

INSTITUTION OF SUIT

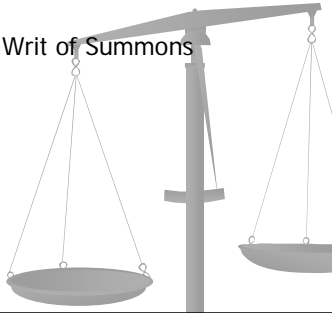
by
William J. Mundy
Burns White and Hickton, LLC



INSTITUTION OF SUIT

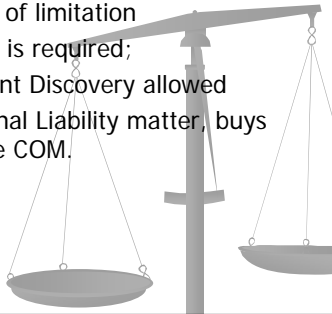
Pa.R.C.P. 1007:

- Praecept for Writ of Summons
- Complaint



PRAECEPT FOR WRIT OF SUMMONS

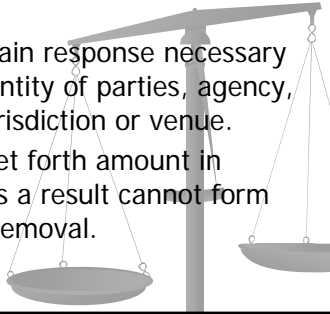
- Tolls statute of limitation
- No response is required;
- Pre Complaint Discovery allowed
- In a Professional Liability matter, buys time to file the COM.



**PRAECIPE FOR WRIT OF SUMMONS
(continued)**

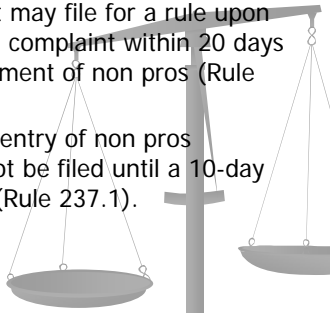
■ **Limitations**

1. Does not gain response necessary to confirm identity of parties, agency, ownership, jurisdiction or venue.
2. Does not set forth amount in dispute and as a result cannot form the basis for removal.



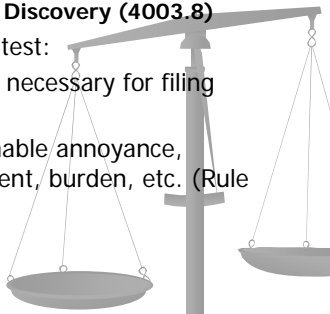
**PRAECIPE FOR WRIT OF SUMMONS
(continued)**

3. Defendant may file for a rule upon plaintiff to file a complaint within 20 days or suffer a judgment of non pros (Rule 1037).
A Praecipe for entry of non pros judgment cannot be filed until a 10-day notice is given (Rule 237.1).



**PRAECIPE FOR WRIT OF SUMMONS
(continued)**

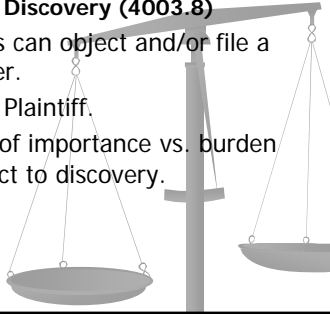
4. **Pre-Complaint Discovery (4003.8)**
 - (a) Two prong test:
 1. Material and necessary for filing complaint
 2. No unreasonable annoyance, embarrassment, burden, etc. (Rule 4011)



**PRAECIPE FOR WRIT OF SUMMONS
(continued)**

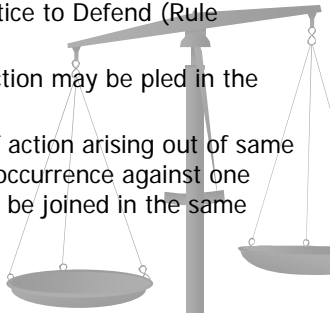
4. **Pre-Complaint Discovery (4003.8)**

- (b) Defendants can object and/or file a protective order.
- Burden on the Plaintiff.
- Weighing test of importance vs. burden on party subject to discovery.



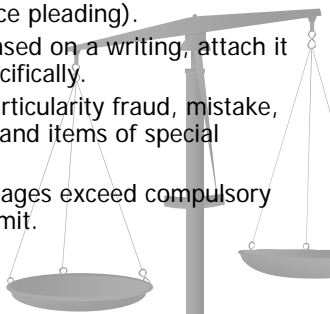
COMPLAINT

- Requires Notice to Defend (Rule 1018.1(b)).
- Causes of action may be pled in the alternative.
- All causes of action arising out of same transaction/occurrence against one person must be joined in the same action.



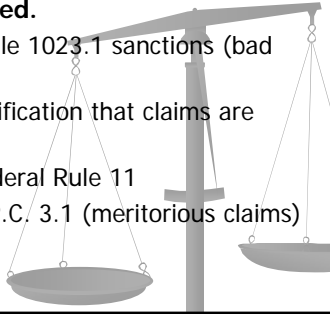
COMPLAINT (continued)

- Fact (v. notice pleading).
- If claim is based on a writing, attach it or cite it specifically.
- Aver with particularity fraud, mistake, time, place, and items of special damages.
- State if damages exceed compulsory arbitration limit.



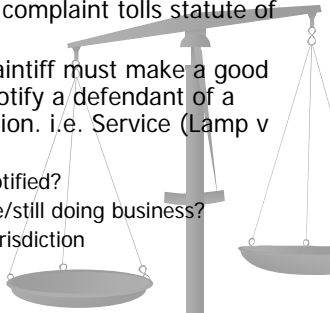
COMPLAINT (continued)

- **Must be verified.**
 - Subject to Rule 1023.1 sanctions (bad faith)
 - Requires certification that claims are meritorious
 - Similar to Federal Rule 11
 - Similar to R.P.C. 3.1 (meritorious claims)



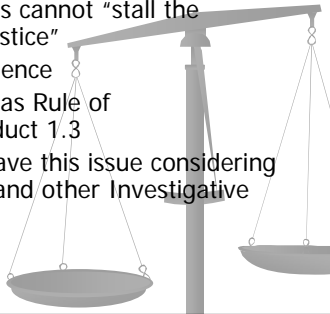
STATUTE OF LIMITATIONS

- Filing of writ or complaint tolls statute of limitations.
- **HOWEVER**, Plaintiff must make a good faith effort to notify a defendant of a commenced action. i.e. Service (Lamp v Heyman).
 - Proper Party notified?
 - Is the part alive/still doing business?
 - Do you have jurisdiction



STATUTE OF LIMITATIONS

- Plaintiff's actions cannot "stall the machinery of justice"
- KEY: Due Dilligence
- Same standard as Rule of ProfessionalConduct 1.3
- Should never have this issue considering Nexis/Internet and other Investigative aids.



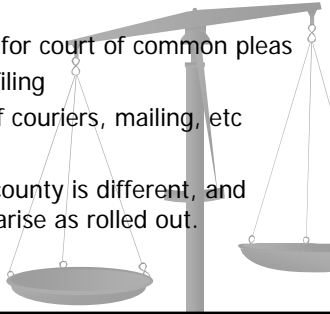
Electronic Filing – Rule 205.4

Benefits:

- Reduced paper for court of common pleas
- Instantaneous filing
- Reduced cost of couriers, mailing, etc

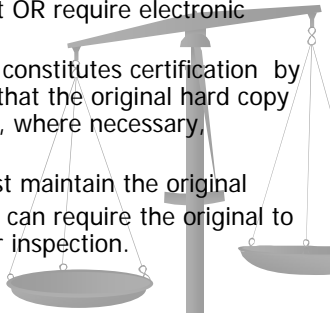
Cons:

- It's new, each county is different, and issues likely to arise as rolled out.



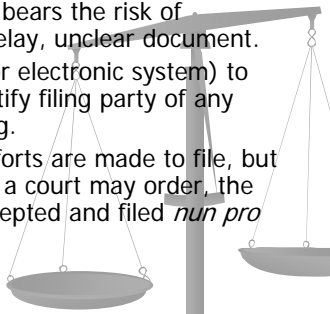
Electronic Filing – Rule 205.4

- CCP may permit OR require electronic filing.
- Electronic filing constitutes certification by the filing party that the original hard copy was signed and, where necessary, verified.
- Filing Party must maintain the original
- Any other party can require the original to be produced for inspection.



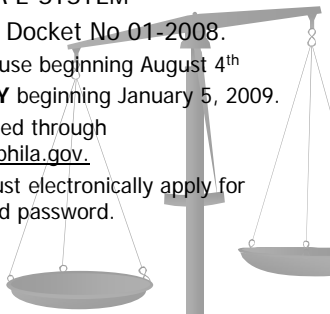
Electronic Filing – Rule 205.4

- The filing party bears the risk of transmission, delay, unclear document.
- Prothonotary (or electronic system) to immediately notify filing party of any issues with filing.
- If good faith efforts are made to file, but problems arise, a court may order the paper to be accepted and filed *nun pro tunc*.



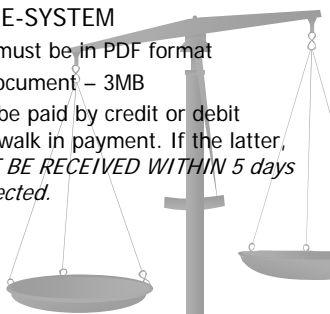
Electronic Filing – Rule 205.4

- PHILADELPHIA E-SYSTEM
- Administrative Docket No 01-2008.
 - Discretionary use beginning August 4th
 - **MANDATORY** beginning January 5, 2009.
 - Access Obtained through <http://courts.phila.gov>.
 - To access, must electronically apply for user name and password.



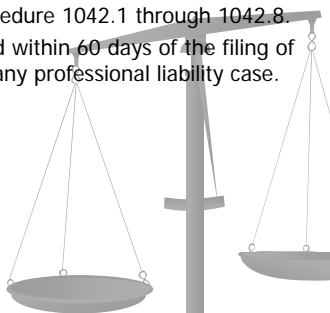
Electronic Filing – Rule 205.4

- PHILADELPHIA E-SYSTEM
 - All documents must be in PDF format
 - Limit for one document – 3MB
 - Filing fees can be paid by credit or debit account, or by walk in payment. If the latter, payment *MUST BE RECEIVED WITHIN 5 days or it will be rejected.*



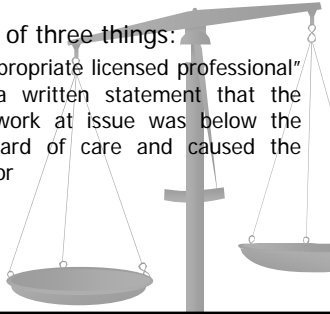
CERTIFICATE OF MERIT

- Rules of Civil Procedure 1042.1 through 1042.8.
- COM must be filed within 60 days of the filing of the Complaint in any professional liability case.



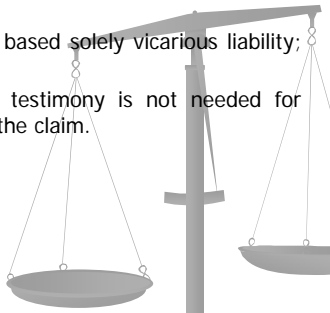
CERTIFICATE OF MERIT

- Must state one of three things:
 - 1) That an "appropriate licensed professional" has supplied a written statement that the treatment or work at issue was below the required standard of care and caused the plaintiff harm, or



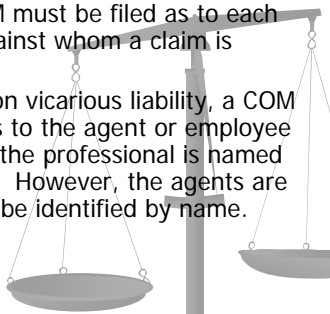
C.O.M

- 2) the claim is based solely vicarious liability; or
- 3) that expert testimony is not needed for prosecution of the claim.
- Rule 1042.3(a).



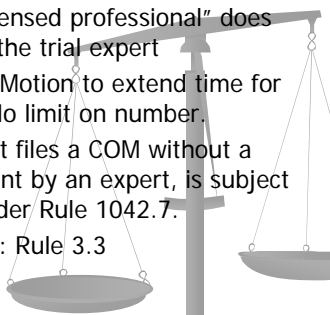
C.O.M

- A separate COM must be filed as to each professional against whom a claim is asserted.
- If claim based on vicarious liability, a COM must be filed as to the agent or employee whether or not the professional is named as a defendant. However, the agents are not required to be identified by name. 1042.3(a)(2)



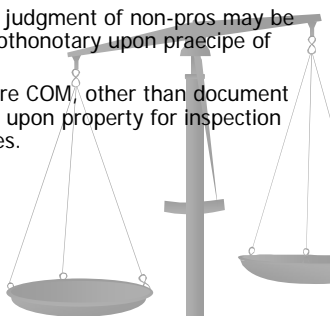
C.O.M

- "Appropriate licensed professional" does not have to be the trial expert
- Party can file a Motion to extend time for 'Good cause'. No limit on number.
- An attorney that files a COM without a written statement by an expert, is subject to sanctions under Rule 1042.7.
 - Ethical issues: Rule 3.3



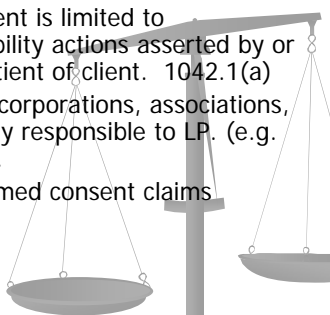
C.O.M

- If no COM filed, a judgment of non-pros may be entered by the prothonotary upon praecipe of the defendant.
- No discovery before COM, other than document requests, or entry upon property for inspection and other purposes.



C.O.M- RULE CHANGES

- COM Requirement is limited to Professional liability actions asserted by or on behalf of patient of client. 1042.1(a)
- Rule applies to corporations, associations, etc. where entity responsible to LP. (e.g. group practice).
- Applies to informed consent claims (battery)

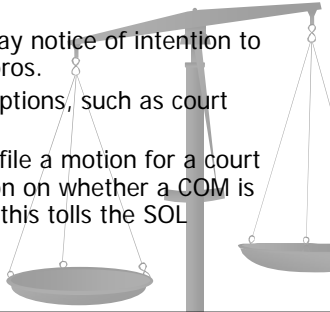


C.O.M- RULE CHANGES

NOTICE

Must give 30 day notice of intention to take a non pros.

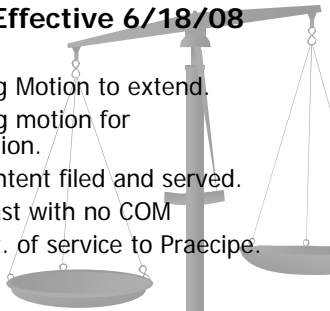
- Certain exceptions, such as court extension
- Plaintiff can file a motion for a court determination on whether a COM is necessary – this tolls the SOL



C.O.M- RULE CHANGES

NON PROS CHECKLIST– Rule 1042.7 – Effective 6/18/08

- No COM.
- No Pending Motion to extend.
- No pending motion for determination.
- Notice of intent filed and served.
- 30 days past with no COM
- Attach cert. of service to Praecipe.



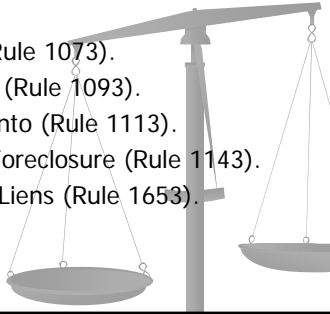
Pontification Moment

- Check Lists
- The Van Halen Rule



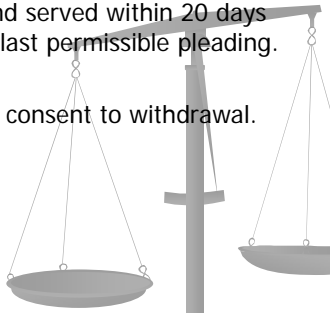
SPECIAL FORMS OF ACTIONS WITH SPECIAL RULES

- Replevin (Rule 1073).
- Mandamus (Rule 1093).
- Quo Warranto (Rule 1113).
- Mortgage Foreclosure (Rule 1143).
- Mechanics Liens (Rule 1653).



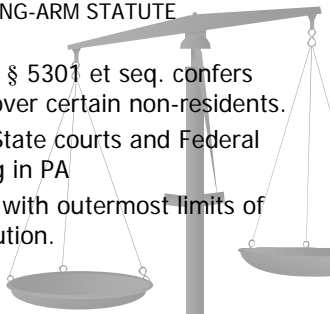
JURY TRIAL DEMAND

- Must be filed and served within 20 days after service of last permissible pleading.
- All parties must consent to withdrawal.



JURISDICTION OVER NON-RESIDENTS

- PENNSYLVANIA LONG-ARM STATUTE
- 42 Pa.C.S.A. § 5301 et seq. confers jurisdiction over certain non-residents.
- Applied by State courts and Federal courts sitting in PA
- Coextensive with outermost limits of U.S. Constitution.

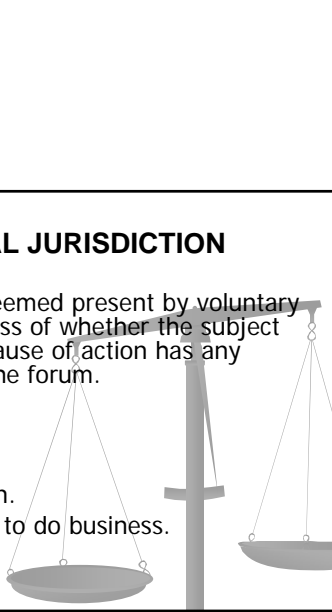


GENERAL JURISDICTION

Non resident deemed present by voluntary action, regardless of whether the subject matter of the cause of action has any connection to the forum.

BASIS:

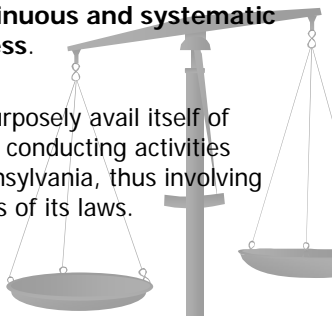
- Consent
- Domicile
- Incorporation.
- Qualification to do business.



GENERAL JURISDICTION (continued)

- Doing continuous and systematic business.

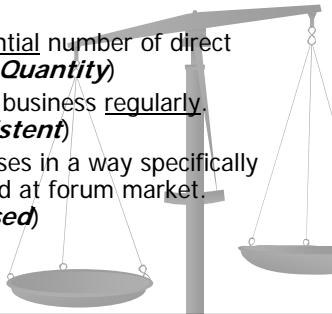
TEST: Purposely avail itself of privilege of conducting activities within Pennsylvania, thus involving the benefits of its laws.



GENERAL JURISDICTION (continued)

Test met if:

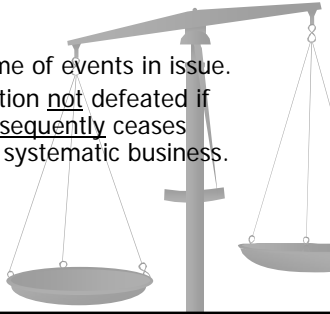
1. Substantial number of direct sales. (**Quantity**)
2. Solicits business regularly. (**Consistent**)
3. Advertises in a way specifically targeted at forum market. (**Focused**)



**GENERAL JURISDICTION
(continued)**

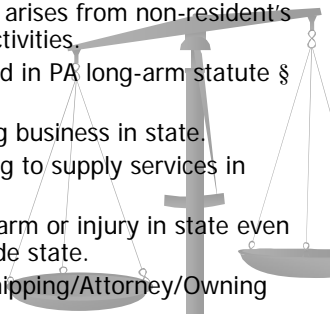
NOTE:

- Must exist at time of events in issue.
- General jurisdiction not defeated if corporation subsequently ceases continuous and systematic business.



**TRANSITIONAL [SPECIFIC]
JURISDICTION**

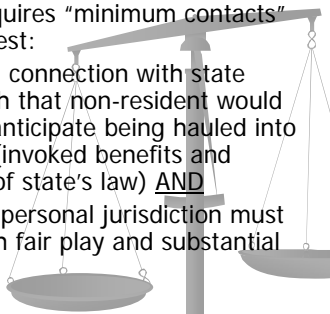
- Cause of action arises from non-resident's Pennsylvania activities.
- Specifically listed in PA long-arm statute § 5322(a)(1):
 - Transacting business in state.
 - Contracting to supply services in state.
 - Causing harm or injury in state even if act was outside state.
 - e.g. Shipping/Attorney/Owning Property



**SPECIFIC JURISDICTION
(CONTINUED)**

Constitution requires "minimum contacts"
– Burger King test:

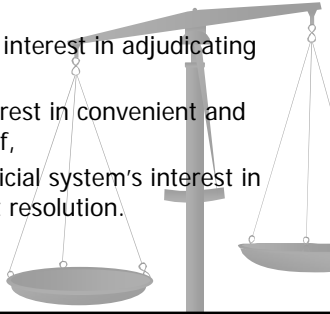
- A. Conduct and connection with state must be such that non-resident would reasonably anticipate being hauled into court there (invoked benefits and protections of state's law) **AND**
- B. Assertion of personal jurisdiction must comport with fair play and substantial justice.



SPECIFIC JURISDICTION (continued)

■ **FACTORS:**

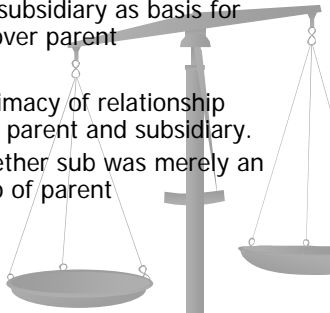
- forum state's interest in adjudicating dispute,
- plaintiff's interest in convenient and effective relief,
- interstate judicial system's interest in most efficient resolution.



OTHER JURISDICTION ISSUES

1. Activities of subsidiary as basis for jurisdiction over parent

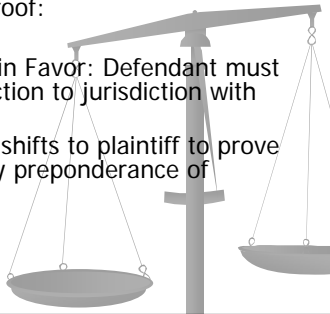
KEY: Intimacy of relationship between parent and subsidiary.
e.g. Whether sub was merely an alter-ego of parent



OTHER JURISDICTION ISSUES (continued)

2. Burden of Proof:

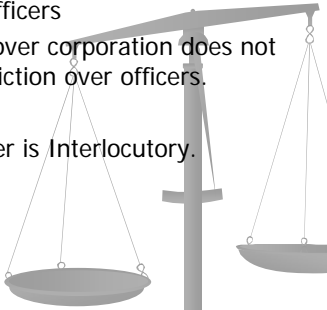
- **Presumption in Favor:** Defendant must support objection to jurisdiction with evidence.
- **Then burden shifts to plaintiff to prove jurisdiction by preponderance of evidence.**



OTHER JURISDICTION ISSUES
(continued)

3. Corporate Officers
Jurisdiction over corporation does not create jurisdiction over officers.

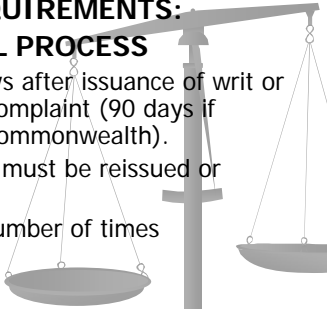
4. Appeal: Order is Interlocutory.



SERVICE OF PROCESS

1. TIME REQUIREMENTS:
ORIGINAL PROCESS

- Within 30 days after issuance of writ or the filing of complaint (90 days if outside the Commonwealth).
- If no service, must be reissued or reinstated.
- No limit on number of times

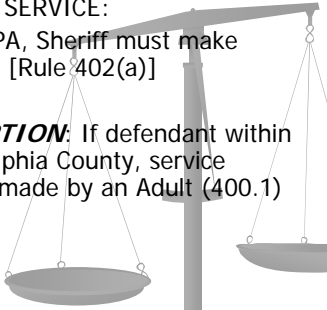


SERVICE OF PROCESS (continued)

2. MANNER OF SERVICE:

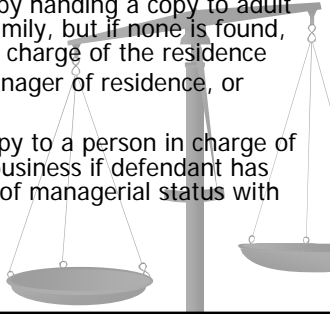
a. Inside PA, Sheriff must make service. [Rule 402(a)]

EXCEPTION: If defendant within Philadelphia County, service can be made by an Adult (400.1)



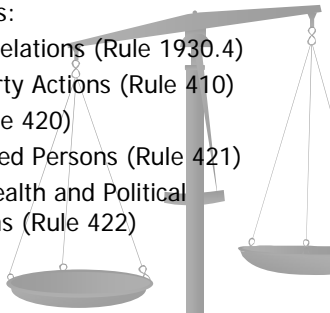
SERVICE OF PROCESS (Method)

- At residence by handing a copy to adult member of family, but if none is found, to an adult in charge of the residence
 - clerk or manager of residence, or
- Handing a copy to a person in charge of defendant's business if defendant has some quality of managerial status with business.



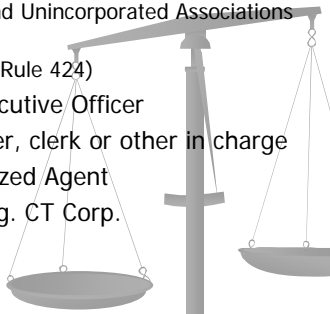
SERVICE OF PROCESS (continued)

- b. Special Rules:
- Domestic Relations (Rule 1930.4)
 - Real Property Actions (Rule 410)
 - Minors (Rule 420)
 - Incapacitated Persons (Rule 421)
 - Commonwealth and Political Subdivisions (Rule 422)



SERVICE OF PROCESS (continued)

- Partnerships and Unincorporated Associations (Rule 423)
- Corporations (Rule 424)
 - On Executive Officer
 - Manager, clerk or other in charge
 - Authorized Agent
 - e.g. CT Corp.



SERVICES OF PROCESS (continued)

c. Outside the Commonwealth (42 Pa.C.S. §5323) (Rule 404)

- Personal delivery by competent adult.
- In a manner approved by forum where service is being made, or
- Certified Mail, R.R (Rule 403)

Note: If refused, regular mail ok if not returned w/in 15 days



ELECTRONIC FILING- SERVICE

■ Can original process be served electronically?

■ *Heck no*

What about all other legal papers?

- *Depends*

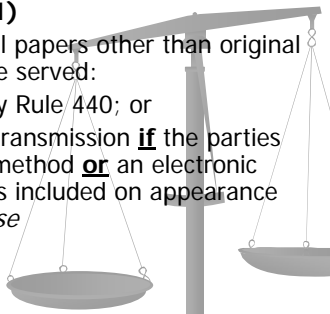


ELECTRONIC FILING- SERVICE

Rule 205.4(g)(1)

Service of all legal papers other than original process can be served:

1. As provided by Rule 440; or
2. By electronic transmission **if** the parties agree to this method **or** an electronic mail address is included on appearance *for this purpose*



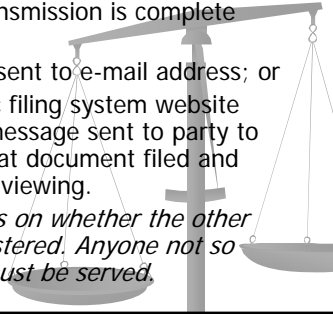
ELECTRONIC FILING- SERVICE

Rule 205.4(g)(2)

Service by e-transmission is complete when:

1. Legal paper sent to e-mail address; or
2. To Electronic filing system website and e-mail message sent to party to be served that document filed and available for viewing.

This depends on whether the other party is registered. Anyone not so registered must be served.

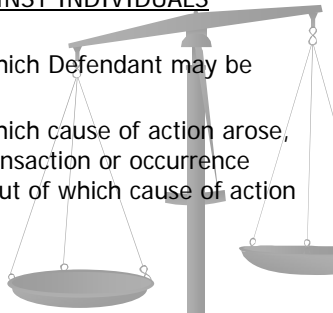


VENUE

A. ACTIONS AGAINST INDIVIDUALS

Rule 1006.

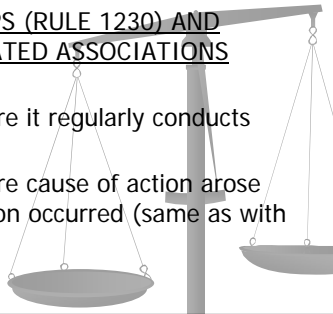
- County in which Defendant may be served.
- County in which cause of action arose, or where transaction or occurrence took place out of which cause of action arose.



VENUE

B. PARTNERSHIPS (RULE 1230) AND UNINCORPORATED ASSOCIATIONS (RULE 2156)

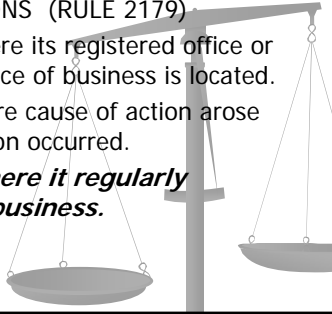
- County where it regularly conducts business.
- County where cause of action arose or transaction occurred (same as with individuals).



VENUE

C. CORPORATIONS (RULE 2179)

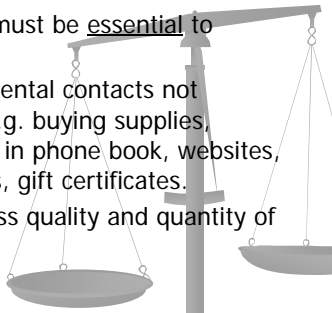
- County where its registered office or principal place of business is located.
- County where cause of action arose or transaction occurred.
- ***County where it regularly conducts business.***



VENUE

Regularly Conducts Business:

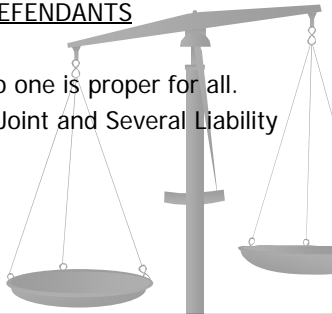
- Contacts must be essential to business.
- Mere incidental contacts not enough. e.g. buying supplies, advertising in phone book, websites, newsletters, gift certificates.
- Must assess quality and quantity of contacts



VENUE

D. MULTIPLE DEFENDANTS

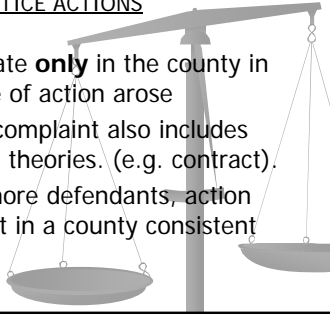
- Venue proper to one is proper for all.
- Applies only to Joint and Several Liability



VENUE

E. MEDICAL MALPRACTICE ACTIONS RULE 1006(a.1)

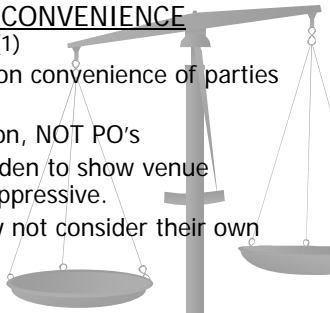
- Venue appropriate **only** in the county in which the cause of action arose
- Applies even if complaint also includes non-malpractice theories. (e.g. contract).
- Where two or more defendants, action must be brought in a county consistent with above rule.



VENUE

G. FORUM NON CONVENIENCE RULE 1006(d)(1)

- Transfer based on convenience of parties and witnesses
- Raised by Petition, NOT PO's
- Defendant's burden to show venue vexatious and oppressive.
- Trial Courts may not consider their own interests



VENUE

F. WAIVER:

- Improper venue must be raised by preliminary objection or is waived.
- Straw Defendants:
 - Transfer of Case AFTER defendant with contacts to County dismissed.
 - Zappala v Brandolin 909 A.2d 1272 (Pa. 2006)
 - Jackson v Laidlaw 822 A.2d 56 (Pa. Super. 2003)

