

04-1082-CD

-VS-

CLEARFIELD HOSPITAL

Note: Subdivision (a) accommodates developing law with respect to defenses or objections which cannot be waived.

(b) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter or that there has been a failure to join an indispensable party, the court shall order that the action be transferred to a court of the Commonwealth which has jurisdiction or that the indispensable party be joined, but if that is not possible, then it shall dismiss the action.

Note: See Section 5103 of the Judicial Code, 42 Pa.C.S. § 5103, relating to the transfer of erroneously filed matters. Adopted June 25, 1946, effective Jan. 1, 1947. Amended June 16, 1994, effective Sept. 1, 1994; Dec. 16, 2003, effective July 1, 2004.

Explanatory Comment—1994

Effective July 1, 1984, the former actions of assumpsit and trespass were consolidated into the present civil action. Prior to the consolidation one of the principal differences in practice between the two actions was in the manner of responding to a complaint. The assumpsit rules required an answer specifically denying each averment of fact in the complaint. The trespass rules, however, gave the attorney the option of either filing a full answer as in assumpsit or filing no answer at all. If the attorney filed an entry of appearance but chose not to file an answer, the effect was to admit specified averments of fact in the complaint and to deny the remainder. However, the new civil action rules eliminated this option and required the assumpsit-type answer in all cases.

At the same time, the proposal that the specific denial of Rule 1029 be deleted in favor of a general denial was not adopted. Thus, there remained the requirement of a specific denial not only in assumpsit or contract cases but also in cases not formerly subject to the rule, i.e., trespass or tort cases. Both attorneys and judges have expressed dissatisfaction with the necessity to file answers specifically denying allegations of fact in a complaint in tort actions. The practice results in pleadings containing unnecessary repetition of language, overwhelming paperwork for both the court and the parties, and complexity of pleading which in many cases does not contribute to the narrowing of the issues or the resolution of the action.

In 1991 the Civil Procedural Rules Committee published Recommendation No. 109 which proposed that a responding party be given in all cases the alternatives of filing an answer or filing merely an entry of appearance which would have the effect of a denial. As the result of the comments received, the Committee republished the recommendation as Recommendation No. 109a which proposed that the civil action rules be amended to include the former practice of giving the attorney the option not to file an answer in a limited class of cases, i.e., the trespass-type case. The ultimate evolution of the proposal is that set forth in the amended rules: an answer is required in all cases but, in actions seeking monetary relief for bodily injury, death or property damage, the answer may consist of a general denial.

The amendments to the rules are described as follows.

Rule 1032. Waiver of Defenses. Exceptions

Rule 1032 has been revised in several respects. As a matter of style, the former one paragraph rule which contained subparts (1) and (2) has been divided into subdivisions (a) and (b) corresponding to the former subparts.

Rule 1032(1) prior to amendment listed two defenses and an objection which were not waived even though they were not

raised "by preliminary objection, answer or reply". The list was incomplete as there has been developing case law holding other defenses nonwaivable. Subdivision (a) of the revised rule makes a general reference to these additional nonwaivable defenses.

Rule 1032(1) also specified that a nonwaivable defense or objection "may also be made by a later pleading, if one is permitted, or by motion for judgment on the pleadings or at the trial on the merits". This language has been deleted so that the rule no longer specifies how or when the defense or objection may be raised.

Finally, subdivision (a) reinforces Rule 1030(b) by adding new language providing that a defense is not waived if there is no requirement that it be pleaded.

Rule 1032(2) prior to amendment provided for the dismissal of an action if the court lacked jurisdiction of the subject matter or an indispensable party had not been joined. However, Section 5103 of the Judicial Code relating to the "Transfer of erroneously filed matters" provides for transfer of such matters to a court having jurisdiction and not dismissal. The rule has been amended to conform to the Judicial Code. At the same time, the rule has also been amended to provide that an indispensable party be joined. If there is not proper court to which the matter may be transferred or if the indispensable party cannot be joined, only then dismissal of the action will be appropriate.

Explanatory Comment—2003

See Explanatory Comment preceding Pa.R.C.P. No. 1501.

Rule 1033. Amendment

A party, either by filed consent of the adverse party or by leave of court, may at any time change the form of action, correct the name of a party or amend his pleading. The amended pleading may aver transactions or occurrences which have happened before or after the filing of the original pleading, even though they give rise to a new cause of action or defense. An amendment may be made to conform the pleading to the evidence offered or admitted.

Adopted June 25, 1946, effective Jan. 1, 1947.

Rule 1034. Motion for Judgment on the Pleadings

Text effective until July 26, 2004.

(a) After the relevant pleadings are closed, but within such time as not to unreasonably delay the trial, any party may move for judgment on the pleadings.

Note: Only the pleadings between the parties to the motion for judgment on the pleadings must be closed prior to filing the motion.

(b) The court shall enter such judgment or order as shall be proper on the pleadings.

Adopted June 25, 1946, effective Jan. 1, 1947. Amended Feb. 14, 1996, effective July 1, 1996.

For text effective July 26, 2004, see Pa.R.C.P. No. 1034, post.

Rule 1034. Motion for Judgment on the Pleadings

Text effective July 26, 2004.

June 16, 2003, Davila filed a response to the rule to show cause.

¶ 5 Appellant subsequently hired counsel, Daniel S. Soom, Esq. Appellant then filed a petition to open or strike judgment of *non pros*. This petition contained certificates of merit dated July 3, 2004 to be filed against Jurenovich, Uberti, and Vermelre. No certificate of merit was attached regarding Davila.

¶ 6 On August 26, 2003, after a hearing on the petition to open or strike judgment of *non pros* and rule to show cause, the Honorable J. Craig Cox entered an order denying the petition to open or strike entry of judgment of *non pros*; the court also denied the motion for extension of time for the filing of a certificate of merit against Davila. Judge Cox held that appellant had failed to timely file certificates of merit and failed to timely file a motion for an extension of time. Further, Judge Cox found that appellant offered no reasonable explanation as to the delay in filing certificates of merit.

*2 ¶ 7 On September 16, 2003, appellant filed a notice of appeal and pursuant to the trial court's order, filed a 1925(b) statement of matters complained of on appeal. Instantly, appellant presents the following issue:

WHETHER THE TRIAL COURT ERRED IN DENYING [APPELLANT'S] PETITION TO OPEN OR STRIKE JUDGMENT OF *NON PROS*.

Appellant's brief at 8.

[1] ¶ 8 Initially, we note our well-settled standard of review. The denial of a petition to open and/or strike judgment of *non pros* is subject to the abuse of discretion standard; an exercise of that discretion will not be reversed on appeal unless there is proof of manifest abuse thereof. *Sklar v. Harleysville Insurance Co.*, 526 Pa. 617, 619, 587 A.2d 1386, 1387 (1991).

[2] ¶ 9 Appellant first claims that the judgment of *non pros* should be stricken; he argues that the 60-day "clock" should start to run from the date of the last reinstated complaint or, in his case, April 10, 2003. (Appellant's brief at 11.) Hence, appellant claims that he had until June 10, 2003 to file the appropriate certificates and the entry of judgments of *non pros* on April 29, 2003 was premature. We disagree.

¶ 10 Recently, our supreme court adopted new rules governing liability actions against licensed professionals. See Pa.R.Civ.P. 1042.1-1042.8. Rule 1042.3 provides that in an action based on an allegation that a licensed professional deviated from an acceptable professional standard, the plaintiff's attorney shall file a certificate of merit with the complaint or within 60 days after the filing of the complaint. Pa.R.Civ.P. 1042.3(a). The certificate certifies that another appropriate licensed professional has supplied a written statement that there is a basis to conclude that the care, skill, or knowledge exercised or exhibited by the defendant in the treatment, practice, or work that is the subject of the complaint fell outside acceptable professional standards and that such conduct was a cause in bringing about the harm. A separate certificate must be filed as to each licensed professional named in the complaint. Pa.R.Civ.P. 1042.3(b). Under Rule 1042.3(d), the court upon good cause shown shall extend the time for filing a certificate of merit for a period not to exceed 60 days. Pa.R.Civ.P. 1042.3(d). This rule does not impose any restrictions on the number of extension orders that the court may enter.

¶ 11 If a plaintiff fails to file either a certificate of merit within the required time or a request for an extension, Rule 1042.5 provides that the prothonotary, on praecipe of the defendant, shall enter a judgment of *non pros* against the plaintiff.

¶ 12 Appellant in the instant action filed the original complaint on February 12, 2003 against all of the named defendants. However, due to the inability to effectuate service, appellant had to reinstate the complaint on March 10, 2003 and again on April 10, 2003. The trial court found no ambiguity in the plain requirements of Pa.R.Civ.P. 1042.3(a). We agree. The 60-day time period for the filing of a certificate of merit or for requesting an extension of time clearly runs from the date of the filing of the original complaint, which in this case would be February 12, 2003.

*3 [3] ¶ 13 The term filing, while not specifically defined within the rules of civil procedure, must be accorded its plain meaning according to its common and approved usage. 1 Pa.C.S.A. § 1903. Black's Law Dictionary defines the term filing to mean to "deliver a legal document to the court clerk or record custodian for placement into the official record." Black's Law Dictionary 643 (7th ed.1999). In other words, filing is the initial commencement of an action.

[4] ¶ 14 Furthermore, we agree with the trial court that looking at the common definition of the term "reinstatement" is also helpful. Black's Law Dictionary defines the term "reinstate" to mean "to place again in a former state or position; to restore." Black's Law Dictionary 1290 (7th ed.1999). Additionally, a reading of Rule 401(b), which pertains to the reissuance of a writ or the reinstatement

merit could be filed within 60 days after the reinstatement of the complaint, appellant missed this deadline after both reinstatements.

FN2. The only reference to any other rule in the comment to Rule 1042.6 sets forth that the notice requirements of Rule 237.1 do not apply to a Rule 1042.6 non pros.

FN3. We also note with approval the trial court opinion in Helfrick v. UPMC Shadyside Hospital, 65 Pa. D & C 4th 420 (Pa.Cmwith.2003), authored by the Honorable Stanton R. Wettick, Jr. of the Allegheny County Court of Common Pleas. In addressing the appealability of the reasonable explanation or legitimate excuse prong to a Rule 1042.6 non pros, Judge Wettick offered the following cogent analysis:

Plaintiff's petition does not set forth a reasonable explanation or legitimate excuse for the inactivity (the inactivity being the failure of plaintiff's counsel to file within the sixty day period a certificate of merit or a motion to extend the time for filing the certificate). This will be so in almost every case in which a judgment of non pros is entered for failure to file a certificate of merit. The plaintiff who has a reasonable explanation or legitimate excuse for not being able to timely file a certificate of merit may, instead, file a motion to extend the time for filing the certificate on or before the filing date that the plaintiff seeks to extend. The filing of the motion to extend tolls the time period within which a certificate of merit must be filed until the court rules on the motion. Consequently, an explanation for the inactivity requires an explanation as to why the plaintiff did not within the sixty day period file a motion to extend the time for filing the certificate of merit.

Id. at 423.

Pa.Super.,2004.
Hoover v. Davila
2004 WL 1879849 (Pa.Super.), 2004 PA Super 314
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Superior Court of Pennsylvania.
Larry HOOVER, Appellant

v.

Dr. Ramon A. DAVILA, M.D., Dr. Michael J. Jurenovich, D.O., Edward J. Uberti,
D.O. and Dr. David A. Vermeire, M.D.
No. 1657 WDA 2003.
Aug. 13, 2004.

Background: Patient brought medical malpractice action against four doctors, alleging that they failed to diagnose him with an active draining sinus in the posterior aspect of his left thigh that caused osteomyelitis in his left femur. After prothonotary entered judgment of non pros, the Court of Common Pleas, Lawrence County, Civil Division, No. 10174 of 2003 C.A., J. Craig Cox, J., denied patient's motions to open or strike entry of judgment non pros, and to extend time for filing certificate of merit against one doctor. Patient appealed.

Holdings: The Superior Court, No. 1657 W.D.A. 2003, Ford Elliot, J., held that:

- (1) 60-day period for filing certificate of merit began on date of original complaint, and
- (2) patient was not entitled to extension of time to file.

Affirmed.

[1]

⊕=30 Appeal and Error
⊕=30k0 k.

The denial of a petition to open and/or strike judgment of non pros is subject to the abuse-of-discretion standard; an exercise of that discretion will not be reversed on appeal unless there is proof of manifest abuse thereof.

[2]

⊕=198H Health
⊕=198Hk0 k.

Sixty-day period for filing certificate of merit in medical malpractice action began to run on date of patient's original complaint, not on date of reinstated complaint after failure to effect service, thereby justifying prothonotary's judgment of non pros. Rules Civ.Proc., Rules 1042.3, 1042.6, 42 Pa.C.S.A.

[3]

⊕=13 Action
⊕=13k0 k.

"Filing" is the initial commencement of an action.

[4]

⊕=302 Pleading
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The reinstatement of a complaint simply continues the complaint's validity from the time of the

original filing until the time service is made. Rules Civ. Proc., Rule 401(b), 42 Pa.C.S.A.

[5]

←198H Health
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Patient was not entitled to extension of time to file certificate of merit regarding one doctor in medical malpractice action, where 60-day period for requesting extension had already passed. Rules Civ. Proc., Rule 1042.3(d), 42 Pa.C.S.A.

[6]

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Patient's purported explanation that he was unaware of the new rule of civil procedure requiring certificates of merit in medical malpractice cases, or that he did not understand the rule, did not amount to just cause for untimely filing of certificate. Rules Civ. Proc., Rule 1042.6, 42 Pa.C.S.A.

[7]

←45 Attorney and Client
←45k0 k.

A pro se litigant is not absolved from complying with procedural rules.
Appeal from the Order, August 26, 2003, in the Court of Common Pleas of Lawrence County Civil Division at No. 10174 of 2003 C.A.
Daniel S. Soom, New Castle, for Hoover, appellant.
Daniel P. Carroll, Jr., Pittsburgh, for Davila, appellee.
Deborah Olszewski, Pittsburgh, for Jurenovich, appellee.

Before: FORD ELLIOTT, ORIE MELVIN, and TODD, JJ.

FORD ELLIOTT, J.

*1 ¶ 1 Appellant, Larry J. Hoover, appeals from the order entered August 26, 2003 in the Court of Common Pleas of Lawrence County that denied his motion for an extension of time for filing a certificate of merit and denied his petition seeking to strike or, alternatively, open the judgment of *non pros*. For the reasons that follow, we affirm.

¶ 2 The relevant facts and procedural history are as follows. Appellant initiated a medical malpractice action by filing a *pro se* complaint on February 12, 2003 against the four appellees--Doctors Michael J. Jurenovich ("Jurenovich"), Edward J. Uberti ("Uberti"), David Vermeire ("Vermeire"), and Ramon A. Davila ("Davila"). Appellant alleged that the appellees failed to diagnose him with an active draining sinus in the posterior aspect of his left thigh that caused osteomyelitis in his left femur. The complaint was reinstated on March 10, 2003 and on April 10, 2003. At no time either at the filing of the original complaint or within 60 days thereafter did appellant file the required certificate of merit as set forth in Pa.R.Civ.P. 1042.3 or file a motion seeking an extension of time to file this certificate.

¶ 3 Due to the fact that no certificates of merit were filed, nor was a motion to extend time for filing the certificates pending before the court, on April 29, 2003, Jurenovich, Uberti, and Vermeire filed a praecipe for entry of judgment of *non pros* pursuant to Pa.R.Civ.P. 1042.6. Thereafter, the prothonotary entered a judgment of *non pros* in favor of Jurenovich, Uberti, and Vermeire.

¶ 4 On May 28, 2003, appellant filed a *pro se* motion to extend time for filing a certificate of merit. However, since the judgment of *non pros* was already entered in favor of Jurenovich, Uberti, and Vermeire, the Honorable Ralph D. Pratt ruled that the only action pending was against Davila. Judge Pratt issued a rule to show cause upon Davila to demonstrate why the requested extension of time to file a certificate of merit should not be granted. (See Order of Court, 5/29/03 docket entry # 9.) On

http://web2.westlaw.com/result/documenttext.aspx?FN=_top&rs=EWNL2.0&sv=Split&vr... 8/26/2004

of a complaint, states as follows: "[The] prothonotary upon praecipe and upon presentation of the original process, shall continue its validity by reissuing the writ or reinstating the complaint ..." See Pa.R.Civ.P. 401(b). Thus, the reinstatement of a complaint simply continues the complaint's validity from the time of the original filing until the time service is made.

¶ 15 We agree with the trial court that pursuant to Rule 1042.3 the date upon which the 60-day period must begin is the date of the filing of the original complaint--which in this case is February 12, 2003. (See trial court opinion, 11/20/03 at 4-5.) Thus, the 60-day period ended on April 14, 2003; and the entry of judgment of *non pros* for failure to timely file the certification was not in error. Pa.R.Civ.P. 1042.6.

[5] ¶ 16 Appellant also raises an argument as to the trial court's failure to grant him an extension of time to file a certificate of merit regarding appellee Davila. We find that the trial court did not err in refusing to grant such an extension, as the 60-day period to request this had already lapsed by the time appellant sought the extension on May 21, 2003. See Pa.R.Civ.P. 1042.3(d). It is of no consequence that appellant had been proceeding *pro se*. The rule clearly states "the attorney for the plaintiff, or the plaintiff if not represented, shall file with the complaint or within sixty days after the filing of the complaint, a certificate of merit ..." Pa.R.Civ.P. 1042.3 (emphasis added). [FN1]

[6] ¶ 17 Next, appellant contends that the trial court erred in its failure to consider the factors enumerated at Pa.R.Civ.P. 3051 when considering his petition to open the judgment of *non pros*. (Appellant's brief at 14.)

¶ 18 Rule 1042.6(a) states: "The prothonotary, on praecipe of the defendant, shall enter a judgment of *non pros* against the plaintiff for failure to file a certificate of merit within the required time provided that there is no pending timely filed motion seeking to extend the time to file the certificate."

¶ 19 The trial court without explanation determined that the comments to Rule 1042.6 precluded the application of Pa.R.Civ.P. 3051. We cannot understand this rationale. [FN2] Rule 3051 governs relief from a judgment of *non pros* whether entered on praecipe or by the court and sets forth as follows: Rule 3051. Relief from Judgment of Non Pros

¶ 4
(b) If the relief sought includes the opening of the judgment, the petition shall allege facts showing that

- (1) the petition is timely filed,
- (2) there is a reasonable explanation or legitimate excuse for the inactivity or delay, and
- (3) there is a meritorious cause of action.

Pa.R.Civ.P. 3051(b)(1-3).

¶ 20 As set forth in the comments to the rule, its purpose is to provide uniformity of practice involving all types of *non pros* judgments:

The rule will apply in all cases in which relief from a judgment of *non pros* is sought, whether the judgment has been entered by praecipe as of right or by the court following a hearing. Where the court has not participated in the entry of judgment, the rule will provide a procedure for court involvement and the making of a record which an appellate court will be able to review.

Pa.R.Civ.P. 3051, comment.

¶ 21 While we might remand for the trial court's review of the motion to open pursuant to the Rule 3051 standard, we decline to do so because on the face of the record, appellant cannot meet the requirement of the rule that any delay be reasonably explained. Appellant's purported explanation is that he was unaware of the new rule of civil procedure requiring certificates of merit or that he did not understand the rule. We find this explanation does not amount to just cause for the untimely filing. [FN3]

[7] ¶ 22 A *pro se* litigant is not absolved from complying with procedural rules. Jones v. Rudenstein, 401 Pa.Super. 400, 585 A.2d 520, 522 (Pa.Super.1991), appeal denied, 529 Pa. 634, 600 A.2d 954 (1991). The fact that appellant initially proceeded *pro se* does not absolve him of the responsibility to comply with procedural rules, new or old. See Commonwealth v. Abu-Jamal, 521 Pa. 188, 200, 555 A.2d 846, 852 (1989) (*pro se* litigant is subject to same rules of procedure as is a counseled defendant). Additionally, Rule 1042.3(a) specifically contemplates *pro se* plaintiffs; thus, appellant's compliance can not be excused due to ignorance of the rules.

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[FN1. Additionally, even if we were to accept appellant's argument that the certificates of

June 16, 2003, Davila filed a response to the rule to show cause.

¶ 5 Appellant subsequently hired counsel, Daniel S. Soom, Esq. Appellant then filed a petition to open or strike judgment of *non pros*. This petition contained certificates of merit dated July 3, 2004 to be filed against Jurenovich, Uberti, and Vermelre. No certificate of merit was attached regarding Davila.

¶ 6 On August 26, 2003, after a hearing on the petition to open or strike judgment of *non pros* and rule to show cause, the Honorable J. Craig Cox entered an order denying the petition to open or strike entry of judgment of *non pros*; the court also denied the motion for extension of time for the filing of a certificate of merit against Davila. Judge Cox held that appellant had failed to timely file certificates of merit and failed to timely file a motion for an extension of time. Further, Judge Cox found that appellant offered no reasonable explanation as to the delay in filing certificates of merit.

*2 ¶ 7 On September 16, 2003, appellant filed a notice of appeal and pursuant to the trial court's order, filed a 1925(b) statement of matters complained of on appeal. Instantly, appellant presents the following issue:

WHETHER THE TRIAL COURT ERRED IN DENYING [APPELLANT'S] PETITION TO OPEN OR STRIKE JUDGMENT OF *NON PROS*.

Appellant's brief at 8.

[1] ¶ 8 Initially, we note our well-settled standard of review. The denial of a petition to open and/or strike judgment of *non pros* is subject to the abuse of discretion standard; an exercise of that discretion will not be reversed on appeal unless there is proof of manifest abuse thereof. Sklar v. Harleysville Insurance Co., 526 Pa. 617, 619, 587 A.2d 1386, 1387 (1991).

[2] ¶ 9 Appellant first claims that the judgment of *non pros* should be stricken; he argues that the 60-day "clock" should start to run from the date of the last reinstated complaint or, in his case, April 10, 2003. (Appellant's brief at 11.) Hence, appellant claims that he had until June 10, 2003 to file the appropriate certificates and the entry of judgments of *non pros* on April 29, 2003 was premature. We disagree.

¶ 10 Recently, our supreme court adopted new rules governing liability actions against licensed professionals. See Pa.R.Civ.P. 1042.1-1042.8. Rule 1042.3 provides that in an action based on an allegation that a licensed professional deviated from an acceptable professional standard, the plaintiff's attorney shall file a certificate of merit with the complaint or within 60 days after the filing of the complaint. Pa.R.Civ.P. 1042.3(a). The certificate certifies that another appropriate licensed professional has supplied a written statement that there is a basis to conclude that the care, skill, or knowledge exercised or exhibited by the defendant in the treatment, practice, or work that is the subject of the complaint fell outside acceptable professional standards and that such conduct was a cause in bringing about the harm. A separate certificate must be filed as to each licensed professional named in the complaint. Pa.R.Civ.P. 1042.3(b). Under Rule 1042.3(d), the court upon good cause shown shall extend the time for filing a certificate of merit for a period not to exceed 60 days. Pa.R.Civ.P. 1042.3(d). This rule does not impose any restrictions on the number of extension orders that the court may enter.

¶ 11 If a plaintiff fails to file either a certificate of merit within the required time or a request for an extension, Rule 1042.6 provides that the prothonotary, on praecipe of the defendant, shall enter a judgment of *non pros* against the plaintiff.

¶ 12 Appellant in the instant action filed the original complaint on February 12, 2003 against all of the named defendants. However, due to the inability to effectuate service, appellant had to reinstate the complaint on March 10, 2003 and again on April 10, 2003. The trial court found no ambiguity in the plain requirements of Pa.R.Civ.P. 1042.3(a). We agree. The 60-day time period for the filing of a certificate of merit or for requesting an extension of time clearly runs from the date of the filing of the original complaint, which in this case would be February 12, 2003.

*3 [3] ¶ 13 The term filing, while not specifically defined within the rules of civil procedure, must be accorded its plain meaning according to its common and approved usage. 1 Pa.C.S.A. § 1903. Black's Law Dictionary defines the term filing to mean to "deliver a legal document to the court clerk or record custodian for placement into the official record." Black's Law Dictionary 643 (7th ed.1999). In other words, filing is the initial commencement of an action.

[4] ¶ 14 Furthermore, we agree with the trial court that looking at the common definition of the term "reinstatement" is also helpful. Black's Law Dictionary defines the term "reinstate" to mean "to place again in a former state or position; to restore." Black's Law Dictionary 1290 (7th ed.1999). Additionally, a reading of Rule 401(b), which pertains to the reissuance of a writ or the reinstatement

merit could be filed within 60 days after the reinstatement of the complaint, appellant missed this deadline after both reinstatements.

FN2. The only reference to any other rule in the comment to Rule 1042.6 sets forth that the notice requirements of Rule 237.1 do not apply to a Rule 1042.6 non pros.

FN3. We also note with approval the trial court opinion in Helfrick v. UPMC Shadyside Hospital, 65 Pa. D & C 4th 420 (Pa.Cmwlth.2003), authored by the Honorable Stanton R. Wettick, Jr. of the Allegheny County Court of Common Pleas. In addressing the appealability of the reasonable explanation or legitimate excuse prong to a Rule 1042.6 non pros, Judge Wettick offered the following cogent analysis:

Plaintiff's petition does not set forth a reasonable explanation or legitimate excuse for the inactivity (the inactivity being the failure of plaintiff's counsel to file within the sixty day period a certificate of merit or a motion to extend the time for filing the certificate). This will be so in almost every case in which a judgment of non pros is entered for failure to file a certificate of merit. The plaintiff who has a reasonable explanation or legitimate excuse for not being able to timely file a certificate of merit may, instead, file a motion to extend the time for filing the certificate on or before the filing date that the plaintiff seeks to extend. The filing of the motion to extend tolls the time period within which a certificate of merit must be filed until the court rules on the motion. Consequently, an explanation for the inactivity requires an explanation as to why the plaintiff did not within the sixty day period file a motion to extend the time for filing the certificate of merit.

Id. at 423.

Pa.Super.,2004.
Hoover v. Davila
2004 WL 1879849 (Pa.Super.), 2004 PA Super 314
END OF DOCUMENT

Copr. (C) 2004 West. No Claim to Orig. U.S. Govt. Works.

In The Court Of Common Pleas Of Clearfield County, Pennsylvania
Civil Division

James E. Comer,
Plaintiff

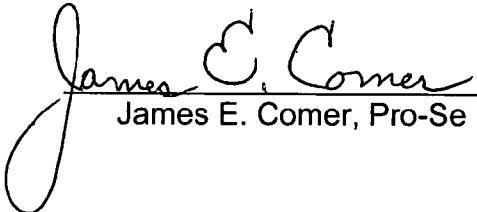
vs.

Civil Action # 04-1082


Clearfield Hospital,
Defendant

Motion To Withdraw

COMES NOW your plaintiff, James E. Comer, pro-se, who, on this 18th day of October, 2004, wishes to withdraw his complaint against defendant, Clearfield Hospital, to include all subsequent pleadings, claims, motions and amendments filed pursuant to this case and its defendant.


James E. Comer, Pro-Se

James E. Comer
519 Williams St. , Apt 11
Clearfield, PA. 16830

FILED
OCT 18 2004 
0/3140/1me
William A. Shaw
Prothonotary/Clerk of Courts
1 COPY TO PLFF..

In the Court of Common Pleas of Clearfield County, Pennsylvania

Civil Division

orig to
CIA

FILED
COPY
JUL 16 2004
William A. Shaw
Prothonotary/Clerk of Courts

James E. Comer
Plaintiff

vs.

Clearfield Hospital
Defendant

No. 04-1082- C.D.AFFIDAVIT IN SUPPORT OF PETITION TO PROCEED IN FORMA PAUPERIS

1. I am the Plaintiff/Defendant in the above matter and because of my financial condition I am unable to pay the fees and costs of prosecuting or defending the action or proceeding.
2. I am unable to obtain funds from anyone, including my family, friends and associates, to pay the costs of litigation.
3. I represent that the information below relating to my ability to pay the costs and fees is true and correct.

a. Name James E. Comer
Address 519 Williams St., Apt #11
Clearfield, PA 16830
Social Security Number 293 - 44 - 8995

b. Date of last employment April 2000
Employer Self
Address 1368 Spyglass Circle, Murrieta, CA
Salary/Wages..... \$ 42,000 yr.
Type of work Website Design

In the Court of Common Pleas of Clearfield County, Pennsylvania

Civil Division

FILED

JUL 16 2004

William A. Shaw
Prothonotary/Clerk of CourtsJames E. Comer
Plaintiff

vs.

Clearfield Hospital
Defendant

No. 04-1082- C.D.

AFFIDAVIT IN SUPPORT OF PETITION TO PROCEED IN FORMA PAUPERIS

1. I am the Plaintiff/Defendant in the above matter and because of my financial condition I am unable to pay the fees and costs of prosecuting or defending the action or proceeding.
2. I am unable to obtain funds from anyone, including my family, friends and associates, to pay the costs of litigation.
3. I represent that the information below relating to my ability to pay the costs and fees is true and correct.

a. Name James E. Comer
 Address 519 Williams St., Apt #11
Clearfield, PA 16830
 Social Security Number 293 - 44 - 8995

b. Date of last employment April 2000
 Employer Self
 Address 1368 Spyglass Circle, Murrieta, CA
 Salary/Wages..... \$ 42,000 yr.
 Type of work Website Design

c. Other Income:

Business/Profession.....	\$	n/a
Self-employment.....	\$	n/a
Interest.....	\$	n/a
Dividends.....	\$	n/a
Pension.....	\$	n/a
Annuities.....	\$	n/a
Social Security Benefits.....	\$	591.40 mo. SSI
Support Payments.....	\$	n/a
Disability payments.....	\$	n/a
Unemployment Compensation/ Supplements Benefits.....	\$	n/a
Workmen's Compensation.....	\$	n/a
Public Assistance.....	\$	n/a
Food Stamps.....	\$	n/a
Other.....	\$	n/a

d. Other contributions to my household support (please circle):

Name of Spouse, Boyfriend/Girlfriend, or Roommate/Housemate

n/a

Employer n/a

Salary/wages per month... n/a \$ n/a

Type of work n/a

Contributions from my child(ren)... \$ n/a

Contributions from my parent(s),
family members, or any other

individuals... \$ n/a

e. Property Owned:

Cash..... \$ 6.00

Checking Account..... \$ n/a

Savings Account..... \$ n/a

Certificates of Deposit..... \$ n/a

Real Estate (including home)..... \$ n/a

Motor Vehicle(s) - Make Oldsmobile Cierra

Year 1988

Cost..... \$ 800.00

Amount owed..... \$ 0

Stocks, bonds..... \$ n/a
 Other..... \$ n/a
 Other..... \$ n/a
 Other..... \$ n/a

f. I have the following debts:

Utilities: \$ 30 .00, explain Electric
 \$ 6 .00, explain Phone
 \$ n/a .__, explain ____
 \$ n/a .__, explain ____
 Groceries: \$ 200 .00 mo.
 Rent/Mortgage: \$ 138 .00, explain Shelter Plus Program
 Loan(s): \$ n/a .__, explain ____
 Auto Expense: \$ 87 .00, explain Insurance
 Child Care: \$ n/a .__, explain ____
 Miscellaneous: \$ 80 .00, explain Gasoline

g. Person(s) dependent upon you for support:

Wife/Husband's name n/a

Children, if any:

Name	<u>n/a</u>	Age	____
Name	<u>n/a</u>	Age	____
Name	<u>n/a</u>	Age	____
Name	<u>n/a</u>	Age	____
Name	<u>n/a</u>	Age	____
Name	<u>n/a</u>	Age	____

Other person(s) dependent upon you:

Name	<u>n/a</u>	Age	____
Name	<u>n/a</u>	Age	____
Name	<u>n/a</u>	Age	____

4. I understand that I have a continuing obligation to inform the Court of improvements in my financial circumstances which would permit me to pay the costs incurred herein.

VERIFICATION

I verify that the statements made in this affidavit are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. Section 4904, relating to Unsworn Falsification to Authorities.

07/15/2004

Date

James E. Comer

Petitioner

CONSENT FOR RELEASE OF CONFIDENTIAL INFORMATION

I, James E. Comer, having filed with the Court an Affidavit requesting In Forma Pauperis standing, hereby consent to the release of any information which may be requested by the Judges of the Court of Common Pleas of Clearfield County, or by any employee of the Court Administrator's Office acting on the behalf and at the direction of any said Judge, relating to any employment compensation, Worker's Compensation, Social Security, Department of Public Welfare or Black Lung benefits which I may receive from any county, state or federal agency which administers or handles processing of any of the above described benefits. This consent shall also authorize the release to the said Court or designee of any information as to any compensation I am receiving, or have received in the past twelve (12) months, from any full or part-time employment of any type whatsoever.

This consent shall remain in effect for a period of twelve (12) months herefrom. A copy or FAX of this release shall have the same legal effect as the original.

Social Security Number: 293 - 44 - 8995

Board of Assistance Number (food stamps, etc.): N/A

DATE: 07 / 15 / 2004

James E. Comer
signature

DATE: 07/15/2004

NAME: James E. Comer

TELEPHONE NUMBER: (814) 765 - 4998

ADDRESS: 519 Williams St., Apt #11
Clearfield, PA 16830

OTHER PARTIES INVOLVED: n/a

REASON FOR FILING THIS PETITION (Write a brief description of your financial problem(s), please be specific. Failure to do so could result in your request being delayed or denied.) (Example: request for filing fee or Mediation Conference fee to be waived due to your inability to submit the required fee because...)

I am unable to submit the filing fee because
I only receive \$591.40 a month. After paying rent,
car insurance, food, gasoline, utilities, etc, I only
have about \$50.00 to get me thru the month.
I only receive SSI - \$591.40 mo.

TYPE OF ACTION: (divorce, custody, District Justice appeal, etc. Please specify what type of action you are pursuing through this application.)

Civil Action (Medical Negligence)

In the Court of Common Pleas of Clearfield County, Pennsylvania
Civil Division

James E. Comer
Plaintiff

vs.
Clearfield Hospital
Defendant

*
*
*
*
*
*
*
*
*

No. 04-1082- C.D.

O R D E R

NOW, this 19 day of July,
2004, upon consideration of the foregoing Affidavit in Support
of Petition to Proceed in Forma Pauperis, it is the ORDER of this
Court that said Petition is GRANTED / ~~GRANTED~~.

FSA
If the Petition is GRANTED, Filing / ~~Mediation~~ Conference
fee is hereby WAIVED.

By the Court,

[Signature]
JUDGE

FILED

JUL 21 2004

William A. Shaw
Prothonotary/Clerk of Courts

In The Court of Common Pleas of Clearfield County, Pennsylvania
Civil Division

James E. Comer,

Plaintiff

vs.

Civil Action # 04-1082-C2

Clearfield Hospital,

Defendant

NOTICE

You have been sued in court. If you wish to defend against the claim(s) 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 GO TO THE YELLOW PAGES OF YOUR TELEPHONE BOOK WHERE YOU WILL FIND FORTY SEVEN LAWYERS PRACTICING IN THE CITY OF CLEARFIELD, PA.

James E. Comer
Plaintiff, Pro-Se
519 Williams St. #11
Clearfield, PA 16830
814-765-4998

FILED ^{1cc}
013:16:51 ^{Piff}
JUL 26 2004
WAS
William A. Shaw
Prothonotary/Clerk of Courts

In The Court Of Common Pleas Of Clearfield County, Pennsylvania
Civil Division

James E. Comer,

Plaintiff

vs.

Civil Action # _____

Clearfield Hospital,

Defendant

Civil Complaint

IN THIS HONORABLE COURT, your plaintiff, James E. Comer, pro-se, enters into action this complaint, historically styled Civil Complaint, in compliance with the Pennsylvania Rules of Civil Procedure. Pursuant to the above matter, plaintiff offers the following allegations, evidence, statements and claims, setting forth a cause of action in this case:

I. Parties

1. Plaintiff: James E. Comer
519 Williams St., Apt 11
Clearfield, PA. 16830
(814) 765-4998
2. Defendant: Clearfield Hospital
809 Turnpike Ave.
Clearfield, PA. 16830
(814) 765-5341

II. Preamble

3. That, on June 28, 2004, at 4: 20 am., plaintiff was admitted to the Clearfield Hospital Emergency Room at 809 Turnpike Ave., Clearfield, PA, where he was treated for a prescription drug overdose following a severe panic attack. Plaintiff was treated by Dr. James Desantis, an employee of Clearfield Hospital, who discharged plaintiff from the emergency room at 8:59 am. MOREOVER, plaintiff states that Dr. Desantis allowed plaintiff to drive away from the hospital property following plaintiff's discharge at 8:59 am.
4. That, on June 28, 2004, at approximately 9:15 am., plaintiff drove his car out of the hospital parking lot, and, after driving a short distance, began to experience confusion and impaired coordination, resulting in plaintiff driving left of center, leaving the road and striking a pile of boulder size rocks, causing extensive damage to his car and physical pain to his head and back.

III. Allegations Of Medical Malpractice/Negligence

5. That, on June 28, 2004, at 8:59 am., Clearfield Hospital, hereafter known as defendant, became responsible for the negligence of its employee, Dr. James Desantis, after Dr. Desantis allowed plaintiff to drive away from the hospital less than three (3) hours after treating plaintiff for an overdose of thirty eight (38) ¹Xanax tablets, prescribed to him for severe anxiety and panic attack.

(2)

¹ Xanax is a very strong tranquilizer used in treating panic attacks and anxiety. Overdose symptoms include: Confusion, impaired coordination, coma.

Plaintiff states that, while driving his car away from the hospital, he quickly returned to an impaired and confused state causing him to lose control of his car, drive left of center, then strike a pile of boulder size rocks.

6. That, defendant was indeed negligent when its employee, Dr. James Desantis, discharged plaintiff from the emergency room prematurely and allowed plaintiff to drive away from the hospital while plaintiff was still under the influence of a drug overdose as described in counts 3, 4 and 5 above.

IV. Evidence In Support Of Allegations

7. That, evidence in the form of documents, medical records and testimony will be presented by plaintiff to show just cause in this case. Furthermore, plaintiff will introduce statements and testimony from the following sources:
 - a) Former assistant Director of Emergency Services of Clearfield Hospital who now practices law in Philadelphia.
 - b) Medical personnel from three (3) area hospitals.
 - c) Personal physicians.

V. Demand

8. Plaintiff demands that this case be tried by a judge.

VI. Claim For Relief

9. Plaintiff requests the following relief pursuant to the above-stated cause:

- a) Relief in the amount of \$1,800.00 to compensate the loss of plaintiff's car.
- b) Relief in the amount of \$5,000.00 to compensate the pain and suffering experienced by plaintiff from June 28, 2004 to present.
- c) Exemplary consideration (punitive) in the amount of \$5,000.00.

IIV. Prayer

10. Your plaintiff in the above matter prays that this Court grants him relief, as claimed above, and awards him any other form of relief deemed just and proper.

James E. Comer
Plaintiff, Pro-Se
519 Williams St, Apt 11
Clearfield, PA 16830
814 (765)-4998

Date: 7/26/04

JAMES E. COMER,

Plaintiff,

vs.

CLEARFIELD HOSPITAL,

Defendant.

: IN THE COURT OF COMMON PLEAS
: OF CLEARFIELD COUNTY, PA
: CIVIL ACTION – LAW

: No. 04-1082-CD

: ISSUE:
: Praecipe for Appearance

: FILED ON BEHALF OF DEFENDANT

: COUNSEL OF RECORD FOR
: DEFENDANT:

: Frank J. Hartye, Esquire
: P.A. I.D. No. 25568
: McIntyre, Dugas, Hartye & Schmitt
: P.O. Box 533
: Hollidaysburg, PA 16648
: 814/696-3581

I hereby certify that a true and correct
copy of the within was mailed to
all parties of record this 6th day of
August, 2004.


Attorney for Defendant


FILED

3/11:30 PM
AUG 09 2004

William A. Shaw
Prothonotary/Clerk of Courts

JAMES E. COMER,

Plaintiff,

vs.

CLEARFIELD HOSPITAL,

Defendant.

: IN THE COURT OF COMMON PLEAS
: OF CLEARFIELD COUNTY, PA
: CIVIL ACTION – LAW

: No. 04-1082-CD

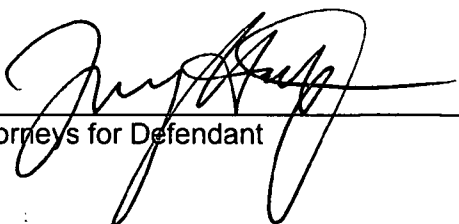
: JURY TRIAL DEMANDED

PRAECIPE FOR APPEARANCE

TO: PROTHONOTARY

Enter my Appearance on behalf of defendant, CLEARFIELD HOSPITAL.

Papers may be served at the address set forth below.



Attorneys for Defendant

McINTYRE, DUGAS, HARTYE & SCHMITT
Frank J. Hartye, Esquire
PA I.D. #25568
P.O. Box 533
Hollidaysburg, PA 16648-0533
PH: (814) 696-3581
FAX: (814) 696-9399

Date: August 6, 2004

JAMES E. COMER,

Plaintiff,

vs.

CLEARFIELD HOSPITAL,

Defendant.

: IN THE COURT OF COMMON PLEAS
: OF CLEARFIELD COUNTY, PA
: CIVIL ACTION – LAW

: No. 04-1082-CD

: ISSUE:
: **PRELIMINARY OBJECTIONS TO**
: **PLAINTIFF'S COMPLAINT**

: FILED ON BEHALF OF DEFENDANT

: COUNSEL OF RECORD FOR
: DEFENDANT:

: Frank J. Hartye, Esquire
: P.A. I.D. No. 25568
: McIntyre, Dugas, Hartye & Schmitt
: P.O. Box 533
: Hollidaysburg, PA 16648
: 814/696-3581

I hereby certify that a true and correct
copy of the within was mailed to
all counsel of record this 10th day of
August, 2004.



Attorney for Defendant

FILED

AUG 11 2004

W. A. Shaw
William A. Shaw

Prothonotary/Clerk of Courts

No. 04-1082-CD

JAMES E. COMER,

Plaintiff,

vs.

CLEARFIELD HOSPITAL,

Defendant.

: IN THE COURT OF COMMON PLEAS
: OF CLEARFIELD COUNTY, PA
: CIVIL ACTION - LAW

: No. 04-1082-CD

: JURY TRIAL DEMANDED

ORDER OF COURT

AND NOW, this 31ST day of AUGUST, 2004, upon consideration of the Preliminary Objections filed in this matter, it is hereby ordered, directed and decreed that the plaintiff shall amend his Complaint within twenty (20) days to set forth that the Defendant, Clearfield Hospital, is a licensed professional and that plaintiff is asserting a professional liability claim against Clearfield Hospital, consistent with Pennsylvania Rule of Civil Procedure 1042.2.

BY THE COURT:


J.

FILED
d/12:57/BL
AUG 31 2004
William A. Shaw
Prothonotary/Clerk of Courts
1cc Atty Hartye

JAMES E. COMER,

Plaintiff,

vs.

CLEARFIELD HOSPITAL,

Defendant.

: IN THE COURT OF COMMON PLEAS
: OF CLEARFIELD COUNTY, PA
: CIVIL ACTION – LAW

: No. 04-1082-CD

: JURY TRIAL DEMANDED

PRELIMINARY OBJECTIONS TO PLAINTIFF'S COMPLAINT

AND NOW, comes the Defendant, CLEARFIELD HOSPITAL, by and through its attorneys, McINTYRE, DUGAS, HARTYE & SCHMITT, and files the following Preliminary Objections to plaintiff's Complaint:

1. Plaintiff initiated the within action by filing a Complaint on or about July 26, 2004.
2. Plaintiff's Complaint alleges that he was a patient in the Emergency Department at Clearfield Hospital on July 28, 2004, at which time he was seen and treated by Dr. James DeSantis.
3. Plaintiff alleges that he took an overdose of Xanax tablets prior to coming to the Emergency Department and that he was discharged from the Emergency Department prematurely which led to a motor vehicle accident and resulting injuries and damages.
4. Finally, plaintiff's Complaint alleges that Dr. James DeSantis was an employee of Clearfield Hospital and was negligent in discharging the plaintiff approximately 4 ½ hours after the initial admission.
5. Pennsylvania Rule of Civil Procedure 1042.2 requires a Complaint to identify each defendant against whom plaintiff is asserting a professional liability claim

asserting that they are a licensed professional and this is in fact a professional liability claim.

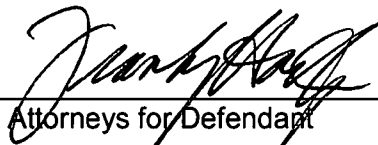
6. Although plaintiff's Complaint appears to set forth a professional liability claim that is he is alleging negligence on the part of a licensed professional (Dr. DeSantis and/or Clearfield Hospital) plaintiff's Complaint does not set forth the required language of Rule 1042.2.

7. Rule 1042.2(b) provides that a defendant may raise by Preliminary Objections the failure of the Complaint to comply with this Rule.

WHEREFORE, Defendant, Clearfield Hospital, requests this Honorable Court to enter an Order requiring plaintiff to amend his Complaint to include the appropriate language that Defendant, Clearfield Hospital, is a licensed professional and that the plaintiff is asserting a professional liability claim against it as required by the Pennsylvania Rules of Civil Procedure.

Respectfully submitted,

McINTYRE, DUGAS, HARTYE & SCHMITT

By 
Attorneys for Defendant

Frank J. Hartye, Esquire
PA I.D. #25568
P.O. Box 533
Hollidaysburg, PA 16648
(814) 696-3581

TO: PLAINTIFF

YOU ARE HEREBY NOTIFIED TO FILE
A WRITTEN RESPONSE TO THE
ENCLOSED **PRELIMINARY OBJECTIONS**
WITHIN TWENTY (20) DAYS FROM
SERVICE HEREOF OR A JUDGMENT
MAY BE ENTERED AGAINST YOU.



Attorneys for Defendant

7-11-13

AB 1100

10/1/13

In The Court of Common Pleas of Clearfield County, Pennsylvania

COMER, JAMES E.

VS.

CLEARFIELD HOSPITAL

CIVIL COMPLAINT

Sheriff Docket # 16009

04-1082-CD

SHERIFF RETURNS

NOW JULY 28, 2004 AT 1:36 PM SERVED THE WITHIN CIVIL COMPLAINT ON CLEARFIELD HOSPITAL, DEFENDANT AT EMPLOYMENT, 809 TURNPIKE AVE., CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO ELAINE C. KARCHNER, P.I.C. A TRUE AND ATTESTED COPY OF THE ORIGINAL CIVIL COMPLAINT AND MADE KNOWN TO HER THE CONTENTS THEREOF.
SERVED BY: HUNTER

Return Costs

Cost	Description
20.37	SHERIFF HAWKINS PAID BY: IFP
0.00	NO SURCHARGE (IFP)

Sworn to Before Me This

17th Day Of August 2004

William A. Shaw

Prothonotary

My Commission Expires

1st Monday in Jan. 2006

Clearfield Co., Clearfield, PA

So Answers,

Chester A. Hawkins
by Marilyn Harris

Chester A. Hawkins

Sheriff

FILED

01/10:12am

AUG 17 2004

William A. Shaw
Prothonotary

CA
In The Court Of Common Pleas Of Clearfield County, Pennsylvania
Civil Division

James E. Comer,

Plaintiff

vs.

Civil Action # 04-1082

Clearfield Hospital,

Defendant

FILED

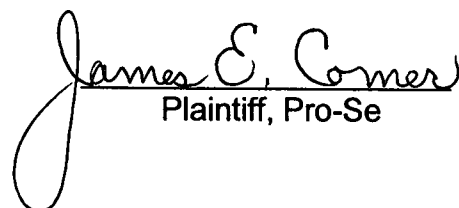
AUG 25 2004
01:22:51
William A. Shaw
Prothonotary/Clerk of Courts
I came to Plaintiff

Motion For Adjudicated Relief

COMES NOW, your plaintiff, pro-se, and moves this Court to issue an Order compelling defendant, Clearfield Hospital, to release any and all medical records, pursuant to the above case, at no cost to plaintiff. Plaintiff states that he filed the above case under Forma Pauperis, AND, is unable to pay for the above requested medical records which are important to his case.

FURTHERMORE, plaintiff served the attached Subpeona Duces Tecum on August 25, 2004 asking that certain medical records be released to him. Defendant claimed that payment for such records would be demanded before records would be released.

WHEREFORE, plaintiff prays that this honorable Court, after determining that his status as a pauper prevents him from paying for medical records important to his case, issue an Order compelling defendant to release those medical records to plaintiff, at no cost.


James E. Comer
Plaintiff, Pro-Se

CA

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

JAMES E. COMER,
Plaintiff

vs.

CLEARFIELD HOSPITAL,
Defendants

*
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*
*

No. 2004-1082-C.D.

O R D E R

NOW, this 27th day of August, 2004, the Court being in receipt of the Plaintiff's pro se Motion for Adjudicated Relief; that notwithstanding the Plaintiff having been granted In Forma Pauperis standing, the Court has no authority to require Defendant, Clearfield Hospital, to provide medical records at no cost; it is therefore the ORDER of this Court that the Motion for Adjudicated Relief be and is hereby dismissed.

By the Court,



FREDRIC J. AMMERMAN
President Judge

FILED

AUG 30 2004

William A. Shaw
Prothonotary/Clerk of Courts

JAMES E. COMER,

Plaintiff,

vs.

CLEARFIELD HOSPITAL,

Defendant.

: IN THE COURT OF COMMON PLEAS
: OF CLEARFIELD COUNTY, PA
: CIVIL ACTION – LAW

:
: No. 04-1082-CD
:

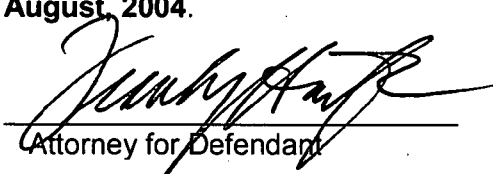
: ISSUE:
: **PRAECIPE FOR ARGUMENT**
:

:
: FILED ON BEHALF OF DEFENDANT
:

: COUNSEL OF RECORD FOR
: DEFENDANT:
:

: Frank J. Hartye, Esquire
: P.A. I.D. No. 25568
: McIntyre, Dugas, Hartye & Schmitt
: P.O. Box 533
: Hollidaysburg, PA 16648
: 814/696-3581

I hereby certify that a true and correct
copy of the within was mailed to
all parties of record this 10TH day of
August, 2004.



Attorney for Defendant

FILED

AUG 11 2004 *EAS*
m 12:00 / am
William A. Shaw
Prothonotary/Clerk of Courts
W. A. Shaw

JAMES E. COMER,

Plaintiff,

vs.

CLEARFIELD HOSPITAL,

Defendant.

: IN THE COURT OF COMMON PLEAS
: OF CLEARFIELD COUNTY, PA
: CIVIL ACTION – LAW

: No. 04-1082-CD

: JURY TRIAL DEMANDED

PRAECIPE

TO: PROTHONOTARY

Kindly list the above-captioned matter for the next available argument list. The matter to be argued is Preliminary Objections on behalf of Defendant, Clearfield Hospital.

Respectfully submitted,

McINTYRE, DUGAS, HARTYE & SCHMITT



Attorneys for Defendant

Frank J. Hartye, Esquire
PA I.D. #25568
P.O. Box 533
Hollidaysburg, PA 16648
(814) 696-3581
(814) 696-9399 – Fax

In The Court Of Common Pleas Of Clearfield County, Pennsylvania
Civil Division

James E. Comer,

Plaintiff

vs.

Civil Action # 04-1082

Clearfield Hospital,

Defendant

FILED ^{ICC}
01/2-10/04 P/ff
AUG 19 2004 _{2/10}

William A. Shaw
Prothonotary/Clerk of Courts

Plaintiff's Response To Defendant's Preliminary Objections

COMES NOW your plaintiff, pro-se, and files the following Plaintiff's Response To Defendant's Preliminary Objections, as follows:

1. That, on August 10, 2004, defendant filed Preliminary Objections To Plaintiff's Complaint alleging that plaintiff's complaint does not conform to rule or law, in that, the complaint does not include the language set-forth in Rule 1042.2 of the Pennsylvania Rules Of Civil Procedure (professional liability claim).
FURTHERMORE, defendant's Objections asks that an Order be entered requiring plaintiff to amend his Complaint to conform to Rule 1042.2 .


WHEREFORE, Plaintiff agrees to amend his complaint, by Order of this Court, to include the language set forth in Rule 1042.2, and, by privilege, include additional allegations and relief.


Plaintiff, Pro-Se

Certificate Of Service

I, the undersigned, do hereby certify that a true and correct copy of the foregoing
Plaintiff's Response To Defendant's Preliminary Objections was sent by first class
mail on this 19th day of August, 2004, to the following:

Frank J. Hartye, Esq.
P.O. Box 533
Hollidaysburg, PA 16648


Plaintiff, Pro-Se

In The Court Of Common Pleas Of Clearfield County, Pennsylvania
Civil Division

James E. Comer,

Plaintiff

vs.

Amended Civil Action # 04-1082

Clearfield Hospital,
Dr. James DeSantis,
Monica Smith,

Defendants

Amended Complaint

IN THIS HONORABLE COURT, your plaintiff, James E. Comer, pro-se, enters into action this civil complaint, amended, reformed and refiled on this 31st day of August, 2004. Pursuant to Rule 1042.2 of the Pennsylvania Rules Of Civil Procedure plaintiff hereby asserts a professional liability claim against all defendants who are licensed professionals with offices in Clearfield County, Pennsylvania. Plaintiff offers the following allegations, statements and claims setting forth a cause of action in this case:

I. Parties

1. Plaintiff: James E. Comer
519 Williams St. Apt 11
Clearfield, PA 16830
(814) 765-4998

(1)

26K
FILED ^{icc}
013.04.01 ^{Piff}
AUG 31 2004

William A. Shaw
Prothonotary/Clerk of Courts

2. Defendants: Clearfield Hospital
809 Turnpike Ave.
Clearfield, PA 16830
(814) 765-5341

Dr. James DeSantis
809 Turnpike Ave.
Clearfield, PA 16830
(814) 765-5341

Monica Smith
809 Turnpike Ave.
Clearfield, PA 16830
(814) 765-5341

II. Procedural History

3. July 26, 2004, plaintiff filed a Civil Complaint in this Court alleging medical malpractice on the part of Clearfield Hospital, defendant.
4. August 10, 2004, defendant filed Preliminary Objections To Plaintiff's Complaint alleging that plaintiff's complaint did not conform to rule or law, in that, the complaint failed to include the language set-forth in Rule 1042.2 of the Pennsylvania Rules Of Civil Procedure. Defendant further asked that an Order be issued requiring that plaintiff amend his complaint to conform to Rule 1042.2.
5. August 19, 2004, plaintiff filed a Plaintiff's Response To Defendant's Preliminary Objections agreeing to amend his complaint to conform to Rule 1042.2.
6. August 25, 2004, defendant sent a letter to the Court Administrator saying that a resolution in the matter concerning Rule 1042.2 had been established and that no further Court involvement would be necessary.
7. August 31, 2004, plaintiff filed Amended Complaint.

III. Allegations

8. Count One: Medical Malpractice

On June 28, 2004, at 8:59 am., Clearfield Hospital, hereafter known as defendant, became responsible for the negligence of its emergency room physician, Dr. James DeSantis, in that, Dr. DeSantis discharged plaintiff prematurely and allowed plaintiff to drive away from the emergency room less than four (4) hours after treating plaintiff for an overdose of thirty eight (38) ¹Xanax tablets following a severe panic attack. Plaintiff further states

that he has a history of severe panic attacks and had been treated by defendant many times prior to June 28, 2004.

9. Count Two: Action Of Deceit

On July 28, 2004, plaintiff filed a complaint, as advised, with the Manager of Nursing at Clearfield Hospital, Monica Smith, also defendant, stating that Dr. James DeSantis was in breach Doctor/Patient privilege (confidentiality).

Plaintiff states that, during his conversation with Monica Smith he mentioned that ²Dr. Jerry Goldstein, former Assistant Director of Emergency Medicine at Clearfield Hospital would be acting as his advisor in a future action against

(3)

¹ Xanax is a very strong tranquilizer used in treating panic attacks and anxiety. Overdose symptoms include: Confusion, impaired coordination, coma.

² Dr. Goldstein now practices law in Philadelphia

Clearfield Hospital. Plaintiff states that, at that time, Monica Smith informed him, that Dr. Goldstein was never the Assistant Director of Emergency Medicine at Clearfield Hospital nor was he ever associated with Clearfield Hospital in any capacity. Plaintiff states that he requested that Monica Smith investigate the matter concerning Dr. Goldstein and she agreed to do so. On August 25, 2004, plaintiff visited with Monica Smith in her office at Clearfield Hospital regarding Dr. Goldstein. Plaintiff states that he was told by Monica Smith that she had investigated Dr. Goldstein and that he was never the Assistant Director of Emergency Medicine at Clearfield Hospital nor was he ever associated with Clearfield Hospital in any capacity. Plaintiff further states that he offered Monica Smith documented evidence showing that Dr. Goldstein was, indeed, a former Assistant Director of Emergency Medicine at Clearfield Hospital but she refused to accept that evidence.

10. Count Three: Breach of Doctor/Patient Privilege

On or about July 7, 2004, plaintiff was asked by someone in his apartment building to take them to the emergency room at Clearfield Hospital for leg pain. Plaintiff states that, while Dr. DeSantis, a physician at Clearfield Hospital, also defendant, was treating this person he informed this person that he had recently treated plaintiff for a drug overdose of thirty eight Xanax tablets and that he suspected that she came to the emergency room in order to obtaining drugs for plaintiff. Plaintiff states that, Dr. DeSantis, defendant,

did indeed, breach plaintiff's privilege to confidentiality when he informed a stranger that plaintiff had been treated for a drug overdose. Plaintiff states that the actions of Dr. DeSantis, on July 7, 2004, caused him (plaintiff) great embarrassment and damage to his character.

IV. Demand

11. Plaintiff demands that this case be tried by a judge.

V. Claim For Relief

12. Plaintiff demands the following relief pursuant to the above-stated cause:

Count One: Medical Malpractice

- a) Relief in the amount of \$1,800.00 to compensate the loss of plaintiff's car.
- b) Relief in the amount of \$5,000.00 to compensate the pain and suffering experienced by plaintiff beginning on June 28, 2004.

Count Two: Action Of Deceit

- a) Punitive relief in the amount of \$2,000.00

Count Three: Breach of Doctor/Patient Privilege

- a) Relief in the amount of \$2,000.00 to compensate plaintiff for embarrassment and damage to his character.
- b) Punitive relief in the amount of \$1,000.00

VI. Prayer

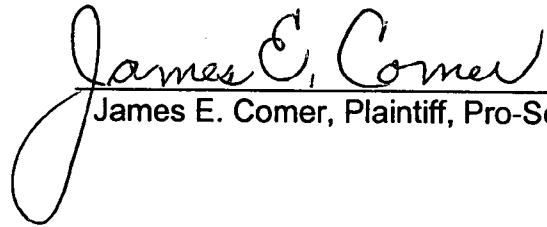
13. Your plaintiff in the above matter prays that this Court grants him relief, as claimed above, and awards him any other form of relief deemed just and proper.


Plaintiff, Pro-Se
519 Williams St., Apt. 11
Clearfield, PA. 16830
(814) 765-4998

Date: 8/31/04

Verification

The undersigned hereby verifies, subject to the penalty of perjury provided under 18 Pa. C.S.A. Section 4904 that the facts set forth in the foregoing Amended Complaint are true and correct so far as they are based upon personal knowledge, and, so far as they are based upon information obtained from others, are believed in good faith to be reliable, true and correct.


James E. Comer, Plaintiff, Pro-Se

Certificate Of Service

I, the undersigned, do hereby certify that a correct and true copy of the foregoing Amended Complaint was sent by first class mail to the following individual on this 31st day of August, 2004:

Frank J. Hartye, Esquire
P.O. Box 533
Hollidaysburg, PA 16648


Plaintiff, Pro-Se

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

JAMES E. COMER

vs.

No. 04-1082-CD

CLEARFIELD HOSPITAL, DR. JAMES
DESANTIS, MONICA SMITH

NOW, this 22 day of September, 2004, upon consideration of the
Plaintiff's Motion for Leave of Court, a Rule is hereby on Defendants to Show Cause why the
Motion should not be granted. Rule Returnable the 12th day of
October, 2004, for filing written response. The Prothonotary is directed to
servc a copy of the Motion and Order on Defendants.

NOTICE

A PETITION OR MOTION HAS BEEN FILED AGAINST YOU IN COURT.
IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE
FOLLOWING PETITION OR MOTION BY ENTERING A WRITTEN APPEARANCE
PERSONALLY OR BY ATTORNEY AND FILING IN WRITING WITH THE COURT
YOUR DEFENSES OR OBJECTIONS TO THE MATTER SET FORTH AGAINST YOU.
YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED
WITHOUT YOU AND AN ORDER MAY BE ENTERED AGAINST YOU BY THE
COURT WITHOUT FURTHER NOTICE FOR RELIEF REQUESTED BY THE
PETITIONER OR MOVANT. YOU MAY LOSE 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.

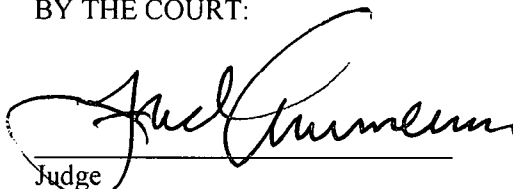
COURT ADMINISTRATOR
Clearfield County Courthouse
230 East Market Street, Suite 228
Clearfield, PA 16830
(814) 765-2641, Ext. 1300 or 1301

FILED

SEP 23 2004

William A. Shaw
Prothonotary

BY THE COURT:


Judge

*ICC to Ref
ICC Order+Motion
Clear Hospital
Dr James De Santis
Monica Smith
809 Turnpike Ave
Clearfield PA 16830*

CP

In The Court Of Common Pleas Of Clearfield County, Pennsylvania
Civil Division

James E. Comer,

Plaintiff

vs.

Amended Civil Action # 04-1082

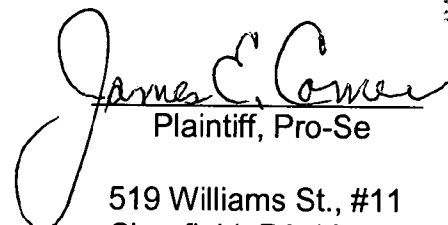
Clearfield Hospital,
Dr. James DeSantis,
Monica Smith,

Defendants

Motion For Leave Of Court


IN THIS HONORABLE COURT, your plaintiff, pro-se, moves for Leave Of Court, whereby plaintiff, pursuant to Rule 1033, wishes to enter a second Amendment to the above Complaint. Plaintiff states that he filed an Amended Complaint on August 31, 2004, however, since that time, certain matters important to his case were discovered and now need to be included in this action.

WHEREFORE, plaintiff prays that this Court will allow him Leave in order that he may again Amend his complaint to include newly discovered matters.


Plaintiff, Pro-Se

519 Williams St., #11
Clearfield, PA 16830

FILED *ice*
012:476/
SEP 09 2004 *Pff*

 William A. Shaw
Prothonotary/Clerk of Courts

In The Court Of Common Pleas Of Clearfield County, Pennsylvania
Civil Division

James E. Comer,
Plaintiff

vs.

Amended Civil Action # 04-1082

Clearfield Hospital,
Dr. James DeSantis,
Monica Smith,

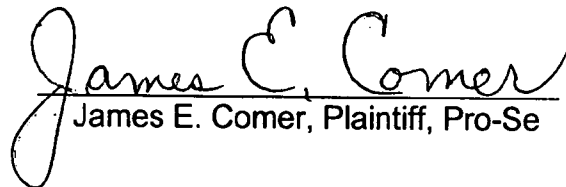
Defendants

Notice Of Intent

You are in default of a Rule to Show Cause (see attached) pursuant to plaintiff's Motion For Leave Of Court. Rule Returnable was set for October 12th, 2004.

WHEREFORE, this is Notice that plaintiff intends to file a Praecipe For Judgment Of Non Pros, pursuant to Rule, in ten (10) days.

WARNING! If you fail to answer this Notice within ten (10) days this case may proceed without you.


James E. Comer, Plaintiff, Pro-Se

Frank J. Hartye, Attorney For Defendants
P.O. Box 533
Hollidaysburg, PA 16648

FILED ^{EGK}
010:306P-1006P
OCT 21 2004

William A. Shaw
Prothonotary/Clerk of Courts

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

JAMES E. COMER

vs.

CLEARFIELD HOSPITAL, DR. JAMES
DESANTIS, MONICA SMITH

No. 04-1082-CD

COPY

NOW, this 22 day of September, 2004, upon consideration of the Plaintiff's Motion for Leave of Court, a Rule is hereby on Defendants to Show Cause why the Motion should not be granted. Rule Returnable the 12th day of October, 2004, for filing written response. The Prothonotary is directed to serve a copy of the Motion and Order on Defendants.

NOTICE

A PETITION OR MOTION HAS BEEN FILED AGAINST YOU IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING PETITION OR MOTION BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE MATTER SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND AN ORDER MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR RELIEF REQUESTED BY THE PETITIONER OR MOVANT. YOU MAY LOSE 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
Clearfield County Courthouse
230 East Market Street, Suite 228
Clearfield, PA 16830
(814) 765-2641, Ext. 1300 or 1301

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

BY THE COURT:

SEP 23 2004

Attest.

William L. Shaw
Prothonotary/
Clerk of Courts

/s/ Fredric J. Ammerman

Judge

JAMES E. COMER,

Plaintiff,

vs.

CLEARFIELD HOSPITAL,

Defendant.

: IN THE COURT OF COMMON PLEAS
: OF CLEARFIELD COUNTY, PA
: CIVIL ACTION – LAW

: No. 04-1082-CD

: ISSUE:
: Reply to Plaintiff's Motion for
: Leave of Court

: FILED ON BEHALF OF DEFENDANT

: COUNSEL OF RECORD FOR
: DEFENDANT:

: Frank J. Hartye, Esquire
: P.A. I.D. No. 25568
: McIntyre, Dugas, Hartye & Schmitt
: P.O. Box 533
: Hollidaysburg, PA 16648
: 814/696-3581

I hereby certify that a true and correct
copy of the within was mailed to
all parties of record this 22nd day of
October, 2004.



Attorney for Defendant

FILED ^{NO} ^{CC}
OCT 25 2004

William A. Shaw
Prothonotary/Clerk of Courts

JAMES E. COMER,

Plaintiff,

vs.

CLEARFIELD HOSPITAL,

Defendant.

: IN THE COURT OF COMMON PLEAS
: OF CLEARFIELD COUNTY, PA
: CIVIL ACTION – LAW

: No. 04-1082-CD

: JURY TRIAL DEMANDED

REPLY TO PLAINTIFF'S MOTION FOR LEAVE OF COURT

AND NOW, comes defendant, CLEARFIELD HOSPITAL, by and through its attorneys, MCINTYRE, DUGAS, HARTYE & SCHMITT, and files the following Reply to Plaintiff's Motion for Leave of Court.

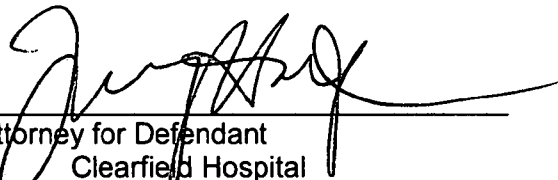
1. Plaintiff requests permission to amend his Complaint. However plaintiff does not indicate to the Court what the proposed changes include.

2. Plaintiff has unilaterally changed the caption of this matter to include as defendants Dr. James DeSantos and Monica Smith. Neither of these individuals are currently parties to this action.

3. Defendant cannot specifically oppose the Second Amended Complaint without knowing what amendments plaintiff is attempting to make.

WHEREFORE, defendant, CLEARFIELD HOSPITAL, requests this Court to deny and dismiss plaintiff's Motion for Leave of Court.

MCINTYRE, DUGAS, HARTYE & SCHMITT



Attorney for Defendant
Clearfield Hospital
FRANK J. HARTYE, ESQUIRE
PA. I.D. No. 23568
P.O. Box 533
Hollidaysburg, PA 16648
814/696-3581

In The Court Of Common Pleas Of Clearfield County, Pennsylvania
Civil Division

James E. Comer,

Plaintiff

vs.

Civil Action No. 04-1082

Clearfield Hospital,

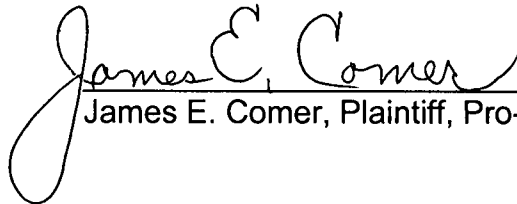
Defendant

Notice Of Withdrawal

COMES NOW your plaintiff, James E. Comer, pro-se, who, on this 26th day of October, 2004, is withdrawing from this Court the above captioned complaint, docketed as Civil Action No. 04-1082, for the following reason:

1. Plaintiff has been unable to obtain a Certificate Of Merit from an appropriate licensed professional.

WHEREFORE, plaintiff gives formal Notice that, on this date, October 26, 2004, the above Civil Action will become null and void.


James E. Comer, Plaintiff, Pro-Se

Frank J. Hartye, Attorney For Defendants
P.O. Box 533
Hollidaysburg, PA 16648

FILED ^{EOK}
OCT 26 2004 ^{ICC}
013:45 PM ^{PIB}

William A. Shaw
Prothonotary/Clerk of Courts

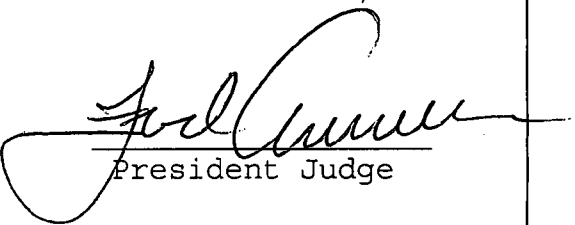
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

JAMES E. COMER, :
Plaintiff :
vs. : No. 2004-1082-CD
CLEARFIELD HOSPITAL, :
Defendant :
: JURY TRIAL DEMANDED

ORDER

AND NOW, this 2 day of November, 2004, the plaintiff having filed a Notice of Withdrawal indicating that he has been unable to obtain a Certificate of Merit and more than sixty (60) days has passed since the filing of an Amended Complaint, it is hereby ORDERED, DIRECTED and DECREED that the above-captioned matter is dismissed.

BY THE COURT,


President Judge

FILED

O P. 38 44

NOV 03 2004

William A. Shaw
Prothonotary