NOTICE TO THE BAR

Effective August 1, 1979 several changes will be made in the Federal Rules of Appellate Procedure. The rules affected are Rules 1 (a), 3 (c), (d) and (e), 4 (a), 5 (d), 6 (d), 7, 10 (b), 11 (a), (b), (c) and (d), 12, 13 (a), 24 (b), 27 (b), 28 (g) and (j), 34 (a) and (b), 35 (b) and (c), 39 (c) and (d), and 40. Among the changes which will immediately affect attorneys filing appeals are the following:

1) The Court of Appeals docket fee of $50.00 will be paid to the District Court Clerk along with the notice of appeal fee of $5.00. Both fees are due upon the filing of the notice of appeal.
2) If a notice of appeal is mistakenly filed with the Court of Appeals, it will be returned to the District Court.
3) Under Rule 4 (a)(4), a notice of appeal filed before the disposition of motions under 50 (b), 52 (b) and 59 to alter or amend a judgment or for a new trial shall have no affect and a new notice of appeal must be subsequently filed.
4) Rule 7 requiring a bond for costs on appeal in civil cases has been changed to where it now merely states that the District Court may require an appellant to file a bond or provide other security.
5) Appellants are required to file an order with the reporter for any transcript within 10 days after filing the notice of appeal. A copy of that order is to be filed with the Clerk of the District Court. If no transcript of parts of the proceeding is to be ordered, the appellant is to file a certificate to that effect. See changed Rule 10 (b) (1).
6) The Clerk of Court is to transmit the notice of appeal to the Court of Appeals forthwith. He is also to transmit the record on appeal forthwith.

DONALD R. BERRY,
Clerk

defendant was responsible to the plaintiff-husband for his wife's medical expenses, but not for any other damages. When the plaintiff in *Thompson* made a motion for a new trial on the ground of inconsistent verdicts, the lower court refused but on appeal, the Supreme Court granted it. The court said that since the jury returned a verdict for the plaintiff-husband it was extremely strange the jury did not make an award to his wife for the injuries which required the medical attention and said:

> It is inevitable that [she] was subjected to pain and inconvenience as a result of her injuries. The doctor so testified. The plaintiff so testified....
>
> It is true that the jury is the final arbiter of facts but it may not, in law, ignore what is patent to the eye, obvious to the mind and clear to the normal processes or ordinary computation. By failing to account for what [the wife] lost through her injuries, while awarding to [her husband] certain monies for therapeutic attention to those same injuries, the jury returned an inconsistent verdict. This court has declared in many cases that where a verdict is inconsistent, a new trial is imperative. 403 Pa. at 331, 332, 169 A.2d at 778, 779.

The Court said further:

> "Once a jury imposes legal liability on a responsible party they may not wilfully or capriciously withhold payment of an item which is inextricably interwoven in the pattern of the liability," 403 Pa. at 333, 169 A.2d 779.

See also *Pascarella v. Pittsburgh Railways Company*, 389 Pa. 8, 131 A.2d 445 (1957); *Little v. Jarvis*, 219 Pa. Super 156, 280 A.2d 617 (1971); *Meyer v. Austin*, 45 D & C 44, 35 Luz. L.R. 396 (1942); and 66 A.L.R. 3d 472 at 481-86.

ORDER OF COURT

NOW, July 12, 1979, a new trial is ordered.

RELIANCE INSURANCE COMPANY v. SHAFFER, C.P. Franklin County Branch, No. A.D. 1978-144

Assumpsit - Petition to Open Default Judgment - Untimeliness

1. A petition to open judgment is a matter of judicial discretion which may be exercised only when the following exist: 1) The petition is promptly filed; 2) a meritorious defense is stated; 3) the failure to appear can be excused.

Richard L. Shoap, Esq., Attorney for Petitioner-Defendant

Dennis J. Harnish, Esq., Attorney for Plaintiff

OPINION AND ORDER

EPPINGER, P.J., July 19, 1979:

Melvin J. Shaffer and his wife are separated. An automobile which she used after the separation was registered in his name. She was involved in an accident. Since he didn't have no-fault insurance, the matter was assigned to the Reliance Insurance Company who paid the wife's claim and then filed a complaint against Mr. Shaffer to recover the sum paid. Apparently Mr. Shaffer talked to the attorney who assisted his wife who said he couldn't represent him, then talked to Legal Services, but made no other arrangements. By this time the 20 days in which to file an answer had expired, and thinking he could not answer, he did nothing.

The suit was filed on March 20, 1978 and default judgment was entered June 15, 1978 approximately three months after service and two months after the answer was due, so it was no snap judgment. Mr. Shaffer learned of the default judgment when he was sent a copy of the plaintiff's Praecipe for entry of default judgment by certified mail on June 13, 1978. Mr. Shaffer's petition to open the judgment was not filed until January 5, 1979.

A petition to open judgment is a matter of judicial discretion, an appeal to the court's equity power which may be exercised only when three conditions exist: (1) the petition to open is promptly filed; (2) a meritorious defense is stated, and (3) the failure to appear can be excused. *Balk v. Ford Motor Co.*, 446 Pa. 137, 140 A.2d 128, 130 (1971), *Keystone Bank v. Flooring Specialists*, Pa. Super , 393 A.2d 698 (1978).

None of the requirements, all of which must be satisfied, has been met here. Mr. Shaffer's petition to open was not promptly filed. There was a delay of over six months between the time he knew the default judgment was entered and the time the petition was filed. The timeliness is measured from the date notice of the entry of default judgment is received by the petitioner. *Maruccio v. Houdaille Industries, Inc.*, Pa. Super , 386 A.2d 91 (1978).

Unexplained delays have been held to be too long: six months (*VanHorn v. Alper*, Pa. Super , 385 A.2d 462 1978)); five months (*Ruszynski v. Jesray Construction Corp.*,

457 Pa. 510, 326 A.2d 326 (1974)); two months (*Pappas v. Stefan*, 451 Pa. 354, 304 A.2d 143 (1973)); 37 days (*Hatgimisios v. Dave's N.E. Mint, Inc.*, 251 Pa. Super 275, 380 A.2d 485 (1977)); and 27 days (*Texas & BH Fish Club v. Bonnell Corp.*, 388 Pa. 198, 130 A.2d 508 (1957)). In *Balk*, supra, defendant's petition to open judgment was considered to be timely filed ten months after entry where actual notice of the default had been received only 12 days before the petition was filed.

Mr. Shaffer's only excuse for failing to act more promptly was that he believed he couldn't do anything after the 20 days for answering had gone by. This excuse is insufficient. This is not a situation where the petitioner erroneously believed he was represented, as in *C. J. Webb Sons Co., Inc. v. Webber*, 194 Pa. Super 614, 169 A.2d 604 (1961), or in which the petitioner is an elderly, unintelligent and indigent person, as in *Hostler v. Gilliam*, 58 Del. 563 (1970), where the excuses were deemed adequate.

Actually, Mr. Shaffer did nothing about getting an attorney after talking with Legal Services until notified by PennDOT that his driving privileges would be suspended for failure to satisfy the judgment, some eight months after being served with the Complaint. The fact that he believed himself powerless to act beyond twenty days does not excuse inactivity. Ignorance or inexperience with legal process is not sufficient reason to open a default judgment. *Killian v. Kutna*, 226 Pa. Super 323, n.5, 310 A.2d 396, 398, n.5 (1976).

Since we conclude his failure to respond earlier has not been reasonably explained or excused, we cannot grant his petition to open the judgment. *Moyer v. Americana Mobile Homes, Inc.*, 244 Pa. Super 441, 368 A.2d 802 (1976).

We find it unnecessary to decide whether the petitioner has stated a meritorious defense, but we do note that the Act of July 19, 1974, P.L. 489, No. 176, Art V, Sect. 501, 40 P.S. Sect. 1009.501, permits the Insurance Company to enter suit against either the owner or the person in whom title is registered. Petitioner claims that while title to the automobile was registered in him, he and his wife were joint owners of the automobile. Though where the equities are otherwise clear a defendant in trespass action need not show a meritorious defense, *Kraynick v. Hertz*, 443 Pa. 105, 277 A.2d 144 (1971), this is not one of those cases because of the long delays.

ORDER OF COURT

NOW, July 19, 1979, the petition to open judgment is denied. The costs shall be paid by the petitioner-defendant.