

# THE COURTS

## Title 231—RULES OF CIVIL PROCEDURE

### PART I. GENERAL

#### [231 PA. CODE CHS. 200 AND 1500]

#### Miscellaneous Technical Amendments to Notes and Comments to Rules; No. 267; Doc. No. 5

#### Order

*Per Curiam:*

And Now, this 5th day of December, 1996, the notes to Rules of Civil Procedure 227.1(c) and 1557 and Footnote 2 of the Explanatory Comment to Rules 1038.1 and 1038.2 are amended to read as follows.

Whereas publication of proposed rulemaking would otherwise be required, it has been determined under Rule of Judicial Administration 103(a)(3) that the amendments are of a perfunctory nature and that the immediate promulgation of this Order is 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 immediately.

#### Annex A

### TITLE 231. RULES OF CIVIL PROCEDURE

#### PART I. GENERAL

#### CHAPTER 200. BUSINESS OF COURTS

I. The notes to Rules of Civil Procedure 227.1(c) and 1557 are amended to read as follows:

#### Rule 227.1. Post-Trial Relief.

\* \* \* \* \*

(c) \*\*\*

**Official Note:** A motion for post-trial relief may be filed following a trial by jury, a trial by a judge without a jury in an action at law pursuant to Rule 1038 or a trial by a judge without a jury in an action in equity. A motion for post-trial relief may not be filed to orders disposing of preliminary objections, motions for judgment on the pleadings or for summary judgment, motions relating to discovery or other proceedings which do not constitute a trial. See *U. S. National Bank in Johnstown v. Johnson*, 506 Pa. 622, 487 A.2d 809 (1985).

[ A motion for post-trial relief may not be filed in a case stated. ]

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#### CHAPTER 1500. ACTION IN EQUITY

#### Subchapter B. PARTITION OF REAL PROPERTY

#### Rule 1557. Order Directing Partition. Post-Trial Relief.

\* \* \* \* \*

**Official Note:** Pennsylvania Rule of Appellate Procedure [ 311(a)(6) ] 311(a)(7) provides that an appeal may be taken as of right from an order directing partition.

\* \* \* \* \*

II. Footnote 2 to the Explanatory Comment to Rules 1038.1 and 1038.2 is amended to read:

2. See the [ **dissenting** ] **concurring** opinion in *McCarron v. Upper Gwynedd Township et al.*, 139 Pa. Cmwlth. Ct. 528, 591 A.2d 1151, 1159 (1990).

#### Explanatory Comment

The note to Rule 227.1(c) has been amended by deleting the second paragraph referring to a case stated. This amendment was required by the abolition of the case stated by Rule 1038.2.

The note to Rule 1557 has been amended to reflect the 1996 amendment of Pennsylvania Rule of Appellate Procedure 311 which renumbered the subparagraph providing for an appeal as of right from an order directing partition.

The amendments are technical in nature and do not affect practice or procedure.

*By the Civil Procedural Rules Committee*

EDWIN L. KLETT,  
Chairperson

[Pa.B. Doc. No. 96-2131. Filed for public inspection December 20, 1996, 9:00 a.m.]

### PART I. GENERAL

#### [231 PA. CODE CH. 3000]

#### Promulgation of Rules 3276—3291 Governing Deficiency Judgments; No. 268; Doc. No. 5

#### Order

*Per Curiam:*

And Now, this 6th day of December, 1996, Rules of Civil Procedure 3276 through 3291 governing Deficiency Judgments are promulgated to read as follows.

This Order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective January 1, 1997.

#### Annex A

### TITLE 231. RULES OF CIVIL PROCEDURE

#### PART I. GENERAL

#### CHAPTER 3000. JUDGMENTS

#### Subchapter E. ENFORCEMENT OF JUDGMENTS IN SPECIAL ACTIONS

#### DEFICIENCY JUDGMENTS

#### General Provisions

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#### Proceedings under Section 8103(a) to Fix Fair Market Value of Real Property Sold

3281.	Parties.
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3286.	Order. Effect.

**Proceedings under Section 8103(d) to Mark Judgment Satisfied, Released and Discharged**

3287.	Parties.
3288.	Petition. Averments. Notice to Defend.
3289.	Service.
3290.	Order Upon Default or Admission.
3291.	Trial.

**General Provisions****Rule 3276. Scope.**

The rules of this chapter govern proceedings pursuant to Section 8103 of the Judicial Code, 42 Pa.C.S. § 8103, relating to deficiency judgments.

**Official Note:** Section 8103(a) of the Judicial Code provides for a petition to fix the fair market value of real property sold in execution proceedings where the price for the property sold is not sufficient to satisfy the amount of the judgment, interest and costs and the judgment creditor seeks to collect the balance due.

Section 8103(d) provides for a petition to have the judgment marked satisfied, released and discharged when the judgment creditor has not initiated a timely proceeding under Section 8103(a).

Rules 3276—3280 are general provisions applicable to both types of petitions. Rules 3281—3286 are special rules applicable to petitions under Section 8103(a) while Rules 3287—3291 apply to petitions under Section 8103(d).

**Rule 3277. Definitions.**

As used in this chapter,

“judgment” means any judgment which is subject to the provisions of Section 8103 of the Judicial Code and includes a judgment de terris, a judgment in rem and a judgment in personam.

**Official Note:** The inclusion of judgments de terris, in rem, and in personam is intended to implement Section 8103(a) of the Deficiency Judgment Law which provides that the “petition shall be filed as a supplementary proceeding in the matter in which the judgment was entered.” This changes the practice under prior case law which did not permit the filing of the proceeding supplementary to a matter in which the judgment obtained was not in personam.

The bringing of a deficiency judgment proceeding supplementary to an action in rem or de terris such as mortgage foreclosure does not change the character of the action as in rem or de terris. See Rule 3286.

“judgment creditor” means the holder of a judgment as defined by this rule;

“prior lien amounts” means the amounts of any prior liens, costs, taxes and municipal claims not discharged by the sale, and the amounts of any such items paid at distribution on the sale.

**Rule 3278. Venue. Supplementary Proceeding.**

The proceeding shall be brought in the county in which the real property which is sold is located as a supplemental proceeding in the execution proceeding in that county.

**Rule 3279. Commencement. Petition.**

(a) The proceeding shall be commenced by filing a petition which shall begin with the notice to defend and set forth the averments required by Rule 3282 or Rule 3288.

(b) The petition shall contain a caption setting forth (1) the docket number of the execution proceedings in which the real property was sold, and

(2) the names of all petitioners and respondents.

**Official Note:** See Rules 3281 and 3287 governing parties to the proceeding.

(c) The petition shall be verified and divided into paragraphs numbered consecutively. Each paragraph shall contain as far as practicable only one material allegation.

**Rule 3280. Answer.**

(a) Except as provided by subdivision (b), an answer to a petition which contains a notice to defend shall be filed within twenty days after service of the petition.

(b) A respondent served outside the United States shall have sixty days from service of the petition within which to file an answer.

(c) The answer to a petition shall be divided into paragraphs, numbered consecutively, corresponding to the numbered paragraphs of the petition.

**Proceedings under Section 8103(a) to Fix Fair Market Value of Real Property Sold****Rule 3281. Parties.**

(a) The petition shall name the judgment creditor as petitioner.

(b) The petition shall name as respondent any debtor, obligor, guarantor, mortgagor, and any other person directly or indirectly liable to the judgment creditor for the payment of the debt, and any owner of the property affected thereby.

**Rule 3282. Petition. Averments. Notice to Defend.**

(a) The petition shall set forth:

(1) the name and address of the judgment creditor,

(2) the name and last known address of each respondent,

(3) a statement that the petition is filed pursuant to Section 8103(a) of the Judicial Code,

(4) the court and number of the execution proceedings, the original judgment and any judgment obtained by transfer,

(5) the date that the property was sold by the sheriff and the date that the sheriff's deed was executed and acknowledged,

(6) a description of the real property and its location,

(7) the fair market value of the real property,

(8) a description of all prior lien amounts if the petitioner desires credit for such amounts, and

(9) a request that the court fix the fair market value of the real property at the value set forth in the petition and that the court determine any prior lien amounts as set forth in the petition.

(b) The petition shall begin with a notice to defend substantially in the following form:

(CAPTION)

NOTICE TO DEFEND

To the Respondent(s):

You have been sued in court. The petition set forth in the following pages requests the court to determine the

amount which should be credited against any liability you may have to the petitioner as a result of the purchase by the petitioner at an execution sale of the real property described in the petition. If you wish to defend against the petition, you must take action within twenty (20) days after this petition and notice are served upon you, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the matters set forth in the petition. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the court without further notice for any claim or relief requested by the petitioner. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

---

(Name)

---

(Address)

---

(Telephone Number)

**Official Note:** The office shall be designated by the court under Rule 1018.1(c).

**Rule 3283. Service.**

- (a) The petition shall be served
- (1) upon a respondent who is a defendant in the judgment who has entered an appearance, by the petitioner in the manner provided by Rule 440, and
  - (2) upon any other respondent
    - (i) by the sheriff or a competent adult who is not a party to the action in the manner prescribed by Rule 402(a) for service of original process, or
    - (ii) by the petitioner mailing a copy in the manner prescribed by Rule 403, or
    - (iii) if service cannot be made as provided in subparagraphs (i) or (ii), pursuant to special order of court as prescribed by Rule 430.
- (b) The person serving the petition shall file a return of service as provided by Rule 405.

**Rule 3284. Order Upon Default or Admission.**

The court shall, without further notice or hearing, enter an order determining the fair market value of the real property to be the value alleged in the petition and determining the prior lien amounts to be in the amounts alleged in the petition if

- (1) no answer is filed within the required time to a petition which contains a notice to defend and notice has been given as provided by Rule 237.1 et seq., or
- (2) an answer is filed which does not deny the allegations in the petition as to the fair market value or the prior lien amounts.

**Rule 3285. Trial.**

If an answer is filed which denies the allegations in the petition as to the fair market value or the prior lien amounts, the trial shall be limited to those two issues which shall be heard by a judge sitting without a jury in accordance with Rule 1038.

**Official Note:** Rules 206.4 through 206.7 governing petitions and answers do not apply to a petition subject to these rules.

**Rule 3286. Order. Effect.**

(a) The order of the court, whether upon default, admission or after trial, determining the fair market value of the real property and of the prior lien amounts shall release the respondents named and served to the extent of the fair market value so determined less the prior lien amounts.

**Official Note:** Section 8103(c)(2) of the Judicial Code provides for a decree to be entered "directing the judgment creditor to file release of the debtors, obligors, guarantors or any other persons directly or indirectly liable for the debts, to the extent of the fair value so fixed."

(b) No order entered in a proceeding pursuant to these rules shall determine or be deemed to have determined whether any respondent is personally liable to the petitioner.

**Proceedings under Section 8103(d) to Mark Judgment Satisfied, Released and Discharged**

**Rule 3287. Parties.**

The petition shall name the judgment creditor as a respondent.

**Rule 3288. Petition. Averments. Notice to Defend.**

- (a) The petition shall set forth:
- (1) the name and address of the petitioner,
  - (2) the name and last known address of each respondent,
  - (3) a statement that the petition is filed pursuant to Section 8103(d) of the Judicial Code,
  - (4) the court and number of the execution proceedings, the original judgment and any judgment obtained by transfer,
  - (5) a statement that the real property was sold, directly or indirectly, to the judgment creditor in the execution proceedings,
  - (6) the date that the property was sold by the sheriff and the date that the sheriff's deed was executed and acknowledged,
  - (7) a statement that no petition under Section 8103(a) of the Judicial Code has been filed within six months after the sale, and
  - (8) a request that the court direct the prothonotary to mark the judgment satisfied, released and discharged.

(b) The petition shall begin with a notice to defend substantially in the following form:

(CAPTION)

NOTICE TO DEFEND

To the Respondent(s):

You have been sued in court. The petition set forth in the following pages requests the court to direct the prothonotary to mark the judgment held by you against the petitioner satisfied, released and discharged as a result of your alleged failure to file a timely petition to fix the fair market value of real property purchased directly or indirectly by you at an execution sale. If you wish to defend against the petition, you must take action within twenty (20) days after this petition and notice are served upon you, by entering a written appearance personally or

by attorney and filing in writing with the court your defenses or objections to the matters set forth in the petition. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the court without further notice for any claim or relief requested by the petitioner. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Telephone Number)

**Official Note:** The office shall be designated by the court under Rule 1018.1(c).

**Rule 3289. Service.**

(a) The petition shall be served in the manner provided by Rule 440.

(b) Proof of service shall be as provided by Rule 405.

**Rule 3290. Order Upon Default or Admission.**

The court shall, without further notice or hearing, enter an order directing the prothonotary to mark the judgment satisfied, released and discharged if

(1) no answer is filed within the required time to a petition which contains a notice to defend and notice has been given as provided by Rule 237.1 et seq., or

(2) an answer is filed which does not deny the allegations in the petition that the judgment creditor has purchased, directly or indirectly, the real property sold in an execution sale on the judgment creditor's judgment and has failed to file a timely petition to fix the fair market value of the real property under Section 8103(a) of the Judicial Code.

**Rule 3291. Trial.**

If an answer is filed which denies the allegations in the petition, the trial shall be by a judge sitting without a jury in accordance with Rule 1038.

**Official Note:** Rules 206.4 through 206.7 governing petitions and answers do not apply to a petition subject to these rules.

**Explanatory Comment**

The new rules governing deficiency judgment proceedings accomplish two objectives. First, they supply a procedure lacking since the repeal by the Judiciary Act Repealer Act (JARA)<sup>1</sup> in 1978 of the Deficiency Judgment Act<sup>2</sup> of 1941. Second, they provide for the filing of a proceeding to fix the fair market value of real property sold as a supplement to the action in which the judgment was entered, thereby eliminating a procedural difficulty which has been termed the "deficiency judgment trap."

**I. The New Procedure**

In 1978 the Deficiency Judgment Act of 1941 was repealed and replaced by a new provision, Section 8103 of

the Judicial Code.<sup>3</sup> The Code provision eliminated much of the procedure in the former statute and made specific mention of matters which would be governed by general rules. The new rules complement the Code provision.

Section 8103 of the Judicial Code contemplates two petitions. One is a petition under subsection (a) by the judgment creditor to fix the fair market value of the real property sold on execution. The other is a petition under subsection (d) to have the judgment marked satisfied when the judgment creditor has failed to timely file a petition to fix the fair market value of the real property.

As the note to Rule 3276 indicates, the new rules are drafted around these two petitions. The first five rules, Rules 3276 through 3280, are general provisions applicable to both petitions under the Code. They govern the scope of the rules, definitions, venue of the proceeding, commencement by petition and the formal requirements of the petition and answer.

The second group of six rules, Rules 3281 through 3286, are rules which apply to the petition to fix the fair market value of real property sold under Section 8103(a) of the Judicial Code. They specify the parties to the proceeding, the averments to be set forth in the petition and a notice to defend, the manner of serving of the petition, the order to be entered upon default or admission, the trial of the matter and the eventual order and its effect.

The final group of five rules, Rules 3287 through 3291, apply to the petition to mark the judgment satisfied, released and discharged under Section 8103(d) of the Judicial Code. These rules parallel the rules just mentioned, prescribing the parties to the proceeding, the averments to be set forth in the petition and a notice to defend, the manner of serving of the petition, the order to be entered upon default or admission and the trial of the matter.

**II. Supplementary Proceeding**

Section 8103(a) of the Judicial Code provides that the "petition shall be filed as a supplementary proceeding in the matter in which the judgment was entered." It has been held, however, that the proceeding may not be brought as a supplement to an action of mortgage foreclosure, an action de terris.<sup>4</sup> Rather, the proceeding must be brought in connection with an action in personam. The inability to bring a proceeding supplementary to an action of mortgage foreclosure, coupled with the time constriction of a six-month period following the sale of the collateral in which to bring the proceeding,<sup>5</sup> has created difficulties for the practitioner.

The rules remove the impediment to bringing a deficiency judgment proceeding supplementary to an action of mortgage foreclosure. First, Rule 3277 defines judgment as "any judgment which is subject to the provisions of Section 8103 of the Judicial Code and includes a judgment de terris, a judgment in rem and a judgment in personam." Second, Rule 3278 provides that the "proceeding shall be brought in the county in which the real property which is sold is located as a supplemental proceeding in the execution proceeding in that county." Thus, in an action of mortgage foreclosure, an action de terris, the petition to fix the fair market value "shall" be filed following the sale of the real property as a supplementary proceeding in the execution proceeding.

<sup>3</sup> 42 Pa.C.S. § 8103.

<sup>4</sup> *McDowell Nat. Bank of Sharon v. Stupka*, 310 Pa. Superior Ct. 143, 456 A.2d 540 (1983).

<sup>5</sup> Section 5522(b)(2) of the Judicial Code, 42 Pa.C.S. § 5522(b)(2).

<sup>1</sup> Section 2(a) [1227] of the Act of April 28, 1978, P.L. 202, No. 53, 42 P.S. § 20002(a) [1227].

<sup>2</sup> Act of July 16, 1941, P.L. 400, No. 151, 12 P.S. § 2621.1 et seq. (Repealed).

In allowing a deficiency judgment proceeding to be brought supplementary to an action de terris or in rem, the character of the action is not altered. As Rule 3286(b) states, the deficiency judgment proceeding merely fixes the fair market value of the real property sold and does not impose personal liability on any respondent.

*By the Civil Procedural Rules Committee*

EDWIN L. KLETT,  
*Chairperson*

[Pa.B. Doc. No. 96-2132. Filed for public inspection December 20, 1996, 9:00 a.m.]

## Title 255—LOCAL COURT RULES

### FRANKLIN AND FULTON COUNTIES

Revision of Local Civil Action Rule 39-1920.3;  
Miscellaneous Docket Volume CC, Page 11

#### Order of Court

December 5, 1996, the following Civil Action Rule is amended for the Court of Common Pleas of the 39th Judicial District of Pennsylvania, both the Franklin and Fulton County Branches: 39-1920.3, effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

*By the Court*

JOHN R. WALKER,  
*President Judge*

#### Rule 39-1920.3. Commencement of the Action.

(a) In addition to all filing fees now or hereafter required to be deposited at the time a complaint in divorce is filed, a standing master/transcription assessment in the amount of \$55.00 shall be deposited commencing September 1, 1993.

(b) The prothonotary shall on or before the final working day of each week following a receipt of standing master/transcription fees transmit the same to the Controller of Franklin County or the Treasurer of Fulton County for deposit in a separate account identified as the Standing Master/Transcription Account.

(c) **When a divorce action is commenced by the filing of a Complaint with the Prothonotary, the Plaintiff shall file the form of report required by the Commonwealth of Pennsylvania, Department of Health, Vital Statistics Division as required by Pa.R.C.P. 1920.46 and shall additionally provide two addressed envelopes for both the Plaintiff and the Defendant who will be notified of the Education Program for Divorcing Parents established by the 39th Judicial District of Pennsylvania by its Order of Court dated \_\_\_\_\_, 1996.**

Education Program for Divorcing Parents; Misc. Docket CC, Page 11

*And Now*, this 5th Day of December, 1996,

*It Is Hereby Ordered* that, effective January 2, 1997, all parties to a divorce action with children under the age of eighteen shall attend the Education Program for Divorc-

ing Parents. The Program is a four-hour educational seminar which has been established by the Court to provide guidance to parents in helping their children adjust to the consequences of divorce. The procedures of the Program are as follows:

1. Simultaneously with the filing of a Divorce Complaint, the moving party must file the vital statistics sheet along with two addressed envelopes for both parties who will then be notified by the Court Administrator's Office of the Program and will be provided with a brochure for registration along with a copy of this Order of Court. The parties must fulfill the requirement of mandatory attendance at the seminar within ninety days.

2. Attendance at the seminar is mandatory and can only be waived for compelling reasons after presentation of a Motion to the Court.

3. Within ten days of the notification of the Program as provided in paragraph 1 above, the parties are required to register by using the pre-printed registration form contained in the Education Program for Divorcing Parents brochure. The Program shall be successfully completed by both parties within ninety days of the filing of the Complaint.

4. A fee of \$40.00 will be assessed against each individual attending the seminar. The fee must be paid and mailed in advance of the seminar along with the completed registration form to the address listed in the brochure. Any requests for a waiver reduction of the fee with proof of hardship must be presented to the Program Administrator as instructed in the brochure.

5. FAILURE TO REGISTER AND COMPLETE THE PROGRAM WILL BE BROUGHT TO THE ATTENTION OF THE COURT AND MAY RESULT IN A FINDING OF CONTEMPT WITH THE IMPOSITION OF SANCTIONS INCLUDING A FINE AND/OR IMPRISONMENT.

6. Upon successful completion of the Program, the Program Administrator will provide a certificate directly to the Prothonotary's Office verifying the parties' participation in the course.

[Pa.B. Doc. No. 96-2133. Filed for public inspection December 20, 1996, 9:00 a.m.]

### NORTHAMPTON COUNTY Administrative Order 1996-7; Misc. 332-96

#### Order of Court

*And Now*, this 3rd day of December, 1996, the Northampton County Office of Pretrial Services is substituted for Lehigh Valley Office of Pre-Trial Services, Inc., in Administrative Order 1992-5. In all other respects, Administrative Order 1992-5 shall remain in effect.

*By the Court*

ROBERT A. FREEDBERG,  
*President Judge*

[Pa.B. Doc. No. 96-2134. Filed for public inspection December 20, 1996, 9:00 a.m.]

## NORTHAMPTON COUNTY

**Rule of Civil Procedure N236—Notice by Prothonotary of Entry of Order, Decree or Judgment; 1996-CM-9361****Order of Court**

And Now, this 5th day of December, 1996, Northampton County Rule of Civil Procedure N236—Notice of Prothonotary of Entry of Order, Decree of Judgment—is hereby adopted as follows, effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

Seven (7) certified copies of the within rules shall be filed with the Administrative Office of Pennsylvania Courts; two (2) certified copies shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*; and one (1) certified copy shall be filed with the Pennsylvania Civil Procedural Rules Committee. One (1) copy of this rule shall be kept available in the Office of the Clerk of Courts. A copy is directed to be published in the *Northampton County Reporter*.

By the Court

ROBERT A. FREEDBERG,  
*President Judge*

**Rule N236. Notice by Prothonotary of Entry of Order, Decree or Judgment.**

When filing any order, decree, or judgment, a party shall provide the Prothonotary with the name and address of each unrepresented party along with a sufficient number of copies for mailing by the Prothonotary.

[Pa.B. Doc. No. 96-2135. Filed for public inspection December 20, 1996, 9:00 a.m.]

## NORTHAMPTON COUNTY

**Rules of Criminal Procedure: Bail; Misc 331-96****Order of Court**

And Now, this 3rd day of December, 1996, Northampton County Rules of Criminal Procedure N4003.1, N4006.1, N4008.1, N4009.1, N4011.1 and N4015.1 are hereby rescinded effective thirty (30) days after publication of this Order in the *Pennsylvania Bulletin*.

Northampton County Rules of Criminal Procedure N4006, N4007, N4010, N4011, N4014 and N4015.1 are hereby adopted as follows, effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

Seven (7) certified copies of the within rules shall be filed with the Administrative Office of Pennsylvania Courts; two (2) certified copies shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*; and one (1) certified copy shall be filed with the Pennsylvania Criminal Procedural Rules Committee. One (1) copy of this rule shall be kept available in the Office of the Clerk of Courts. A copy is directed to be published in the *Northampton County Reporter*.

By the Court

ROBERT A. FREEDBERG,  
*President Judge*

**Rule N4006. Release on R.O.R. or Nominal Bail.**

If a defendant is released on his own recognizance (R.O.R.) or on nominal bail, the Court or the issuing authority may designate the Northampton County Office

of Pretrial Services as surety for the defendant, and the defendant shall then become subject to the rules and regulations of the bail agency.

**Rule N4007. Types of Bail.****A. Percentage Cash Bail**

(1) A defendant for whom bail has been set or a private third party surety, with the approval of the Court or with the approval of the issuing authority and the recommendation of the Court-designated bail agency, shall execute the bail bond and deposit with the issuing authority or the Clerk of Courts—Criminal a sum of money equal to ten percent (10%) of the amount of bail set, but in no event less than Fifty (\$50.00) Dollars. Corporate sureties or professional bail bondsmen or agents thereof are expressly prohibited from posting the deposit for bail as provided in this Rule.

(2) Where the Court or the issuing authority releases a defendant on bail on the percentage cash bail program, the Court-designated bail agency shall be designated surety for the defendant, and the defendant shall then become subject to the rules and regulations of that bail agency.

**B. Real Estate**

(1) If realty is offered to satisfy the bail set for an individual defendant, the owner shall present justification for such by filing an affidavit containing the following information for such realty:

(a) Owner's name, address and occupation;

(b) A general description of the real estate which is offered as surety, including location;

(c) A statement of the manner in which title was obtained;

(d) A statement of all encumbrances, including taxes, and estimated amounts required to satisfy said encumbrances;

(e) A statement of any and all other surety undertakings; and

(f) A statement of the fair market value of any realty offered as surety and the assessed valuation of any realty offered as surety and located in Northampton County.

(2) Upon review of the affidavit, the Clerk of Court—Criminal Division shall deduct from the fair market value the amount of any encumbrance, lien, judgment, mortgage or obligation of record to determine the net value of the realty. Realty shall only be accepted as consideration for bail if the net value is at least equal to the amount of the bail required.

(3) Realty shall be used as bail pursuant to this section only if it has not been posted or is not presently being used for bail for any other charges or defendants, unless permitted by court order.

**Rule N4010. Designation of Local Bail Agency.**

(a) The Northampton County Office of Pretrial Services is designated to have the duties and powers of a bail agency as set forth in Rule 4010 of the Pennsylvania Rules of Criminal Procedure.

(b) Whenever a defendant has failed to comply with the rules and regulations of the bail bond or of the bail agency or any additional conditions of his release, he may be brought before the Court to determine if additional bail shall be set in his case, or bail revoked.

**Rule N4011. Qualifications of Surety and Bail Bondsmen.**

(a) Surety companies, fidelity companies and bondsmen are not qualified to act as sureties in Northampton County except as otherwise provided for in these rules.

(b) The Clerk of Courts—Criminal shall compile, maintain, and make available for public inspection a list of approved surety companies, fidelity companies, and professional bondsmen qualified to act as sureties in Northampton County (hereinafter "the approved list").

(c) A professional bondsman, as defined in 42 Pa.C.S.A. § 5741, may not be included on the approved list unless he:

(1) presents proof of currently valid registration and licensure by the Insurance Department of the Commonwealth of Pennsylvania, pursuant to 42 Pa.C.S.A. § 5742;

(2) presents proof that he maintains an office in Northampton County from which he conducts his business, pursuant to 42 Pa.C.S.A. § 5744; and

(3) posts and maintains as security with the Clerk of Courts—Criminal the sum of Twenty-five Thousand (\$25,000.00) Dollars in United States currency.

(d) Any fidelity or surety company authorized to act as surety within this Commonwealth may not be included on the approved list unless the company:

(1) presents proof of currently valid registration and licensure by the Insurance Department of the Commonwealth of Pennsylvania pursuant to 40 P. S. §§ 831 et seq.;

(2) files with the District Attorney, and with the Clerk of Courts—Criminal for the last calendar quarter ending before the date of the application, a report of the type required to be filed quarterly, pursuant to 42 Pa.C.S.A. § 5747; and

(3) posts and maintains as security with the Clerk of Courts—Criminal the sum of Twenty-five Thousand (\$25,000.00) Dollars in United States currency.

(e) A professional bondsman or surety company wishing to be placed on the approved list must file information required by Rules N4007.101(c) and N4007.101(d) with the Clerk of Courts—Criminal. Upon finding of compliance of the applicant with these rules and all applicable laws, the Clerk of Courts—Criminal shall place the name of the applicant on the approved list.

(f) Upon order of the Court of Common Pleas of Northampton County, after hearing held on not less than ten (10) days notice to the bondsman or fidelity or surety company, the Clerk of Courts—Criminal shall remove the name of the bondsman or company from the approved list. Grounds for suspension or revocation shall include, in the discretion of the Court:

(1) failure of the bondsman or fidelity or surety company to comply with the requirement of these rules;

(2) failure of the bondsman or fidelity or surety company to pay any forfeited bail bond within six (6) months of the forfeiture or file a petition to reinstate said bail bond within the six-month period;

(3) suspension of the license of a bondsman by a Court of Common Pleas elsewhere in the Commonwealth of Pennsylvania for reasons other than failure to maintain an office in the county in which he was suspended;

(4) suspension of the license of a fidelity or surety company by the Insurance Department of the Commonwealth of Pennsylvania;

(5) non-compliance by a fidelity or surety company with the requirements of 42 Pa.C.S.A. § 5747;

(6) non-compliance by a bondsman with the requirements of 42 Pa.C.S.A. § 5746(b).

(g) Whenever bail has been forfeited with respect to a defendant for whom bail has been posted by a professional bondsman or surety company or fidelity company, the amount of said forfeited bail shall, pursuant to Pa.R.Crim.P. 4016, be deducted and withdrawn by the Clerk of Courts—Criminal from the security posted by the said bondsman or company pursuant to these rules. Within ten (10) days after notice to the bondsman or company of such withdrawal by the Clerk of Courts—Criminal, the said bondsman or company shall replenish the posted security to maintain Twenty-five Thousand (\$25,000.00) Dollars as security. Failure, after such notice, so to replenish the security shall (1) require notice by the Clerk of Courts—Criminal of such failure to the District Attorney, and (2) be grounds for removal of the name of the bondsman or fidelity or surety company from the approved list.

(h) The Clerk of Courts—Criminal may make additions to or deletions from the approved list at any time. When there is an addition to or deletion from the list, the Clerk of Courts—Criminal shall distribute copies of the list to the District Attorney of Northampton County, Public Defender of Northampton County, Bail Agency, Warden, and to the Court Administrator, who shall distribute the list to all sitting Judges and District Justices of the Third Judicial District. An updated list shall be distributed at least once every twelve months, notwithstanding the absence of any additions or deletions from the list.

(i) No person or office may accept bail from a bondsman, a fidelity company or a surety company that is not included on the current approved list.

**Rule N4014. Duration of Obligation—Termination of Case.**

In cases where a defendant has been sentenced to a term of imprisonment, commencement of which sentence has been deferred, full and final disposition of the case shall not be deemed to occur prior to defendant's surrender to authorities for commencement of the sentence of imprisonment.

**Rule N4015.1. Return of Deposits; Charges.**

(a) Upon full and final disposition of the case, the issuing authority or the Clerk of Courts—Criminal shall retain twenty per cent (20%) of the amount deposited, but in no event less than Fifty (\$50.00) Dollars as administrative costs for the percentage cash bail program and shall return the balance to the defendant or the third party surety unless the balance is applied to pay a fine and costs of prosecution or to make restitution. The moneys retained shall be considered as earned at the time the bail undertaking is executed and the money is deposited by the defendant or the third party surety.

(b) If the Court, upon sentence, orders the defendant to pay a fine and costs of prosecution or to make restitution, the amount deposited by the defendant under the percentage cash bail program shall be first applied to the administrative costs as aforesaid or for general county use and then to the fine, costs, and restitution as ordered.

(c) Where a third party surety has deposited money under the percentage cash bail program or otherwise, the

moneys deposited shall be first applied to the administrative costs as aforesaid. With the voluntary written authorization of the person who deposited the bail, any balance shall then be applied to the fine, costs, and restitution ordered by the Court.

(d) Upon authorization in writing of the defendant and the third party surety who posted the deposit, whatever balance of such deposit is repayable to the defendant or the third party surety may be paid to the defendant's attorney of record upon filing such written authorization with the Clerk of Courts—Criminal.

(e) When a defendant or a third party surety has deposited a sum of money under the percentage cash bail program, then upon full and final disposition of the case, the deposit less the administrative costs and any amount applied to payment of fine, costs, and restitution as set forth above, shall be returned to the person who originally posted the deposit. Notice of the full and final disposition shall be sent by the Clerk of Courts—Criminal to the person who originally posted money at his address of record. Any money not claimed within one hundred eighty (180) days from the time of full and final disposition of the case shall be deemed as fees and shall be forfeited to the use of the County of Northampton.

[Pa.B. Doc. No. 96-2136. Filed for public inspection December 20, 1996, 9:00 a.m.]

## DISCIPLINARY BOARD OF THE SUPREME COURT

### Notice of Suspension

Notice is hereby given that on December 4, 1996, pursuant to Rule 214(d) of the Pa.R.D.E., Dale John Belock has been placed on Temporary Suspension by the Supreme Court of Pennsylvania until further Order of the Court.

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

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