

# THE COURTS

## Title 201—RULES OF JUDICIAL ADMINISTRATION

[201 PA. CODE CH. 7]

### Rescission of Rule 701 Governing Assignment of Judges to Courts and Promulgation of New Rule 701; No. 242 Judicial Administration; Doc. No. 1

#### Order

*Per Curiam:*

And Now, this 18th day of April, 2002, Pennsylvania Rule of Judicial Administration 701 is rescinded and new Rule 701 is promulgated to read as follows.

To the extent that notice of proposed rulemaking would be required by Rule 103 of the Rules of Judicial Administration or otherwise, the rescission of Rule 701 and promulgation of new Rule 701 is hereby found to be required in the interest of justice and efficient administration.

This order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective January 6, 2003.

#### Annex A

### TITLE 201. RULES OF JUDICIAL ADMINISTRATION

#### CHAPTER 7. ASSIGNMENT OF JUDGES

#### ASSIGNMENT AND TRANSFER OF JUDGES

#### Rule 701. Assignment of judges to courts.

(A) *Conditions Applicable for the Certification of Senior District Justices, Judges or Justices.*

(1) To be eligible for senior certification, a district justice, judge or justice:

(a) shall have served as a district justice, judge or justice, whether or not continuously or on the same court, by election or appointment for an aggregate period equaling a full term of office; and

(b) shall not have been defeated for reelection or retention.

(2) In addition to paragraph (1), any duly elected district justice, judge or justice, having an aggregate of five years of judicial service, who is required to retire at age seventy, shall be eligible for certification.

(3) Senior status shall end on the last day of the calendar year in which a district justice, judge or justice attains age seventy-five; however, those serving in senior status as of the effective date of this rule who were previously excepted from the age seventy-five limitation pursuant to the amendment of January 1, 1999 may continue to serve until the last day of the calendar year in which they attain age eighty.

(4) For certification of senior status, a district justice, judge or justice shall verify such additional information as required by the application for certification forms authorized under paragraph (B) below.

(B) *Certification of Senior District Justices, Judges and Justices.* The Administrative Office shall promulgate application forms, as approved by the Supreme Court, for certification of senior district justices, judges and justices. A former or retired district justice, judge or justice who

requests assignment to temporary judicial service shall file the application for certification form with the Administrative Office, and, upon approval, shall be eligible for judicial assignment. Failure to comply with the provisions contained in the application form may result in the immediate revocation of senior certification.

(C) *Request for the Assignment of Additional District Justices or Judges.*

(1) *Request for Assignment.* Whenever a president judge deems additional judicial assistance necessary for the prompt and proper disposition of court business, a formal request for assignment of one or more district justices or judges shall be transmitted to the Administrative Office.

(2) *Recommendation by the Court Administrator of Pennsylvania and Action by Chief Justice.* Upon the recommendation of the Court Administrator, the Chief Justice may, by order, assign any retired, former, or active district justice, judge or justice to temporary judicial service on any court to fulfill a request by a president judge, or to reduce case inventories, or to serve the interest of justice.

(3) *Duration of Assignment.* Unless otherwise provided in the order of assignment, the order shall continue in effect after its stated expiration date until unfinished business pending before the assigned judge is completed.

(4) *Certification of Service.* The president judge of a district to which a district justice or judge has been temporarily assigned under this rule shall certify to the Administrative Office, on a certificate completed and signed by the assigned district justice or judge, the number of days of temporary judicial service and the amount of any compensation to which the assigned judge is entitled.

(5) *Expenses of Assigned Judges.* All judges assigned to duties outside of their judicial districts may, in addition to any per diem payment authorized by law, be reimbursed with the approval of the Court Administrator for necessary expenses, including hotel accommodations and meals, incident to such duties.

(6) *Restrictions on Temporary Assignments.* No judge shall be assigned under this rule to any court while any judge thereof is assigned to another court under this rule, except when required to take the place of a judge who is recused or disqualified, or is otherwise unavailable, or under other appropriate circumstances.

(7) *Ceremonial Functions.* District justices, judges and justices on temporary assignments shall have authority to conduct ceremonial functions, including performing weddings and administering oaths.

(D) *Judicial Assignment Records.* The Administrative Office shall maintain records of certification applications and assignments to temporary judicial service.

(E) *Regional Administrative Units.*

(1) Judicial districts through their president judges may petition the Supreme Court for approval to combine with other districts to form regional administrative units that provide for the assignment of district justices and judges to any other judicial district in the unit. Upon annual approval by the Supreme Court, district justices and judges, when so assigned, shall exercise the same power and authority as vested in a district justice or judge of that judicial district.

(2) In cases where a judge has disqualified him or herself for any of the reasons specified in Canon 3 C of the Code of Judicial Conduct, the assignment of another judge to the case shall be made through the Administrative Office. In other instances of recusal, the assignment may be made through the Regional Unit, but in no case shall a recusing judge select his or her replacement.

(3) Each regional unit shall file with the Administrative Office a quarterly report of all assignments that occurred within the unit for that period.

(F) *Suitable Facilities and Staffing for Senior Common Pleas Judges.* Suitable facilities and adequate staff are to be provided for senior judges, the parameters of which are to be determined and promulgated by the Administrative Office.

*Directive:* In accordance with Rule of Judicial Administration 701(F), the Administrative Office of Pennsylvania Courts promulgates this directive establishing minimum standards for suitable facilities and adequate staff for the senior judges of the courts of common pleas.

The president judge of a judicial district, in consultation with the Court Administrator of Pennsylvania as needs may require, shall provide from available resources for each senior judge formerly of the judicial district who is regularly or periodically assigned in that district and for each visiting senior judge the following facilities and staff for matters arising under the appointment:

(1) the use of judicial chambers which shall be of adequate size and appropriately furnished, afford a measure of privacy, and include office equipment and supplies as are necessary to conduct judicial business;

(2) services of a law clerk who shall provide customary assistance including legal research and drafting of legal documents; and

(3) services of a secretary who shall provide customary assistance including typing correspondence, orders and opinions, answering phone calls and taking messages, receiving and sending mail and deliveries.

**Official Note:** The expense reimbursement authorized by subdivision (C)(5) is in addition to the per diem payable under the Act of June 1, 1956 (1955 P. L. 1959) § 10, 17 P. S. § 830.32.

Supreme Court Rule 79 adopted effective Oct. 10, 1966; renumbered Rule 701 March 15, 1972; amended effective Feb. 20, 1975; June 10, 1975; Oct. 5, 1977, amended June 26, 1980, effective Aug. 2, 1980, amended effective April 29, 1998; Dec. 8, 1998, effective Jan. 1, 1999; amended April 18, 2002, effective January 6, 2003.

[Pa.B. Doc. No. 02-782. Filed for public inspection May 3, 2002, 9:00 a.m.]

## Title 234—RULES OF CRIMINAL PROCEDURE

### [234 PA. CODE CH. 1]

#### Rule 118; Use of Two-Way Simultaneous Audio-Visual Communication in Criminal Proceedings

The Criminal Procedural Rules Committee is planning to recommend the Supreme Court of Pennsylvania adopt new Pa.R.Crim.P. 118 (Use of Two-Way Simultaneous Audio-Visual Communication in Criminal Proceedings).

New Rule 118 would authorize a court or issuing authority to use two-way simultaneous audio-visual communication in criminal proceedings. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's considerations in formulating this proposal. Please note that the Committee's Reports should not be confused with the official Committee Comments to the rules. Also note the Supreme Court does not adopt the Committee's Comments or the contents of the explanatory Reports.

The text of the proposed new rule precedes the Report.

We request interested persons submit suggestions, comments, or objections concerning this proposal to the Committee through counsel, Anne T. Panfil, Chief Staff Counsel, Supreme Court of Pennsylvania, Criminal Procedural Rules Committee, P. O. Box 1325, Doylestown, PA 18901, fax: (717) 795-2106, e-mail: criminal.rules@supreme.court.state.pa.us no later than Monday, June 17, 2002.

JOSEPH P. CONTI,  
*Chair*

#### Annex A

### TITLE 234. RULES OF CRIMINAL PROCEDURE CHAPTER 1. SCOPE OF RULES, CONSTRUCTION AND DEFINITIONS, LOCAL RULES

#### PART A. BUSINESS OF THE COURTS

#### Rule 118. Use Of Two-Way Simultaneous Audio-Visual Communication In Criminal Proceedings.

(A) The court or issuing authority may use two-way simultaneous audio-visual communication at any criminal proceeding except:

- (1) preliminary hearings;
- (2) trials;
- (3) sentencing hearings;
- (4) parole, probation, and intermediate punishment revocation hearings;
- (5) ARD revocation hearings; and
- (6) any other proceeding in which the defendant has a right to appear.

(B) When a criminal proceeding is conducted using two-way simultaneous audio-visual communication, the defendant must be permitted to communicate fully and confidentially with defense counsel immediately prior to and during the proceeding.

#### Comment

This rule was adopted in 2002 to make it clear that unless the case comes within one of the exceptions in paragraph (A), the court or issuing authority may use two-way simultaneous audio-visual communication in any criminal proceeding. Two-way simultaneous audio-visual communication is a type of advanced communication technology as defined in Rule 103.

This rule is not intended to preclude the use of advanced communication technology for the preservation of testimony as permitted by Rules 500 and 501.

Nothing in this rule is intended to limit any right of a defendant to waive his or her presence at a criminal proceeding in the same manner as the defendant may waive other rights. See, e.g., Rule 602 Comment.

See Rule 542 for the procedures governing preliminary hearings.

See Chapter 6 for the procedures governing trials.

See Chapter 3 for the procedures governing ARD.

See Chapter 7 for the procedures governing sentencing hearings.

See Rule 708 for the procedures governing revocation of probation, intermediate punishment, and parole.

The paragraph (A)(4) reference to revocation hearings addresses Gagnon II-type probation (*Gagnon v. Scarpelli*, 411 U.S. 778 (1973)) and parole (*Morrissey v. Brewer*, 408 U.S. 471 (1972)) revocation hearings, and is not intended to prohibit the use of two-way simultaneous audio-visual communication in hearings to determine probable cause (Gagnon I).

**Official Note:** New Rule 118 adopted \_\_\_\_\_, effective \_\_\_\_\_.

*Committee Explanatory Reports:*

Report explaining proposed new Rule 118 published at 32 Pa.B. 2198 (May 4, 2002).

## REPORT

Proposed New Pa.R.Crim.P. 118

### USE OF TWO-WAY SIMULTANEOUS AUDIO-VISUAL COMMUNICATION IN CRIMINAL PROCEEDINGS

#### I. Background

This proposal is the fifth in a series of proposals the Committee has developed that would permit the use of advanced communication technology (ACT) in criminal proceedings. In making the proposals, the Committee recognizes that the implementation of provisions for the use of ACT in criminal proceedings furthers the goals of achieving statewide, uniform procedures in criminal proceedings, providing quick and efficient administration of justice, and bringing convenience to the parties.<sup>1</sup>

Following the publication of these proposals, and through various communications to the Committee,<sup>2</sup> we became aware that the uses of ACT are expanding throughout Pennsylvania. To determine how widespread the use of ACT is, and in which criminal proceedings ACT is being used, the Committee conducted a survey of the president judges concerning the use of ACT in their judicial districts.<sup>3</sup> The responses to the survey indicated that several judicial districts rapidly are moving ahead in this area, but several others are reluctant to invest the resources in ACT until the Criminal Rules provide guidance for its use. Other judicial districts are not using ACT because of concerns about the "face-to face" constitutional provision.<sup>4</sup> In view of the survey responses and the general communications concerning when ACT should be used in criminal proceedings, the Committee agreed that it was imperative to have a general rule governing the use of ACT in all criminal proceedings.

<sup>1</sup> The first published proposals incorporated ACT provisions into the rules that govern, inter alia, the procedures for preliminary arraignments, arraignments, search warrants, and arrest warrants. See 28 Pa.B. 3934 (August 15, 1998), 29 Pa.B. 4426 (August 21, 1999), 29 Pa.B. 4429 (August 21, 1999), 29 Pa.B. 4539 (August 28, 1999).

<sup>2</sup> Some of these general communications include comments made during the common pleas automation project, oral communications made to Committee members and Staff, and questions to the Committee from AOPC staff.

<sup>3</sup> We received 41 survey responses: 17 judicial districts reported that they are experimenting with ACT; 16 want to begin to use ACT in criminal proceedings; 8 have no plans to use and no need to use ACT. Some judicial districts use ACT for a large number of criminal cases and a panoply of criminal proceedings; other judicial districts are proceeding conservatively, waiting for the Court or the rules to sanction its use before they proceed. In many instances, funding was reported to be a problem, but the anticipation is that the judicial districts will achieve ACT capabilities and use it in the same way as the judicial districts already using ACT.

<sup>4</sup> See PA.CONST. art. I, § 9.

#### II. Discussion of Proposed New Rule 118

One issue of concern in developing the earlier ACT-related proposals was how to safeguard the defendant's rights, including the defendant's participation in the defense of his or her case and access to defense counsel. The Committee agreed that, when the criminal proceeding is one that requires rigid protection of the defendant's rights and the integrity and fairness of the judicial process, any rules addressing this type of procedure must require that the type of ACT employed for the criminal proceeding must be one capable of providing two-way simultaneous audio-visual communication, and allow for confidential communications between defendant and defendant's counsel.

When developing the procedures for the new rule, the Committee agreed that the proposed new rule should preserve the status quo, i.e., the new rule should not create nor abridge existing rights of the defendant to appear at a criminal proceeding; rather, the new rule merely should be permissive of the use of two-way simultaneous audio-visual communication in criminal proceedings. In addition, the Committee recognized that the rule also should not alter a defendant's right to effectively waive his or her appearance at a hearing, nor address whether the parties must agree to its use. Finally, the Committee agreed that although the scope of the new rule should be broad, the rule should be clear that in those criminal proceedings in which the use of two-way simultaneous audio-visual communication would not be appropriate, no other form of ACT may be used to conduct the proceeding. Accordingly, the Committee is proposing a new Rule 118 that generally would authorize a court or issuing authority to use two-way simultaneous audio-visual communication in criminal proceedings, and would enumerate the criminal proceedings in which using any form of ACT to conduct the proceeding would be prohibited.

The new rule would be divided into two paragraphs. Paragraph (A) would provide the general rule that a court or issuing authority may use two-way simultaneous audio-visual communication at any criminal proceeding. Paragraph (A) also provides six enumerated exceptions to the general rule. These exceptions are (1) preliminary hearings, (2) trials, (3) sentencing hearings, (4) parole, probation, and intermediate punishment revocation hearings, (5) ARD revocation hearings, and (6) any other proceeding in which the defendant has a right to appear.

Paragraph (B) makes it clear that when a criminal proceeding is conducted using two-way simultaneous audio-visual communication, the defendant must be permitted to communicate fully and confidentially with his or her defense counsel immediately prior to and during the proceeding. This language is consistent with the language included in the Committee's earlier ACT-related proposals and recognizes the importance of the defendant's access to defense counsel, and the confidentiality of communications between the defendant and defense counsel.

The Comment would:

- highlight that the criminal proceedings contemplated by the rule require two-way simultaneous audio-visual communication
- make it clear that the rule is not intended to preclude the use of ACT for the preservation of testimony as permitted by Rules 500 and 501

- provide a cross-reference to Rule 103 further explaining that two-way-simultaneous is one form of advanced communication technology as defined in Rule 103
- make it clear that the language in paragraph (A)(6) is not intended to alter the right of a defendant to waive his or her presence at a criminal proceeding
- explain that the paragraph (A)(4) exception for revocation hearings addresses *Gagnon* II-type hearings, in which there may be a sentencing for a violation of the defendant's probation or parole, and not the *Gagnon* I-type revocation hearings in which there only is a probable cause finding that a violation has occurred
- cross-reference the rules concerning the "criminal proceedings" enumerated as exceptions in paragraph (A)(1)—(5).

[Pa.B. Doc. No. 02-783. Filed for public inspection May 3, 2002, 9:00 a.m.]

## Title 246—MINOR COURT CIVIL RULES

[246 PA. CODE CHS. 200—500 AND 1000]

**Order Renumbering Rule 325, Adopting New Rules 211, 341, and 342, and Amending or Revising the Notes to Rules 306, 315, 324, 402, 514, 518, 1001, and 1007 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices; No. 134; Magisterial Doc. No. 1; Book No. 2**

The Minor Court Rules Committee has prepared a Final Report explaining the renumbering of Rule 325; the adoption of new Rules 211, 341, and 342, and; the amendments or revisions to the Notes to Rules 306, 315, 324, 402, 514, 518, 1001, and 1007 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices, effective January 1, 2003. These rule changes provide a procedural mechanism for the entry of satisfaction of money judgments. The changes also provide for several technical or "housekeeping" amendments to these rules. The Final Report follows the Court's Order.

### Order

*Per Curiam:*

Now, this 5th day of April, 2002, upon the recommendation of the Minor Court Rules Committee; the proposal having been published before adoption at 31 Pa.B. 4528 (August 18, 2001), and a *Final Report* to be published with this *Order*:

*It Is Ordered* pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Pa. R.C.P.D.J. No. 325 is renumbered, new Pa. R.C.P.D.J. Nos. 211, 341, and 342 are adopted, and Pa. R.C.P.D.J. Nos. 306, 315, 324, 402, 514, 518, 1001, and 1007 are amended or the Notes thereto are revised in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective January 1, 2003.

### Annex A

## TITLE 246. MINOR COURT CIVIL RULES

### PART I. GENERAL

#### CHAPTER 200. RULES OF CONSTRUCTION; GENERAL PROVISIONS

#### **Rule 211. Abolished, Consolidated, or Changed Magisterial Districts; Subsequent Filings.**

When these rules specify that a party is to file or serve an ancillary or supplementary action in the district justice court which rendered a judgment or issued other process, but that court no longer exists or its magisterial district boundaries have been changed, the party may file or serve the ancillary or supplementary action only in the district justice court in which the original record of the proceedings containing the judgment is filed.

**Official Note:** This rule provides a procedure for filing or serving an ancillary or supplementary action, when the action should be filed or served in the district justice court which rendered the judgment or issued other process, but that court has been abolished, consolidated or otherwise changed. Such actions may include a request for order of execution or a request for a certified copy of a judgment (see Rule 402), an objection to levy or other property claim (see Rule 413), a request for order of possession (see Rule 515), or a request for entry of satisfaction (see Rule 341), among others. The rule provides that, under these circumstances, the action may be filed or served only in the district justice court that has become the official custodian of the original record, even though that court did not render the judgment.

Adopted April 5, 2002, effective January 1, 2003.

#### CHAPTER 300. CIVIL ACTION

#### **Rule 306. Numbering and Filing of Complaints.**

The district justice shall retain the original of the complaint. Complaints shall be numbered consecutively in order of filing, annually, and shall be filed as prescribed by the [ State ] Court Administrator of Pennsylvania. Complaints filed in the case by a defendant shall take the same number as the plaintiff's complaint.

**Official Note:** It was felt that this rule contained all the provisions concerning office procedures that should be required by rule. [ It is hoped, however, that close supervision by the State Court Administrator will bring about ] The Court Administrator of Pennsylvania publishes the District Justice Automated Office Clerical Procedures Manual that prescribes uniform filing, record keeping and other office procedures.

**The phrase "[ c ]omplaints filed in the case by a defendant" includes cross-complaints filed pursuant to Rule 315 and supplementary actions filed pursuant to Rule 342.**

Amended June 30, 1982, effective 30 days after July 17, 1982; amended April 5, 2002, effective January 1, 2003.

#### **Rule 315. Claim by Defendant.**

A. The defendant, by filing [ his own ] a complaint at least five [ (5) ] days before the date set for the hearing, may assert in the case any claim against the plaintiff [ which ] that is within the jurisdiction of a district justice. Such a claim need not arise from the same transaction or occurrence from which the plaintiff's claim arose, nor need it be the same type of claim.

B. The rules governing the form, processing, and service of a plaintiff's complaint shall apply also to the defendant's complaint[, and]. The district justice shall set a date and time for the hearing of both complaints together [shall be set which] that shall not be less than [twelve (12)] 12 or more than [thirty (30)] 30 days from the filing of the defendant's complaint.

\* \* \* \* \*

D. If the defendant files a cross-complaint, the district justice shall promptly notify the plaintiff of the time and date set for the hearing of both complaints together. If the plaintiff has an attorney of record [named in the complaint form filed by him], the notice shall be given to the attorney of record instead of to the plaintiff.

**Official Note:** Subdivision A of this rule permits the defendant to file a cross-complaint against the plaintiff at least five days before the date originally set for the hearing, if it is for a claim cognizable by a district justice. [See the Judicial Code, § 1515(a)(3)] See Section 1515(a)(3) of the Judicial Code, 42 Pa.C.S. § 1515(a)(3), [as amended by § 10(18) of the Judiciary Act Repealer Act, Act of April 28, 1978, P. L. 202, No. 53,] as to waiver of jurisdictional limits, a defendant filing a cross-complaint being considered a "plaintiff" as to the cross-complaint within the meaning of this statute. [Such a claim need not comply with the counterclaim rules found in Pa.R.C.P. Nos. 1031(a) and 1046.] The requirement that a cross-complaint be filed at least five days before the hearing [limitation] is intended to give the district justice time to notify the plaintiff or [his] the plaintiff's attorney, under subdivision D of the rule, of any new hearing time and date[, so that he will not arrive at the office of the district justice with his witnesses only to find that the original date of the hearing has been changed to a later date]. Notice under subdivision D is not a substitute for the service required under subdivision B. If the defendant does not file [within the five day period, he can] an action at least five days before the hearing, the defendant may still file a complaint against the plaintiff but it will not be processed [under the cross-complaint rules] as a cross-complaint.

No provision has been made for a stay of the district justice proceedings upon notice by the defendant [that he intends] of intention to commence an action in the court of common pleas on a claim against the plaintiff not within district justice jurisdiction. It was thought that no such provision was necessary, for if the plaintiff prevails in the district justice action the defendant may appeal, the appeal operates as an automatic supersedeas of the money judgment, the case is heard de novo, and the defendant may assert [his] a claim in the court of common pleas, possibly as a counterclaim. [See Pa.R.C.P.J.P. Nos.] See Rules 1002, 1007, and 1008.

Since a cross-complaint is in the nature of a responsive pleading, there is no fee for filing it.

**No cross-complaint may be filed in a supplementary action filed under Rule 342. See Rule 342 and Note.**

Amended Oct. 17, 1975, effective in 90 days; Jan. 29, 1976, effective in 30 days; April 25, 1979, effective in 30

days; June 30, 1982, effective 30 days after July 17, 1982; amended April 5, 2002, effective January 1, 2003.

**Rule 324. Notice Of Judgment, Dismissal or Continuance, and the Right to Appeal.**

A. The district justice shall promptly give or mail to the parties written notice of judgment, dismissal or continuance. The written notice shall be given or mailed to all parties, but if any party has an attorney of record [named in the complaint form], the written notice shall be given or mailed to the attorney of record instead of to the party.

B. [Notice] The written notice of judgment shall contain:

(1) advice as to the right of the parties to appeal, the time within which the appeal must be taken, and that the appeal is to the court of common pleas[. ],

(2) a statement advising that, except as otherwise provided in the rules, if the judgment holder elects to enter the judgment in the court of common pleas, all further process must come from the court of common pleas and no further process may be issued by the district justice, and

(3) a statement advising that unless the judgment is entered in the court of common pleas anyone interested in the judgment may file a request for entry of satisfaction with the district justice if the judgment debtor pays in full, settles, or otherwise complies with the judgment.

**Official Note:** As to subdivision B(2), see Rule 402D and Note. As to subdivision B(3), see Rule 341.

Amended effective Feb. 1, 1973; amended Oct. 17, 1975, effective in 90 days; April 25, 1979, effective in 30 days; June 30, 1982, effective 30 days after July 17, 1982; amended effective Dec. 1, 1983; amended March 27, 1992, effective June 25, 1992 [The March 27, 1992, Order provided in part: "In promulgating this Order, the Court recognizes that the District Justice Automation Project will be affected by said Rule changes and that, therefore, those Rules which affect the Project will become effective as the District Justice offices are brought on-line."]; amended and Note added April 5, 2002, effective January 1, 2003.

Rule [ 325 ] 210. Practices Prohibited.

\* \* \* \* \*

**Official Note:**

\* \* \* \* \*

[Amended] Rule 325 amended June 30, 1982, effective 30 days after July 17, 1982; renumbered Rule 210 April 5, 2002, effective January 1, 2003.

**SATISFACTION OF MONEY JUDGMENTS**

**Rule 341. Request for Entry of Satisfaction; Service; Entry of Satisfaction.**

A. If a judgment debtor has paid in full, settled, or otherwise complied with a judgment rendered in a district justice court, anyone interested in the judgment may request the entry of satisfaction of the judgment by filing a written request in the office of the district justice who rendered the judgment.

B. A request for entry of satisfaction by anyone other than the judgment creditor must be served upon the

judgment creditor in accordance with the rules in the 300 Series regarding service of the complaint.

C. Within 90 days from the date of service of the request for entry of satisfaction, the judgment creditor shall enter satisfaction in the office of the district justice in which the request for entry of satisfaction was filed.

**Official Note.** Subdivision A provides a mechanism for a judgment debtor, or anyone interested in the judgment, to file a written request for entry of satisfaction in the office of the district justice who rendered the judgment. See Section 8104(a) of the Judicial Code, 42 Pa.C.S. § 8104(a).

Subdivision B is intended to provide a number of alternative methods of service. See Rules 307, 308, 309, 310, 311, 312 and 313. When permitted, service by mail should be at the option of the person filing the request for entry of satisfaction.

Upon the entry of satisfaction, the judgment debtor may file a true copy of the entry of satisfaction in any other district justice court in which the judgment may have been entered pursuant to Rule 402. Nothing in this rule is intended to suggest that it is the obligation of the judgment creditor to enter satisfaction in any court other than the court specified in subdivision C.

These procedures also apply to satisfaction of money judgments rendered in actions for the recovery of possession of real property (landlord/tenant actions). See Rules 514 and 518.

If a judgment creditor does not comply with the provisions of this rule, the judgment debtor may proceed under Rule 342.

A party may contest the entry of satisfaction by filing a petition to strike the entry of satisfaction with the court of common pleas.

Adopted April 5, 2002, effective January 1, 2003.

**Rule 342. Failure of Judgment Creditor to Enter Satisfaction; Supplementary Action.**

A. If the judgment creditor does not enter satisfaction within the 90 day period after service of the request as specified in Rule 341C, the judgment debtor may commence a supplementary action for damages by filing a civil complaint in the office of the district justice in which the request for entry of satisfaction was filed.

B. (1) Except as provided in subparagraph B(2), upon the filing of a complaint as provided in subdivision A, the action shall proceed as a civil action in accordance with the rules of the 300 Series.

(2) No claim under Rule 315 will be permitted in a supplementary action filed pursuant to this Rule.

**Official Note.** A judgment debtor may seek damages pursuant to Section 8104(b) of the Judicial Code, 42 Pa.C.S. § 8104(b). The action commenced under subdivision A of this Rule is a supplementary proceeding in the matter in which the judgment was entered. As such, it must be filed in the office of the district justice in which the request for entry of satisfaction was filed. Also, it must be indexed to the same docket number as, and made a part of the record of, the underlying action. See Rule 306 and Note. Because the supplementary action is merely a continuation of the underlying action, there are no filing costs for it, however there may be costs for service of the action.

Subdivision B provides that, once a supplementary action is filed under subdivision A, the proceedings in the

action, including the form of the complaint, setting the hearing date, service, and hearing, should proceed as if a regular civil action, except that no cross-complaints under Rule 315 will be permitted. See Rules 304 through 381. While it is not the intent of this rule to limit defenses that may be raised in a supplementary action, only those issues arising from the Rule 342 supplementary action are to be considered at the hearing. Therefore, subparagraph B(2) makes clear that no cross-complaints are permitted to be filed.

When rendering judgment in an action filed pursuant to this rule, the district justice may determine if the judgment debtor is entitled to damages under Section 8104(b) of the Judicial Code, 42 Pa.C.S. § 8104(b), and whether satisfaction should be entered on the underlying judgment.

A party may appeal from a judgment in an action filed pursuant to this rule, but issues on appeal are limited to those raised in the action filed under this rule. See Rule 1007.

Adopted April 5, 2002, effective January 1, 2003.

**CHAPTER 400. EXECUTION OF JUDGMENTS FOR THE PAYMENT OF MONEY**

**Rule 402. Request for Order of Execution; Entry of Judgment in Court of Common Pleas.**

A. Execution of a judgment for the payment of money rendered by a district justice may be ordered by a district justice in whose office the judgment was rendered or entered, provided the plaintiff files in that office

(1) not before the expiration of [ **thirty (30)** ] **30** days after the date the judgment is entered by the district justice, and

(2) within five [ **(5)** ] years of that date,

a request for an order of execution [ **on a form which shall be prescribed by the State Court Administrator** ].

\* \* \* \* \*

C. The plaintiff may enter the judgment, for the purpose of requesting an order of execution thereon, in an office of a district justice other than that in which it was rendered only if [ :

(1) **the office of the district justice in which the judgment is entered for execution is that of the district justice of the magisterial district within the boundaries of which the district justice who rendered the judgment conducted his magisterial business, or**

(2) ] levy is to be made outside the county in which the judgment was rendered and the office in which the judgment is entered for execution is that of a district justice whose magisterial district is situated in the county in which levy is to be made.

The plaintiff may enter the judgment in such other office by filing therein a copy of the record of the proceedings containing the judgment, certified to be a true copy by the district justice in whose existing office the judgment was rendered or by any other official custodian of the record.

D. (1) The plaintiff may enter the judgment in the court of common pleas in any county. When so entered, the indexing, revival and execution of the judgment shall be in accordance with procedures applicable in the court of common pleas.

(2) The judgment may be entered in the court of common pleas by filing with the prothonotary a copy of the record of the proceedings containing the judgment, certified to be a true copy by the district justice in whose office the judgment was rendered or by any other official custodian of the record.

(3) The judgment may be entered in the court of common pleas after [ thirty (30) ] 30 days from the date the judgment is entered by the district justice. The judgment may not be entered in the court of common pleas after five [ (5) ] years from the date the judgment is entered by the district justice.

(4) Except as provided in subparagraph D(5) of this rule, once the judgment is entered in the court of common pleas all further process must come from the court of common pleas and no further process may be issued by the district justice.

(5) The district justice shall enter satisfaction on the docket of the district justice proceedings upon the filing by any Party in interest of a certified copy of the docket entries of the court of common pleas showing the and satisfaction have been entered in the court of common pleas.

*Official Note:* Under subdivision A of this rule, the execution proceedings are commenced by requesting an "order of execution." [on a new form or form to be prescribed by the State Court Administrator. This is in accordance with the purpose of simplifying district justice procedures sought to be achieved throughout these rules. See the note to Rule 304.] The request may not be filed before the expiration of [ thirty (30) ] 30 days after the date [ of ] the judgment is entered by the district justice. This will give the defendant an opportunity to obtain a supersedeas within [ that time ] the appeal period. The request must be filed within five [ (5) ] years of the date [ of ] the judgment is entered by the district justice. No provision has been made for [ the ] revival of [ the ] a judgment in district justice proceedings.

Subdivision C provides for entering the judgment, for the purpose of requesting an order of execution, in an office of a district justice other than that in which the judgment was rendered[ , but imposes certain limitations upon the use of this procedure. The first instance in which this can be done, set forth in C(1), will provide a procedure for use in the case of abolished, consolidated or changed magisterial districts. The second instance, set forth in C(2), provides for a transfer of the judgment ] when levy is to be made outside the county in which the judgment was rendered. Compare Pa.R.C.P. No. 3002.

As to subdivision D, [ see the Judicial Code, § 1516, 42 Pa.C.S. § 1516. ] see Section 1516 of the Judicial Code, 42 Pa.C.S. 4 1516. The [ thirty ] 30 day limitation in the rule appears to be required by this Section. Certification by the district justice should not be done before the expiration of [ thirty (30) ] 30 days after the date of entry of the judgment. The only method available to renew a judgment would be to record the judgment in the Prothonotary's office prior to the expiration of the five year period and then follow the applicable Rules of Civil Procedure for the [ Revival of a Judgment, Rule 1521 and 3025 et seq. ] revival of judgments. See Pa.R.C.P. No. 3025 et seq. Also, [ Subdivision ] subdi-

vision D makes clear that when the judgment is entered in the court of common pleas, all further process shall come from the court of common pleas and that no further process shall be issued by the district justice **except that the district justice shall enter on the district justice docket proof of satisfaction of a judgment that had been entered in the court of common pleas and subsequently satisfied in that court. This exception is necessary so that procedures exist for entering satisfaction of all judgments with the district justice court, regardless of whether the judgment has been certified to and satisfied in the court of common pleas.**

Amended Jan. 29,1976, effective in 30 days; amended effective March 24, 1977; amended April 25, 1979, effective in 30 days; June 30, 1982, effective 30 days after July 17, 1982; March 27, 1992, effective June 25,1992; amended December 15, 2000, effective January 1, 2001; amended April 5, 2002, effective January 1, 2003.

**CHAPTER 500. ACTIONS FOR THE RECOVERY OF POSSESSION OF REAL PROPERTY**

**Rule 514. Judgment.**

\* \* \* \* \*

*Official Note:*

\* \* \* \* \*

**For procedure for entry of satisfaction of money judgments, see Rule 341.**

Amended April 25, 1979, effective in 30 days; June 30, 1982, effective 30 days after July 17, 1982; amended effective Dec. 1, 1983; amended March 27, 1992, effective June 25, 1992 [ **The March 27, 1992, Order provided in part: "In promulgating this Order, the Court recognizes that the District Justice Automation Project will be affected by said Rule changes and that, therefore, those Rules which affect the Project will become effective as the District Justice offices are brought on-line."** ]; March 28, 1996, effective March 29, 1996; Note revised April 5, 2002, effective January 1, 2003.

**Rule 518. Satisfaction of Order by Payment of Rent and Costs.**

\* \* \* \* \*

*Official Note:* [ Rent in arrears shall include only those sums ] "Rent actually in arrears" means the sum set forth on the order for possession.

**For procedure for entry of satisfaction of money judgments, see Rule 341.**

Amended June 30, 1982, effective 30 days after July 17, 1982; March 27,1992, effective June 25, 1992 [ **The March 27, 1992, Order provided in part: "in promulgating this Order, the Court recognizes that the District Justice Automation Project will be affected by said Rule changes and that, therefore, those Rules which affect the Project will become effective as the District Justice offices are brought on-line."** ]; Note revised April 5, 2002, effective January 1, 2003.

## CHAPTER 1000. APPEALS

APPELLATE PROCEEDINGS WITH RESPECT TO  
JUDGMENTS AND OTHER DECISIONS OF  
DISTRICT JUSTICES IN CIVIL MATTERS

## Rule 1001. Definitions.

As used in this chapter\*:

\* \* \* \* \*

(6) *Claimant*—Includes a defendant with respect to a defendant's cross-complaint **or supplementary action filed pursuant to Rule 342** in the action before the district justice.

(7) *Defendant*—Includes a plaintiff with respect to the defendant's cross-complaint **or supplementary action filed pursuant to Rule 342** in the action before the district justice.

\* \* \* \* \*

**Official Note:**

\* \* \* \* \*

Adopted June 1, 1971. Amended April 25, 1979, effective in 30 days; June 30, 1982, effective 30 days after July 17, 1982; amended effective Dec. 1, 1983; **amended April 5, 2002, effective January 1, 2003.**

## Rule 1007. Procedure on Appeal.

\* \* \* \* \*

B. [ The ] **Except as otherwise provided in subdivision C, the action upon appeal [ shall ] may** not be limited with respect to amount in controversy, joinder of causes of action or parties, counterclaims, added or changed averments or otherwise because of the particulars of the action before the district justice.

C. **When an appeal is taken from a supplementary action filed pursuant to Rule 342, only those issues arising from the Rule 342 action are to be considered.**

**Official Note:** As under earlier law, the proceeding on appeal is conducted de novo, but the former rule that the proceeding would be limited both as to jurisdiction and subject matter to the action before the district justice [ (see *Crowell Office Equipment v. Krug*, 213 Pa. Super. 261, 247 A.2d 657, 1968) ] (see *Crowell Office Equipment v. Krug*, 213 Pa. Super. 261, 247 A.2d 657 (1968)) has not been retained. Under subdivision B, the court of common pleas on appeal can exercise its full jurisdiction and all parties will be free to treat the case as though it had never been before the district justice, subject of course to the Rules of Civil Procedure. **The only limitation on this is contained in subdivision C, which makes clear that an appeal from a supplementary action filed pursuant to Rule 342 is not intended to reopen other issues from the underlying action that were not properly preserved for appeal.**

Adopted June 1, 1971. Amended June 30, 1982, effective 30 days after July 17, 1982; **amended April 5, 2002, effective January 1, 2003.**

FINAL REPORT<sup>1</sup>

*Renumbering of Pa. R.C.P.D.J. No. 325, New Pa. R.C.P.D.J. Nos. 211, 341, and 342, and Amendments to or Revisions to the Notes of Pa. R.C.P.D.J. Nos. 306, 315, 324, 402, 514, 518, 1001, and 1007*

ENTRY OF SATISFACTION OF MONEY  
JUDGMENTS

On April 5, 2002, effective January 1, 2003, upon recommendation of the Minor Court Rules Committee<sup>2</sup>, the Supreme Court of Pennsylvania renumbered Rule 325, adopted new Rules 211, 341, and 342, and amended or revised the Notes to Rules 306, 315, 324, 402, 514, 518, 1001, and 1007 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices<sup>3</sup>.

## I. Background

The Minor Court Rules Committee undertook a review of the issue of the entry of satisfaction of money judgments in response to a request from the Administrative Office of Pennsylvania Courts (AOPC). The AOPC advised the Committee that on several occasions, individuals against whom money judgments have been rendered reported that the judgments have appeared on their credit reports as outstanding when in fact the judgments were satisfied (paid in full). The AOPC requested that the Committee review the need for some procedural mechanism for judgment debtors to request entry of satisfaction and for judgment creditors to enter satisfaction of judgments rendered by district justices. Currently, there is no such formal mechanism. This issue has come to the forefront because of the increased use by credit reporting agencies of data contained in the District Justice Automated System (DJS) to check for district justice judgments rendered against applicants for credit. Before automation, this was not a significant issue because there was no efficient way for credit reporting agencies to check for district justice judgments in the numerous district justice courts throughout the Commonwealth. The Committee learned, however, that since the 550-plus district justice courts have been fully automated via the DJS, several credit-reporting agencies routinely request reports from AOPC to identify civil judgments that may have been entered against applicants for credit. The information requested by the credit reporting agencies is public record, and is provided in accordance with the AOPC's Access to District Justice Records Policy, 204 Pa. Code § 213.1 et seq.

The Committee was concerned that the information provided to credit reporting agencies may not be complete because satisfaction of judgment information is not entered in district justice civil cases. The Committee, therefore, wished to establish simplified procedures by which a judgment debtor may request an entry of satisfaction and a judgment creditor may enter a satisfaction in district justice court.

In conjunction with proposed new rules and amendments to, or revisions to the Notes of, existing rules regarding entry of satisfaction, the Committee also recognized the need to renumber Rule 325, and for several technical or "housekeeping" amendments to Rules 306, 315, 324, 402, and 1007.

The Committee's initial proposal was published at 31 Pa.B. 1319 (March 10, 2001). In response to comments

<sup>1</sup>The Committee's Final Report should not be confused with the official Committee Notes to the Rules. Also, the Supreme Court of Pennsylvania does not adopt the Committee's Notes or the contents of the Committee's explanatory Final Reports.

<sup>2</sup>Recommendation No. 3 Minor Court Rules 2001.

<sup>3</sup>Supreme Court of Pennsylvania Order No. 134, Magisterial Docket No. 1, Book No. 2 (April 5, 2002).

received after this first publication, the Committee revised the original proposal. Because of the nature and extent of the revisions, the Committee deemed it necessary and appropriate to republish the proposal for additional comments. A revised proposal and Report were published at 31 Pa.B. 4528 (August 18, 2001).

## II. Discussion of Rule Changes

### A. Request for and Entry of Satisfaction—New Rules

The Committee considered a number of options for incorporating into the rules a procedure for entry of satisfaction of money judgments. The Committee decided that, no matter the approach, any new rules or amendments must be based on and consistent with Section 8104 of the Judicial Code, 42 Pa.C.S. § 8104, relating to duty of judgment creditor to enter satisfaction. It was suggested that one approach for dealing with satisfaction of judgments would be to simply notify the judgment creditor, via the Notice of Judgment form required by Rule 324 (Notice of Judgment, Dismissal or Continuance, and the Right to Appeal), that the judgment creditor has a duty to notify the court of satisfaction and that failure to do so could result in an action for damages under Section 8104. This approach would not necessarily have required a rule change, but only a request to the AOPC to amend the Notice of Judgment form. The Committee, however, opted for a more formal and comprehensive rules-based approach.

There was also discussion about incorporating entry of satisfaction into an amendment to Rule 324 by requiring that the notice of judgment contain a notice that it is the obligation of the judgment creditor to timely notify the district court that a judgment has been satisfied.

Ultimately, however, the Committee decided that, in accordance with Section 8104, the burden should be on the judgment debtor to request an entry of satisfaction. Further, given the need for an entirely new procedure, the Committee decided that it was most appropriate to incorporate entry of satisfaction into the rules via entirely new rules dealing exclusively with this issue.

It was at first suggested that the Committee position the new rules immediately following the rules relating to civil judgments, perhaps as a new rule 326. Upon closer review of the existing rules, however, it seemed more appropriate to create an entirely new subset within the 300 series entitled "SATISFACTION OF MONEY JUDGMENTS." Also, in the course of this discussion, the Committee decided to renumber and move the existing Rule 325 because the subject matter of that rule more appropriately belongs in the 200 Series. (The renumbering of Rule 325 is addressed later in this Report.)

#### 1. New Rule 341

The Committee recommended an entirely new Rule 341, entitled "Request for Entry of Satisfaction; Service; Entry of Satisfaction." Subdivision A of the new rule provides a mechanism for a judgment debtor, or anyone with an interest in the judgment, to request an entry of satisfaction by filing a written request with the district justice who rendered the judgment.

Subdivision B of the new rule addresses service of the request for entry of satisfaction. Unless the judgment creditor is the requesting party, the request needs to be served upon the judgment creditor in accordance with the existing rules regarding service of an original complaint. The Note to Rule 341 refers to Rules 307, 308, 309, 310, 311, 312 and 313.

Subdivision C of the new rule provides that a judgment creditor has 90 days from the date of service of the request for entry of satisfaction to enter satisfaction with the district justice who rendered the judgment, which satisfaction would forever discharge the judgment. It is the Committee's intention that, once satisfaction is entered, the satisfaction would appear in the DJS data as the final disposition of the case so that it is clear to inquiring credit agencies that the judgment has been paid. The Note also makes clear that once the satisfaction is entered, the judgment debtor may file a true copy of the entry of satisfaction in any other district justice court in which the judgment may have been entered pursuant to Rule 402. It is not the Committee's intention that the judgment creditor be required to enter the satisfaction in any court other than the district justice court in which judgment was rendered.

The Committee incorporates a number of clarifying statements in the Note to the new rule. First, the Note makes clear that the procedures set forth in the new rule also apply to satisfaction of money judgments rendered in actions for the recovery of possession of real property (land lord/tenant actions). Also, the Note states that a party may contend that satisfaction should not have been entered in a matter by filing a petition to strike entry of satisfaction with the court of common pleas. Although all other procedures relating to satisfaction are handled at the district justice level under these rules, the Committee felt that petitions to strike an entry of satisfaction would be more appropriately handled at the common pleas level since the decision to strike an entry of satisfaction is an exercise of the court's general equitable powers.

#### 2. New Rule 342

The Committee recommended an entirely new Rule 342, entitled "Failure of Judgment Creditor to Enter Satisfaction; Supplementary Action." Subdivision A of this new rule provides a procedural mechanism for a judgment debtor to commence a supplementary action for liquidated damages as provided in 42 Pa.C.S. § 8104(b) if the judgment creditor does not enter satisfaction as required by Rule 341. The supplementary action is to be filed in the office of the district justice in which the request for entry of satisfaction was filed. Further, the Note to Rule 342 makes clear that the action is to be indexed to the same docket number as, and made a part of the record of, the underlying action. Because the "Rule 342 action" is supplementary to the underlying judgment, there are no filing costs; however there may be costs for service of the action.

Subdivision B provides that the supplementary action is to proceed in accordance with the 300 Series rules as if a regular civil action. The Committee had considered an abbreviated hearing process similar to that provided for in Rules 420 and 421 when a party files an ancillary property claim in a case in which execution is underway. The Committee decided, however, that full due process (including notice, service and hearing requirements) should be afforded since the supplementary "Rule 342 action" could result in a judgment for liquidated damages being entered against the judgment creditor. After hearing in a "Rule 342 action" the district justice may determine if the judgment debtor is entitled to liquidated damages for the judgment creditor's failure to enter satisfaction, and may enter satisfaction in the underlying judgment. Subdivision B does include one exception to the general rule that the Rule 342 action proceed as a regular civil action: no claims under Rule 315 (cross-complaints) will be permitted. While it was not the intent of the

Committee in drafting this rule to limit defenses that may be raised in a supplementary action, the Committee did believe that only those issues arising from the Rule 342 supplementary action are to be considered at the hearing. Therefore, subdivision B(2) makes clear that no cross-complaints are permitted to be filed.

Either party may appeal from a district justice's judgment in a "Rule 342 action" in accordance with the regular appellate rules (that are discussed in greater detail below).

## **B. Correlative Rule Changes**

### *1. Correlative Revision to the Note to Rule 306*

The Committee recommended a revision to the Note to Rule 306 to make clear that the phrase "[c]omplaints filed in the case by a defendant" includes cross complaints filed pursuant to Rule 315 and supplementary actions filed pursuant to the new Rule 342, and that both types of complaints are to be indexed to the same docket number as the plaintiff's underlying complaint.

Also, the Committee recommended an unrelated "housekeeping" revision to the Note to make reference to the District Justice Automated Office Clerical Procedures Manual as the main source of uniform filing, record keeping and other district court office procedures.

### *2. Correlative Amendment to Rule 315*

The Committee recommended a revision to the Note to Rule 315 to make clear that no cross-complaint may be filed in a supplementary action filed under Rule 342. See discussion *supra* Part II.A.2.

### *3. Correlative Amendment to Rule 324*

In addition to the new Rules 341 and 342, the Committee also recommended an amendment to Rule 324 to require that the Notice of Judgment form contain a statement advising that, upon satisfaction of a judgment, any interested party may file a request for entry of satisfaction. The Committee recognized the need for this additional statement in the notice because most defendants in civil actions appear *pro se* and, absent a clear notice, may not know that they can request an entry of satisfaction that could effect the status of their personal credit history.

The Committee further recommended an amendment to the rule (not directly related to satisfaction of judgments) to require that the Notice of Judgment form contain a statement advising that, except as otherwise provided in the rules, if the judgment holder elects to enter the judgment in the court of common pleas, all further process must come from the court of common pleas and no further process may be issued by the district justice. The Note to Rule 402 was revised effective January 1, 2001 to clarify this restriction, and the Committee concluded that it should also be clearly stated in the notice of judgment so that a judgment holder can make an informed decision about entering a judgment in the court of common pleas. This is important because there are advantages and disadvantages to entering a judgment in the court of common pleas. Many judgment holders opt to enter the judgment in the court of common pleas because, once entered, it can act as a lien against real property. However, judgment holders must be aware that execution of the judgment at the common pleas level can be much more costly and complicated than at the district justice level. By making this restriction clear in the notice of judgment, a judgment holder can consider all factors before deciding to enter a judgment in the court of common pleas.

In addition, the Committee recommended a minor amendment to further clarify that the district justice must give or mail written notice of judgment to the parties or the parties' attorneys of record. Finally, the Committee recommended the addition of a Note to Rule 324 to make cross-references to Rules 402D and the new Rule 341.

### *4. Correlative Amendment to Rule 402*

As stated above, the Note to Rule 402 was revised effective January 1, 2001 to clarify that if the judgment holder elects to enter the judgment in the court of common pleas, all further process must come from the court of common pleas and no further process may be issued by the district justice. Upon further consideration, and in light of the important considerations relating to satisfaction of judgments, the Committee concluded that this restriction should be more prominently pronounced in the rule. Accordingly, the Committee recommended an amendment to Rule 402 to state clearly the restriction on further process from the district justice court after a judgment has been entered in the court of common pleas. The Committee, however, did want to provide a means for a district justice to make an entry of satisfaction on the district justice docket if a judgment has been entered and then satisfied in the court of common pleas. This is necessary to prevent district justice judgments that are entered and then satisfied in the court of common pleas from remaining open on the district justice's docket and appearing on that docket as if they have not been satisfied. To accomplish this, the Committee recommended dividing Rule 402D into five numbered subparagraphs to outline the procedures for entering a judgment in the court of common pleas, with a new subparagraph (5) to read "[t]he district justice shall enter satisfaction on the docket of the district justice proceedings upon the filing by any party in interest of a certified copy of the docket entries of the court of common pleas showing the judgment and satisfaction have been entered in the court of common pleas."

### *5. Correlative Revisions to the Notes to Rules 514 and 518*

Because the procedures for the entry of satisfaction set forth in new Rules 341 and 342 also apply to the satisfaction of money judgments rendered in actions for the recovery of possession of real property (landlord/tenant actions), the Committee recommended revisions to the Notes to Rules 514 (relating to judgment in landlord/tenant actions) and 518 (relating to satisfaction of order for possession by payment of rent and costs) to cross reference new Rule 341. The Committee also included a clarification in the Note to Rule 518 that "rent actually in arrears" means the sum set forth on the order for possession.

### *6. Correlative Amendments to Rules 1001 and 1007*

The Committee recognized the need for minor amendments to appellate Rules 1001 and 1007 to fully provide for appeals from judgments rendered in "Rule 342 actions." First, the Committee recommended an amendment to Rule 1001(6) to make clear that a claimant in an appeal can include a defendant with respect to a defendant's supplementary action brought pursuant to new Rule 342. Likewise, the Committee recommended an amendment to Rule 1001(7) to make clear that a defendant in an appeal can include a plaintiff with respect to a defendant's supplementary action filed pursuant to Rule 342.

The Committee further recommended that Rule 1007 be amended by the addition of a subdivision C to restrict

appeals from "Rule 342 actions" to issues that arise from the Rule 342 action. This is to make clear that an appeal from a supplementary action filed pursuant to Rule 342 is not intended to reopen other issues from the underlying action that were not properly preserved for appeal.

### C. Technical and "Housekeeping" Amendments

In conjunction with the substantive changes discussed above, the Committee recommended that Rule 325 be renumbered and moved. The Committee also recommended a new Rule 211 to deal with subsequent filings in abolished, consolidated, or changed magisterial districts. Finally, the Committee identified a number of technical and "housekeeping" amendments needed in Rules 324 and 402.

#### 1. Renumbering and Moving Rule 325

In contemplating the new rules relating the entry of satisfaction, the Committee reviewed the entire 300 Series, particularly Rules 322, 323 and 324, all relating to judgments. Upon review of Rule 325, relating to practices prohibited, the Committee determined that the content of the rule relates not only to civil actions, but to actions for the recovery of possession of real property (land lord/tenant actions) as well. Accordingly, the Committee determined that Rule 325 should be moved out of the 300 Series (relating to Civil Action), and into the 200 Series (relating to Rules of Construction; General Provisions), and further, that it be renumbered as new Rule 210.

#### 2. New Rule 211

In further contemplating the new rules, the Committee recognized that it needed to make provision for the filing of a request for entry of satisfaction when the office of the district justice who rendered the judgment has been abolished, consolidated or otherwise changed by reestablishment (redistricting) of magisterial districts. This situation is currently provided for in Rule 402 as it relates to requesting an order of execution. The Committee determined that this situation could arise in a number of circumstances and decided to recommend a general rule in the 200 Series to deal with the situation. Accordingly, the Committee recommended a new Rule 211 entitled "Abolished, Consolidated, or Changed Magisterial Districts; Subsequent Filings." This new rule is intended to cover all situations in which a party wishes to file or serve an ancillary or supplemental action, such as a request for order of execution or a request for a certified copy of a judgment (under Rule 402), an objection to levy or other property claim (under Rule 413), a request for order of possession (under Rule 515), or a request for entry of satisfaction (under Rule 341), among others, when the action should be filed or served in the office of the district justice who rendered the judgment or issued other process, but that office has been abolished, consolidated or otherwise changed. The new rule provides that, under these circumstances, the action may be filed or served only with the district justice who has become the official custodian of the original record, even though that district justice did not render the judgment.

Of course, as a corollary to this, the Committee recommended that Rule 402C(1) be deleted because it becomes unnecessary with the addition of new Rule 211.

#### 3. Other Technical or "Housekeeping" Changes

Also, in Rules 315, 402, and 1007, the Committee recommended minor changes to correct citation form, to address gender neutrality issues in the rules, to conform

to modern drafting style, and to make other minor corrections and clarifications.

[Pa.B. Doc. No. 02-784. Filed for public inspection May 3, 2002, 9:00 a.m.]

### [246 PA. CODE CH. 300]

## Order Amending Rule 305 of the Rules Of Conduct, Office Standards and Civil Procedure for District Justices; No. 136; Magisterial Doc. No. 1; Book No. 2

The Minor Court Rules Committee has prepared a Final Report explaining the amendments Rule 305 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices, effective July 1, 2002. These rule changes remove from the rule the implication that parties can obtain legal advice from district justices or court staff. The changes also provide for several technical or "housekeeping" amendments to these rules. The Final Report follows the Court's Order.

### Order

*Per Curiam:*

Now, this 5th day of April, 2002, upon the recommendation of the Minor Court Rules Committee; the proposal having been published before adoption at 31 Pa.B. 5794 (October 20, 2001), and a *Final Report* to be published with this *Order*:

*It Is Ordered* pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule 305 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices is amended in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective July 1, 2002.

### Annex A

## TITLE 246. MINOR COURT CIVIL RULES

### PART I. GENERAL

#### CHAPTER 300. CIVIL ACTION

### Rule 305. Setting the Date For Hearing; Delivery for Service.

The district justice, at the time the complaint is filed, shall:

(1) Set a hearing date which shall be not less than [ **twelve (12)** ] **12** or more than [ **sixty (60)** ] **60** days from the date the complaint is filed.

(2) Insert the hearing time and date and the address of [ **his magisterial office** ] **the district justice court** in the complaint form.

(3) Deliver a copy of the complaint form with hearing time and date thereon to the plaintiff [ **or his agent** ].

(4) Deliver a copy of the complaint form with hearing time and date thereon for service on the defendant as hereinafter set forth, which copy shall contain the following notice:

\* \* \* \* \*

(b) If you have a claim against the plaintiff which is within district justice jurisdiction and which you intend to assert at the hearing, you must file it on a complaint

form at this office at least five [ (5) ] days before the date set for the hearing. [ **If you have a claim against the plaintiff which is not within district justice jurisdiction, you may request information from this office as to the procedures you may follow.** ]

(c) [ **You must appear at the hearing and present your defense.** ] **YOU MUST APPEAR AT THE HEARING AND PRESENT YOUR DEFENSE. UNLESS YOU DO, JUDGMENT [ WILL ] MAY BE ENTERED AGAINST YOU BY DEFAULT.**

**Official Note.** The [ **sixty** ] **60** day limitation in subdivision (1) of this rule was considered to provide sufficient time in which to effect service under the requirement of Rule 307 that service be made at least ten days before the hearing. See Rule 314E as to reinstatement of complaints **dismissed because of lack of service.** [ **It is contemplated that the** ] The copies required in subdivisions (3) and (4) [ **will be** ] are provided by the District Justice Automated System [ **or “snap out” forms** ]. Giving the notice mentioned in subdivision (4)(a) is necessary if the defendant is to obtain judgment under Rule 319A because of the plaintiff's failure to appear. Subdivision (4)(b) gives notice of the right to file a cross-claim within district justice jurisdiction. The procedure for filing such a claim is set forth in Rule 315, and the [ **note** ] **Note** to that rule indicates possible procedures as to counterclaims not within district justice jurisdiction. Subdivision (4)(c) provides for a warning concerning a default judgment, which may be rendered under Rule 319B.

Amended Oct. 17, 1975, effective in 90 days; June 30 1982, effective 30 days after July 17, 1982; March 27, 1992, effective June 25, 1992 [ **The March 27, 1992, Order provided in part: “in promulgating this Order, the Court recognizes that the District Justice Automation Project will be affected by said Rule changes and that, therefore, those Rules which affect the Project will become effective as the District Justice offices are brought on-line”** ]; amended April 5, 2002, effective July 1, 2002.

#### FINAL REPORT<sup>1</sup>

*Amendment to Pa. R.C.P.D.J. No. 305*

#### **AMENDMENT TO RULE 305 TO REMOVE FROM THE RULE THE IMPLICATION THAT PARTIES CAN OBTAIN LEGAL ADVICE FROM DISTRICT JUSTICES OR COURT STAFF**

On April 5, 2002, effective July 1, 2002, upon recommendation of the Minor Court Rules Committee<sup>2</sup>, the Supreme Court of Pennsylvania amended Rule 305 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices<sup>3</sup>.

#### **I. Background**

The Committee undertook a review of Rule 305 in response to a request from the Administrative Office of Pennsylvania Courts (AOPC). The AOPC reported that it had received an inquiry from a district justice regarding the language on the Civil Action Hearing Notice, AOPC

form 308-B-94. The last sentence in the third paragraph of the Notice to Defendant section of the form provides that if the defendant has “a claim against the plaintiff which is not within district justice jurisdiction, you [the defendant] may request information from this [district justice court] office as to the procedures you may follow.” The district justice was concerned that this language, the inclusion of which is required by Rule 305(4)(b), implies that a party can obtain legal advice from district justices or court staff. Upon review of the Rule, the Committee agreed that such an implication does exist. Accordingly, the Committee recommended that Rule 305 be amended to remove from the rule the language that creates the implication that parties can obtain legal advice from district justices or court staff.

In conjunction with the amendment to the rule described above, the Committee also recognized the need for several technical or “housekeeping” amendments to this rule.

#### **II. Discussion of Rule Changes**

First, as noted above, the Committee recommended that the last sentence in Rule 305(4)(b) be deleted entirely as it creates the implication that parties can obtain legal advice from district justices or court staff. The Committee determined that the sentence may create more confusion and problems than it solves, and therefore should be deleted from the rule and the Civil Action Hearing Notice form.

Also, the Committee recommended that both sentences in the section of the Notice to Defendant as required by Rule 305(4)(c) be capitalized to make this important section of the notice stand out more prominently.

Finally, in conjunction with the proposed amendments to Rule 305 described above, the Committee also recognized the need for minor changes to the rule and its Note to make other minor clarifications, to address gender neutrality issues, and to conform with modern drafting style.

[Pa.B. Doc. No. 02-785. Filed for public inspection May 3, 2002, 9:00 a.m.]

#### [246 PA. CODE CHS. 400 AND 500]

#### **Order Amending Rules 403, 515, 516 and 519 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices; No. 135; Magisterial Doc. No. 1; Book No. 2**

The Minor Court Rules Committee has prepared a Final Report explaining the amendments to Rules 403, 515, 516, and 519 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices, effective July 1, 2002. These rule changes provide for the issuance and reissuance of orders of execution and orders for possession after a supersedeas is terminated or a stay is lifted, and for time limits for requesting the issuance or reissuance of orders for possession in cases arising from residential leases. The changes also provide for several technical or “housekeeping” amendments to these rules. The Final Report follows the Court's Order.

#### **Order**

*Per Curiam:*

*Now, this 5th day of April, 2002, upon the recommendation of the Minor Court Rules Committee; the proposal*

<sup>1</sup>The Committee's Final Report should not be confused with the official Committee Notes to the Rules. Also, the Supreme Court of Pennsylvania does not adopt the Committee's Notes or the contents of the Committee's explanatory Final Reports.

<sup>2</sup>Recommendation No. 5 Minor Court Rules 2001.

<sup>3</sup>Supreme Court of Pennsylvania Order No. 136, Magisterial Docket No. 1, Book No. 2 (April 5, 2002).

having been published before adoption at 31 Pa.B. 4392 (August 11, 2001), and a *Final Report* to be published with this *Order*.

*It Is Ordered* pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rules 403, 515, 516, and 519 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices are amended in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective July 1, 2002.

#### Annex A

### TITLE 246. MINOR COURT CIVIL RULES

#### PART I. GENERAL

#### CHAPTER 400. EXECUTION OF JUDGMENTS FOR THE PAYMENT OF MONEY

#### Rule 403. Issuance and Reissuance of Order of Execution.

\* \* \* \* \*

B. (1) Upon written request **filed** by the plaintiff **within five years from the date of entry of the judgment**, an order of execution [ **may** ] shall be reissued at any time, and any number of times [ **except that any request for reissuance must be filed within five years from the date of the judgment** ].

(2) **If an order of execution is superseded by an appeal, writ of certiorari, supersedeas, or a stay pursuant to a bankruptcy proceeding, and**

(a) **the appeal, writ of certiorari, or supersedeas is stricken, dismissed, or otherwise terminated; or**

(b) **the bankruptcy stay is lifted; and**

(c) **the plaintiff wishes to proceed with the order of execution,**

**the plaintiff must file with the district justice a written request for reissuance of the order of execution in accordance with subparagraph (1).**

C. **A written request for reissuance of the order of execution filed pursuant to subparagraph B(2) must be accompanied by a copy of the court order or other documentation striking, dismissing, or terminating the appeal, writ of certiorari, or supersedeas, or lifting the bankruptcy stay.**

#### *Official Note.* \* \* \*

Subdivision B will permit the reissuance of an order of execution upon written request of the plaintiff timely filed. Compare Pa.R.C.P. No. 3106(b). The written request for reissuance may be in any form and may consist of a notation on the permanent copy of the request for order of execution form, "Reissuance of order of execution requested," subscribed by the plaintiff. The district justice shall mark all copies of the reissued order of execution, "Reissued. Request for reissuance filed \_\_\_\_\_ (time and date)." A new form [ **or new form sets** ] may be used upon reissuance, those portions retained from the original being exact copies although signatures may be typed **or printed** with the mark */s/*. There [ **is** ] **are** no filing [ **fee** ] **costs** for reissuing an order of execution, for the reissuance is, merely a continuation of the original proceeding. **However, there may be additional server costs for service of the reissued order of execution.**

Amended Jan. 29, 1976, effective in 30 days; amended effective March 24, 1977; April 25, 1979, effective in 30 days; June 30, 1982, effective 30 days after July 17, 1982; March 27, 1992, effective June 25, 1992 [ **The March 27, 1992, Order provided in part: "in promulgating this order, the Court recognizes that the District Justice Automation Project will be affected by said Rule changes and that, therefore, those Rules which affect the Project will become effective as the District Justice offices are brought on-line** ]; amended July 16, 2001, effective August 1, 2001; **amended April 5, 2002, effective July 1, 2002.**

#### CHAPTER 500. ACTIONS FOR THE RECOVERY OF POSSESSION OF REAL PROPERTY

#### Rule 515. Request for Order for Possession.

A. If the district justice has rendered a judgment arising out of a non-residential lease that the real property be delivered up to the plaintiff, the plaintiff may, after the [ **fifteenth (15th)** ] **15th** day following the date of the entry of the judgment, file with the district justice a request for an order for possession [ **on a form which shall be prescribed by the State Court Administrator** ]. The request [ **form shall be attached to the order, and** ] shall include a statement of the judgment amount, return, and all other matters required by these rules.

B. (1) [ **If** ] **Except as otherwise provided in subparagraph (2), if the district justice has rendered a judgment arising out of a residential lease that the real property be delivered up to the plaintiff, the plaintiff may after the [ tenth (10th) ] 10th day but within 120 days following the date of the entry of the judgment, file with the district justice a request for an order for possession [ on a form which shall be prescribed by the State Court Administrator ] . The request [ form shall be attached to the order, and ] shall include a statement of the judgment amount, return, and all other matters required by these rules.**

(2) **In a case arising out of a residential lease, if before the plaintiff requests an order for possession,**

(a) **an appeal or writ of certiorari operates as a supersedeas; or**

(b) **proceedings in the matter are stayed pursuant to a bankruptcy proceeding; and**

(c) **the supersedeas or bankruptcy stay is subsequently stricken, dismissed, lifted, or otherwise terminated so as to allow the plaintiff to proceed to request an order for possession, the plaintiff may request an order for possession only within 120 days of the date the supersedeas or bankruptcy stay is stricken, dismissed, lifted, or otherwise terminated.**

*Official Note.* The fifteen days in subdivision A of this rule [ **plus** ], **when added to the [ sixteen ] 16 day period provided for [ days ] in Rule [ 519.A. ] 519A,** will give the defendant time to obtain a supersedeas within the appeal period. [ **See Pa. R.C.P.D.J. Nos. ] See Rules 1002, 1008, 1009, and 1013.**

The 1995 amendment to [ **§** ] **section 513 of [ the ] The Landlord [ / ] and Tenant Act of 1951, 68 P. S.**

§ 250.513, [ (Act No. 1995-33) ] established a ten-day appeal period [ of time for an appeal ] from a judgment for possession of real estate arising out of a residential lease; therefore, the filing of the request for order for possession in [ subdivision B ] subparagraph B(1) is not permitted until after the appeal period [ of time for appeal ] has expired. In cases arising out of a residential lease, the request for order for possession generally must be filed within 120 days of the date of the entry of the judgment.

Subparagraph B(2) provides that in a case arising out of a residential lease, if a supersedeas (resulting from an appeal or writ of certiorari) or bankruptcy stay is stricken, dismissed, lifted, or otherwise terminated, thus allowing the plaintiff to proceed with requesting an order for possession, the request may be filed only within 120 days of the date the supersedeas or bankruptcy stay is stricken, dismissed, lifted, or otherwise terminated.

The time limits in which the plaintiff must request an order for possession imposed in subdivision B apply only in cases arising out of residential leases and in no way affect the plaintiff's ability to execute on the money judgment. See Rule 516, Note, and Rule 521A.

At the time the plaintiff files the request for an order for possession, the district justice court should collect server fees for all actions through delivery of possession. Thereafter, if the order for possession is satisfied 48 hours or more prior to a scheduled delivery of possession, a portion of the server costs may be refundable. See Rules 516 through 520 and Section 2950(d) of the Judicial Code, 42 Pa.C.S. § 2950(d).

Amended June 1, 1971; amended April 25, 1979, effective in 30 days; June 30, 1982, effective 30 days after July 17, 1982; March 27, 1992, effective June 25, 1992 [ The March 27, 1992, Order provided in part: "In promulgating this order, the Court recognizes that the District Justice Automation Project will be affected by said Rule changes and that, therefore, those Rules which affect the Project will become effective as the District Justice offices are brought on-line ]; March 28, 1996, effective March 29, 1996; amended April 5, 2002, effective July 1, 2002.

Rule 516. Issuance and Reissuance of Order for Possession

A. Upon the timely filing of the request form, the district justice shall issue the order for possession and shall deliver it for service and execution to the sheriff of, or any certified constable in, the county in which the office of the district justice is situated. If this service is not available to the district justice, service may be made by any certified constable of the Commonwealth. The order shall direct the officer executing it to deliver actual possession of the real property to the plaintiff. The district justice shall attach a copy of the request form to the order for possession.

B. (1) Except as otherwise provided in subdivision C, upon written request of the plaintiff the district justice shall reissue an order for possession for one additional 60 day period.

(2) If an order for possession is issued and subsequently superseded by an appeal, writ of certiorari,

supersedeas, or a stay pursuant to a bankruptcy proceeding, and

(a) the appeal, writ of certiorari, or supersedeas is stricken, dismissed, or otherwise terminated; or

(b) the bankruptcy stay is lifted; and

(c) the plaintiff wishes to proceed with the order for possession,

the plaintiff must file with the district justice a written request for reissuance of the order for possession in accordance with subparagraph (1).

C. In a case arising out of a residential lease a request for reissuance of an order for Possession may be filed only within 120 days of the date of the entry of the judgment or, in a case in which the order for possession is issued and subsequently superseded by an appeal, writ of certiorari, supersedeas, or a stay pursuant to a bankruptcy Proceeding, only within 120 days of the date the appeal, writ of certiorari, or supersedeas is stricken, dismissed, or otherwise terminated or the bankruptcy stay is lifted.

D. A written request for reissuance of the order for possession filed after an appeal, writ of certiorari, or supersedeas is stricken, dismissed, or otherwise terminated, or a bankruptcy stay is lifted, must be accompanied by a copy of the court order or other documentation striking, dismissing, or terminating the appeal, writ of certiorari, or supersedeas, or lifting the bankruptcy stay.

*Official Note:* The order for possession deals only with delivery of possession of real property and not with a levy for money damages. [ When the ] A plaintiff who seeks execution of the money judgment part of the judgment [ , he will have to ] must proceed under Rule 521A, using the forms and procedure there prescribed. The reason for making this distinction is that the printed notice requirements on the two forms, and the procedures involved in the two matters, differ widely.

Subdivision B provides for reissuance of the order for possession for one additional 60 day period. However, pursuant to subdivision C, in cases arising out of a residential lease, the request for reissuance of the order for possession must be filed within 120 days of the date of the entry of the judgment or, in a case in which the order for possession is issued and subsequently superseded by an appeal, writ of certiorari, supersedeas, or a stay pursuant to a bankruptcy proceeding, only within 120 days of the date the appeal, writ of certiorari, or supersedeas is stricken, dismissed, or otherwise terminated, or the bankruptcy stay is lifted. The additional 60 day period need not necessarily immediately follow the original 60 day period of issuance. The written request for reissuance may be in any form and may consist of a notation on the permanent copy of the request for order for possession form, "Reissuance of order for possession requested," subscribed by the plaintiff. The district justice shall mark all copies of the reissued order for possession, "Reissued. Request for reissuance filed \_\_\_\_\_ (time and date)." A new form may be used upon reissuance, those portions retained from the original being exact copies although signatures may be typed or printed with the mark "/s/." There are no filing costs for reissuing an order

for possession, for the reissuance is merely a continuation of the original proceeding. However, there may be additional server costs for service of the reissued order for possession.

The time limits in which the plaintiff must request reissuance of an order for possession imposed in subdivision C apply only in cases arising out of residential leases and in no way affect the Plaintiff's ability to execute on the money judgment. See Rule 521A.

Amended June 30, 1982, effective 30 days after July 17, 1982; amended July 16, 2001, effective August 1, 2001; amended April 5, 2002, effective July 1, 2002.

Rule 519. Forcible Entry and [ Ejectment ] Delivery of Possession.

\* \* \* \* \*

C. No order for possession [ shall ] may be executed [ on or ] after [ sixty (60) ] 60 days following its issuance or reissuance. [ An order for possession shall be reinstated for one (1) additional sixty (60) day period upon written request for order for possession to the district justice. (See Pa. R.C.P.D.J. No. 515). ]

**Official Note:** The differing lengths of notices set for nonresidential leases and residential leases are made necessary by reason of the 1995 amendment to [ Section ] section 513 of the Landlord[ / ] and Tenant Act of 1951, 68 P.S. § 250.513. [ See Note following Pa. R.C.P.D.J. No. 515. ] See Rule 515, Note.

[ Subdivision C of this Rule will permit the reinstatement, upon written request of the plaintiff of an order for possession which had not been executed on or after sixty (60) days following its issuance. The written request for reinstatement may be in any form and may consist of a notation on the permanent copy of the order for possession form "Reinstatement of Order requested," subscribed by the plaintiff. The district justice shall mark all copies of the reinstated order for possession "Order Reinstated. Request for reinstatement filed on \_\_\_\_\_, (Date)." If it is necessary to use a new form or new form sets for the reinstated order for possession, the reinstated order for possession, except for service portions thereof, shall be an exact copy of the original order for possession, although signatures may be typed with the mark "/s/" indicating an actual signature. Since a reinstated order for possession is merely a continuation of the original action, there is no filing fee for reinstating an order for possession. ]

Amended April 25, 1979, effective in 30 days; June 30, 1982, effective 30 days after July 17, 1982; March 27, 1992, effective June 25, 1992 [ The March 27, 1992, Order provided in part: "In promulgating this order, the Court recognizes that the District Justice Automation Project will be affected by said Rule changes and that, therefore, those Rules which affect the Project will become effective as the District Justice offices are brought on-line ]; March 28, 1996, effective March 29, 1996; amended April 5, 2002, effective July 1, 2002.

## FINAL REPORT<sup>1</sup>

*Amendments to Pa. R.C.P.D.J. Nos. 403, 515, 516, and 519*

### ISSUANCE AND REISSUANCE OF ORDER OF EXECUTION OR ORDER FOR POSSESSION AFTER SUPERSEDEAS IS TERMINATED OR STAY IS LIFTED; TIME LIMITS FOR REQUESTING ISSUANCE OR REISSUANCE OF ORDER FOR POSSESSION IN CASES ARISING FROM RESIDENTIAL LEASES

On April 5, 2002, effective July 1, 2002, upon recommendation of the Minor Court Rules Committee<sup>2</sup>, the Supreme Court of Pennsylvania amended Rules 403, 515, 516, and 519 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices<sup>3</sup>.

#### I. Background

The Minor Court Rules Committee undertook a review of various issues related to the issuance and reissuance of orders of execution and orders for possession on its own initiative. The Committee wished to clarify the procedures for the reissuance of an order of execution or order for possession after a supersedeas is terminated or a stay is lifted. Further, the Committee wished to establish a time limit for a plaintiff to request the issuance or reissuance of an order for possession in cases arising from residential leases.

The Committee believed the amendments providing for the reissuance of an order of execution or order for possession after a supersedeas is terminated or a stay is lifted were necessary to make clear the Committee's position that a plaintiff must request a reissuance of the order of execution or order for possession and may not simply proceed with the previously issued order.

Further, the Committee believed it was necessary to amend the rules to impose a specific time limitation on the plaintiff to request the issuance or reissuance of an order for possession, in cases arising from residential leases, to prevent the plaintiff (landlord) from requesting and executing an order for possession at any time after judgment even though the plaintiff may have led the defendant (tenant) to believe that the defendant could remain in the leased premises under arrangements to pay the back rent. Rule 518 (Satisfaction of Order By Payment of Rent and Costs) provides that "the defendant may, in a case for the recovery of possession solely because of failure to pay rent, satisfy the order for possession by paying . . . the rent actually in arrears and the costs of the proceedings." Pa. R.C.P.D.J. No. 518. This "pay and stay" rule enables defendants to avoid eviction by paying back rent in full before the order for possession is executed. The Committee learned, however, that in many cases even if the defendant is unable to pay the full rent in arrears to avoid eviction, the plaintiff, having received a judgment from the district justice, allows the defendant to stay in the premises on the condition that the defendant pay the back rent in accordance with some payment plan. Because of the serious and sensitive issues surrounding one being evicted from one's home, the Committee recommended a time limit for the plaintiff to request the issuance or reissuance of an order for possession.

In conjunction with amendments to the rules regarding orders of execution and orders for possession, the Com-

<sup>1</sup>The Committee's Final Report should not be confused with the official Committee Notes to the Rules. Also, the Supreme Court of Pennsylvania does not adopt the Committee's Notes or the contents of the Committee's explanatory Final Reports.

<sup>2</sup>Recommendation No. 4 Minor Court Rules 2001.

<sup>3</sup>Recommendation No. 4 Minor Court Rules 2001.

mittee also recognized the need for several technical or "housekeeping" amendments to these rules.

Before the Committee recommended these amendments to the Supreme Court, the Committee published the proposal for public comment at 31 Pa.B. 4392 (August 11, 2001).

## II. Discussion of Rule Changes

### A. Reissuance of Orders After Supersedeas Is Terminated or Stay Lifted

#### 1. Rule 403

The Committee recommended an amendment to Rule 403 (Issuance and Reissuance of Order of Execution) to add a subparagraph B(2) to provide for the reissuance of an order of execution upon the disposition of an appeal, writ of certiorari, or bankruptcy stay that had superseded or stayed the original order of execution.

The Committee recognized that in most cases an appeal or writ of certiorari will not operate as a supersedeas against an order of execution, because normally the appeal or writ will be filed before an order of execution may be issued because of the 30 day waiting period for requesting an order of execution prescribed by Rule 402A. However, the Committee believed it necessary to provide for this possibility because of the provision in Rule 1002 allowing for an appeal to be filed after the 30 day appeal period with leave of court; and the provision in Rule 1009 allowing for the filing at any time of a writ of certiorari claiming lack of personal or subject matter jurisdiction.

The new subparagraph requires a plaintiff who wishes to proceed with an order of execution after a supersedeas has been terminated or a stay lifted to request a reissuance of the order in accordance with the existing rule.

Also, the Committee recommended the addition of a new subdivision C to require a party requesting a reissuance of an order after a supersedeas is terminated or a stay is lifted to provide the court with an order or other documentation striking, dismissing, terminating, or lifting the supersedeas or stay.

The Committee also recommended a revision to the Note to Rule 403 to make clear that, although there are no filing costs for a reissued order of execution, there may be additional server costs.

#### 2. Rule 516

The Committee recommended a similar amendment to Rule 516 (Issuance of Order for Possession) to add a subparagraph B(2) to provide for the reissuance of an order for possession upon the disposition of an appeal, writ of certiorari, or bankruptcy stay that had superseded or stayed the original order for possession. However, the amendment to Rule 516 differs from the Rule 403 amendment in that the request for reissuance, in cases arising from residential leases, would be subject to a 120-day time limit from the date the appeal, writ, supersedeas, or stay is terminated or lifted. This time limitation will be discussed in greater detail below.

The Committee recognized that in most cases an appeal or writ of certiorari will not operate as a supersedeas against an order for possession, because normally the appeal or writ will be filed before an order for possession may be issued because of the waiting periods for requesting an order for possession prescribed by Rule 515. However, the Committee believed it necessary to provide for this possibility because of the provision in Rule 1002 allowing for an appeal to be filed after the normal appeal period with leave of court; and the provision in Rule 1009

allowing for the filing at any time of a writ of certiorari claiming lack of personal or subject matter jurisdiction.

Also, the Committee recommended the addition of a new subdivision D to require a party requesting a reissuance of an order after a supersedeas is terminated or a stay lifted to provide the court with an order or other documentation striking, dismissing, terminating, or lifting the supersedeas or stay.

The Committee also recommended a revision to the Note to Rule 516 to make clear that, although there are no filing costs for a reissued order for possession, there may be additional server costs.

### B. Time Limitation on Issuance and Reissuance of Order for Possession in Cases Arising From Residential Leases

#### 1. Rule 515

The Committee recommended that subdivision B of Rule 515 (Request for Order for Possession) be amended to impose a 120-day time limit for the plaintiff to request an order for possession in cases arising from residential leases. Under the new subparagraph B(1), dealing with residential leases, the plaintiff is permitted to request an order for possession after the 10th day but within 120 days. Also, the Committee recommended the addition of a subparagraph B(2) to provide for a 120-day time limit for the plaintiff to request an order for possession, in a case arising from a residential lease, after a supersedeas or bankruptcy stay is terminated or lifted, thus allowing the plaintiff to proceed with the initial request for an order for possession.

The Note to the rule makes clear that the time limitation applies only to the request for order for possession in a case arising from a residential lease, and in no way affects the plaintiffs ability to execute on the money judgment.

#### 2. Rule 516

The Committee also recommended a 120-day time limit on requests for the reissuance of orders for possession in cases arising from residential leases. The Committee recommended that Rule 516 (Issuance of Order For Possession) be amended to add a subparagraph B(1) as the general rule for reissuance of orders for possession. (See discussion of Rule 519 below.) As under the previous version of the rules, the amended Rule 516(B)(1) allows an order for possession to be reissued for one additional 60-day period. The new subdivision C, however, requires that the request for reissuance of the order for possession in a case arising from a residential lease be filed within 120 days of the date of the entry of the judgment or within 120 days of the date an appeal, writ of certiorari, or supersedeas is stricken, dismissed, or otherwise terminated, or a bankruptcy stay is lifted. Also, the Committee recommended that the title of Rule 516 be changed to "ISSUANCE AND REISSUANCE OF ORDER FOR POSSESSION" to more accurately reflect its content and to be consistent with its counterpart in the civil action rules, Rule 403.

The Note to the rule makes clear that the time limitation applies only to the order for possession in cases arising from residential leases and in no way affects the plaintiffs ability to execute on the money judgment.

### C. Correlative Rule Change to Rule 519

Reissuance of orders for possession was formerly provided for in Rule 519 (Forcible Entry and Ejectment). The Committee recommended that reissuance of orders for possession be handled under Rule 516 as described above,

and that Rule 519 be amended accordingly. This change makes the rules relating to landlord and tenant actions more closely parallel the civil action rules (see Pa. R.C.P.D.J. No. 403), and more appropriately arranges the subject matter of the rules. Also, the Committee recommended that the title of Rule 519 be changed to "FORCIBLE ENTRY AND DELIVERY OF POSSESSION" to more accurately reflect its content.

*D. Technical and "Housekeeping" Amendments*

In a related matter, the Committee recommended a revision to the Note to Rule 515 to clarify that at the time the plaintiff files the request for an order for possession, the district justice court should collect server costs for all actions through delivery of possession. Thereafter, if the debt is satisfied 48 hours or more prior to a scheduled delivery of possession, a portion of the server fees may be refundable. The revised Note cross references Rules 516 through 520 and Section 2950(d) of the Judicial Code, 42 Pa.C.S. § 2950(d).

Finally, the Committee recommended minor changes to Rules 403, 515, 516, and 519 to correct citation form, to address gender neutrality issues in the rules, and to make other minor clarifications.

[Pa.B. Doc. No. 02-786. Filed for public inspection May 3, 2002, 9:00 a.m.]

for the 2002-2003 registration year of the collection fee for checks in payment of the annual registration fee for attorneys that are dishonored and the late payment penalty for registrations not received on time.

Pennsylvania Rule of Disciplinary Enforcement 219(d)(2) provides that, where a check in payment of the annual registration fee for attorneys has been returned to the Board unpaid, a collection fee established annually by the Board must be paid before the annual registration fee shall be deemed to have been paid. The Board has established the collection fee for the 2002-2003 registration year as \$50.00 per returned item.

Pa.R.D.E. 219(h)(2) provides that a late payment penalty established annually by the Board must be paid by an attorney who fails to timely file an annual registration statement before the attorney shall be considered on active status for the new registration year. The Board has established the late payment penalty for the 2002-2003 registration year as \$75.00

ELAINE M. BIXLER,  
*Executive Director and Secretary*  
*The Disciplinary Board of the*  
*Supreme Court of Pennsylvania*

[Pa.B. Doc. No. 02-788. Filed for public inspection May 3, 2002, 9:00 a.m.]

## Title 249—PHILADELPHIA RULES

### PHILADELPHIA COUNTY

#### Deferment of Villanova Insurance Company Cases by Reason of Order of Rehabilitation; Adminis- trative Doc. 04 of 2002

##### Order

*And Now*, this 17th day of April, 2002, upon consideration of the Order of Rehabilitation entered by the Pennsylvania Commonwealth Court dated March 28, 2002 pursuant to the petition of the Insurance Commissioner of the Commonwealth of Pennsylvania, it is hereby *Ordered* and *Decreed* that all cases in which Villanova Insurance Company is a named party shall be placed in deferred status.

It is further *Ordered* and *Decreed* that all actions currently pending against an insured of Villanova Insurance Company shall be placed in deferred status for ninety (90) days from April 1, 2002.

WILLIAM J. MANFREDI,  
*Supervising Judge*

[Pa.B. Doc. No. 02-787. Filed for public inspection May 3, 2002, 9:00 a.m.]

## DISCIPLINARY BOARD OF THE SUPREME COURT

#### Collection Fee and Late Payment Penalty for 2002- 2003 Registration Year

Notice is hereby given of the establishment by The Disciplinary Board of the Supreme Court of Pennsylvania

#### Notice to Attorneys

Notice is hereby given that pursuant to Rule 221(b), Pa.R.D.E., the following List of Financial Institutions have been approved by the Supreme Court of Pennsylvania for the maintenance of fiduciary accounts of attorneys. Each financial institution has agreed to comply with the requirements of Rule 221, Pa.R.D.E. which provides for trust account overdraft notification.

ELAINE M. BIXLER,  
*Executive Director and Secretary*  
*The Disciplinary Board of the*  
*Supreme Court of Pennsylvania*

#### LIST OF APPROVED PA FINANCIAL INSTITUTIONS

##### Bank Code A.

374	Abington Savings Bank
2	Adams County National Bank
477	Advest, Inc.
302	Allegheny Valley Bank of Pittsburgh
548	Allegiance Bank of North America
124	Allfirst Bank
375	Altoona First Savings Bank
376	Ambler Savings and Loan Association
532	American Bank of Lehigh Valley
502	American Eagle Savings Bank, PaSA
116	Ameriserv Financial
377	Apollo Trust Company
568	ARC Federal Credit Union
407	Armstrong County Trust Company

##### B.

558	Bancorp.com Bank (The)
155	Bank of Hanover & Trust Company
3	Bank of Lancaster County, N.A.
415	Bank of Landisburg (The)
546	Bank Philadelphia
453	Bank Pittsburgh





482	Peoples National Bank of Rural Valley (The)	150	Three Rivers Bank & Trust Company
447	Peoples National Bank of Susquehanna County	467	Turbotville National Bank (The)
444	Peoples Savings Bank		<b>U.</b>
491	Peoples State Bank (The)	113	Union Bank and Trust Company
443	Peoples Thrift Savings Bank	481	Union Building and Loan Savings Bank
131	PFC Bank	232	Union National Bank & Trust Co.
556	Philadelphia Federal Credit Union	483	Union National Bank of Mount Carmel (The)
448	Phoenixville Federal Savings		Union National Community Bank
79	PNC Bank, National Association	133	Unitas National Bank
534	Pocono Community Bank	243	United Bank of Philadelphia
528	Polonia Bank	472	United Savings Bank
449	Port Richmond Savings	475	
454	Portage National Bank		<b>V.</b>
559	Potters Bank		Vartan National Bank
450	Premier Bank		Vista Bank
455	Prestige Bank, FSB	136	
202	Progress Bank	313	<b>W.</b>
451	Progressive Home Federal		WNB
456	Prudential Savings Bank		Washington Federal Savings Bank
530	PSB	123	Wayne Bank
	<b>Q.</b>	119	Waypoint Bank
107	Quakertown National Bank (The)	121	West Milton State Bank
560	Quaint Oak Savings Bank	65	West View Savings Bank
	<b>R.</b>	122	Westmoreland Federal Savings and Loan Assoc. of Latrobe
487	Reliable Bank, PaSA	494	Wheeling National Bank
452	Reliance Savings Bank	473	William Penn Savings and Loan Association
220	Republic First Bank	553	Willow Grove Bank
463	Rittenhouse Trust Company (The)	476	Wilmington Trust of PA
496	Roxborough Manayunk Federal Savings Bank	474	Woodlands Bank
208	Royal Bank of Pennsylvania	160	
	<b>S.</b>	272	<b>X.</b>
513	S & T Bank		<b>Y.</b>
457	Savings and Loan Association of Milton		<b>Z.</b>
514	Schuylkill Savings & Loan Association		
464	Scottdale Bank & Trust Company (The)		
460	Second Federal Savings & Loan Assoc. of Philadelphia		
335	Second National Bank of Masontown		
147	Security National Bank		
516	Sentry Federal Credit Union		
458	Sharon Savings Bank		
312	Sky Bank		
462	Slovenian Savings & Loan Assoc. of Franklin - Conemaugh		
459	Smithfield State Bank		
486	Somerset Trust Company		
469	Spring Hill Savings Bank, FSB		
111	Southwest Bank		
316	Sovereign Bank, FSB		
465	St. Edmond's Savings and Loan Association		
518	Standard Bank PASA		
542	Stonebridge Bank		
529	Suburban Community Bank		
466	Suburban Federal Savings Bank		
110	Sun Bank		
517	Sun National Bank		
236	Swineford National Bank		
	<b>T.</b>		
558	TheBancorp.com Bank		
26	Third Federal Savings Bank		

[Pa.B. Doc. No. 02-789. Filed for public inspection May 3, 2002, 9:00 a.m.]

**Notice of Suspension**

Notice is hereby given that on April 19, 2002, pursuant to Rule 214(d)(1) of the Pa.R.D.E., Marc M. Scola, who resides outside the Commonwealth of Pennsylvania, was placed on temporary suspension by the Supreme Court until further Order of the Court. In accordance with Rule 217(f), Pa.R.D.E., this notice is published in the *Pennsylvania Bulletin*.

ELAINE M. BIXLER,  
Executive Director and Secretary  
The Disciplinary Board of the  
Supreme Court of Pennsylvania

[Pa.B. Doc. No. 02-790. Filed for public inspection May 3, 2002, 9:00 a.m.]

**Notice of Transfer of Attorneys to Inactive Status**

Notice is hereby given that the following attorneys have been transferred to inactive status by Order of the Supreme Court of Pennsylvania dated March 20, 2002, pursuant to Rule 111(b) Pa.R.C.L.E., which requires that

every active lawyer shall annually complete, during the compliance period for which he or she is assigned, the continuing legal education required by the Continuing Legal Education Board. The Order became effective April 19, 2002 for Compliance Group 2 due August 31, 2001.

Notice with respect to attorneys having Pennsylvania registration addresses, who have been transferred to inactive status by said Order, was published in the appropriate county legal journal.

Mark William Andersson  
Lawrenceville, GA

Steven Craig Baker  
Atlanta, GA

Peter Joseph Bonfiglio  
Laurel Spring, NJ

Ralph Adrian Cantafio  
Steamboat Springs, CO

James Thomas Carey  
Weirton, WV

Charles L. Chambers  
Kew Gardens, NY

Burke Arthur Christensen  
Naperville, IL

Adam S. Cohen  
Westampton, NJ

Terry Alexis Collins  
Atlanta, GA

Laura Jean Davies  
Wilmington, DE

Charles Anthony DiFazio  
Mt. Laurel, NJ

Latif Selassie Doman  
Washington, DC

Richard M. Flynn  
Gloucester, NJ

Stephen Watkins Forbes  
Littleton, CO

Rise A. Friedman  
Indianapolis, IN

Michelle Ann Harrell  
Springfield, VA

Thomas S. Harty  
Cherry Hill, NJ

Marcia Ruth Isaacson  
New York, NY

Cheryl-Renee Johnson  
Bronx, NY

Susan Carol Kowalenko  
Westfield, NJ

Duncan Rogers Lee  
Upper Nyack, NY

John Joseph Leshinski  
Phoenix, AZ

Adam Eli Levy  
Leonardo, NJ

Frederick A. Love  
Pembroke Pines, FL

Louis Neil Magazzu  
Vineland, NJ

George Andrew Massucco  
JAPAN

James D. Mills  
Brick, NJ

Kimberly Monaco  
Moorestown, NJ

Mary Colleen Murphy  
Glen Burnie, MD

Heidi Meredith Pender  
McLean, VA

Stephen F. Perazzo  
Staten Island, NY

Gregory J. Poland  
Binghamton, NY

Moira Jean Poper  
Mt. Laurel, NJ

Peter J. Proko  
Sewell, NJ

Ronald Julius Rakunas  
Dana Point, CA

Margaret Devine Rodriguez  
Morristown, NJ

Jeffrey Roth  
Springfield, NJ

Richard S. Scolaro  
Syracuse, NY

Robert Scott Shtofman  
Encino, CA

Colleen Mary Stiger  
Boca Raton, FL

Nicole Cyd Tenenbaum  
Greenville, DE

Jeffrey Alan Thiel  
Washington, DC

Richard R. Thomas II  
New Brunswick, NJ

Maureen Patricia Vahey  
Wilmington, DE

Robert James Weatherly  
Plainfield, NJ

Nanci Olivere Weber  
Greenlawn, NY

ELAINE M. BIXLER,  
*Executive Director and Secretary  
The Disciplinary Board of the  
Supreme Court of Pennsylvania*

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