

**SUPREME COURT OF PENNSYLVANIA
CIVIL PROCEDURAL RULES COMMITTEE**

NOTICE OF PROPOSED RULEMAKING

**Proposed Adoption of Pa.R.Civ.P. 1034.1 and
Proposed Amendment of Pa.R.Civ.P. 1028**

The Civil Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the adoption of Pa.R.Civ.P. 1034.1 and the amendment of Pa.R.Civ.P. 1028 for the reasons set forth in the accompanying publication report. Pursuant to Pa.R.J.A. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any report accompanying this proposal was prepared by the Committee to indicate the rationale for the proposed rulemaking. It will neither constitute a part of the rules nor be adopted by the Supreme Court.

Additions to the text of the proposal are bolded and underlined; deletions to the text are bolded and bracketed.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

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All communications in reference to the proposal should be received by **April 22, 2026**. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

By the Civil Procedural Rules Committee,

Casey Alan Coyle
Chair

(This is an entirely new rule.)

Rule 1034.1. Pretrial Motion in Actions for Protected Public Expression.

- (a) **General Rule.** At any time after service of original process, a party may file a motion for dismissal of or judgment on a cause of action, or part of a cause of action, based on a party's protected public expression immunity as set forth in 42 Pa.C.S. §§ 8340.11 *et seq.* The motion may be decided based on the motion and any response, oral argument, or an evidentiary hearing.
- (b) **Stay.** Except as provided in subdivision (c), the filing of a motion pursuant to this rule shall stay all other proceedings in the action including discovery and the moving party's obligation to file a responsive pleading. The stay shall remain in effect until the order ruling on the motion becomes final including the appeal of the order.
- (c) **Exceptions to Stay.** If an action is stayed pursuant to subdivision (b):
 - (1) A party may challenge service of a writ of summons or a complaint, personal or subject matter jurisdiction, or venue via separately filed preliminary objections pursuant to Rule 1028.
 - (2) A court may allow limited discovery pursuant to Rules 4001 *et seq.* if a party shows that specific information:
 - (i) is necessary to establish whether a party has satisfied or failed to satisfy a burden pursuant to 42 Pa.C.S. § 8340.15 relating to the grant of immunity; and
 - (ii) is not reasonably available unless discovery is allowed.
 - (3) Upon a showing of good cause, a court may consider a request for special or preliminary injunctive relief pursuant to Rule 1531.
 - (4) Upon a showing of good cause, a court may allow a proceeding relating exclusively to a cause of action:
 - (i) in response to which no party has asserted protected public expression immunity; and
 - (ii) does not implicate an issue relevant to a party's assertion of protected public expression immunity or to the cause of action for which that immunity has been asserted.

- (5) A party may voluntarily discontinue all or part of the party's action pursuant to Rule 229.
- (6) A party may move to recover attorney fees, court costs, and expenses of litigation pursuant to 42 Pa.C.S. § 8340.18.

(d) **Denial of Motion.** If a motion is denied under this rule, a party shall have 20 days to file a responsive pleading, if a responsive pleading has not already been filed.

Rule 1028. Preliminary Objections.

(a) **Grounds.** Preliminary objections may be filed by any party to any pleading and are limited to the following grounds:

(1) lack of jurisdiction over the subject matter of the action or the person of the defendant, improper venue or improper form or service of a writ of summons or a complaint;

[Note: Of the three grounds available to challenge venue, only improper venue may be raised by preliminary objection as provided by Rule 1006(e). *Forum non conveniens* and inability to hold a fair and impartial trial are raised by petition as provided by Rule 1006(d)(1) and (2).]

See Rule of Appellate Procedure 311(b) for interlocutory appeals as of right from orders sustaining jurisdiction and venue.]

(2) failure of a pleading to conform to law or rule of court or inclusion of scandalous or impertinent matter;

(3) insufficient specificity in a pleading;

(4) legal insufficiency of a pleading (demurrer);

[Note: The defense of the bar of a statute of frauds or statute of limitations can be asserted only in a responsive pleading as new matter under Rule 1030.]

(5) lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action;

(6) pendency of a prior action or agreement for alternative dispute resolution;

[Note: An agreement to arbitrate may be asserted by preliminary objection or by petition to compel arbitration pursuant to the Uniform Arbitration Act, 42 Pa.C.S. § 7304, or the common law, 42 Pa.C.S. § 7342(a).]

(7) failure to exercise or exhaust a statutory remedy; and

(8) full, complete and adequate non-statutory remedy at law.

(b) **Raising of Preliminary Objections.** All preliminary objections shall be raised at one time. They shall state specifically the grounds relied upon and

may be inconsistent. Two or more preliminary objections may be raised in one pleading.

(c) **Amended Pleading Permitted and Court Action.**

- (1) A party may file an amended pleading as of course within [twenty] 20 days after service of a copy of preliminary objections. If a party has filed an amended pleading as of course, the preliminary objections to the original pleading shall be deemed moot.
- (2) The court shall determine promptly all preliminary objections. If an issue of fact is raised, the court shall consider evidence by depositions or otherwise.

[Note: Preliminary objections raising an issue under subdivision (a)(1), (5), (6), (7) or (8) cannot be determined from facts of record. In such a case, the preliminary objections must be endorsed with a notice to plead or no response will be required under Rule 1029(d).]

However, preliminary objections raising an issue under subdivision (a)(2), (3) or (4) may be determined from facts of record so that further evidence is not required.

Rule 239.5 requires every court to promulgate Local Rule 1028(c) describing the local court procedure governing preliminary objections.]

- (d) **Overruled Preliminary Objections.** If the preliminary objections are overruled, the objecting party shall have the right to plead over within [twenty] 20 days after notice of the order or within such other time as the court shall fix.
- (e) **Timing for Filing Amended Pleading.** If the filing of an amendment, an amended pleading, or a new pleading is allowed or required, it shall be filed within [twenty] 20 days after notice of the order or within such other time as the court shall fix.
- (f) **Objections to Amended Pleading.** Objections to any amended pleading shall be made by filing new preliminary objections.

Comment:

Preliminary objections raising an issue under subdivisions (a)(1), (a)(5), (a)(6), (a)(7), or (a)(8) cannot be determined from facts of record. In such a case,

the preliminary objections must be endorsed with a notice to plead or no response will be required under Rule 1029(d).

However, preliminary objections raising an issue under subdivisions (a)(2), (a)(3), or (a)(4) may be determined from facts of record so that further evidence is not required.

Of the three grounds available to challenge venue under subdivision (a)(1), only improper venue may be raised by preliminary objection as provided by Rule 1006(e). Forum non conveniens and inability to hold a fair and impartial trial are raised by petition as provided by Rule 1006(d)(1) and (2). See Pa.R.A.P. 311(b) for interlocutory appeals as of right from orders sustaining jurisdiction and venue.

The defense of the bar of a statute of frauds or statute of limitations can be asserted only in a responsive pleading as new matter under Rule 1030 and not pursuant to subdivision (a)(4).

A claim of immunity under the Uniform Public Expression Protection Act, 42 Pa.C.S. §§ 8340.11 et seq., may be asserted by preliminary objection pursuant to subdivision (a)(4) or by motion pursuant to Rule 1034.1.

An agreement to arbitrate may be asserted by preliminary objection pursuant to subdivision (a)(6) or by petition to compel arbitration pursuant to the Uniform Arbitration Act, 42 Pa.C.S. § 7304, or the common law, 42 Pa.C.S. § 7342(a).

Rule 239.5 requires every court to promulgate Local Rule 1028(c) describing the local court procedure governing preliminary objections.

Historical Commentary

The following commentary is historical in nature and represents statements of the Committee at the time of rulemaking:

Explanatory Comment--1973

These identical amendments are self-explanatory.

These subdivisions have heretofore provided that, when preliminary objections are disposed of, the Court is faced with a duty to fix a time within which the next procedural move shall take place, but contained no standard time in the event that the Court failed so to fix a time. The amendment provides that the standard time of 20 days, which appears, throughout the entire pleading chapter, shall become the norm unless the Court fixes some other time.

The amendments have the practical advantage of fixing a standard time in all cases, of relieving the Court of the burden of fixing a time except in special situations, and of removing the ambiguity that would result if the Court disposes of the preliminary objection but overlooks fixing any time for the next procedural step in the action.

Explanatory Comment--1991

See Rule 1017.

Explanatory Comment--Oct. 24, 2003

See Explanatory Comment following Pa.R.C.P. No. 239.

Explanatory Comment--Dec. 16, 2003

See Explanatory Comment preceding Pa.R.C.P. No. 1501.

**SUPREME COURT OF PENNSYLVANIA
CIVIL PROCEDURAL RULES COMMITTEE**

PUBLICATION REPORT

**Proposed Adoption of Pa.R.Civ.P. 1034.1 and
Proposed Amendment of Pa.R.Civ.P. 1028**

The Civil Procedural Rules Committee is considering recommending the adoption of Pennsylvania Rule of Civil Procedure 1034.1 and the amendment of Pennsylvania Rule of Civil Procedure 1028 to provide a procedure for a pretrial motion to dismiss authorized by the Uniform Public Expression Protection Act (Act), 42 Pa.C.S. §§ 8340.11 *et seq.*, to address Strategic Lawsuits Against Public Participation (SLAPP suits),

Section 8340.16 of the Act contains a statutory pretrial motion procedure facilitating a more timely determination of a party's assertion of immunity based upon protected public expression. The Committee commenced rulemaking by examining the statutory procedure contained in § 8340.16:

- a 60-day time period after service of a pleading asserting a cause of action based on protected public expression, unless extended by the court upon good cause shown, to file the motion;
- a 60-day time period after the filing of the motion to schedule oral argument unless the court grants an extension to allow discovery or for good cause;
- a 60-day time period after oral argument for the court to rule on the motion and render its written opinion;
- imposing a stay of all other proceedings upon the filing of the motion with certain exceptions; and
- the effect of filing a motion did not preclude a party from asserting immunity through other pleadings and motions available under the Rules of Civil Procedure.

42 Pa.C.S. § 8340.16(b)-(d).

The Committee does not propose a 60-day time period for filing a motion. If a time period is necessary, the Committee believed that it should be the same as other pleadings – 20 days. Without that congruence, there could be filings pending at the same time as the motion to dismiss such as preliminary objections.

Yet, the Committee observed that Rule 1028(a)(6), which permits a party to raise in a preliminary objection the ground of the pendency of a prior action or agreement, advises in a note that alternative procedural mechanisms are available when agreements to arbitrate are involved in the litigation. Notably, no time periods for filing are imposed in this circumstance. Extrapolating that concept to the motion to dismiss, the Committee concluded that, in the alternative, no specific time period for filing the motion should be imposed. Further, by eliminating a specified time period, the rule would provide flexibility by allowing the litigant to challenge the SLAPP suit with the procedural mechanism the litigant deems appropriate. Accordingly, the proposal does not include a timing requirement for the filing of the motion and instead the rule would allow the motion to be filed any time after the service of original process.

With regard to raising claims of immunity by other procedural mechanisms, the Committee proposes adding commentary to Rule 1028 advising that a claim of immunity under the Act may be asserted by preliminary objection pursuant to Rule 1028(a)(4) or Rule 1034.1.

The Committee then examined the statutory procedure for a 60-day time period within which oral argument must be scheduled as well as the time period within which the judge must render a decision on the motion after oral argument. The Committee observed that specific time periods for scheduling oral argument and for the trial court to issue a decision are not required for other motions. In maintaining procedure with other types of motions, the Committee proposes no timing requirements for oral argument or disposition of the motion. Instead, the proposed rule would specify that the motion may be decided based on the motion and any response, oral argument, or an evidentiary hearing.

The proposed rule contains, as set forth in § 8340.16(e), the imposition of a stay of proceedings upon the filing of the motion with the following certain exceptions:

- a party may challenge service of a writ of summons or a complaint, personal or subject matter jurisdiction, or venue;
- the court may allow limited discovery;
- a court may consider, upon good cause shown, a request for special or preliminary injunctive relief to protect against an imminent threat to public health or safety;
- a court may allow, upon good cause shown, a proceeding relating exclusively to a cause of action to which no party has asserted immunity to protected public expression, and does not implicate an issue relevant to a

party's assertion of protected public expression immunity or to the cause of action for which that immunity has been asserted;

- a party may voluntarily discontinue all or part of the party's action; and
- a party may file a motion to recover attorney fees and court costs.

Finally, the proposed rule provides a 20-day time period for the filing of a responsive pleading if a motion to dismiss is denied, unless a responsive pleading has already been filed. This provision recognizes that because the motion to dismiss may be filed at any time, a responsive pleading may have been filed prior to the motion.

The Committee invites all comments, objections, concerns, and suggestions regarding this proposed rulemaking.