

THE COURTS

Title 246—MINOR COURT CIVIL RULES

PART I. GENERAL

[246 PA. CODE CHS. 300—500 AND 1000]

Order Amending Rules 315, 402, 510, 517, 1002 and 1004 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices; No. 125; Magisterial Doc. No. 1 Book 2

The Minor Court Rules Committee has prepared a Final Report explaining the amendments to Rules 315, 402, 510, 517, 1002 and 1004 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices, effective January 1, 2001. These rule changes clarify these rules and/or their Notes based on various inquiries received by the Committee. The Final Report follows the Court's Order.

Order

Per Curiam:

Now this 15th day of December, 2000, upon the recommendation of the Minor Court Rules Committee; the proposal having been published before adoption at 29 Pa.B. 6329 (December 18, 1999), 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 315, 402, 510, 517, 1002 and 1004 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 January 1, 2001.

Annex A

TITLE 246. MINOR COURT CIVIL RULES

PART I. GENERAL

CHAPTER 300. CIVIL ACTION

Rule 315. Claim by Defendant.

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C. A money judgment for the plaintiff or for the defendant, but not for both, [may] shall be entered with respect to such cross complaints, any lesser amount found due on the claim asserted in one being deducted from the greater amount found due on the claim asserted in the other.

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Official Note

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Under subdivision C, a judgment shall be entered on both complaints where a cross-complaint has been filed, but the award of money shall only be for one party.

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 December 15, 2000, effective January 1, 2001.

EXECUTION OF JUDGMENTS FOR THE PAYMENT OF MONEY

Rule 402. Requests 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) days after the date [of] the judgment is entered by the district justice, and

* * * * *

D. 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. 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. The judgment may [not] be entered in the court of common pleas [until] after thirty (30) days [after] from the date [of] 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.

Official Note

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As to Subdivision D, see the Judicial Code, Section 1516, 42 Pa.C.S. 1516. The thirty day limitation appears to be required by this Section. Certification by the district justice should not be done before the expiration of thirty (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. Also, Subdivision 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.

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.

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

Rule 510. Subpoena of Witnesses.

A district justice may issue subpoenas throughout the Commonwealth to require the attendance of witnesses in any cause of action triable before [him] the district

justice. The subpoena may also require the person to produce at the time of hearing documents or things that are under the possession, custody or control of that person.

Official Note:

This rule is the same as Rule 317 [of the trespass and assumpsit rules] governing subpoenas in civil actions.

Amended June 30, 1982, effective 30 days after July 17, 1982; amended December 15, 2000, effective January 1, 2001.

Rule 517. Notation of Time of Receipt; Service of Order of Possession.

The [plaintiff] district justice shall [serve] mail a copy of the order for possession [by mailing a copy of it] to the defendant by first class mail and shall deliver a copy of it for service 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 officer receiving the order for possession shall note upon the form the time and date that [he received it.] **it was received, and [He]** shall serve the order within forty-eight (48) hours by handing a copy of it to the defendant or to an adult person in charge for the time being of the premises possession of which is to be delivered or, if none of the above is found, by posting it conspicuously on those premises. The service copy of the order shall contain the following notice:

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Official Note

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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; March 27, 1992, effective June 25, 1992; March 28, 1996, effective March 29, 1996; amended December 15, 2000, effective January 1, 2001.

**CHAPTER 1000. APPEALS
APPEAL**

Rule 1002. Time and Method of Appeal.

A. A party aggrieved by a judgment for money, or a judgment affecting the delivery of possession of real property arising out of a nonresidential lease, may appeal therefrom within thirty (30) days after the date of the entry of the judgment by filing with the prothonotary of the court of common pleas a notice of appeal on a form which shall be prescribed by the State Court Administrator together with a copy of the Notice of Judgment issued by the district justice. The prothonotary shall not accept an appeal from an aggrieved party which is presented for filing more than thirty (30) days after the date of entry of the judgment without leave of court and upon good cause shown.

B. A party aggrieved by a judgment for the delivery of possession of real property arising out of a residential lease may appeal therefrom within ten (10) days after the date of the entry of judgment by filing with the prothonotary of the court of common pleas a notice of appeal on a form which shall be prescribed by the State Court Administrator, together with a copy of the Notice of Judgment issued by the district justice. The prothonotary

shall not accept an appeal from an aggrieved party which is presented for filing more than ten (10) days after the date of entry of judgment without leave of [Court] court and upon good cause shown.

Note

The thirty day limitation in subdivision A of this rule is the same as that found in the Judicial Code § 5571(b), 42 Pa.C.S. § 5571(b), as amended by § 10(67) of the Judiciary Act Repealer Act, Act of April 28, 1978, P. L. 202, No. 53. The ten day limitation in subdivision B of this rule is designed to implement the time for appeal set forth in § 513 of the Landlord and Tenant Act of 1951 (Act No.1995-33, approved July 6, 1995) (Act No. 1995-33 was suspended by the Pa. Supreme Court on March 28, 1996 by Order of Court insofar as the Act is inconsistent with Rules of Civil Procedure Governing Actions and Proceedings Before District Justices, as adopted by that Order.). The two subdivisions of this rule are intended to clarify that where the right of possession of residential real estate is at issue, the shorter, ten day period for appeal applies; where [the judgment from which] the appeal is taken [is a judgment only] from any judgment for money, or a judgment affecting a nonresidential lease, under these rules, the thirty day period of time for appeal applies. **A party may appeal the money portion of a judgment only within the thirty day appeal period specified in subsection A of this rule. It is the intent of this rule that no supersedeas under Pa. R.C.P.D.J. No. 1008 shall be issued by the Prothonotary after the ten (10) day period for filing an appeal, unless by order of court.**

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Adopted 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; March 28, 1996, effective March 29, 1996; **amended December 15, 2000, effective January 1, 2001.**

Explanatory Comment—2001

The January 1, 2001, amendments to Rule 1002(A) and (B) are to make the language within the Rule consistent. Previously, the Rule used the words “date of entry of judgment” and then “date of judgment.” It is the opinion of the Committee that the phrase “date of entry of judgment” should be used and that it should be used consistently throughout the Rule.

The amendment to the Note is necessitated because Rule 514 requires that a judgment be rendered for the delivery of possession of the real property to the plaintiff and a separate entry of a judgment for money, whether it be for rent, damages, or costs. The separate entry of the judgment for money should be treated the same as a judgment in a civil action and there are no additional exigencies requiring an accelerated appeal period. The ten (10) day appeal period should only be applicable to the possession judgment and not to the money judgment.

The purpose of this amendment to the Note and this Explanatory Comment is to clarify the intent of the Rule to permit an appeal of the money judgment only within the thirty (30) day appeal period. See *Cherry Ridge Development v. Chenoga*, 703 A.2d 1061 (Pa. Super. 1997).

Rule 1004. Filing Complaint or Praecipe on Appeal; Appeals Involving Cross-Complaints.

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Official Note

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All judgments entered must be appealed to preserve all issues, if such issue can be properly pleaded in the court of common pleas. This is of particular importance under subdivision C, where both complaints must be appealed to preserve all issues. See *Borough of Downingtown v. Wagner*, 702 A.2d 593 (Pa. Cmwlth. 1997).

Adopted June 1, 1971. 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 December 15, 2000, effective January 1, 2000.

FINAL REPORT¹

Amendments to Rules 315, 402, 510, 517, 1002 and 1004 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices

On November 17, 2000, effective January 1, 2001, upon the recommendation of the Minor Court Rules Committee, the Supreme Court of Pennsylvania amended Rules 315 (Claim by Defendant), 402 (Request for Order of Execution; Entry of Judgment In Court of Common Pleas), 510 (Subpoena of Witnesses), 517 (Notation of Time of Receipt; Service of Order for Possession), 1002 (Time and Method of Appeal), and 1004 (Filing Complaint or Praeceptum on Appeal; Appeals Involving Cross-Complaints) of the Rules of Conduct, Office Standards and Civil Procedure for District Justices.

I. BACKGROUND

The Committee had received various inquiries requesting that several Rules and/or their Notes be clarified. These amendments are the Committee's attempt to make the appropriate clarifications to those Rules and/or their Notes and thus dispel any lingering confusion.

II. DISCUSSION OF RULE CHANGES

A. Rule 315 (Claim by Defendant)

The purpose of this amendment to the Note is to clarify that in a case where a complaint and cross complaint are both filed, the district justice shall enter a judgment on both the complaint and cross complaint. However, there shall be only an award of money to one party.

B. Rule 402 (Request for Order of Execution; Entry of Judgment in Court of Common Pleas)

First, the Rules use the terms "date of judgment" and "date of entry of the judgment" almost interchangeably. The Committee decided to be uniform in the use of only one term and chose the term of "date of entry of the judgment."

Second, it was brought to the Committee's attention that some district justices were signing the certification of judgment prior to the expiration of the thirty day appeal period. The Committee was of the opinion that it should be emphasized that this is not the proper practice.

¹ 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.

Third, the Committee was asked how long a district justice judgment is valid? The Committee was of the opinion that a district justice's judgment is valid for five years. Accordingly, the Committee recommended this amendment to specify that a district justice judgment may not be entered in the court of common pleas after five years from the date the judgment is entered by the district justice.

Fourth, the Committee wished to clarify that once a judgment is certified to 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.

C. Rule 510 (Subpoena of Witnesses)

The Committee recommended an amendment to the Rule and the Note to provide that a subpoena, in a landlord tenant matter, may be issued that requires an individual to produce documents or things which are in their possession, custody, or control. The Court had previously approved the same amendment to Rule 317 which governs subpoenas in civil actions before district justices.

D. Rule 517 (Notation of Time of Receipt; Service of Order of Possession)

This amendment clarifies who is to serve a copy of an order of possession upon the defendant, the district justice by first class mail or the plaintiff. This issue arose as a result of Acts 33 and 35 of 1995. The Committee recommended that the district justice should serve the order of possession upon the defendant by first class mail. It was the Committee's belief that this is a more efficient manner of insuring that the defendant receives a copy of the order of possession.

E. Rule 1002 (Time and Method of Appeal)

As a result of Acts 33 and 35 of 1995 and the Superior Court's decision in *Cherry Ridge Development v. Chenoga*, 703 A.2d 1061 (Pa. Super. 1997), several questions arose regarding the appeal period of a landlord tenant judgment if only the money damages are being appealed. The Committee considered this and decided to recommend an amendment to the Note to indicate that if the appellant is appealing only the money damages and not the possession order, that this is in the nature of an appeal of a civil action and should be the same appeal period, namely 30 days.

In addition, the Committee recommended to amend the Rule to use the term "date of entry of the judgment" in place of the term "date of judgment" for reasons provided in item B of this Final Report.

F. Rule 1004 (Filing Complaint or Praeceptum on Appeal; Appeals Involving Cross-Complaints)

The Committee, with this amendment to the Note, clarifies that in a case where there is a complaint and cross complaint, an appeal of judgment from either one is not an appeal of judgments from both. Rather, in order to preserve all issues, an appeal must be taken from both the judgment for the complaint and the judgment for the cross complaint.

[Pa.B. Doc. No. 00-2256. Filed for public inspection December 29, 2000, 9:00 a.m.]

Title 255—LOCAL COURT RULES

CAMERON COUNTY
Local Rule 101; No. 2000-7555

Order of Court

And Now, this 7th day of September, 2000, It Is Ordered and Decreed that Local Rule No. 101(C), Inactive Cases, is hereby amended as follows:

C. INACTIVE CASES

(a)

(1) Where it would be unduly burdensome to research the captions, parties and mailing addresses of Cameron County divorce cases that have been inactive for two years or more, such cases shall be terminated without service of individual notice. These cases will be deemed terminated without any further entry in the docket, and will be excluded from any computerized or other modern docket control system installed, subject to the right of the parties to reactivate the matter for good cause shown. The president judge will determine when the use of this procedure is appropriate.

Notice of the cases terminated will be made to the attorneys of record for plaintiffs and to plaintiffs appearing pro se within sixty (60) days after termination.

. . .

In all other respects, the rule shall remain unchanged. This amendment shall become effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

By the Court

VERNON D. ROOF,
President Judge

[Pa.B. Doc. No. 00-2257. Filed for public inspection December 29, 2000, 9:00 a.m.]

ELK COUNTY

Local Rule 101; Crim. Misc. No. 2000-23

For the text of the amendment of Local Rule 101, see 30 Pa.B. 6885 (December 30, 2000).

[Pa.B. Doc. No. 00-2258. Filed for public inspection December 29, 2000, 9:00 a.m.]

MONROE COUNTY

Schedule of Fees; Domestic Relations Section; No. Misc. 2000; No. 1 Administrative Order of 2000

Order

And Now, this 6th day of December, 2000, the Court hereby adopts the following Schedule of Fees for the

Domestic Relations Section of the Court of Common Pleas of Monroe County, effective ten (10) days after the date of publication in the *Pennsylvania Bulletin*:

- | | |
|---|---------|
| (a) Arrearage Certifications (per person) | \$ 5.00 |
| (b) Photocopy Costs, per page | \$.50 |
| (c) Objection to Conference Officer's Recommendation/Request for Hearing (must be paid at the time of the demand for hearing) | \$25.00 |
| (d) Exceptions to Hearing Officer's Recommendation/Request for Argument Court Hearing (must be paid at time of filing Exceptions in Domestic Relations Office) | \$50.00 |
| (e) Genetic Testing (per person) which will be assessed against the defendant unless the defendant is excluded, in which case the Domestic Relations Section will pay the costs of the genetic test | \$62.00 |
| (f) AOPC/JCP fee, per case (as mandated by the Pennsylvania Supreme Court Rule) | \$ 5.00 |
| (g) Transcription fee—in accordance with Court Rules | |

Fees must be paid when service is requested with the exception of the genetic testing fee. Checks may be accepted subject to collection. A Twenty (\$20.00) Dollar service charge shall be assessed if any check is returned by drawer's bank for any reason.

The Domestic Relations Section is authorized to adopt regulations and to inaugurate and maintain accounting systems in order to collect and process the above fees.

It is further ordered that the District Court Administrator shall file seven (7) certified copies of this Rule with the Administrative Office of PA Courts, two (2) certified copies to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*, One (1) certified copy to the Domestic Relations Procedural Rules Committee and One (1) copy to the Monroe County Legal Reporter for publication in the next issue.

It is further Ordered that this Administrative Order shall be kept continuously available for public inspection and copying in the Domestic Relations Office.

By the Court

RONALD E. VICAN,
President Judge

[Pa.B. Doc. No. 00-2259. Filed for public inspection December 29, 2000, 9:00 a.m.]