

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

NOTICE OF PROPOSED RULEMAKING

Proposed Adoption of Pa.R.C.P. No. 242

The Civil Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the adoption of Rule 242 for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. No. 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 reports, notes, or comments in the proposal have been inserted by the Committee for the convenience of those using the rules. They will neither constitute a part of the rules nor be officially 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:

**Karla M. Shultz, Counsel
Civil Procedural Rules Committee
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
PO Box 62635
Harrisburg, PA 17106-2635
FAX: 717-231-9526
civilrules@pacourts.us**

All communications in reference to the proposal should be received by **April 23, 2021**. 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,

John J. Hare
Chair

PUBLICATION REPORT

The Civil Procedural Rules Committee received a request to consider a rule allowing the citation of non-precedential appellate court decisions for their persuasive value in the trial courts. Specifically, the Committee was asked to consider such a rule following the amendment of Pa.R.A.P. 126 (Citation of Authorities) permitting such citation in the appellate courts.

The Rules of Civil Procedure are silent as to the citation of authorities in the trial courts; there is likewise no prohibition to the citation of non-precedential appellate court decisions. In the absence of any prohibition, it is assumed these decisions may be cited.

The Committee observed that permitting citation to these decisions could have significant benefits to the bench and bar including:

- promoting consistency among the trial courts on routine issues, as well as a more informed analysis on controversial issues;
- providing the trial courts with more guidance about the current state of the law, which in turn should bring more predictability in resolving all civil matters as well as more efficiency and cost-effectiveness for parties and the courts;
- allowing the use of similar fact patterns or legal analyses to support or refute position;
- allowing the citation of opinions that may be more illustrative and more current than binding precedent; and
- retaining the trial court's discretion to give appropriate weight to these decisions as persuasive value.

Notwithstanding these benefits, the Committee recognized that the intermediate appellate courts have imposed limitations for citing to each court's respective non-precedential decisions for their persuasive value. See Superior Court O.P. § 65.37 regarding citation to Superior Court non-precedential decisions and Pa.R.A.P. 3716 and Commonwealth Court I.O.P. § 414 regarding citation to Commonwealth Court non-precedential decisions.

Accordingly, the Committee proposes new Rule 242 to make explicit the assumption that non-precedential appellate court decisions may be cited in the trial courts. However, respectful of the limitations the intermediate appellate courts have placed on the citation of their decisions, the Committee proposes within Rule 242 to

cross-reference and incorporate Pa.R.A.P. 126 for the specific requirements when citing to non-precedential appellate court decisions for their persuasive value in the trial courts. A note to the proposed rule is intended to inform practitioners of the Superior Court and Commonwealth Court operating procedures.

All comments, concerns, and suggestions concerning this proposal are welcome.

(This is an entirely new rule.)

Rule 242. Citation of Authorities.

Citation of authorities in matters subject to these rules shall be in accordance with Pa.R.A.P. 126.

Note: See also 210 Pa. Code § 65.37 and *Wenk v. State Farm Fire and Casualty Co.*, 228 A.3d 540, 552 n.11 (Pa. Super. 2020) for citing to non-precedential decisions of the Superior Court; and Pa.R.A.P. 3716 and 210 Pa. Code § 69.414 for citing to non-precedential decisions of the Commonwealth Court.