



## TESTIMONY OF THE PENNSYLVANIA BAR ASSOCIATION IN OPPOSITION TO HOUSE BILL 1552 FOR THE OCTOBER 24, 2011 HEARING

To: Members of the House Judiciary Committee

The Pennsylvania Bar Association (PBA) appreciates the opportunity to submit this written testimony in opposition to HB 1552. The bill, addressing venue, is unconstitutional and from a policy standpoint, ill-advised.

In providing that “a civil action or proceeding brought to recover damages for death or injury to a person may only be filed in the county in which the cause of action arose,” HB 1552 violates Article 5, Section 10(c) of the Pennsylvania Constitution, which provides in relevant part, “The Supreme Court shall have the power to prescribe general rules governing practice, procedure and the conduct of all courts . . . . All laws shall be suspended to the extent that they are inconsistent with rules prescribed under these provisions.”

In the context of this constitutional provision, the Pennsylvania Supreme Court has stated that the General Assembly may address substantive (law) issues, but *only* the Court may address procedural issues. *Payne v. Commonwealth Dep’t of Corrections*, 582 Pa. 375, 871 A.2d 795 (Pa. 2005), *Commonwealth v. McMullen*, 599 Pa. 435, 961 A.2d 842 (Pa. 2008). The Court stated in *Payne*, “As a general rule, substantive law is that part of the law which creates, defines and regulates rights, while procedural laws are those that address methods by which rights are enforced.” Moreover, in *Payne*, discussing legislation, the Court classified as substantive provisions that “define[] the parameters for relief” but as procedural provisions “set[ting] forth the method by which inmates enforce their rights to file prison conditions litigation.” Consistent with this substantive-procedural dichotomy, the Court in 1960 stated (citation omitted),

Thus, venue, unlike jurisdiction, being a matter of procedure, and not substance, is within the competency of the Procedural Rule's prescription. ‘Essentially venue is an incident of procedure. It is part of that body of law which bounds and delineates the forum and the manner and mode of enforcing a litigant's rights. It is distinguishable from and is not within the field of law, known as substantive, which recognizes, creates and defines rights and liabilities and causes of action.’

## STATEMENT OF THE PENNSYLVANIA BAR ASSOCIATION

*McGinley v. Scott*, 401 Pa. 310, 164 A.2d 424 (Pa. 1960). In keeping with these rulings is the Commonwealth Court ruling in *North-Central PA Trial Lawyers Assoc. v. Weaver*, 827 A.2d 550 (Pa. Commw. Ct. 2003), “[V]enue in civil cases concerns a matter of pure procedure. . . .”

We respectfully suggest that passing HB 1552 with the aim of awaiting an order of court striking it down is ill advised on multiple levels, and would be an unfortunate affront to the exclusive jurisdiction of the Supreme Court of Pennsylvania.

With respect to policy, HB 1552 creates a number of practical problems, including but not limited to the following:

- A distinction without legitimate basis is created between actions to recover damages for personal injuries and actions to recover damages for property damage or breach of contract.
- It would force parties who may live in the same county to litigate in a distant county simply because an accident occurred there. As an illustration, say an auto accident injuring a pedestrian in Cumberland County led to a medical malpractice claim in Lancaster County. Under HB 1552 the pedestrian would be precluded from suing the doctors and the driver in Lancaster County, even if the driver lived in Lancaster County. The medical malpractice case would have to be brought in Lancaster County where the medical procedure at issue was performed under the previous medical malpractice venue rule amendments.
- It would prevent transfer of an action to another county for the convenience of parties and witnesses, because the *forum non conveniens* transfer rule, Pa.R.C.P. 1006(d)(1), limits such a transfer to a county in which the action could originally have been brought.
- It would require that a municipality whose vehicle may have been involved in an accident in another county litigate in that county, whereas under the present rule, Pa.R.C.P. 2103(b), an action against a political subdivision may be brought only in the county in which the political subdivision is located.

For the reasons specified above, the PBA urges the House Judiciary Committee to not report HB 1552 out of Committee. The PBA thanks the Committee for the opportunity to submit this testimony. Should you have any questions, please do not hesitate to contact us at 800-932-0311.