

The Greene Reports

Official Legal Publication for Greene County, Pennsylvania
Owned and operated by Greene County Bar Association
Greene County Courthouse, Waynesburg, PA 15370

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November 10, 2022



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Serving the Legal Community of Greene County
Since October 1982

The Greene Reports

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COURT OF COMMON PLEAS
Honorable Louis Dayich, President Judge
Honorable Jeffry N. Grimes, Judge

MOTIONS

Criminal & Civil & O.C.:
November 21 and 23, 2022

CRIMINAL

Arraignments: November 21, 2022
ARDs: December 12, 2022
ARD Revocations: December 12, 2022
Parole Violations: November 21, 2022
Plea Court: December 13, 14, and 15, 2022
License Suspension Appeals: December 20, 2022
Argument Court: TBD

ORPHANS

Accounts Nisi: December 5, 2022
Accounts Absolute: December 15, 2022

SUPREME COURT SUPERIOR COURT COMMONWEALTH COURT

Convenes in Pgh.: April 17-21, 2023
Convenes in Pgh.: December 13-14, 2022
Convenes in Pgh.: February 6-10, 2023

THE GREENE REPORTS

Owned and published by the GREENE COUNTY BAR ASSOCIATION
Editor: Kayla M. Sammons
E-mail address: editor.greenerreports@yahoo.com

EDITORIAL POLICY

All articles published in The Greene Reports are intended to inform, educate or amuse. Any article deemed by the editorial staff to be reasonably interpreted as offensive, demeaning or insulting to any individual or group will not be published.

The views expressed in the articles represent the views of the author and are not necessarily the views of The Greene Reports or the Greene County Bar Association.

The Greene Reports welcomes letters to the Editor both for publication and otherwise. All letters should be addressed to: Editor, The Greene Reports, Greene County Courthouse, 10 East High Street, Waynesburg, PA 15370. Letters must include signature, address and telephone number. Anonymous correspondence will not be published. All letters for publication are subject to editing and, upon submission, become the property of The Greene Reports.

THE GREENE COUNTY BAR ASSOCIATION

Christopher M. Simms, President
Timothy M. Ross, Vice-President
Allen J. Koslovsky, Secretary
Lukas B. Gatten, Treasurer
Jessica L. Phillips, Ex-Officio

ARGUMENTS

Argument Court: November 26, 2022

CIVIL

Domestic Relations Contempts: November 28, 2022
Domestic Relations Appeals: November 28, 2022

JUVENILE

Plea Day: December 15, 2022

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DEED TRANSFERS

The following property transfers have been recorded in the Greene County Recorder of Deeds office.

ALEPPO AND JACKSON TOWNSHIP

Mark S. Monesmith to The Mineral Company, et ux., 63.14836 Acres, O&G, \$8,287.95 (11-14-22)

CLARKSVILLE BOROUGH

Ishaan Patel by TCB, et ux., to Makel & Associates, LLC, Tax Claim, Lot, \$500.00 (11-14-22)
Donald Maize by TCB, et ux., to Cari Swink, Lot, \$3,000.00 (11-14-22)

CUMBERLAND TOWNSHIP

Rosa Melissa Vamosi, et al., to James Lawrence, et al., 3 Tracts, \$80,000.00 (11-15-22)
Edna R. Lavins by TCB, et ux., to Valley Abstracting LLC, Tax Claim, Tract, \$500.00 (11-9-22)

Martin Folan by TCB, et ux., to Charles Bowser, Tax Claim, Lot, \$500.00 (11-14-22)
Robert E. Shaw by TCB, et ux., to Remington Rasel, Tax Claim, Lot, \$500.00 (11-14-22)
Nemacolin Hunting and Fishing Club by TCB, et ux., to Remington Rasel, Tax Claim, Lot, \$500.00 (11-14-22)

Frank T. Sigle by TCB, et ux., to Remington Rasel, Tax Claim, 11 Crucible, \$1,400.00 (11-15-22)

Frank T. Sigle by TCB, et ux., to Remington Rasel, Tax Claim, Lot 12, Crucible, \$1,400.00 (11-15-22)

Frank T. Sigle by TCB, et ux., to Remington Rasel, Tax Claim, Lot 13, Crucible, \$1,400.00 (11-15-22)

Frank T. Sigle by TCB, et ux., to Remington Rasel, Tax Claim, Lot 14, Crucible, \$1,400.00 (11-15-22)

DUNKARD TOWNSHIP

Donna D. Triplett by TCB, et ux., to Alexander Shuppe, Tax Claim, Tract, \$2,500.00 (11-9-22)
Anthony Garcia Jr., by TCB, et ux., to Alexander Shuppe, Tax Claim, 14 Maple Sterling Coal Co Plan, \$500.00 (11-9-22)

Harry A. Jordan by TCB, et ux., to George Enterprises, Tax Claim, Tract, Sewickly Coal, \$500.00 (11-15-22)

FRANKLIN TOWNSHIP

Betty G. Fox Estate A/K/A Betty Anne Fox Estate, et ux., to Scott M. Henderson, et al., 43 Colonial Place Plan, \$236,900.00 (11-14-22)

GILMORE TOWNSHIP

John R. Lovingwood by POA, et ux., to Willow Point Minerals LLC, 12.42 Acres, O&G, \$50,000.00 (11-14-22)

GRAY TOWNSHIP

Patrick A. Bedilion to Patrick Andrew Bedilion, et ux., 2 1/2 Acres, \$39,529.50 (11-10-22)

JEFFERSON TOWNSHIP

Robert R. Riffle, et ux., to Valley Abstracting LLC, Tax Claim, Tract, \$500.00 (11-9-22)
Lee Hamilton by TCB, et ux., to Valley Abstracting LLC, Tax Claim, 160 Fairground Add., \$500.00 (11-9-22)

Lee Hamilton by TCB, et ux., to Valley Abstracting LLC, Tax Claim, 162 Fairground Add., \$500.00 (11-9-22)

Lee Hamilton by TCB, et ux., to Valley Abstracting LLC, Tax Claim, 159 Fairground Add., \$500.00 (11-9-22)

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Lee Hamilton by TCB, et ux., to Valley Abstracting LLC, Tax Claim, 161 Fairground Add.,
\$500.00 (11-9-22)

Lee Hamilton by TCB, et ux., to Valley Abstracting LLC, Tax Claim, 158 Fairground Add.,
\$500.00 (11-14-22)

Lee Hamilton by TCB, et ux., to Valley Abstracting LLC, Tax Claim, 156 Fairground Add.,
\$500.00 (11-14-22)

Lee Hamilton by TCB, et ux., to Valley Abstracting LLC, Tax Claim, 155 Fairground Add.,
\$500.00 (11-14-22)

Joseph S. Mangione, et ux., to TW Plus LLC, Tax Claim, 67 Landing Heights Plan, ½ Interest,
\$500.00 (11-15-22)

MORGAN TOWNSHIP

Ravinder P. Chandhok, et ux., to Gregg M. Ullom, et ux., 17.448 Acres, \$21,000.00 (11-10-22)

MORRIS TOWNSHIP

Dennis J. Knowlson to MMA Mineral Group LLC, 20 Acres, O&G, \$9,000.00 (11-14-22)

PERRY TOWNSHIP

Zachary David McGinnis to Ashley M. Krashna, et ux., Tract, \$349,900.00 (11-10-22)

RICES LANDING BOROUGH

Esther Neroni to Michael A. Ozohonish, II, Lot, Bayard Plan, \$50,000.00 (11-9-22)

RICHHILL TOWNSHIP

James R. Rhome, et ux., to EQT Production Company, 1.35 Acres, O&G, \$1,000.00 (11-14-22)

SPRINGHILL AND GILMORE TOWNSHIPS

West Virginia University Foundation Inc., to The Mineral Company, et ux., 2 Tracts, O&G,
\$182,586.60 (11-14-22)

WASHINGTON TOWNSHIP

Michelle L. Anderson A/K/A Michelle L. Hyde, et ux., to Raymond P. Schafer, Lot,
\$135,000.00 (11-14-22)

WAYNE TOWNSHIP

Kathleene McNay Schlienger to DUC Hunter LLC, 81.5 Acres, O&G, \$25,468.75 (11-14-22)

Jackie Jones by TCB, et ux., to Valley Abstracting LLC, Tax Claim, 43 Hoy Plan, \$500.00 (11-9-22)

Jackie Jones by TCB, et ux., to Valley Abstracting LLC, Tax Claim, Tract, \$500.00 (11-9-22)

Jackie C. Jones by TCB, et ux., to Valley Abstracting LLC, Tax Claim, 41 Hoy Plan, \$500.00
(11-9-22)

Jackie C. Jones by TCB, et ux., to Valley Abstracting LLC, Tax Claim, 44 Hoy Plan, \$500.00
(11-9-22)

Jackie C. Jones by TCB, et ux., to Valley Abstracting LLC, Tax Claim, 42 Hoy Plan, \$500.00
(11-14-22)

WAYNESBURG BOROUGH

Stephen I. Freeman by TCB, et ux., to Cari Swink, Tax Claim, Lot, \$2,000.00 (11-14-22)

Richard S. Bortz, Jr., by TCB, et ux., to TW Plus LLC, Tax Claim, Lot, \$3,000.00 (11-15-22)

Richard S. Bortz, Jr., by TCB, et ux., to TW Plus LLC, Tax Claim, Lot, \$2,000.00 (11-15-22)

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ESTATE NOTICES

NOTICE is hereby given of the grant of letters by the Register of Wills to the Estates of the following named decedents. All persons having claims are requested to make known the same and all persons indebted to the decedent are requested to make payment to the personal representative or his attorney without delay.

FIRST PUBLICATION

ADAMS, RUSTY SHANE

Late of Waynesburg Borough, Greene County, Pennsylvania

Co-Executor: Kacy L. Umina, 3815 S. Lincoln Street, Englewood, CO 80113

Co-Executor: Sharon Yvonne Dowdy, 1630 Jameson Road, Fairview, WV 26570

Attorney: Lori J. Paletta-Davis, Esquire, Umina Legal, PLLC, 133 Greenbag, Road,
Morgantown, WV 26501

LEMMON, MARVIN LUKE A/K/A MARVIN L. LEMMON A/K/A MARVIN LEMMON

Late of Orange County, California, with assets in Freeport and Gilmore Townships,
Greene County, Pennsylvania

Administrator: Alex M. Lemmon, 423 N. 32nd Street, Harrisburg, PA 17111

Attorney: Mark D. Hipp, Sigma Legal Advisors, 1801 Market Street, Ste. 300, Camp
Hill, PA 17011

NESTO, JOSEPH ANTHONY SR. A/K/A JOSEPH A. NESTO

Late of Rices Landing Borough, Greene County, Pennsylvania

Executrix: Shelby Nesto McLaughlin, 138 Center Avenue, Rices Landing, PA 15357

Attorney: Thomas P. Agrafiotis, Esquire, Melenyzer & Agrafiotis LLC, 411
Washington Avenue, Charleroi, PA 15022

TUSTIN, MCCLEESE JUNE

Late of Center Township, Greene County, Pennsylvania

Executrix: Debbie Tustin, C/O Lukas B. Gatten, Esquire, Logan & Gatten Law Offices,
54 N. Richhill Street, Waynesburg, PA 15370

Attorney: Lukas B. Gatten, Esquire, Logan & Gatten Law Offices, 54 N. Richhill
Street, Waynesburg, PA 15370

ROMESBURG, MICHAEL W. A/K/A MICHAEL WILLIAM ROMESBURG

Late of Cumberland Township, Greene County, Pennsylvania

Administrator: Joseph A. Romesburg, 210 Woodside Drive, Washington, PA 15301

Attorney: Brandon K. Meyer, Esquire, 76 North Richhill Street, Waynesburg, PA
15370

WINSLOW, EDWARD

Late of Franklin Township, Greene County, Pennsylvania

Executor: William Tod Winslow, 19813 Bittersweet Lane, Estero, FL 33928

Attorney: Lukas B. Gatten, Logan & Gatten Law Offices, 54 N. Richhill Street,
Waynesburg, PA 15370

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SECOND PUBLICATION

DICKEY, JAMES W.

Late of Cumberland Township, Greene County, Pennsylvania
Administratrix: Mary Lou Balogh, 143 West Wood Avenue, PO Box 304, Nemaocolin,
PA 15351

Attorney: Lukas B. Gatten, Esquire, Logan & Gatten Law Offices, 54 N. Richhill
Street, Waynesburg, PA 15370

HOWARD, KAREN L.

Late of Greene Township, Greene County, Pennsylvania
Executrix: Jodi R. Hall, 150 Gapen Road, Garard's Fort, PA 15334

Attorney: Timothy N. Logan, Esquire, Logan & Gatten Law Offices, 54 N. Richhill
Street, Waynesburg, PA 15370

MEISSNER, DONALD L.

Late of Whitely Township, Greene County, Pennsylvania
Executor: Roger A. Wence, 163 Curry Road, Waynesburg, PA 15370

Attorney: Timothy N. Logan, Esquire, Logan & Gatten Law Offices, 54 N. Richhill
Street, Waynesburg, PA 15370

THIRD PUBLICATION

CHAPMAN, JUNE S.

Late of Waynesburg, Greene County, Pennsylvania
Executor: Jay N. VanScyoc, 313 Huffman Street, Waynesburg, PA 15370
Attorney: Kirk A. King, Esquire, 77 South Washington Street, Waynesburg, PA 15370

HOLBERT, JACK A. A/K/A JACK ALLEN HOLBERT

Late of Dunkard Township, Greene County, Pennsylvania
Executrix: Carol Holbert, 116 Bald Hill Church Road, Mt. Morris, PA 15349

Attorney: Phillip C. Hook, Attorney, 430 East Oakview Drive, Suite 101, Waynesburg,
PA 15370

MCCOY, VICKIE LANE A/K/A VICKIE L. MCCOY

Late of Carmichaels, Greene County, Pennsylvania
Executrix: Shannon L. McCoy, 105 Inwood Avenue, Carmichaels, PA 15320
Attorney: Kirk A. King, Esquire, 77 South Washington Street, Waynesburg, PA 15370

NIETHAMER, GENE A.

Late of Jackson Township, Greene County, Pennsylvania
Executor: Carl V. Trosch, 750 Holiday Drive, Suite 105, Pittsburgh, PA 15220
Attorney: Carl V. Trosch, 750 Holiday Drive, Suite 105, Pittsburgh, PA 15220

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FIRST AND FINAL ACCOUNT

LIST OF FIRST AND FINAL ACCOUNTS TO BE PRESENTED TO THE COURT BY
SHERRY L. WISE, CLERK OF COMMON PLEAS COURT, ORPHANS' COURT
DIVISION ON December 5, 2022 FOR NISI CONFIRMATION AND ON December 15, 2022
FOR FINAL CONFIRMATION.

The First & Final Account of Christopher Michael Simms, Court Appointed Executor of the
Estate of Charles S Bedilion, late of Jefferson Township, Greene County, Pennsylvania

Attorney: Christopher Michael Simms
54 South Washington Street
Waynesburg PA 15370

LEGAL NOTICE

IN THE COURT OF COMMON PLEAS OF
GREENE COUNTY, PENNSYLVANIA
CIVIL DIVISION

Redevelopment Authority of the)
County of Greene)
)
v.) No. AD-727-2021
)
Christopher A. Stanko Byrne)

IMPORTANT NOTICE

TO: Christopher A. Stanko Byrne

TAKE NOTICE that the above-identified Plaintiff has filed a Complaint in
Action to Quiet Title against you at the above number and term averring that
the Plaintiff is the sole owner of:

ALL that certain lot or piece of ground situate in the Second Ward of the
Borough of Waynesburg, Greene County, Pennsylvania, having an address
of 9 W. Lincoln Street, known as Parcel 27-04-188, and being a part of Lot
38 in the Sayers Addition.

NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the Complaint, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP:

COURT ADMINISTRATOR - LAW LIBRARY
GREENE COUNTY COURTHOUSE
10 EAST HIGH STREET
WAYNESBURG, PA 15370
PHONE: (724) 852-5237

SOUTHWESTERN PENNSYLVANIA LEGAL AID SOCIETY
63 SOUTH WASHINGTON STREET
WAYNESBURG, PA 15370
PHONE: (724) 627-3127

The Court ordered that this Notice be served upon you by publication.

LEGAL NOTICE

Milstead & Associates, LLC
Roger Fay, Esquire, ID No. 315987
Nelson Diaz, Esquire, ID No. 48624
1 E. Stow Road
Marlton, NJ 08053
(856) 482-1400
Attorneys for Plaintiff File No. 229932-1

| | |
|--|--|
| <p>Nationstar Mortgage LLC d/b/a Mr. Cooper 8950 Cypress Waters Boulevard Coppell, TX 75019,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">Vs.</p> <p>Chiquila Hall Ross, known heir of Joseph W. Ross, Deceased; Ava Ross, known heir of Joseph W. Ross, Deceased; Hunter Ross, known heir of Joseph W. Ross, Deceased Unknown heirs, successors, assigns and all persons, firms, or associations claiming right, title or interest from or under Joseph W. Ross, Deceased</p> <p style="text-align: center;">Defendant(s)</p> | <p>COURT OF COMMON PLEAS GREENE COUNTY</p> <p>No.</p> <p><u>CIVIL ACTION MORTGAGE FORECLOSURE</u></p> |
|--|--|

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ON AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

Greene County Notice to Defend
Court Administrator
Greene County Courthouse
10 East High Street
Suite 2018
Waynesburg, PA 15370
724-852-5237

SUPREME COURT NOTICE

SUPREME COURT OF PENNSYLVANIA
COMMITTEE ON RULES OF EVIDENCENOTICE OF PROPOSED RULEMAKING**Proposed Amendment of Pa.R.E. 103 and 802**

The Committee on Rules of Evidence is considering proposing to the Supreme Court of Pennsylvania the amendment of Pennsylvania Rule of Evidence 103 concerning the preservation of claims of error and Rule 802 concerning hearsay. 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 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:

Daniel A. Durst, Counsel
Committee on Rules of Evidence
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
PO Box 62635
Harrisburg, PA 17106-2635
FAX: 717.231.9536
evidencerules@pacourts.us

All communications in reference to the proposal should be received by **January 23, 2023**. 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 Committee on Rules of Evidence,
Sara E. Jacobson, Chair

Rule 103. Rulings on Evidence.

(a) **[Preserving a] Claim of Error.** A party may claim error in a ruling to admit or exclude evidence only:

- (1) if the ruling admits evidence, a party, on the record:
 - (A) makes a timely objection, motion to strike, or motion in limine; and
 - (B) states the specific ground, unless it was apparent from the context; or
- (2) if the ruling excludes evidence, a party informs the court of its substance by an offer of proof **on the record**, unless the substance was apparent from the context.

(b) **[Not Needing to Renew an Objection or Offer of Proof] Preservation of Claim of Error.** **[Once the court rules definitively on the record—either before or at trial—a party need not renew an objection or offer of proof to preserve a claim of error for appeal.] To preserve a claim of error for appeal, the court must rule definitively on the record either before or at trial. If the court does not, then the party must renew the objection or offer of proof pursuant to subdivision (a) and obtain a ruling to preserve a claim of error for appeal. Once the court rules definitively on the record, a party need not renew an objection or offer of proof.**

(c) **Court’s Statement About the Ruling; Directing an Offer of Proof.** The court may make any statement about the character or form of the evidence, the objection made, and the ruling. The court may direct that an offer of proof be made in question-and-answer form.

(d) **Preventing the Jury from Hearing Inadmissible Evidence.** To the extent practicable, the court must conduct a jury trial so that inadmissible evidence is not suggested to the jury by any means.

Comment: Pa.R.E. 103(a) differs from F.R.E. 103(a). The Federal Rule says, “A party may claim error in a ruling to admit or exclude evidence only if the error affects a substantial right of the party...” In Pennsylvania criminal cases, the accused is entitled to relief for an erroneous ruling unless the court finds beyond a reasonable doubt that the error is harmless. See *Commonwealth v. Story*, [476 Pa. 391,] 383 A.2d 155 (Pa. 1978). Civil cases are governed by Pa.R.Civ.P. [No.] 126 which permits the court to disregard an erroneous ruling “which does not affect the substantial rights of the parties.” Pa.R.E. 103(a) is consistent with Pennsylvania law.

Pa.R.E. 103(a)(1) specifically refers to motions *in limine*. These motions are not mentioned in the Federal rule. Motions *in limine* permit the trial court to make rulings on evidence prior to trial or at trial but before the evidence is offered. Such motions can expedite the trial and assist in producing just determinations. **Subdivision (a)(2) also differs from F.R.E. 103(a)(2) insofar as it clarifies that an offer of proof must be on the record.**

[Pa.R.E. 103(b), (c) and (d) are identical to F.R.E. 103(b), (c) and (d).]

Pa.R.E. 103(b) differs from F.R.E. 103(b) insofar as it unambiguously requires the court to rule definitively on the record to preserve a claim of error for appeal. When an objection comes in the form of a motion *in limine* before trial, a court’s definitive ruling is final. If the court’s ruling is tentative, deferred, or denied without prejudice, there is no definitive ruling on the objection. When an evidentiary ruling is tentative, deferred, or denied without prejudice, the objecting party must renew its objection at trial to preserve a claim of error for appeal. See, e.g., *Blumer v. Ford Motor Co.*, 20 A.3d 1222, 1232 (Pa. Super. 2011).

Pa.R.E. 103(c) and (d) are identical to F.R.E. 103(c) and (d).

F.R.E. 103(e) permits a court to “take notice of a plain error affecting a substantial right, even if the claim of error was not properly preserved.” This **[paragraph] subdivision** has not been adopted because it is inconsistent with Pa.R.E. 103(a) and Pennsylvania law. See *Commonwealth v. Clair*, [458 Pa. 418,] 326 A.2d 272 (Pa. 1974); *Dilliplaine v. Lehigh Valley Trust Co.*, [457 Pa. 255,] 322 A.2d 114 (Pa. 1974).

[Official Note: Adopted May 8, 1998, effective October 1, 1998; amended November 2, 2001, effective January 1, 2002; rescinded and replaced January 17, 2013, effective March 18, 2013.]

Committee Explanatory Reports: Final Report explaining the November 2, 2001 amendments to paragraph (a) published with the Court’s Order at 31 Pa.B. 6384

(November 24, 2001). **Final Report explaining the January 17, 2013 rescission and replacement published with the Court's Order at 43 Pa.B. 651 (February 2, 2013).**]

Rule 802. The Rule Against Hearsay.

Hearsay is not admissible except as provided by these rules, by other rules prescribed by the Pennsylvania Supreme Court, or by statute.

Comment: Pa.R.E. 802 differs from F.R.E. 802 in that it refers to other rules prescribed by the Pennsylvania Supreme Court, and to statutes in general, rather than federal statutes.

Often, hearsay will be admissible under an exception provided by these rules. **In addition, unobjectioned to hearsay is admissible as substantive evidence. See, e.g., Jones v. Spidle, 286 A.2d 366, 367 (Pa. 1971) ("It is well established that hearsay evidence, admitted without objection, is accorded the same weight as evidence legally admissible as long as it is relevant and material to the issues in question."); see also Pa.R.E. 103 (Rulings on Evidence).**

The organization of the Pennsylvania Rules of Evidence generally follows the organization of the Federal Rules of Evidence, but the Pennsylvania Rules' organization of the exceptions to the hearsay rule is somewhat different than the federal organization. There are three rules which contain the exceptions: **1)** Pa.R.E. 803 Exceptions to the Rule Against Hearsay—Regardless of Whether the Declarant is Available as a Witness[.]; **2)** Pa.R.E. 803.1 Exceptions to the Rule Against Hearsay—Testimony of Declarant Necessary[, and]; **and 3)** Pa.R.E. 804 Exceptions to the Rule Against Hearsay—When the Declarant is Unavailable as a Witness.

On occasion, hearsay may be admitted pursuant to another rule promulgated by the Pennsylvania Supreme Court. For example, in civil cases, all or part of a deposition may be admitted pursuant to Pa.R.Civ.P. [No.] 4020, or a video deposition of an expert witness may be admitted pursuant to Pa.R.Civ.P. [No.] 4017.1(g). In preliminary hearings in criminal cases, the court may consider hearsay evidence pursuant to Pa.R.Crim.P. 542(E) and 1003(E). In criminal trials, Pa.R.Crim.P. 574 provides a procedure for the admission of forensic laboratory reports supported by a certification.

Also, hearsay may be admitted pursuant to a state statute. Examples include:

1. A public record may be admitted pursuant to 42 Pa.C.S. § 6104. See Comment to Pa.R.E. 803(8).
2. A record of vital statistics may be admitted pursuant to 35 P.S. § 450.810. See Comment to Pa.R.E. 803(9) (Not Adopted).
3. In a civil case, a deposition of a licensed physician may be admitted pursuant to 42 Pa.C.S. § 5936.
4. In a criminal case, a deposition of a witness may be admitted pursuant to 42 Pa.C.S. § 5919.
5. In a criminal or civil case, an out-of-court statement of a witness **[12] 16** years of age or younger, describing certain kinds of sexual abuse, may be admitted pursuant to 42 Pa.C.S. § 5985.1.
6. In a dependency hearing, an out-of-court statement of a witness under **[16] 18** years of age, describing certain types of sexual abuse, may be admitted pursuant to 42 Pa.C.S. § 5986.

7. In a criminal or civil case, an out-of-court statement of a witness with an intellectual disability or autism, describing certain kinds of criminal offenses, may be admitted pursuant to 42 Pa.C.S. § 5993.

[7.] **8.** In a prosecution for speeding under the Pennsylvania Vehicle Code, a certificate of accuracy of an electronic speed timing device (radar) from a calibration and

testing station appointed by the Pennsylvania Department of Motor Vehicles may be admitted pursuant to 75 Pa.C.S. § 3368(d).

On rare occasion, hearsay may be admitted pursuant to a federal statute. For example, when a person brings a civil action, in either federal or state court, against a common carrier to enforce an order of the Interstate Commerce Commission requiring the payment of damages, the findings and order of the Commission may be introduced as evidence of the facts stated in them. 49 U.S.C. § 11704(d)(1).

[Official Note: Adopted May 8, 1998, effective October 1, 1998; Comment revised March 23, 1999, effective immediately; Comment revised March 10, 2000, effective immediately; Comment revised March 29, 2001, effective April 1, 2001; rescinded and replaced January 17, 2013, effective March 18, 2013; Comment revised February 19, 2014, effective April 1, 2014; Comment revised November 9, 2016, effective January 1, 2017.

Committee Explanatory Reports: Final Report explaining the March 23, 1999 technical revisions to the Comment published with the Court's Order at 29 Pa.B. 1714 (April 3, 1999). Final Report explaining the March 10, 2000 changes updating the seventh paragraph of the Comment published with the Court's Order at 30 Pa.B. 1641 (March 25, 2000). Final Report explaining the March 29, 2001 revision of the Comment published with the Court's Order at 31 Pa.B. 1995 (April 14, 2001). Final Report explaining the February 19, 2014 revision of the Comment published with the Court's Order at 44 Pa.B. 1309 (March 8, 2014). Final Report explaining the November 9, 2016 revision of the Comment published with the Court's Order at 46 Pa.B. 7438 (November 26, 2016).]

SUPREME COURT OF PENNSYLVANIA COMMITTEE ON RULES OF EVIDENCE

Publication Report

Proposed Amendment of Pa.R.E. 103 and 802

The Committee on Rules of Evidence has studied the interplay between the procedural steps set forth in subdivisions (a) and (b) of Pa.R.E. 103 and the judicial practice of deferring an evidentiary ruling. Often, rulings are contemporaneous with the offering of evidence and resulting objection. In those circumstances, subdivisions (a) and (b) set forth the procedure to claim and preserve an allegedly erroneous evidentiary ruling.

However, there are occasions where a party may seek an evidentiary ruling prior to trial or at trial before evidence is offered using a motion *in limine*. See Pa.R.E. 103, Comment at ¶ 2. A motion *in limine* can be beneficial because it allows the parties to better prepare for trial, informs the judge, and avoids delays during trial. Further, a ruling prior to the offering of evidence is consonant with the imperative that inadmissible evidence not be suggested to the jury through opening statements or witness examination. See Pa.R.E. 103(d).

Of course, there may be times when a party raises a claim in a motion *in limine* prior to trial but admissibility cannot be determined until other contextual evidence is heard at trial. See also Pa.R.E. 404, Comment at ¶ 8 (discussing purpose of pre-trial notice of evidence of other crimes, wrongs, or acts even though the ruling is postponed until trial). Yet, the application of Pa.R.E. 103(b) has required an eventual ruling on the claim contained in the motion *in limine* to preserve the claim for appellate review. See, e.g., *Blumer v. Ford Motor*

Co., 20 A.3d 1222 (Pa. Super. 2011). In other words, seeking a ruling without obtaining a ruling does not preserve an issue.

In those circumstance, a common practice has been to defer ruling on a motion *in limine* until trial. It was through this practice that the Committee evaluated subdivisions (a) and (b). The Committee observed that subdivision (a) is titled “preserving a claim of error,” but the subdivision does not state that the court must rule on the claim contained within an objection or motion *in limine*. It is only in subdivision (b) where there is mention of “the court rul[ing] definitively on the record.” To close this potential “waiver trap,” the Committee wishes to clarify what a party needs to do to raise a claim of error and what the court must do for the claim to be preserved for appellate review.

Accordingly, the Committee proposes removing “Preserving a” from the title of subdivision (a) and clarifying that the proffer in subdivision (a)(2) be “on the record” by adding that phrase to the rule text. Subdivision (b) would be re-titled to state “Preserving a Claim” to emphasize that the court must rule on the claim to preserve it for appellate review.

Additionally, the current rule text within subdivision (b) would be replaced. The first sentence of the proposed new rule text would state unambiguously that the court must definitively rule on the record to preserve a claim of error. The second sentence would indicate that, if the court does not definitively rule on the objection, then a party must renew an objection or offer of proof to preserve a claim of error. This sentence is intended to address the situation in *Blumer v. Ford Motor Co.*; a reference to that case would also be contained in the Comment. While the requirement of this sentence may seem implicit, it is intended to provide a basis for counsel to renew an objection and prompt the court to rule. See, e.g., *Keffer v. Bob Nolan's Auto Serv., Inc.*, 59 A.3d 621, 657-58 (Pa. Super. 2012) (“When the trial court overlooks or fails to rule on an issue, the party seeking the court’s ruling must remind the court that it has not ruled and obtain a definitive ruling on the issue.”). The final sentence regarding unnecessary renewed objections to definitive rulings was retained in essence from the current text.

Anecdotally, the Committee has learned of another practice when a motion *in limine* cannot be determined prior to trial. That practice is to deny the motion *in limine* without prejudice to raise the claim again at trial when the evidence is offered. While that practice might appear to permit the parties to claim and preserve any evidentiary errors at the time of offering, a denial without prejudice is not intended to be definitive as to the claim itself. *Accord Yates v. Pinellas Hematology & Oncology, P.A.*, 21 F.4th 1288, 1297 (11th Cir. 2021). To inform readers, the Committee proposes adding cautionary language within the Comment.

The Committee next considered the applicability of Pa.R.E. 103 and the operation of the Rules of Evidence, specifically Article VIII concerning hearsay. Pa.R.E. 802 states: “Hearsay is not admissible except as provided by these rules, by other rules prescribed by the Pennsylvania Supreme Court, or by statute.” Yet, the hearsay exceptions found in the rules, see Pa.R.E. 803, 803.1, and 804, apply only if there is a claim of error pursuant to Pa.R.E. 103(a). When no claim is asserted, then the unobjected to hearsay is admissible as substantive evidence regardless of any exception.

While the admissibility of unobjected to hearsay may be readily apparent to experienced practitioners, the language of Pa.R.E. 802 suggests all hearsay, even that unobjected to, must meet an exception. The Committee proposes adding a statement to the Comment to Pa.R.E. 802, together with a case citation, clarifying that unobjected to hearsay is admissible regardless of exception. The statement is intended to confirm that even rank hearsay may be admissible if the opponent does not object. Additionally, the statutory hearsay exceptions have been updated.

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

SUPREME COURT NOTICE

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

NOTICE OF PROPOSED RULEMAKING

Proposed Adoption of Pa.R.J.C.P. 405

The Juvenile Court Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the adoption of Pennsylvania Rule of Juvenile Court Procedure 405 governing the admission of a certified forensic lab report in lieu of the expert appearing and testifying in court 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 officially adopted by the Supreme Court.

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

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Juvenile Court Procedural Rules Committee
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All communications in reference to the proposal should be received by **January 17, 2023**. 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 Juvenile Court Procedural Rules Committee,
The Honorable Alice Beck Dubow, Chair

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

PUBLICATION REPORT

Proposed Adoption of Pa.R.J.C.P. 405

The Juvenile Court Procedural Rules Committee (“Committee”) proposes adoption of Pennsylvania Rule of Juvenile Court Procedure 405 governing the admission of a certified forensic lab report in lieu of the expert appearing and testifying in court.

The Committee received a rulemaking request for a delinquency rule mirroring Pa.R.Crim. P. 574 (Forensic Laboratory Report; Certification In Lieu of Expert Testimony). As background, Pa.R.Crim.P. 574 was intended to implement the use of “notice and demand” procedures approved in *Melendez-Diaz v. Massachusetts*, 129 U.S. 2527 (2009), which held that the 6th Amendment’s confrontation right precluded presentation of laboratory reports without a live witness testifying at trial. The reasons for rulemaking include increased consistency among the bodies of rules for prosecutors and defenders crossing over from criminal proceedings to delinquency proceedings. Also, responses to offers of stipulation are sometimes not received so having a formal mechanism would be beneficial. Further, experts seem increasingly busy and a rule that operates to relieve the burden of appearing when reports are uncontested would allow the experts to focus on the proceedings where reports are contested and to reduce lab testing backlogs.

The Committee previously published proposed Pa.R.J.C.P. 405, which provided for “notice and demand” procedures nearly identical to Pa.R.Crim.P. 574. *See* 44 Pa.B. 3306 (June 7, 2014). The Committee ultimately discontinued rulemaking because the timeframes were not compatible with adjudicatory hearings for detained juveniles. *See* Pa.R.J.C.P. 404(A) (hearing to be held within 10 days of the petitions filing.) Further, several commentators indicated that stipulations were a widely used and effective alternative to live expert witness testimony.

Given the prior comments, the Committee considered a rule largely modeled after Pa.R.Crim.P. 574 but that would exclude juveniles who were pre-adjudication detention given the 10-day adjudicatory window for detained juveniles. The rate of pre-adjudication detention appears to be declining over time and most detentions now occur post-adjudication. Consequently, the “detention exclusion” would not erode the value of the rule.

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

<The following is an entirely new rule.>

Rule 405. Forensic Laboratory Report and Certification.

(a) Report and Certification in Lieu of Expert Testimony.

- (1) If the requirements of this rule have been met, the attorney for the Commonwealth may seek to offer a forensic laboratory report into evidence in lieu of testimony in any adjudicatory hearing of a non-detained juvenile.
- (2) The report shall be supported by a certification, as provided in subdivision (e), from the expert who drafted the report and performed the analysis.

(b) Notice.

- (1) The attorney for the Commonwealth shall file the written notice and serve the written notice, together with the report and certification, upon the juvenile’s attorney.
- (2) The notice shall include a statement from the juvenile that:

- (i) If no written demand for testimony as provided in subdivision (c)(3) is made, the forensic laboratory report and certification are admissible in evidence; and
- (ii) the expert who drafted the report does not have to testify.

(3) Service shall occur no later than 20 days prior to the adjudicatory hearing.

(4) Once entered into evidence, the report and certification shall qualify as if the expert had testified personally.

(c) Demand.

- (1) Within 10 days of service of the notice, the juvenile’s attorney may file and serve a written demand upon the attorney for the Commonwealth requiring the expert to testify at the adjudicatory hearing.
- (2) If a written demand is filed and served, the expert must testify.
- (3) If no demand is filed and served as required by subdivision (c)(1), the report and certification are admissible in evidence without the expert’s testimony.

(d) Extension. For cause shown, the judge may:

- (1) extend the time requirements of this rule; or
- (2) grant a continuance of the adjudicatory hearing.

(e) Certification. The expert shall complete a certification providing:

- (1) the education, training, and experience that qualify the expert to perform the analysis or examination;
- (2) the entity by which the expert is employed and a description of the expert’s regular duties;
- (3) the name and location of the laboratory where the analysis or examination was performed;
- (4) any state, national, or international accreditations of the laboratory at which the analysis or examination was performed;

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- (5) that the analysis or examination was performed under industry-approved procedures or standards; and
- (6) the report accurately reflects the findings and opinions of the expert.

Comment: This rule is intended to establish a uniform procedure for delinquency proceedings, similar to Pa.R.Crim.P. 574, for the admission of laboratory reports without the expense of live expert testimony while protecting a juvenile’s confrontation rights. The rule provides a “notice and demand” procedure for delinquency proceedings. Under this rule, the attorney for the Commonwealth may seek to admit a forensic laboratory report as evidence without expert testimony if the requirements are met and no demand for the presence of the expert is made. If the juvenile makes such a demand, the expert is required to testify before the report can be admitted into evidence.

Given the prompt adjudicatory hearing requirement of the Juvenile Act, 42 Pa.C.S. § 6335(a) (if juvenile is detained, then adjudicatory hearing must be held within 10 days of the filing of a petition), this rule is only available for adjudicatory hearings of non-detained juveniles. *See* Pa.R.J.C.P. 404(B) (if juvenile is not detained, then adjudicatory hearing must be held within a reasonable time).

Nothing in this rule is intended to: 1) preclude a stipulation agreed to by the parties for the admission of the report without the expert’s presence; 2) prevent further stipulation by the parties in light of the admission of the report and certification; or 3) change the discovery requirements pursuant to Rule 340.

Pursuant to subdivision (d), the court may permit filing of the notice or demand after the time period required in the rule if the party seeking the late filing shows cause for the delay. In the situation where the judge permits the late filing of the notice, the juvenile still has ten days to make the demand for the live testimony of the expert. This may necessitate a continuance of the adjudicatory hearing.

The certification in subdivision (e) does not require a description of the actual tests performed for the analysis. This information more properly belongs in the report itself. Because one of the goals of this rule is to permit the juvenile to make an informed decision regarding whether to demand the live testimony of the expert, the report should provide information sufficient to describe the methodology by which the results were determined.

For purposes of this rule, a laboratory is “accredited” when its management, personnel, quality system, operational and technical procedures, equipment, and physical facilities meet standards established by a recognized state, national, or international accrediting organization such as the American Society of Crime Laboratory Directors/Laboratory Accrediting Board (ASCLD/Lab) or Forensic Quality Services – International (FQS-I).

See Rule 345 for filing and service requirements.