

**CHAPTER 200. MINORS AS PARTIES**

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**Rule 2026. Definitions.**

As used in this chapter

“action” means any civil action or proceeding brought in or appealed to any court of record which is subject to these rules;

“guardian,” except where the context otherwise indicates, means the party representing the interest of a minor party in any action, whether as (a) the guardian of a minor appointed by any court of competent jurisdiction, (b) a person in the nature of a next friend selected to represent a minor plaintiff in an action, or (c) a guardian ad litem specially appointed by the court in which the action is pending;

**Official Note:** A testamentary guardian is not included as such within the above definition of guardian. A testamentary guardian may, however, obtain the right to represent the minor in litigation, not in the capacity as testamentary guardian, but by qualifying as a guardian within the above definition either by selection under clause (b) or appointment under clause (c).

“judgment” means any final judgment or final order entered in any action.

**Source**

The provisions of this Rule 2026 adopted February 14, 1939, effective September 4, 1939; amended April 18, 1975, effective immediately, 5 Pa.B. 1820; amended April 12, 1999, effective July 1, 1999, 29 Pa.B. 2274; amended December 16, 2003, effective July 1, 2004, 34 Pa.B. 9. Immediately preceding text appears at serial page (255293).

**Rule 2027. Guardian to Represent Minor.**

When a party to an action, a minor shall be represented by a guardian who shall supervise and control the conduct of the action in behalf of the minor.

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(302513) No. 352 Mar. 04

**Source**

The provisions of this Rule 2027 adopted February 14, 1939, effective September 4, 1939; amended April 18, 1975, effective immediately, 5 Pa.B. 1820; amended April 12, 1999, effective July 1, 1999, 29 Pa.B. 2274. Immediately preceding text appears at serial pages (220899) to (220900).

**Rule 2028. Actions By and Against Minors. Averments in Plaintiff's Pleading.**

(a) An action in which a minor is plaintiff shall be entitled "A, a Minor, by B, Guardian," against the party defendant.

**Official Note:** Under the above rule the representative of a minor plaintiff is termed a "guardian" regardless of whether under prior practice he or she would be termed a legal guardian or a next friend.

(b) The initial pleading filed in behalf of a minor plaintiff shall state the name and address of his or her guardian and the guardian's relationship, if any, to the subject matter of the action or to any of the parties thereto. In case the person selected as guardian is a guardian appointed by any court of competent jurisdiction or by a will duly probated, the initial pleading shall contain a reference to the record of the appointment.

(c) An action in which a minor is the defendant shall be commenced against the minor by name in the manner in which a like action is commenced against an adult.

**Official Note:** An action against a minor is begun in the same manner as an action against an adult, although by Rule 2034, *infra*, as under prior practice, the subsequent appointment of a guardian to represent the minor is essential to the rendition of a valid judgment against the minor.

**Source**

The provisions of this Rule 2028 adopted February 14, 1939, effective September 4, 1939; amended April 18, 1975, effective immediately, 5 Pa.B. 1820; amended April 12, 1999, effective July 1, 1999, 29 Pa.B. 2274.

**Rule 2029. Service Upon Minors.**

[Rescinded]

**Official Note:** For service of original process when the defendant is a minor, see Rule 420. For service of other legal papers, see Rule 441(a).

**Source**

The provisions of this Rule 2029 rescinded June 20, 1985, effective January 1, 1986, 15 Pa.B. 2452. Immediately preceding text appears at serial page (22305).

**Rule 2030. Setoffs and Counterclaims.**

In an action brought on behalf of a minor the defendant may assert any setoff or counterclaim which the defendant has against the minor.

**Official Note:** Under these rules, the next friend of the minor plaintiff is replaced by a guardian who combines the functions of liability for costs and supervision of the action and whose presence enables the defendant to assert cross or counterclaims against the minor plaintiff. This prevents a decision such as *Hess v. Gerhart*, 43 Lanc. 585 (1933), in which it was held that since the minor plaintiff in a trespass case was suing by his next friend the defendant could not make a counterclaim for injuries arising from the same accident and that the appointment of a guardian ad litem to defend against such counterclaim was necessary before such counterclaim could be asserted.

**Source**

The provisions of this Rule 2030 adopted February 14, 1939, effective September 4, 1939; amended April 12, 1999, effective July 1, 1999, 29 Pa.B. 2274. Immediately preceding text appears at serial pages (220900) to (220901).

**Rule 2031. Selection and Appointment of Guardians.**

(a) A minor plaintiff may select a guardian, but such selection shall not bar the court from removing the guardian for cause in accordance with these rules.

(b) If a minor party to an action is not represented, the court shall appoint a guardian for the minor either upon its own motion or upon the petition of (1) the minor party, (2) a guardian of the minor appointed by any court of competent jurisdiction, or by a will duly probated, (3) any relative of the minor, or (4) any other party to the action.

(c) The petition shall state the name and address of the person proposed as guardian, and the guardian's relationship, if any, to the subject matter of the action or to any of the parties thereto. In case the person proposed as guardian is a guardian appointed by any court of competent jurisdiction or by a will duly probated, the petition shall contain a reference to the record of such appointment.

(d) When the petition is filed by the minor the court may make the appointment ex parte.

(e) When the petition is filed by a person other than the minor, the court shall direct a rule to be served upon the minor or upon such other person as the court may designate to show cause why the prayer of the petition should not be granted.

**Source**

The provisions of this Rule 2031 adopted February 14, 1939, effective September 4, 1939; amended April 18, 1975, effective immediately, 5 Pa.B. 1820; amended April 12, 1999, effective May 1, 1999, 29 Pa.B. 2274. Immediately preceding text appears at serial page (220901).

**Rule 2032. Affidavit as to Age.**

A party to an action may file and serve on any other party thereto a rule as of course to file of record an affidavit setting forth whether the other party is an adult or a minor.

**Source**

The provisions of this Rule 2032 adopted February 14, 1939, effective September 4, 1939; amended April 18, 1975, effective immediately, 5 Pa.B. 1820; amended April 12, 1999, effective May 1, 1999, 29 Pa.B. 2274. Immediately preceding text appears at serial page (220901).

**Rule 2033. Removal of Guardian.**

(a) A person who is entitled to apply for the appointment of a guardian for a minor may petition the court for a rule to show cause why the guardian representing the minor in an action should not be removed and another guardian be substituted.

(b) The petition shall be in substantially the same form as the petition for the appointment of a guardian under these rules and shall set forth the reasons why the substitution should be made.

(c) The court upon the petition, or on its own motion, shall make such substitution when it deems the same advisable.

**Source**

The provisions of this Rule 2033 adopted February 14, 1939, effective September 4, 1939; amended April 18, 1975, effective immediately, 5 Pa.B. 1820.

**Rule 2034. Procedure When Minority of a Party is Ascertained.**

(a) If the minority of a party is ascertained before trial, the only remedy available to any other party desiring to object to the non-representation of the minor shall be the right to apply for the appointment of a guardian for the minor and a stay of proceedings pending such appointment.

(b) If the minority of a party is first ascertained during the trial, the court may forthwith appoint a guardian of its own motion or upon the oral application of any person entitled under these rules to file a petition for the appointment of a guardian. In such cases the information required by these rules in petitions for such appointments shall be stated on the record.

(c) If the appointment of a guardian is made during the trial, the court may grant a continuance to enable the guardian properly to present the minor's case. The court may refuse a continuance if the minor has previously filed an affidavit asserting his or her majority.

(d) If, after the conclusion of the trial, or after the entry of a finding, verdict or judgment against a minor, application is made for the appointment of a guardian for a minor against whom any relief is sought, the court shall, in either case, forthwith appoint a guardian for such minor, and may vacate the finding, verdict or judgment and may enter an order in the nature of a procedendo.

**Source**

The provisions of this Rule 2034 adopted February 14, 1939, effective September 4, 1939; amended October 26, 1939, effective October 26, 1939; amended April 18, 1975, effective immediately, 5 Pa.B. 1820; amended April 12, 1999, effective July 1, 1999, 29 Pa.B. 2274. Immediately preceding text appears at serial page (220902).

**Rule 2035. Nonsuit. Directed Verdict. Judgment Notwithstanding the Verdict. New Trials.**

The non-representation of a minor plaintiff may not be assigned by a defendant as a ground for a nonsuit, directed verdict, or judgment in favor of any party, but may be assigned by the minor plaintiff as ground for a new trial when a setoff or counterclaim has been successfully asserted against the minor plaintiff.

**Source**

The provisions of this Rule 2035 adopted February 14, 1939, effective September 4, 1939; amended through October 19, 1983, effective January 1, 1984, 13 Pa.B. 3629. Immediately preceding text appears at serial page (22308).

**Rule 2036. Affidavits by Minors.**

Affidavits which are required to be made by a party to an action, including affidavits to the pleadings, may be made by a minor if the minor has sufficient mental capacity to understand the contents of the paper to which the affidavit is made and to appear in court as a witness. If the minor lacks such capacity, such affidavits shall be made by any competent person having knowledge or information as to the facts averred therein and shall state the reason for the minor's lack of capacity to make such affidavit.

**Source**

The provisions of this Rule 2036 adopted February 14, 1939, effective September 4, 1939; amended April 12, 1999, effective July 1, 1999, 29 Pa.B. 2274. Immediately preceding text appears at serial page (220903).

**Rule 2037. Minor Becoming of Age During Pendency of Action.**

(a) When a minor reaches majority during the pendency of the action, the minor or the minor's guardian may have the record amended to remove the name of the guardian.

(b) When such amendment of the record has been completed, the guardian shall be relieved of all liability for costs.

**Source**

The provisions of this Rule 2037 adopted February 14, 1939, effective September 4, 1939; amended December 22, 1972, effective December 22, 1972; amended April 18, 1975, effective immediately, 5 Pa.B. 1820; amended April 12, 1999, effective July 1, 1999, 29 Pa.B. 2274. Immediately preceding text appears at serial page (220903).

**Rule 2038. Judgments and Costs.**

A judgment entered in an action shall be the obligation of the minor only. A guardian shall not be individually liable for the payment of any judgment entered against the minor. The guardian shall also not be individually liable for any of the costs of the action except costs taxed against a minor plaintiff, and costs taxed against a minor defendant asserting a setoff or counterclaim.

**Source**

The provisions of this Rule 2038 adopted February 14, 1939, effective September 4, 1939.

**Rule 2039. Compromise, Settlement, Discontinuance and Distribution.**

(a) No action to which a minor is a party shall be compromised, settled or discontinued except after approval by the court pursuant to a petition presented by the guardian of the minor.

(b) When a compromise or settlement has been so approved by the court, or when a judgment has been entered upon a verdict or by agreement, the court, upon petition by the guardian or any party to the action, shall make an order approving or disapproving any agreement entered into by the guardian for the payment of counsel fees and other expenses out of the fund created by the compromise, settlement or judgment; or the court may make such order as it deems proper fixing counsel fees and other proper expenses. The balance of the fund shall be paid to a guardian of the estate of the minor qualified to receive the fund, if the minor has one or one is to be appointed. The balance of the fund payable to the guardian of the estate may include a structured settlement underwritten by a financially responsible entity that assumes responsibility for future payments or a trust as described in subdivision (b)(4) of this rule. If the minor has no such guardian and none is to be appointed, the court may order:

(1) an amount not more than twenty-five thousand dollars (\$25,000.00) to be paid for the benefit of the minor to the guardian of the person or to the natural guardian or to the person or agency by whom the minor is maintained or to the minor;

**Official Note:** The amount payable under subparagraph (1) conforms to the amount set forth in Section 5101 of the Probate, Estates and Fiduciaries Code, 20 Pa.C.S. § 5101, relating to when a guardian is unnecessary.

(2) any amount in cash of a resident or non-resident minor to be deposited in one or more savings accounts in the name of the minor in banks, building and loan associations, savings and loan associations or credit unions, deposits in which are insured by a Federal governmental agency, provided that the amount deposited in any one such savings institution shall not exceed the amount to which accounts are thus insured, or in one or more accounts in the name of the minor investing only in securities guaranteed by the United States government or a Federal governmental agency managed by responsible finan-

cial institutions. Every such order shall contain a provision that no withdrawal can be made from any such account until the minor attains majority, except as authorized by a prior order of the court. Proof of the deposit shall be promptly filed of record;

**Official Note:** The order should provide for deposits in more than one savings institution if future accrued interest may reasonably be expected to increase a single deposit beyond the insured limit.

For the definition of savings account, see Rule 76.

The rule contemplates the deposit of money in an account investing in federally guaranteed securities, withdrawals from which may be blocked, and not the direct investment in a particular security.

(3) an agreement be executed providing for a structured settlement underwritten by a financially responsible entity that assumes responsibility for future payments. All moneys paid from the structured settlement during minority shall be paid into a restricted account as provided by subdivision (b)(2) of this rule;

(4) a trust agreement be executed with a corporate fiduciary which is independent from the minor and anyone acting on the minor's behalf and is lawfully authorized to engage in trust business in Pennsylvania or the state of the minor's domicile, which trust

- (i) is designated to receive the fund;
- (ii) contains such terms for investment, disbursement and distribution of the fund as the court deems proper; and
- (iii) expressly provides that it is subject to the court's continuing jurisdiction, including the court's right to modify or terminate, for cause shown, although the trust may be otherwise irrevocable.

**Official Note:** This rule permits the use of a trust, including a special needs trust.

(c) When a judgment has been entered in favor of a minor plaintiff and no petition has been filed under the provisions of subdivision (b) of this rule, the amount of the judgment or any part thereof shall be paid only to a guardian of the estate of the minor qualified to receive the fund, unless the court, on its own motion or on petition of a person, not a party to the action, representing the interest of the minor, enters an order under subdivision (b) of this rule.

(d) Nothing contained in this rule shall prevent the payment into court of any money by the defendant.

**Official Note:** The amendments to Rules 2039, 2064 and 2206 conform the Rules to the recent amendments to the Probate Estates and Fiduciaries Code made by Act 293 of 1974, 20 Pa.C.S. §§ 5101, 5103, 5505.

#### Source

The provisions of this Rule 2039 adopted February 14, 1939, effective September 4, 1939; amended May 17, 1950; amended September 25, 1956, effective forthwith; amended April 2, 1962, effective forthwith; amended July 22, 1970, effective July 22, 1970; amended June 25, 1975, effective

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## **231 Rule 2049**

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tive immediately, 5 Pa.B. 1817; amended October 3, 1996, effective January 1, 1997, 26 Pa.B. 4985. Immediately preceding text appears at serial pages (159488) to (190557).

### **Rule 2049. Effective Date. Pending Actions.**

These rules shall become effective on the fourth day of September, 1939, and shall apply to actions pending at that time.

#### **Source**

The provisions of this Rule 2049 adopted February 14, 1939, effective September 4, 1939.

### **Rule 2050. [Rescinded].**

#### **Source**

The provisions of this Rule 2050 adopted February 14, 1939, effective September 4, 1939; rescinded June 3, 1994, effective July 1, 1994, 24 Pa.B. 3010. Immediately preceding text appears at serial pages (159489) to (159490).

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