached to the complaint form, and subdivision C provides for an automatic selection as between competing "guardians". Of course, one who has filed a notice of intent to represent may withdraw, in which event the next guardian in precedence, if any, would represent the minor party.

Source

The provisions of this Rule 805 amended September 18, 1990, effective immediately, 20 Pa.B. 5042; amended March 27, 1992, effective 90 days from the date on which the Order is signed, 22 Pa.B. 1893 and 1900. Immediately preceding text appears at serial pages (152385) to (152386).

Rule 806. Guardian to Supervise Action.

When a minor party is represented by a guardian—

(1) The guardian shall supervise and control the conduct of the action in behalf of the minor.

(2) Notices required to be given by the magisterial district judge under Rules 318, 319B and 324 shall, if the party to whom the notice must be given is a minor represented by a guardian, be given to the guardian.

Official Note: Compare Pa. R.C.P. Nos. 2027, 2029(b).

Rule 807. Judgment; Costs.

A. Judgment may be entered for or against the minor party whether or not he is represented by a guardian.

B. A judgment entered in the action shall be the obligation of the minor only. A guardian shall not be individually liable for the payment of any judgment entered against the minor or for the costs of the action.

Official Note: Subdivision A of this rule follows the concept adopted in Rule 802. In view of the right of appeal de novo from judgments rendered by magisterial district judges and the protections that are available under these rules, it was felt that such a judgment against a minor party should not be set aside, even as a discretionary matter, on the ground that the minor was not represented by a guardian. Compare *Hamilton v. Moore*, 335 Pa. 433, 6 A.2d 787 (1939).

As to subdivision B, compare Pa. R.C.P. No. 2038. Requiring a minor plaintiff's guardian to pay costs seemed undesirable and unnecessary with respect to civil actions before magisterial district judges.

Rule 808. Compromise, Settlement, Discontinuance and Payment.

A. If a minor party is represented by a guardian, the guardian may compromise or settle the action on behalf of the minor or may discontinue the action if it was brought by the minor. A minor party not represented by a guardian may compromise or settle the action or may discontinue the action if it was brought by him.

B. The amount of a compromise, settlement or judgment in favor of a minor party shall be paid to the guardian of the estate of the minor qualified to receive the fund if he has one or one is to be appointed. If the minor has no such guardian, and none is to be appointed, the amount shall be paid to the guardian of the person or to the natural guardian or to the person or agency by whom the minor is maintained or to the minor.

Official Note: This rule takes a somewhat different approach than the comparable Pa. R.C.P. No. 2039. In view of the relatively small sums involved in money judgments rendered by magisterial district judges, there seems to be little reason for requiring the magisterial district judge to participate and make decisions in these matters.

Source

The provisions of this Rule 808 amended January 29, 1976, 6 Pa.B. 361; amended September 18, 1990, effective immediately, 20 Pa.B. 5042. Immediately preceding text appears at serial page (25109).

Rule 809. Incompetent May Be Party To Action.

An incompetent may be a party to an action before a magisterial district judge if he is represented by his guardian.

Official Note: Since an “incompetent” as defined in Rule 801(a) is a person who already has a guardian appointed because of incompetency, this rule requires that he be represented by his guardian. See Rule 812A. Under Rule 819, the magisterial district judge cannot appoint a guardian ad litem.

See also Rules 813 and 815 and the notes to those rules.

Rule 810. Entitlement of Complaint.

The complaint in a civil action before a magisterial district judge to which an incompetent is a party shall be entitled in the name of the incompetent, followed by the phrase “an incompetent, represented by A, his guardian.” The address of the incompetent and that of his guardian shall be shown on the complaint form.

Official Note: Since the rules in this chapter relating to incompetents deal with persons who already have a guardian because of incompetency, the complaint is entitled to show that the incompetent, whether plaintiff or defendant, is represented by his guardian. Compare Pa. R.C.P. No. 2054.

Source

The provisions of this Rule 810 amended September 18, 1990, effective immediately, 20 Pa.B. 5042. Immediately preceding text appears at serial page (25109).

Rule 811. Service of the Complaint.

Service of the complaint upon a defendant who is an incompetent, or of a cross-complaint upon a plaintiff who is an incompetent, shall be upon his guardian. This service shall be made in accordance with Rule 307.

Official Note: Service is required to be upon the guardian. These rules generally assume the existence of a guardian whose identity is known. Compare Pa. R.C.P. No. 421.

Source

The provisions of this Rule 811 amended July 16, 2001, effective August 1, 2001, 31 Pa.B. 4055. Immediately preceding text appears at serial page (256531).

Rule 812. Guardian to Represent Incompetent and Supervise Action.

A. The guardian of a party who is an incompetent shall represent him and shall supervise and control the conduct of the action in behalf of the incompetent.

B. Notices required to be given by the magisterial district judge under Rules 318, 319B and 324 shall, if the party to whom the notice must be given is an incompetent, be given to the guardian of the incompetent.

Official Note: Compare Pa. R.C.P. Nos. 2053(a), 2055(b).

Rule 813. Procedure When Incompetent Party Not Designated as Such.

A. Except as provided in subdivisions B and C of this rule, if during the pendency of the action the magisterial district judge finds that a party not designated

in the complaint as an incompetent represented by his guardian is an incompetent, the magisterial district judge shall dismiss the proceeding without prejudice. Such a finding shall be based on the fact that the party has a guardian appointed because of the party's incompetency by a court of competent jurisdiction.

B. If the party as to whom such a finding is made is one of several plaintiffs or defendants, the proceedings shall be dismissed only as to him.

C. A complaint filed by a party who is an incompetent but not designated as such in the complaint may be amended by his guardian, at any time during the pendency of the action before judgment, to state that the party is an incompetent represented by his guardian. A complaint filed against a party who is an incompetent but not designated as such may be amended to state that the party is an incompetent represented by his guardian only with the written consent of the guardian, which shall be attached to the record copy of the complaint form.

Official Note: With the exceptions stated, subdivision of this rule requires that the proceedings be dismissed without prejudice when the magisterial district judge finds that a party not designated in the complaint as an incompetent represented by his guardian is actually an incompetent, that is, one who already has a guardian because of incompetency (see Rule 801(2)). This rule is intended to take care of a situation in which incompetency is not disclosed or not known at the time the complaint is filed.

The exception in subdivision B is obvious. The exception in the first sentence of subdivision C contemplates a case in which the incompetent files his own complaint without disclosing his incompetency and this fact comes to light during the pendency of the action. This exception will allow the guardian to make what is in effect a ratifying amendment to the complaint, so that the case can go on a judgment. The exception in the second sentence of subdivision C permits an amendment with the written consent of the guardian in actions brought against undesignated incompetents, the guardian's consent being required because service will not normally have been made upon him under these circumstances and to allow reissuance and new service of the complaint, as amended, would be incompatible with the general civil procedure for magisterial district judges. Neither of the amendments provided for in subdivision C need be made in compliance with Rule 316 or Rule 509.

Rule 814. Judgment and Costs.

A judgment entered in the action shall be the obligation of the incompetent only. A guardian shall not be individually liable for the payment of any judgment entered against the incompetent or for the costs of the action.

Official Note: See Pa. R.C.P. No. 2063.

Rule 815. Judgment—Unrepresented Incompetent.

A. Except as provided in subdivision B of this rule, if after judgment the magisterial district judge finds that a party not designated in the complaint as an incompetent represented by his guardian was an incompetent, the magisterial district judge shall, unless the party's guardian files his consent in writing to the judgment, vacate the judgment and dismiss the proceedings without prejudice. Such a finding shall be based on the fact that the party had a guardian appointed because of the party's incompetency by a court of competent jurisdiction.

B. A judgment in favor of a defendant shall not be vacated or set aside on the ground that he was an incompetent not represented by his guardian.

Official Note: Except as provided in subdivision B, if after judgment the magisterial district judge finds that a party not designated in the complaint as an incompetent represented by his guardian was an incompetent as defined in Rule 801(2), the magisterial district judge must, unless the party's guardian files his consent in writing to the judgment, vacate the judgment and dismiss the proceedings without prejudice. If the guardian does file his consent to the judgment, it should be attached to the record copy of the complaint form. It was thought best not to give the magisterial district judge the kind of discretion in this matter inherent in Pa. R.C.P. No. 2056(d) and in *Hamilton v. Moore*, 335 Pa. 433, 6 A.2d 787 (1939). Of course, if the party as to whom the finding of incompetency is made was one of several plaintiffs or defendants affected by the judgment, the judgment will be vacated, and the proceedings dismissed, only as to him.

The exception is subdivision B forbids vacating or setting aside a judgment in favor of a defendant on the ground that he was an incompetent not represented by his guardian. The reason for this exception is that the rules as to incompetents as parties are for their protection and not for the protection of adverse parties. The word "defendant" as used here includes a plaintiff with respect to a cross-complaint of the defendant but does not include the defendant with respect to his cross-complaint.

Rule 816. Compromise, Settlement, Discontinuance and Payment.

A. The guardian of a party who is an incompetent may compromise or settle the action on behalf of the incompetent or may discontinue the action if it was brought by or on behalf of the incompetent.

B. The amount of a compromise, settlement or judgment in favor of a party who is an incompetent shall, if it is known that he is incompetent, be paid to the guardian of his estate qualified to receive the fund if he has one or one is to be appointed. If the incompetent has no such guardian and none is to be appointed, the amount shall be paid to the guardian of the person or to the person or agency by whom the incompetent is maintained.

Official Note: Compare Pa. R.C.P. No. 2064. See the note to Rule 808.

Source

The provisions of this Rule 816 amended January 29, 1976, 6 Pa.B. 361. Immediately preceding text appears at serial page (21206).

Rule 817. Party Both an Incompetent and a Minor.

If a party is both an incompetent and a minor, the rules in this chapter relating to incompetents shall apply.

Official Note: See Pa. R.C.P. No. 2052 and its note.

Rule 818. Representation in Rule 420 Matters.

A guardian of a party in interest who is a minor or an incompetent may represent the minor or incompetent in hearings held under Rule 420. On behalf of the

minor or incompetent, he may make any appeal or file any objection, claim, exception or request mentioned in that rule.

Official Note: The rules allows guardians of minors or incompetents, as defined in Rule 801(3), to represent them in Rule 420 matters and matters preliminary thereto.

Rule 819. Magisterial District Judge May Not Appoint Guardian.

A magisterial district judge shall not appoint guardians or guardians ad litem.

Official Note: Magisterial district judges shall not be required or allowed to appoint guardians ad litem, considering the expedition with which civil actions before magisterial district judges are required to be handled under the general rules of civil procedure applicable to magisterial district judges.

Rule 820. Appellate Proceedings.

A guardian of a party who is a minor or an incompetent may initiate in an appropriate court of common pleas an appeal, certiorari proceedings or a statement of objection to Rule 420 orders and determinations.

Official Note: It was thought advisable to include a provision giving guardians of minors and incompetents, as defined in Rule 801(3), the right to initiate appeals, certiorari proceedings and statements of objection to Rule 420 orders and determinations. In doing so, of course, they will have to comply with applicable provisions of the rules governing appellate proceedings. Once the case is in the court of common pleas, however, provisions of the Rules of Civil Procedure relating to guardians ad litem and other procedures will apply.

Rule 881. Acts of Assembly Suspended.

All Acts of Assembly or parts thereof that are inconsistent with the rules in this chapter are suspended to the extent of such inconsistency.

Source

The provisions of this Rule 881 amended April 25, 1979, effective May 25, 1979, 9 Pa.B. 1499. Immediately preceding text appears at serial page (21207).

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