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Practice and Procedure in Montgomery County Court of Common Pleas

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This is an update to the original e-book that I released in December 2013. This update incorporates the recent changes implemented in Montgomery County Court of Common Pleas by local rule and procedure as of March 31, 2016.

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Introduction

Montgomery County, Pennsylvania, is one of the most heavily populated and wealthiest counties in the state with booming commerce. Many attorneys from outside the area perceive it as a difficult county to practice law. With understanding and knowledge of the rules and procedures, you can successfully maneuver your way through Montgomery County courts. This guide will lead the way.

To get started, your first stop needs to be the county website at www.montcopa.org. Here are 10 reasons why you need to visit the website:

- 1) Review the local rules of civil, orphans court and criminal procedure;
- 2) Check the Court Calendar
- 3) Obtain addresses and telephone numbers for Judges;
- 4) Obtain information regarding the Judge's staff;
- 5) Review and obtain civil dockets through the Prothonotary's Office;
- 6) Check status of argument and trial listings;
- 7) Perform judgment and lien searches;
- 8) Obtain copies of pleadings filed in cases;
- 9) Access property records through Board of Assessment and Recorder of Deeds; and
- 10) Access all County Departments.

What Every Attorney Needs To Know About Practicing in Montgomery County Court of Common Pleas

Cases filed before January 1, 2016

Montgomery County is an attorney driven system. What does that mean? It means that the court will not hold your hand, tell you what and when to do it. The court does not initially establish dates for completion of discovery or trial.

Before you jump off a bridge, there is hope. Because it is an attorney driven system, if one or both attorneys want to push a case and set dates for completion of discovery or for trial, they can do it.

There are two options. First is to request a 212 conference. You write to the court if the other side will not agree to list the case for trial. At the conference the judge will typically establish a date for completion of discovery and for the case to be listed for trial.

The second is to request a discovery management conference pursuant to local rule 4019. The conference will be scheduled before one of the court-appointed Discovery Masters. At the conference, deadlines will be set for discovery, exchange of expert reports and for filing a trial praecipe.

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Cases filed on or after January 1, 2016

Montgomery County has enacted a new Local Rule of Civil Procedure 200 entitled Trial Readiness. Rule 200 implements a monumental change in the practice and procedure in Montgomery County. Traditionally, Montgomery County has been attorney driven. Now, Montgomery County is moving to a court-driven system.



Rule 200 divides cases into two categories, arbitration and non-arbitration cases. In both cases, there will be a period of time where the case will still be attorney driven. However, the court will intervene after nine months in an arbitration case and 18 months in a non-arbitration case.

After nine months/arbitration cases and 18 months/non-arbitration cases, the case will be scheduled for a case management conference before one of the six court-appointed attorney case managers. At the case management conference, there will be settlement discussion and then a case management deadline will be imposed, no more than 60 additional days for arbitration cases and no more than 120 additional days for non-arbitration cases. Then the case will automatically be placed either in the arbitration pool or the trial pool.

As a result of the change in the rules for cases filed on or after January 1, 2016, defense counsel now must be proactive in commencing the completing discovery. The court will not grant extensions of the case management order that is issued, nine months after filing the arbitration case and 18 months after the filing of the non-arbitration case unless there are extraordinary circumstances.

Montgomery County – It's Not The Federal Court System

To understand the procedure in Montgomery County, ignore what you know about the federal court system. In federal court when a case is filed a judge is assigned to the case. That judge is married to the case. They handle all aspects of the case, including the trial. Federal court judges also handle both civil and criminal trials.

In Montgomery County, cases are handled based upon the division that a judge is assigned. There are six divisions:

- Civil
- Criminal
- Equity
- Family
- Juvenile
- Orphans Court

Prior to March 2016, family law judges were also assigned to handle pre-trial civil matters. That has now changed. Civil judges are now handling all civil matters. Once a trial praeipe is filed then the case is randomly reassigned to a civil judge. It may or may not be the same judge as the pre-trial judge.

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Are Briefs Required?

There is a mandatory briefing requirement when filing or responding to the following:

- 1) Preliminary Objections
- 2) Motions For Judgment on the Pleadings
- 3) Motions for Summary Judgment
- 4) Petitions To Transfer Venue Based Upon Forum Non Conveniens
- 5) Petition To Open a Default Judgment
- 6) Petition To Open a Judgment of Non Pros

When required, briefs must be filed with the pleading or response to the pleading.

Other than the aforementioned filings a brief is not required to be filed. However, the court will accept briefs.

The Montgomery County Discovery Master Program – One of a Kind in the Commonwealth of Pennsylvania

In January 1996, the Montgomery County Court of Common Pleas Board of Judges passed Montgomery County Local Rule 4019 – the start of the Montgomery County Discovery Master Program. Montgomery County was the first county, and 16 years later, it is still the only county, with such a program.

Motions are filed with the prothonotary and forwarded to the court administration for assignment of a rule returnable date. Rule returnable dates are scheduled for a Monday within 45 days. The rule returnable date is a paper filing date and does not require that counsel appear for argument. If the discovery motion is contested, an answer must be filed by the rule returnable date. If an answer is filed, then argument is automatically scheduled before a discovery master for the Friday of the same week of the rule returnable date. Note this is automatic and you will not receive notice! If an answer is not filed then the motion is deemed uncontested and the proposed order attached to the motion is entered by the court.

A few things to remember regarding the Friday arguments. First, the masters review the motion and answer prior to argument. Second, if a document is important to the disposition of the motion then it needs to be attached to the motion or answer. Third, with the advent of e-filing, the prothonotary no longer keeps hard copies of motions and exhibits, and the discovery masters now only receive the pleadings without the exhibits. If the exhibits are important to the disposition of the motion then copies of the exhibit should be brought to the discovery argument.

There are currently nine discovery masters that have been appointed by the court. The discovery masters hear arguments on the contested motions and only then make written recommendations to the assigned judge. Thereafter, the judge issues an order within seven to 10 days of the argument before the discovery master.



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How Can I Get a Case Scheduled for Trial in Montgomery County?

There are four ways to schedule a case for trial. The typical way is to file a trial praecipe. Traditionally, you needed all attorneys to sign the trial praecipe. If all attorneys are in agreement then just one attorney needs to sign – a time saver!

The second way is to have the court order the case be placed in the trial pool. This happens after a 212 conference if your opposing counsel refuses to permit you to file a trial praecipe. First, you should contact opposing counsel and ask them to consent to filing the trial praecipe. In order to file a trial praecipe all discovery must be complete. That is typically the reason why counsel reach an impasse as there is usually one side who wants to continue with discovery. You then write to the computer assigned pre-trial judge requesting a 212 conference. At the conference the judge will typically set a date when discovery is to be concluded as well as when the case will be placed in the trial pool.

The third way is to request a discovery management conference. Pursuant to local rule 4019, such conferences can be held before a discovery master.

Now with cases filed after January 1, 2016, there is a fourth way. A civil case master can order the case into the trial pool.



Ask for a Discovery Management Conference

A little known gem in Montgomery County is the discovery management conference. Rule 4019(5) permits a party to request a discovery management conference before a discovery master in civil cases in which the damages exceed the jurisdictional limit for compulsory arbitration. A request is submitted to the assigned judge who then recommends whether to schedule a discovery management conference before a discovery master.

If a discovery management conference is scheduled, then the parties meet with the discovery master to establish deadlines for the completion of discovery and exchange of expert reports. If an agreement is reached then a proposed order is submitted to the court based upon the agreement of the parties. If an agreement is not reached, the discovery master recommends deadlines to the assigned judge. Whether by agreement or recommendation of the discovery master, the court enters a discovery management conference order.

Before making such request there are few things you should know. First, the rule only applies to cases in excess of \$50,000. Second, very few attorneys request discovery management conferences. Therefore, judges rarely, if ever, deny a request. Finally, discovery management conferences move the case along.

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What Happens at the Pre-Trial Conference?

In January 2011, Montgomery County Court of Common Pleas started conducting pre-trial conferences.

Once the case is in the trial pool then it takes approximately four to six months for a pre-trial conference.

Prior to the conference, pursuant to rule 212, you are required to file a pre-trial memorandum. The content of the memo are set forth in both the state rule of civil procedure 212.1 and Montgomery County local rule.

The pre-trial conference is scheduled before one of the six civil division judges. The computer randomly assigns your case to that judge. The following is likely to happen at your pre-trial conference:

- The judge will conduct a settlement conference. Thus, all parties need to be present in person or by telephone.
- The judge will set a trial date. Thus, if you have any conflicts regarding dates you must list them in the pre-trial memo. Otherwise, the court will not accept your conflicts in your schedule.
- The judge will set deadlines for Voire Dire, Motions in Limine, Points for Charge, etc. Thus, it is mandatory that trial counsel attend the conference.
- The judge will discuss any other issues likely to arise before or during trial. Thus, come prepared be bring those issues to the judge's attention at the conference.

In 2015 there was a change in procedure and pre-trial conferences are no longer scheduled in cases with docket numbers of 2010 or earlier. In those cases, once a trial praecipe has been filed the parties receive a scheduling order and are placed in a 30-day standby trial pool.

Have a Plan in Place When You File an Active Status Certificate in Montgomery County, PA

Next time you file an active status certificate in Montgomery County Court of Common Pleas you might get a notice for a conference before a judge or civil case master.

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Pennsylvania Rule of Civil Procedure 230.2 was rescinded and it has been re-enacted by the Pennsylvania Supreme Court effective December 2016. The Rule permitted the prothonotary to send a notice to terminate a case that has had inactivity for two years or more. The notice is a form set forth in the PA Rules of Civil Procedure. Typically, a party will file a form indicating that they intend to proceed with the case. Unfortunately, that might be the only activity on a case until the prothonotary sends out the next notice in two years.

Well, you might want to think twice about just filing the form in Montgomery County. The court, led by Civil Administrator Judge Thomas DelRicci, has taken a proactive role regarding those cases. Montgomery County by rule of judicial administration has implemented the same procedures as rescinded Rule 230.2.

Now, the court has discretion to schedule a conference before a discovery master per local rule 4019 (5) or a civil case manager. If scheduled, counsel will be summoned to appear before a discovery master or civil case manager. The discovery master or civil case manager will then set deadlines for completion of discovery, exchange of expert reports, filings of Dispositive Motions for the case to be placed in the trial pool.

So next time you file an active status certificate, I recommend that you have a plan in place for moving the case forward. Additionally, make sure you have a sufficient retainer to pay for the expense of proceeding with the litigation. Otherwise, you and your client might be in for a rude awakening.

Center for Mediation and Arbitration

The Center for Mediation and Arbitration is a program established by the Montgomery Bar Association as an affordable alternative for dispute resolution. Montgomery County courts in conjunction with the Bar Association have revamped their existing mediation program to encourage all parties to utilize the center to resolve disputes in an expeditious manner.

The center has replaced the previous Davenport Dispute Resolution Center. The center is staffed by 13 highly qualified attorneys who currently or previously served as discovery masters, judges and/or seasoned trial attorneys.

If you would like more information regarding the center go to the Bar Association website at: <http://www.montgomerybar.org/adr/home.htm>

For more information, please contact:

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