

THE COURTS

Title 246—MINOR COURT CIVIL RULES

PART I. GENERAL

[246 PA. CODE CH. 400]

Proposed Amendment to Rule 421 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices

Introduction

The Minor Court Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Pa. R.C.P.D.J. No. 421 to provide for the issuance of subpoenas duces tecum in determination of property claim hearings (Rule 420 hearings) and to make other technical or "housekeeping" amendments to this rule. The Committee has not submitted this proposal for review by the Supreme Court of Pennsylvania.

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

The text of the proposed changes precedes the Report. Additions are shown in bold; deletions are in bold and brackets.

We request that interested persons submit suggestions, comments, or objections concerning this proposal to the Committee through counsel,

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Minor Court Rules Committee
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or e-mail to: mike.krimmel@supreme.court.state.pa.us
no later than Friday, July 6, 2001.

By the Minor Court Rules Committee

FRED A. PIERANTONI, III,
Chair

Annex A

TITLE 246. MINOR COURT CIVIL RULES

PART I. GENERAL

CHAPTER 400. EXECUTION OF JUDGMENTS FOR THE PAYMENT OF MONEY

Rule 421. Time for Hearing and Determination; Subpoenas; Effective Date of Orders and Determination.

A. The district justice shall hold hearings on matters to be determined [**by him**] under Rule 420 not later than five [**(5)**] days after they are filed [**in his office**], and [**he**] shall notify all parties in interest of the date and time of the hearing by telephone or other timely means of communication. [**He**] **The district justice shall [make his] enter a determination not later than three [(3)] days after the hearing.**

B. [**At the time of the entry of the determination, the**] **The district justice shall promptly give or mail to the parties written notice of the determination. [If a] The written notice shall be given or mailed to all parties in interest, but if any party has an attorney of record the written notice shall be given or mailed to the attorney of record instead of to the party. Notice of the determination shall contain advice as to the right of the parties to file a Statement of Objection, the time within which the statement must be filed, and that the statement is to be filed with the court of common pleas.**

C. The district justice may issue subpoenas throughout the Commonwealth to require the attendance of witnesses. **The subpoena may also require the person to produce at the time of the hearing documents or things that are under the possession, custody or control of that person.**

D. Any stay of the whole or part of the execution proceedings ordered by the district justice shall be effective immediately. All other orders and determinations with respect to the whole or part of the execution proceedings shall not take effect until after the expiration of ten [**(10)**] days from [**their**] **the date of entry of the order or determination.**

Official Note:

* * * * *

Subdivision [**C**] **D** provides that, except for stays, determinations and orders of the district justice concerning the execution proceedings shall not take effect until after the expiration of ten days from [**their**] **the date of entry of the determination or order.** This will give any aggrieved party in interest a chance to obtain a stay by filing a statement of objection in the court of common pleas during that period of time. [**See Rule 1016B.**] **See Rule 1016.**

Source

Amended June 1, 1971; 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 _____, effective _____.

Report

Proposed Amendment to Pa. R.C.P.D.J. No. 421

Issuance of Subpoenas Duces Tecum in Determination of Property Claim Hearings (Rule 420 Hearings)

I. Background

The Committee undertook a review of Rule 421 when it came to the Committee's attention that Rule 421(C), that provides for the issuance of subpoenas in determination of property claims hearings (Rule 420 hearings), was not consistent with Rule 317 (relating to subpoena of witnesses in civil actions) and Rule 510 (relating to subpoena of witnesses in landlord/tenant actions). The Supreme Court has recently approved amendments to Rules 317

and 510 to provide for the issuance of subpoenas duces tecum. In recommending these amendments the Committee apparently overlooked the subpoena provision in Rule 421. Accordingly, the Committee proposes that Rule 421 be amended to provide for the issuance of subpoenas duces tecum in Rule 420 hearings to make it consistent with the other subpoena rules.

In conjunction with the proposed amendment to the rule regarding subpoenas duces tecum, the Committee also recognized the need for several technical or "house-keeping" amendments to this rule.

II. Discussion of Rule Changes

First, as noted above, the Committee proposes that a second sentence be added to Rule 421(C) to provide that "[t]he subpoena may also require the person to produce at the time of the hearing documents or things that are under the possession, custody or control of that person." This language is consistent with the previously approved amendments to Rules 317 and 510.

Secondly, in Rule 421(B), the Committee proposes minor changes to make the notice of determination requirement consistent with the notice requirement in Rule 324 relating to notice of judgment in civil actions.

Third, in Rule 421(D), the Committee proposes that the time period for filing a Statement of Objection run from "the date of entry of the order or determination" to make this time period consistent with the general appeal periods in civil and landlord/tenant actions that run from the date of entry of the judgment.

Finally, the Committee proposes minor changes to the rule to address gender neutrality issues, to correct cross-references in the Note, and to conform with modern drafting style.

[Pa.B. Doc. No. 01-980. Filed for public inspection June 8, 2001, 9:00 a.m.]

Title 249— PHILADELPHIA RULES

PHILADELPHIA COUNTY

Amendment of Philadelphia Orphans' Court Rules 6.3.A., 6.10.A., 7.1.A., 1.2.B., 1.2.K. and 3.2.A.; President Judge General Court Regulation No. 2001-01

Order

And Now, this 23rd day of May, 2001, the Board of Judges of Philadelphia County having voted at the Board of Judges' meeting held on May 17, 2001 to amend Philadelphia Orphans' Court Rules 6.3.A., 6.10.A., 7.1.A., 1.2.B., 1.2.K and 3.2.A., *It Is Hereby Ordered* that Philadelphia Orphans' Court Rules 6.3.A., 6.10.A., 7.1.A., 1.2.B., 1.2.K., and 3.2.A., are amended as follows, effective July 2, 2001.

This General Court Regulation is issued in accordance with Pa.O.C. Rule 1.2, and shall become effective July 2, 2001. As required, the original General Court Regulation shall be filed with the Prothonotary in a Docket maintained for General Court Regulations issued by the President Judge of the Court of Common Pleas of Phila-

delphia County, and copies shall be submitted to the Clerk of the Orphans' Court, the Administrative Office of Pennsylvania Courts, the Legislative Reference Bureau and the Orphans' Court Procedural Rules Committee. Copies of the Order shall also be submitted to American Lawyer Media, *The Legal Intelligencer*, Jenkins Memorial Law Library, and the Law Library for the First Judicial District.

FREDERICA A. MASSIAH-JACKSON,
President Judge

Amendments to Philadelphia Orphans' Court Rules Rule 6.3.A Time and Contents of Notice.

Notice shall be given at least fifteen (15) days prior to the audit and shall set forth:

* * * * *

(2) that (except as to non-residuary legatees or claimants whose legacies or claims have been or will be satisfied in full) a copy of the account and a copy of the will or trust instrument accompany the notice, or have been furnished previously, or will be sent upon request, as the case may be, and that any person who objects to the transactions shown in the account **or in the notice**, must appear in person or by counsel at the audit **[under penalty that] and file written objections with the Clerk in accordance with Rule 6.10.A**, or the Court may otherwise assume that there is no objection and may approve the account as stated.

(3) the accountant's understanding of the nature of the claim, interest or objection of the party notified; whether the claim, interest or objection is admitted or contested; if admitted, whether it will be paid in full or in part, and, if contested, that an appearance in person or by counsel must be made at the audit **[to press any such claim, interest or objection] and that written objections must be filed with the Clerk in accordance with Rule 6.10.A, or the claim or objection may be dismissed.**

* * * * *

(5) the accountant's interpretation of any dispute, or fairly disputable question, known to or reasonably ascertainable by the accountant, together with a copy of the instrument or material parts thereof containing any provision which forms the basis of the dispute, and a statement that if the person notified does not agree with the accountant's interpretation, he or she must appear at the audit in person or by counsel **[to present his or her contention, under penalty for failure to appear, that the Court will] and file written objections with the Clerk in accordance with Rule 6.10.A, or the Court may assume that he or she agrees with the accountant's interpretation.**

Rule 6.10.A **[Objections.] Written Objections.**

[Written] Objections to an account or statement of proposed distribution **[shall be filed with the Clerk of the Orphans' Court the later of twenty (20) days after service or the account or statement of proposed distribution on the objectant, or within twenty (20) days after the date the account is first called for audit] must be in writing and shall be filed with the Clerk of the Orphans' Court no later than the time and date fixed for the original call of the account for audit, unless otherwise specified by Order of Court.**

Probate Section Comment: See Rule 6.3.B, which provides for supplemental notice to parties in interest when an audit is continued.

Rule 7.1.A Exceptions. Rules Governing.

Old (1)—(4) PREEMPTED BY STATE LAW (enacted January 1, 2001)

(1) Exceptions shall be in writing, numbered consecutively, and signed by the exceptant or the exceptant's attorney. Each exception shall:

(a) be specific as to description and amount;

[(b) in no event raise questions which could have been raised previously by claim or objection;]

(c) raise **[but]** one **and only one** issue of law or fact, but if there are several exceptions relating to the same issue of law or fact, all such exceptions shall be included in one exception; and

(d) set forth briefly the reason or reasons in support of the exception.

(2) The Hearing or Auditing Judge shall issue a scheduling order setting forth dates for filing of briefs and oral argument.

(3) Exceptions shall be disposed of by the Hearing or Auditing Judge, sitting alone, unless the Administrative Judge, at the request of the Hearing or Auditing Judge, refers a matter, in whole or in part, to the court en banc for disposition. Only the Administrative Judge, acting at the request of the Hearing or Auditing Judge, may refer a matter to the court en banc.

Court Comment: This is the exclusive method by which a matter may be referred to the court en banc. The Court will not entertain any petitions, letters or other correspondence requesting that a matter be referred to the court en banc.

Probate Section Comment: See Pa. O.C. Rules 7.1 and 7.2 regarding exceptions.

Rule 1.2.B Court En Banc. (Note: Administrative Order of December 4, 2000 repealed the old rule)

(1) The court en banc shall sit at a time designated by the Administrative Judge of the Orphans' Court Division.

(2) The court en banc shall convene only to hear exceptions referred to it pursuant to Rule 7.1.A(3).

(3) The Administrative Judge shall issue a scheduling order setting forth briefing requirements, and dates for filing of briefs and oral argument before the court en banc.

Rule 1.2.K Corporate Fiduciaries. Approval. Security.

(1) *In General.* **[Corporations] Financial institutions** having fiduciary powers and authorized to do business in this Commonwealth, upon petition and pursuant to approval by the Court, may act as fiduciaries in matters pending in the Court, provided that a **[current] copy (either the original or photocopy) of the certificate evidencing the approval [of the state banking department, or a certified copy of the certificate from the Federal Reserve Board granting the right to exercise fiduciary powers, is on file with the Clerk] to conduct fiduciary activities issued by the appropriate state or federal banking regulator**

is attached to the petition. The institution shall certify in the petition that the certificate has been issued by the appropriate regulator and is valid as of the date of the petition.

(2) *Period of Approval.* The approval granted by the Court under paragraph (1) of this Rule shall be for a period of one year **[, and, thereafter, annually, subject, however,] running from January 1 to December 31. In order for approval to be granted or renewed in a timely fashion, an institution must file said petition on or before December 15 in the year preceding the year in which the institution wishes to act as a corporate fiduciary. The approval granted by the Court is subject to compliance by the institution with these Rules and with such other rules and regulations governing approval or renewal as the Court will, from time to time, promulgate.**

(3) *Security.* Except when required by statute or for special cause shown, bond will not be required of an approved corporate fiduciary.

Rule 3.2.A Pleadings.

* * * * *

(3) Preliminary Objections

(a) Preliminary objections shall be limited to questions of (i) law, (ii) form, or (iii) jurisdiction, and may be filed by any party, and shall be accompanied by one original brief **[prepared in conformity with Rule 1.2.B.(4)(a)(i)—(ii), (v)—(viii), (4)(c) and (4)(d).]**

(b) An answer to preliminary objections shall be accompanied by one original brief, **[prepared in conformity with Rule 1.2.B.(4)(a)(i)—(ii), (v)—(viii), (4)(c) and (4)(d),]** and shall be filed within twenty (20) days after service of the preliminary objections and accompanying brief.

[Pa.B. Doc. No. 01-981. Filed for public inspection June 8, 2001, 9:00 a.m.]

Title 25—LOCAL COURT RULES

LUZERNE COUNTY

Order Adopting Rules of Criminal Procedure; No. 203 Misc. 01

Order

Now this 18th day of May, 2001, the Court hereby adopts Luzerne County Rule of Criminal Procedure Nos. 300(B)(2) and amended Rule 301, effective immediately.

It is further ordered that the District Court Administrator shall file seven (7) certified copies of this rule with the Administrative Office of Pennsylvania Courts, two (2) certified copies to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*, one (1) certified copy to the Criminal Procedural Rules Committee, one (1) certified copy to the Judicial Council of Pennsylvania Statewide Rules Committee, and one (1) copy to the *Luzerne Legal Register* for publication in the next issue.

It is further ordered that these local rules shall be kept continuously available for public inspection and copying in the Clerk of Court's Office.

By the Court

JOSEPH M. AUGELLO,
President Judge

Rule 300(B)(2). Accelerated Disposition in Summary Cases.

The district attorney of Luzerne County having filed a certification designating certain classes of offenders that may be considered for summary case ARD, summary ARD may only be approved for offenders charged with violations of 18 Pa.C.S. Section 6308. Purchase, consumption, possession or transportation of liquor or malt or brewed beverages, who have not previously participated in the summary ARD program.

Rule 301. Procedures for Accelerated Rehabilitative Disposition in Summary Cases Before the Minor Judiciary.

(a) Program Costs: The administrative fee taxable under each application shall be \$10.00 (ten dollars), which shall be collected by the program provider and paid over to the Luzerne County General Fund which shall be payable no later than the day of admission to the program. The defendant shall further agree, as a condition of the ARD program, to pay the fees of any recommended treatment and/or community service program and/or approved alternative adjudication program. Restitution, if any, shall be paid to the district justice.

(b) Application:

i. Application for summary ARD shall be made upon the same forms as used in the Court of Common Pleas in court cases.

ii. The issuing authority shall establish the duration and conditions of defendant's probation, and transmit two copies of the application, and note thereon the transmittal date to the District Attorney. If the District Attorney disapproves the application, he shall retain one copy and transmit one copy back to the issuing authority noting disapproval within 20 days of the transmittal of the application.

(c) Program Conditions: An offender admitted to ARD shall comply with the following:

i. Obey all federal, state and local penal laws, and all rules of probation; and,

ii. Complete an approved adjudication alternative program as directed by the issuing authority; and,

iii. Undergo a drug and alcohol evaluation, if required by the issuing authority, and complete any recommended treatment.

(d) Program Admission and Completion: Unless the district attorney has disapproved the application, an eligible offender may be admitted to ARD by the issuing authority thirty days after transmittal of the application to the District Attorney. Bail, security or other collateral shall terminate upon entry. Admission to ARD shall not affect any period of license suspension/revocation directed by statute. Upon satisfactory completion of the program, the charges against the defendant shall be dismissed. The record of arrest shall not be affected by the operation of this local rule, however upon successful completion of the program, the case record shall be sealed by the issuing authority.

(e) Program Monitoring: Representatives from an approved adjudication alternative program are hereby authorized to monitor and supervise a defendant's progress in the summary ARD program. Further such organizations shall inform the issuing authority of either the offender's successful completion, or the failure to complete, and in the latter case may testify as to the reasons therefor in program revocation proceedings.

(f) Revocation: Should a defendant fail to comply with any condition of the ARD program, he or she may be revoked from the program by order of the issuing authority at a revocation hearing where the defendant will be afforded an opportunity to be heard. The issuing authority may issue such process as is necessary to bring the defendant before the Court. Should the defendant fail to appear after receiving notice of a revocation hearing, the issuing authority may issue a warrant pursuant to Pa.R.Crim.P. 75. No appeal shall be allowed from a revocation order.

Upon disapproval of the application by the district attorney, or upon revocation of the defendant's summary ARD program, or if a defendant declines to accept the program the case shall thereafter be scheduled for trial pursuant to Chapter 50 of the Pennsylvania Rules of Criminal Procedure.

(g) Monthly Report: Issuing authority shall submit a monthly report on the final disposition of all cases in which a defendant has applied for entry into the ARD program to the District Attorney.

(h) Adjudication alternative programs shall be approved by the Court of Common Pleas.

[Pa.B. Doc. No. 01-982. Filed for public inspection June 8, 2001, 9:00 a.m.]

SNYDER AND UNION COUNTIES
Adoption of Local Rules; No. 32 Misc. 2001

Order

And Now, this 18th day of May, 2001, it is hereby *Ordered*:

1. That the Rules of Civil Procedure of the 17th Judicial District are amended by the adoption of the following rule:

17CV001. Termination of Inactive Cases.

1. The Prothonotary shall list for general call on the third Monday of September all civil matters in which no steps or proceedings have been taken for two (2) years or more prior thereto and shall give notice thereof to counsel of record, and to the parties for whom no appearance has been entered, as provided by Pa.R.J.A. No. 1901(c). If no action is taken or no written objection is docketed in such a matter prior to the commencement of the general call, the Prothonotary shall strike the matter from the list and enter an order as of course dismissing the matter with prejudice for failure to prosecute, under the provisions of this rule. If no good cause for continuing a matter is shown at the general call, an order shall be entered forthwith by the court for dismissal.

2. Local Rule 6.1(a) is hereby renumbered as 17CV1018.1.

3. That all local rules currently numbered 17LR13 ____ are hereby renumbered as 17CV13 ____ .

4. That Rules 17CV216.1, 17CV216.2, 17CV1301.1 through 17CV1304.2, 17CV1306, 17CV1308.1, 17CV1308.2, 17CV1314, 17CR106.1, and 17CR106.2 shall remain in full force and effect.

5. That all other local rules of the 17th Judicial District of Pennsylvania are hereby abrogated, and shall be of no further force or effect.

6. These amendments shall become effective thirty (30) days after publication of this Order in the *Pennsylvania Bulletin*.

7. The Court Administrator of the 17th Judicial District of Pennsylvania shall comply with the provisions of Pa.R.J.A. No. 103(c).

By the Court

HAROLD F. WOELFEL, Jr.,
President Judge

[Pa.B. Doc. No. 01-983. Filed for public inspection June 8, 2001, 9:00 a.m.]